

No. 70916-0-I

DIVISION I, COURT OF APPEALS
OF THE STATE OF WASHINGTON

GALLEON HOMEOWNERS ASSOCIATION,

Plaintiff-Respondent

v.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., and
NATIONSTAR MORTGAGE LLC

Defendants-Appellants

ON APPEAL FROM SNOHOMISH COUNTY SUPERIOR COURT

(The Honorable George N. Bowden)

NATIONSTAR AND MERS' OPENING BRIEF

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INTRODUCTION & SUMMARY OF ARGUMENT

This appeal arises from a judgment granting the foreclosure of the Galleon Homeowners Association (Association)'s assessment lien against a unit.

The trial court correctly granted summary judgment against the owner of the unit for the unpaid assessments and foreclosed the lien against the unit.

The trial court, however, exceeded its authority when it granted a default judgment that “foreclosed forever” the interests of “mortgage lenders.” The court lacked authority to grant relief beyond that which the allegations and prayer of the complaint sought. Here, the complaint did not name “mortgage lenders” as parties, so the judgment against them was void. For the same reasons, the court lacked authority to add to the judgment a super-priority remedy that was not pleaded in the complaint.

The court later compounded these errors in a series of rulings, denying the motion to vacate the default judgment and culminating with the declaration that the mortgage lender had no statutory right of redemption under the original or revised redemption statute.

Nationstar Mortgage LLC (Nationstar), the junior lienholder that the Association chose not to name in its lawsuit, acted promptly and well within the undisputed redemption period to intervene in the case and

redeem the property. Indeed, the redemption period has not even expired. Nonetheless, the trial court refused to vacate a default judgment, denied Nationstar's request to formally intervene in the case, and awarded attorney fees and costs to the condominium association well after its judgment had been fully satisfied.

Under Washington law, a party whose lien is subsequent in priority to a foreclosed lien has a statutory right of redemption. During the pendency of this case and before the redemption period expired, the Washington legislature voted almost unanimously to replace the ambiguous word "time" with the unambiguous word "priority" in RCW 6.23.010, making it clear that lienholders "subsequent in priority" are qualified redemptioners. This right of redemption exists under the proper interpretation of the former version of the qualified redemptioner statute and if the new version of the statute is applied retroactively.

Even if the Washington Supreme Court upholds the interpretation of the prior redemption statute in the *Fulbright* and *Summerhill* decisions and declines to apply the new statute retroactively, Nationstar may still redeem because the new statute is now in effect and its redemption period has not expired. Moreover, as did the lienholder in *Fulbright*, Nationstar asserts that a under a proper reading of Washington's race-notice recording statute and the Condominium Act, Nationstar's lien was

“subsequent in time” to the Association’s lien under former RCW 6.23.010(1)(b) because the Association perfected its lien when it recorded its declaration in 1978 (amended in 2006), but Nationstar’s predecessor did not record the Deed of Trust lien until 2007. Nationstar is thus a qualified redemptioner even under the prior statute.

Because the trial court erred when it found Nationstar was not a qualified redemptioner, it also erred when it denied Nationstar’s attempt to intervene and set aside the default judgment. The trial court’s denial of Nationstar’s motion to vacate the default judgment was also error because that judgment is void to the extent it contains new and different forms of relief than the actual relief requested in the complaint. The judgment and foreclosure decree included amounts in excess of the six months of assessments over which the Association could claim a super-priority lien, added an actual reference to the operative statute, RCW 64.34.364, and its limited “six month” super-priority provision, and a forfeiture provision triggered by the failure to satisfy the priority lien before the Sheriff’s Sale.

The trial court also misinterpreted and misapplied the Washington Supreme Court’s decision in *Bain v. Metropolitan Mortg. Group, Inc.*, 175 Wn.2d 83, 106, 285 P.3d 34 (2012) and general agency law, despite the undisputed evidence of Mortgage Electronic Registration Systems, Inc.’s (MERS) status as Nationstar and its predecessors’ agent. This error

produced the incorrect conclusion that MERS, the mortgagee of record, was not entitled to service of process.

Finally, the trial court also erred when it awarded the Association fees and costs against Nationstar allegedly incurred in connection with litigating Nationstar's motion to vacate the default judgment and foreclosure decree. None of the bases for this award are legally sufficient. Neither of the Condominium Act statutes relied upon by the Association and the trial court apply in these circumstances. The "equitable grounds" of CR 60 apply when a motion to set aside a judgment is granted, not denied. Nor do the facts support an equitable fees and costs award.

ASSIGNMENTS OF ERROR

1. The court erred when it ruled that Nationstar was not a qualified redemptioner.
2. In the alternative, the court erred by not finding that Nationstar's lien was "subsequent in time" under the prior version of RCW 6.23.010(1)(b) given the plain language of the Condominium Act, RCW 64.34.364(7), and Washington's race-notice statute, RCW 65.08.070 because the Association recorded its declaration and perfected its lien in 1978, but Nationstar's predecessor perfected its lien in 2007.
3. The Superior court erred when it denied Nationstar's Motion to Intervene.
4. The court erred when it denied Nationstar and MERS' Motion to Vacate.
5. The court erred when it concluded that MERS was not entitled to service of process.

6. The court erred when it awarded attorney fees to the Association.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether Nationstar is a qualified redemptioner under the current or former versions of RCW 6.23.010(1)(b);

2. Whether, under former RCW 6.23.010(1)(b) (2013), Nationstar's lien was "subsequent in time" to the Association's assessment lien where the Association recorded its declaration in 1978 and Nationstar's predecessor perfected its lien in 2007.

3. Whether Nationstar, as a holder or servicer of the promissory note secured by the Deed of Trust eliminated by the foreclosure of the Association's assessment lien, had an interest in the Deed of Trust such that Nationstar should have been permitted to intervene in the underlying lawsuit.

4. Whether the trial court erred when it denied the Motion Vacate where the default judgment and foreclosure obtained by the Association contained different and additional relief than that requested in its complaint.

5. Whether the trial court erred when it concluded that MERS was not entitled to receive service of process of the underlying lawsuit

where it was the nominee beneficiary of record and the agent of the original lender and subsequent beneficiaries of the Deed of Trust.

6. Whether the trial court erred when it awarded the Association attorney fees and costs against Nationstar.

STATEMENT OF THE CASE

A. The Association Perfected Its Lien by Recording its Declaration Before Nationstar’s Predecessor Recorded the Deed of Trust.

On April 24, 1978, the Association recorded its Condominium Association Declaration. CP 314-319; 229.¹ The Declaration included references to Chapter 64.32 RCW, the Horizontal Property Regimes Act (Condominiums). CP 314-319.

In 1992, Washington adopted the Uniform Condominium Act. The Act’s lien for assessments provision, RCW 64.34.364, applied to existing condominiums but did “not invalidate or supersede existing, inconsistent provisions of the declarations ... of those condominiums.” RCW 64.34.010.

On May 24, 2004, Maria Berglund (Berglund) purchased Galleon Condominium Unit 605 (the Unit) for \$131,000. CP 191.

¹ Under the Washington Condominium Act, “[r]ecording of the declaration constitutes record notice and perfection of the lien for assessments[.]” RCW 64.34.364(7).

On November 21, 2006, the Association recorded the Eighth Amendment to the Galleon Condominium Declaration. CP 316-319; 114.² The Amendment's Section 15 deleted the lien provisions under the old condominium act (Chapter 64.32 RCW, the Horizontal Property Regimes Act) and adopted the Uniform Condominium Act's super-priority provision of assessment liens due for the six month period preceded a sheriff's sale over "a mortgage on the apartment before the date on which the assessment sought to be enforced became delinquent." *Compare* RCW 64.34.364 (Lien for assessments) *with* Section 15(i)(1)(b) (preserving the priority of "a mortgage on the apartment recorded before the date on which the assessment sought to be enforced became delinquent ...") Section 15(i)(2) (providing "lien shall also be prior to the mortgages described in subparagraph 15(i)(1) to the extent of assessments for common expenses ... which would have become due during the six months immediately proceeding the date of a sheriff's sale ...")³

On December 29, 2006, Berglund borrowed \$166,500 from Fremont Investment and Loan (Fremont). She executed a promissory note (Note) that was secured with a Deed of Trust against the Unit. CP 194-202; 162-184. Fremont recorded the Deed of Trust with the Snohomish

² Snohomish Cnty. Recording No. 200611210732. The Court may judicially notice this publicly recorded document, a true and correct copy of which is attached to the Appendix as Exhibit A. *See* ER 201; RAP 9.11.

³ *See id.*

County Auditor's Office on January 10, 2007. CP 203. The Deed of Trust identifies MERS as the nominee beneficiary for Fremont and its successors and assignees. CP 163-164. The Deed of Trust is clear that MERS "holds only legal title to the interests granted by [Berglund] in the [Deed of Trust], but if necessary to comply with law or custom, MERS (as nominee for [Fremont] and [Fremont'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[.]" CP 164. Further, the Deed of Trust's requirements for proper notice to the lender applies to notices given by the borrower. *See* CP 172-173. Because MERS is the nominee beneficiary of record for both the original lender and its successors and assigns (CP 163-164) notice by third parties such as the Association must be given to MERS, as was done in this case. *See* CP 171-172; 187; 339.

Fremont indorsed the Note in blank. CP 198.⁴ Nationstar began servicing the loan on July 17, 2007. CP 159. MERS was Fremont and Nationstar's agent with respect to the Note and Deed of Trust. *Id.*⁵

⁴ Under Washington's Uniform Commercial Code, this blank indorsement rendered the Note bearer paper, enforceable by the person in possession of it. *See, e.g.* RCW 62A.1.201(21)(A); .3-301.

⁵ MERS would also have been an agent of any other beneficiaries of the Deed of Trust and their servicers. *See* CP 159.

B. The Association's Action to Foreclose its Assessment Lien.

Snohomish County real property records indicate that the Association liened the property in January 2009 and released the lien in May 2009.⁶

On or about April 18, 2011, Berglund defaulted on her obligation to pay monthly condominium assessments. CP 320. The Association recorded another lien in March 2012.⁷ On May 8, 2012, the Association sued Berglund to collect \$5,824.61 in unpaid assessments and related fees and costs. CP 344-345. The suit does not refer to the recorded claim of lien, nor does the suit allege that the recorded claim was sent to MERS. CP 344-347.

The suit did name MERS as a defendant. CP 344. The Association asserted that “[a]lthough MERS is listed as the beneficiary on deeds of trust, MERS does not meet the definition of ‘beneficiary’” and was clouding title[.]” CP 345. The suit, however, did not name the original lender. The suit does not provide notice of the super-priority provision in the declaration and in RCW 64.34.364(3) allowing “the lien to be prior to the mortgages ... to the extent of assessments for common expenses ... which would have become due during the six months immediately proceeding the date of a sheriff’s sale[.]” See CP 344-347.

⁶ Snohomish Cnty. Recording Nos. 200901070180, 20090412028.

⁷ Snohomish Cnty. Recording Nos. 201203020114.

The suit requested that “plaintiff’s lien be declared a valid first lien upon the land ...,” that MERS had no interest in the property, and that “the rights of each of the defendants and persons claiming by, through, or under them, be adjudged inferior and subordinate to plaintiff’s liens and be forever foreclosed except for only the statutory right of redemption allowed by law, if any.” CP 347.

The Association recorded a lis pendens referring to the suit. CP 78. RCW 4.28.320 provides a lis pendens “contain the names of the parties ...” The Association’s lis pendens, however, failed to identify MERS as one of the parties. *See id.*

Berglund did not appear, but submitted a declaration in response to CP 360-361; 336. On May 16, 2012, the Association served MERS through its Delaware registered agent. CP 187; 339. MERS forwarded the summons and complaint to Nationstar the next day. CP 187. Because of an internal error that was likely the product of a high volume of transfers of servicing rights to Nationstar, Nationstar did not respond to the lawsuit. CP 187-188.

C. The Foreclosure Decree Differs from the Complaint.

On July 23, 2012, the Association moved to default MERS and Berglund. CP 335. On August 24, 2012, the court entered a default order against MERS. CP 333. On October 26, 2012, the court entered a

Default/Summary Judgment, Order and Foreclosure Decree against the Berglunds and Order and Decree of Foreclosure against MERS. CP 301-305. The Decree of Foreclosure includes more and different relief from the complaint by referring to the super-priority assessment lien provision of the Uniform Condominium Act and mortgage lenders. The additional relief stated in relevant part:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the rights of defendant mortgage lenders be adjudged inferior and subordinate to the plaintiff's lien to the extent of assessments for common expenses based on the periodic budget adopted by the Association pursuant to RCW 64.34.360(1) which would have become due during the six months immediately preceding the date of any sheriff's sale conducted pursuant to this foreclosure decree;

...

that if the defendant mortgage lenders, and the persons claiming by, through or under them, do not satisfy the Association's lien priority as described in the preceding paragraph prior to any sheriff's sale conducted pursuant to this decree, their rights are forever foreclosed;

...

that period redemption shall be one year from the date of the Sheriff's sale after which time the Sheriff shall issue the Sheriff's deed to the purchaser[.]

CP 304.

The Sheriff's Sale occurred on March 1, 2013. CP 275; 115. The Condo Group LLC (Condo Group), through Ray Stevenson, purchased the Property for \$14,000. *See id.* The Condo Group received only a Sheriff's Certificate of Sale; no deed or title has been issued. *See* CP 257.

D. The Legislature Initiated the Near Unanimous Amendment of the Redemption Statute During the Month Before the Sale.

A month before the sale, Washington legislators introduced in February 2013 Senate Bill 5541 (SB 5541) changing the word “time” in RCW 6.23.010(1)(b) to “priority.”⁸ The express purpose of this amendment was to reverse the *Summerhill* interpretation of the phrase “subsequent in time” and clarify that the phrase gave redemption rights to holders of liens subsequent in priority to the foreclosed lien.⁹ The Senate passed the bill on March 11 and the House passed the bill on April 9, 2013 with just two days and 140 yeas.¹⁰ The Governor signed the law on April 23, 2013.¹¹

E. The Court Denied Nationstar’s Request for Redemption and for Vacation of the Default Judgment.

Four months after the sale, MERS, at Nationstar’s direction and in its capacity as Nationstar’s agent, executed and recorded an Assignment of Deed of Trust in favor of Nationstar on May 28, 2013. CP 227. On July 26, 2013, the court granted Nationstar an order to show cause why the Association’s default order, default judgment and foreclosure decree should not be vacated. CP 149-150.

⁸ App. Ex. B.

⁹ *See id.* at 2.

¹⁰ App. Ex. C.

¹¹ *Id.*

Two days later, a new version of the redemption statute (RCW 6.23.010(1)(b)) became effective on July 28, 2013, well before the redemption period for the Property expired. On August 20, 2013, the court denied Nationstar's motion to vacate the default judgment and foreclosure decree, ruling that neither MERS nor Nationstar ever held the beneficial interest in the Deed of Trust at a relevant time and that Nationstar did not have the right to redeem the Property. CP 53-54. The Court subsequently awarded attorney fees and costs to the Association allegedly incurred in responding to Nationstar's Motion to Vacate. CP 9-10. On September 18, 2013, Nationstar and MERS appealed to this Court. CP 1-3.

F. The Review of the *Fulbright* Decision Involves Similar Issues.

On September 4, 2013, the Washington Supreme Court granted Bank of America, N.A.'s petition for review of this Court's decision in *BAC Home Loans Servicing LP v. Fulbright*, 174 Wn. App. 352, 298 P.3d 779 (2013). See 178 Wn.2d 1001, 308 P.3d 642 (Table). The issues presented by Bank of America's petition are:

1. Whether the Redemption Act should apply to lienholders with extinguished liens subsequent in priority to the foreclosing lien, whether or not subsequent in time;
2. Whether a condominium association creates and perfects its lien for unpaid for unpaid assessments upon

recording of the condominium declaration, thus authorizing the lienholder to redeem because its deed of trust was recorded after the condominium declaration; and

3. Whether SB 5541 applies retroactively to pending redemptions when the property's purchaser does not hold a sheriff's deed or title.¹²

The Washington Supreme Court's opinion in *Fulbright* will likely control portions of this appeal. In contrast to *Fulbright*, the statutory redemption period in this case had not expired before SB 5541 came into effect. Oral argument in *Fulbright* is presently set for February 11, 2014.¹³

G. Nationstar Tolls the Redemption Period.

On January 6, 2014, Nationstar began the process of redeeming the Property under RCW 6.23.010(1)(b) as “[a] creditor having a lien by judgment, decree, deed of trust, or mortgage, on any portion of the property, or any portion of any part thereof, separately sold, subsequent in priority to that on which the property was sold.” (underline added).¹⁴ Nationstar has delivered a redemption request letter and supporting documentation to the Snohomish County Sheriff.¹⁵ Nationstar anticipates that the Condo Group will refuse to cooperate in the redemption process

¹² App. Ex. D.

¹³ http://www.courts.wa.gov/appellate_trial_courts/supreme/calendar/?fa=atc_supreme_calendar.display&year=2014&file=docwin14.

¹⁴ Prior to July 28, 2013, RCW 6.23.010(1)(b) used the word “time” instead of “priority.”

¹⁵ App. Ex. E.

and take the position that Nationstar is not an authorized redemptioner. Upon rejection of its redemption attempt by the Condo Group, Nationstar will in an abundance of caution file an action for declaratory judgment that it is entitled to redeem the Property and place the estimated redemption amount in the Snohomish County Superior Court registry, in order resolve any question about the tolling of its redemption period.

ARGUMENT

A. Recent Developments in Redemption Rights Law.

As the Court is aware, there have been a number of recent developments in the law regarding a Deed of Trust lienholder's right to redeem real property sold pursuant to the super-priority lien for delinquent condominium assessment dues created by RCW 64.34.364. Nationstar and MERS survey these developments briefly as context for their legal arguments.

In *Summerhill Village Homeowners' Ass'n v. Roughley*, 166 Wn. App. 625, 270 P.3d 639, *amended by and recon. denied by* 289 P.3d 645 (2012), this Court held that the prior version of RCW 6.23.010(1)(b) was unambiguous and did not allow redemption by deed of trust lienholders whose liens were extinguished by the foreclosure of super-priority condominium assessment liens and were not literally "subsequent in time" to the foreclosing lien.

Key to this Court’s analysis was its view that the prior redemption statute was part of “a highly technical statutory scheme, not for casual tinkering by courts.” *Summerhill*, 166 Wn. App. at 632. The Court thus declined to “rewrite the redemption statute because a lienholder’s lack of diligence has had unexpected consequences.” *Id.* Now, however, the Washington legislature has re-written the statute to confirm its original intent.

In *Fulbright*, 174 Wn. App. 352, 298 P.3d 779, Bank of America argued that former RCW 6.23.010(1)(b) and the rest of the Redemption Act permitted redemption by holders of extinguished liens that had been subsequent in priority to the foreclosing lien. Unlike the lienholder in *Summerhill* however, Bank of America also argued that its Deed of Trust was “subsequent in time” to the condominium lien under RCW 64.34.364(7), which provides that the recording of the condominium “constitutes record notice and perfection of the lien for assessments,” because its lien was recorded after the condominium association recorded its lien.

Relying in part on *Summerhill*, this Court held that the effect of the recordation of the condominium declaration was to give notice to the world that assessment liens may arise in the future. *Fulbright*, 174 Wn. App. at 357. As a result, this Court held that Bank of America’s Deed of

Trust was not “subsequent in time” to the association’s lien, because that lien came into existence after the Deed of Trust was recorded. *Id.*

B. Nationstar Is Entitled to Redeem Because the Current Version of RCW 6.23.010(1)(b) Applies to Nationstar’s Unexpired Redemption Period.

The statutory redemption period is one year. RCW 6.23.020(1)(b). The Sheriff’s Sale at issue occurred on March 1, 2013 and thus any qualified redemptioner could redeem the Property on or before March 1, 2014. CP 275; 115; 304. The new version of RCW 6.23.010(1)(b) became effective on July 28, 2013, eight months before the redemption period expired. Because the legislature made it clear that a lienholder whose lien was “subsequent in priority” to the foreclosed lien may redeem, Nationstar is now undisputedly a qualified redemptioner that should be allowed to exercise its statutory right to redeem.

Simply put, the new redemption statute applies to Nationstar’s redemption period from July 28, 2013 forward. When the legislature amends a redemption statute, the amendment applies to the remainder of an unexpired redemption period unless the Legislature expressly states otherwise. *See Severson v. Penski*, 36 Wn. App. 740, 745, 677 P.2d 198 (1984). In *Severson*, this Court held that an amendment requiring the Sheriff’s Sale purchaser to send written notices to the judgment debtor every two months during the one-year redemption period applied to the

nearly five-month period that was left on the judgment debtor's original redemption period when the statute was enacted. *Id.* at 742, 744-745.

The same result should follow here. Because the Legislature has now clarified that Nationstar is a qualified redemptioner, it should be permitted to exercise that right as its time for doing so has not expired. The correctness of this approach is underscored by the fact that the Legislature has amended redemption laws in the past to specifically limit the amendment's applicability to sales occurring after the amendment's effective date. For example, when the Legislature amended the redemption statute in 1897 to grant creditors redemptioner status, the Legislature included a provision that "the rights of redemption from sales upon judgments prior thereto shall remain unaffected." *Geddis v. Packwood*, 30 Wash. 270, 271-72, 70 P. 481 (1902). The 1899 Act had a similar reservation "that such rights conferred shall not be applicable to judgments entered before their enactment." *Id.* In contrast, the 2013 amendment does not contain a similar reservation, and none should be implied. If the "Legislature uses certain language in one instance but different, dissimilar language in another, a difference in legislative intent is presumed." *Millay v. Cam*, 135 Wn.2d 193, 202, 955 P.2d 791 (1998). Similarly, under the "expressio unius est exclusio alterius" canon of statutory construction, when a statute lists the things upon which it

operates, there is a presumption that the legislature intended all omissions. *Blue Diamond Group, Inc. v. KB Seattle 1, Inc.*, 163 Wn. App. 449, 266 P.3d 881 (2011).

If the Legislature had wanted SB 5441 to not apply to unexpired redemption periods, it could have included a reservation clause similar to the ones included in prior Redemption Act amendments. Instead, the Legislature made a swift and unambiguous statement that all lienholders subsequent in priority to the foreclosed lien are qualified redemptioners. Because the Legislature did not include such a reservation in the 2013 amendment, Nationstar should be entitled to redeem the Property, as its time for doing so has not passed.

C. The Amendment to RCW 6.23.010(1)(b) Should Also Apply Retroactively.

A statutory amendment is presumed to apply prospectively, but it will apply retroactively if: (1) the legislature so intended; (2) the amendment is curative; or (3) it is remedial. *McGee Guest Home, Inc. v. Dep't of So. and Health Servs.*, 142 Wn.2d 316, 324, 12 P.3d 144 (2000).

The test for retroactivity is disjunctive; “amendments to statutes may be applied retroactively to effectuate legislative intent or if the amendment is remedial. *See id.* at 325 (citing *Harbor Steps Ltd. Part'ship v. Seattle Technical Finishing, Inc.*, 93 Wn. App. 792, 798, 970 P.2d 797,

rev. denied, 138 Wn.2d 1005, 984 P.2d 1034 (1999)). Here, applying SB 5541 retroactively is appropriate because doing so would effectuate legislative intent and because the amendment is remedial.

1. **Applying SB 5541 Retroactively Effectuates Legislative Intent.**

If “a former statute is amended, such amendment is strong evidence of legislative intent of the first statute.” *Waggoner v. Ace Hardware Corp.*, 134 Wn.2d 748, 755-756, 953 P.2d 88 (1998) (citations omitted). *See also Moen v. Spokane City Police Dep’t.*, 110 Wn. App. 714, 719-720, 42 P.3d 456 (2002) (“later amendments to a statute may be strong evidence of what the Legislature intended in the original statute”); *Johnson v. Cont’l West Inc.*, 99 Wn.2d 555, 559, 663 P.2d 482 (1983) (“If the amendment was enacted soon after controversies arose as to the interpretation of the original act, it is logical to regard the amendment as a legislative interpretation of the original act.”) (internal citations omitted).

SB 5541 is a near unanimous statement of legislative intent. It replaced the word “time” with “priority,” eliminating the prior ambiguity of whether “subsequent in time” meant “subsequent in priority,” where priority is established under the race-to-record principles favoring early recordings, which are augmented by relation-back exceptions and perfection and notice principles. The legislature’s intent is that all junior

lienholders, not just those whose liens were recorded “subsequent in time” should be allowed to redeem. This Court should apply the new RCW 6.23.010(1)(b) retroactively and permit Nationstar to redeem the Property.

2. **The 2013 Amendment Is Also Curative and Remedial Without Supplanting Vested, Contractual or Constitutional Rights.**

A statutory amendment applies retroactively if it is curative or remedial. *McGee Guest Home*, 142 Wn.2d at 324-325. An amendment that “clarifies or technically corrects an ambiguous statute” is curative. *Wash. State Farm Bureau Fed. v. Gregoire*, 162 Wn.2d 284, 303, 174 P.3d 1142 (2007). An amendment that betters or forwards already existing remedies for the enforcement of rights or redress of injuries is remedial. *Haddenham v. State*, 87 Wn.2d 145, 148, 550 P.2d 9 (1976). But a Court will not apply a statute retroactively if doing so would affect a contractual, constitutional or vested right. *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 460, 463, 832 P.2d 1303 (1992).

The *Summerhill* decision was the express basis for the Legislature’s decision to amend RCW 6.23.010(1)(b).¹⁶ This immediate and direct legislative response leaves no doubt that the Redemption Act protects all junior lienholders subsequent in priority to the foreclosed lien. It is thus curative and remedial.

¹⁶ App. Ex C at 2.

Applying the amendment does not harm a vested right of the Condo Group.¹⁷ A “certificate of sale executed by a sheriff does not vest title, being at most evidence of an inchoate estate that may or may not ripen into an absolute title.” *Severson*, 36 Wn. App. at 744 (quoting *Bonded Afd. Co. v. Helgerson*, 188 Wash. 176, 178, 61 P.2d 1267 (1936)). A purchaser at a judicial foreclosure sale is entitled to possession, rents and profits of the property, he does not hold title “until he receives a deed in pursuance of the sale.” *Singly v. Warren*, 18 Wash. 434, 445, 51 P. 1066 (1898).

Here, the Snohomish County Sheriff has not issued a deed to the Condo Group, because the redemption period has not expired. Rather, the Condo Group has only a certificate of sale (CP 257), which does not convey title or amount to a vested right. *See W.T. Watts, Inc. v. Sherrer*, 89 Wn.2d 245, 248, 571 P.2d 203 (1977). The Condo Group’s purchase was made knowing that it would be subject to a one-year right of redemption. Nationstar will, prior to the expiration of the one year redemption period, file a declaratory judgment action and tender sufficient funds to redeem the property and if as is anticipated, the Condo Group refuses to cooperate with the redemption process. *See Millay*, 135 Wn.2d at 198.

¹⁷ No constitutional or contractual interests are implicated by retroactive application of SB 5541 in this case, Nationstar and MERS address the impact on vested rights only.

To the extent that the Court concludes that retroactive application would not effectuate legislative intent, it should still apply the amended redemption statute retroactively because the amendment is curative and remedial.

D. Properly Interpreted, the Prior Version of RCW 6.23.010(1)(b) Permits Redemption by Holders of Liens Subsequent in Priority to the Foreclosed Lien.

The 2013 amendment to RCW 6.23.010(1)(b) confirms that a creditor's redemption status depends on the priority of the would-be redemptioner's "lien by ... deed of trust or mortgage," clarifying that "subsequent in time" meant "subsequent in priority." Perfection has a temporal element. "When evaluating a priority conflict between secured parties and lienholders, the pertinent times are when the security interest was perfected and when the lienholder gave notice of the lien." *Robb v. Kaufman*, 81 Wn. App. 182, 190, 913 P.2d 828 (1996) (citing Gerald F. Hess, *Priority Conflicts Between Security Interests and Washington Statutory Liens for Services or Materials*, 25 Gonz. L. Rev. 453, 480–81 (1990)) (underline added).

"Perfection is a concept used to determine the priority of a security interest against competing interests in the collateral. It refers to that single date, or moment in time, when the state perfection statute is satisfied, and the lien becomes good against other creditors who can no longer obtain

superior rights.” *In re Snavely*, 314 B.R. 808, 816 n. 9 (9th Cir. Bankr. Appellate Panel 2004) (underline added). In this case, the Association’s complaint does not refer to essential dates necessary provide fair notice to the mortgagee: the date when the Association’s declaration was recorded, when the deed of trust was recorded, when the condominium owner initially fell delinquent on assessments, and when a lien was recorded. *See* CP 344-344-347. The complaint merely requests that the Association’s “lien be declared a valid first lien.” CP 347. In the context of the ambiguous complaint, “first lien” has a temporal connotation.

Consistent with fundamental canons of statutory construction, this Court in *Summerhill* recognized that ambiguous statutes should be construed to effectuate the legislature’s intent and avoid a literal reading of the statute if it would result in unlikely, absurd or strained consequences. 289 P.3d at 649. In this analysis, “[t]he purpose of an enactment should prevail over express but inept wording.” *Whatcom County v. City of Bellingham* 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).

However, this Court did not apply this statutory construction analysis in *Summerhill* or *Fulbright* because it found that “the language of [former RCW 6.23.010(1)(b)] is unambiguous, and the expressed legislative intent is consistent with the language.” 289 P.3d at 649. Now, however, this Court has the benefit of a subsequent legislative enactment,

SB 5541, to aid in its analysis. Using the new version of RCW 6.23.010(1)(b) to interpret the prior version is the appropriate approach to take because “later amendments to a statute may be strong evidence of what the Legislature intended in the original statute.” *Moen*, 110 Wn. App. at 719-720. “If the amendment was enacted soon after controversies arose as to the interpretation of the original act, it is logical to regard the amendment as a legislative interpretation of the original act.” *Cont’l West Inc.*, 99 Wn.2d at 559 (quoting 1A C. Sands, *Statutory Construction* § 22.31 (4th ed. 1972)). An original act and amendment “must” be read and construed as one law passed at the same time. *Frank v. Fischer*, 108 Wn.2d 468, 474, 739 P.2d 1145 (1987). The 2013 amendment in SB 5541 had a clear and singular purpose – to clarify that holders of liens subsequent in *priority* to the foreclosed lien were statutory qualified redemptioners.

This result is particularly appropriate because the prior use of the phrase “subsequent in time” in the prior redemption statute is not even “inept” per se. See *City of Bellingham*, 128 Wn.2d at 546. Rather, the phrase “subsequent in time” first appeared in the statute in 1899,¹⁸ when in the context of the redemption statute, “time” was understood to equate with “priority,” under the “first in time first in right” principle. See, e.g.,

¹⁸ Act of Mar. 8, 1899, ch. 53, § 7, 1899 Wash. Laws 85, 89. Attached as App. Ex. F.

18 William B. Stoebuck and John W. Weaver, *Washington Practice, Real Estate: Transactions*, § 19.19 (2d ed. 2010) (paraphrasing definition of “Redemptioner” in former RCW 6.23.010 by stating “Redemptioner” “is defined as a creditor who has a lien by...deed of trust...on any portion of the property, which lien is subsequent in priority to that being foreclosed.”) (underlining added); *Millay*, 135 Wn.2d at 198 (using the word “junior” without reference to “time” to describe a qualified redemptioner).

As recently as 2012, Division III of this Court explained statutory redemption rights as driven by a concept of lien priority, not literal temporal recordation. See *Olson Eng’g v. KeyBank Nat’l Ass’n*, 171 Wn. App. 57, 70 n. 15, 286 P.3d 390 (2012) (stating “statutory redemption allows junior lienholders, acting within a year...after the foreclosure sale to buy the foreclosed property by paying the property’s purchaser the amount it paid at the foreclosure sale.”).

This Court should reverse the Superior Court and hold that Nationstar is a qualified redemptioner under the proper interpretation of former RCW 6.23.010(1)(b).

E. Nationstar Is Also Authorized to Redeem Under the Condominium and Race-Notice Acts.

In *Fulbright*, the Washington Supreme Court will consider an issue that was not presented in the *Summerhill* case – whether under former RCW 6.23.010(1)(b), the deed of trust lien was “subsequent in time” to the condominium association’s assessment lien, under the Condominium Act’s RCW 64.34.364(7). RCW 64.34.364(7) provides that the recording the condominium’s declaration “constitutes record notice and perfection of the lien for assessments” and in *Fulbright* the lienholder’s deed of trust was recorded after the condominium declaration was recorded.

The same fact pattern is present in this case. The Association recorded an amended declaration in 2006, but Nationstar’s Deed of Trust was recorded later in 2007. CP 203; 229; 314-319. In *Fulbright*, this Court rejected the argument that an association’s assessment lien arises on recordation of the condominium declaration. If the Washington Supreme Court reverses *Fulbright* on based on the recording date of the condominium declaration, Nationstar would be entitled to redeem on this theory as well because its Deed of Trust was recorded “subsequent in time” to the Association’ declaration. *See* former RCW 6.23.010(1)(b) (2013).

Moreover, Nationstar's claim is stronger than the mortgagee's claim in *Fulbright*. In this case, the Association's 2006 amendment of the condominium declaration deleted the provisions preserving the priority of mortgages over the assessment lien under the prior statute, RCW 64.32.200(2)(b). The 2006 amendment adopted the limited super-priority provision. But for the 2006 amendment, the Association had no colorable basis for filing a complaint claiming "a valid first lien" and "the rights of each of the defendants and persons claiming by, through, and under them, be adjudged inferior and subordinated to plaintiff's lien." CP 374. But for the amendment, there could be no perfection and notice of a possible lien.

F. The Superior Court Erred When it Denied Nationstar's Motion to Intervene Because Nationstar Was a Qualified Redemptioner.

A court's decision on a motion to intervene is reviewed for abuse of discretion. *Diversified Wood Recycling, Inc. v. Johnson*, 161 Wn. App. 891, 896, 251 P.3d 908 (2011). A proper interpretation of the former statute or retroactive application of the current statute would allow Nationstar to intervene. Because the Superior Court's conclusion that Nationstar was not a qualified redemptioner was error, its ultimate decision not to let Nationstar formally intervene was an abuse of discretion. CP 52-54.

“Upon timely application anyone shall be permitted to intervene in an action: ... (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.” CR 24(a). “Where a person seeks to intervene after judgment, the court should allow intervention only upon a strong showing after considering all circumstances, including prior notice, prejudice to the other parties, and reasons for and length of the delay.” *Kreidler v. Eikenberry*, 111 Wn.2d 828, 832–33, 766 P.2d 438 (1989).

Here, as a party claiming an interest in the Property itself having the right to redeem it, Nationstar was entitled to intervene as a matter of right. *See* CR 24(a). Although Nationstar did not timely respond to the lawsuit, it acted promptly within its redemption period after learning of the court proceedings and the sale of the Property. Nationstar learned of the default against it on May 30, 2013 and authorized counsel to attempt to vacate the default on June 3, 2013. CP 156. Nationstar obtained an order to show cause why the default should not be vacated on July 26, 2013. CP 149-150. Although the Court denied this request and Nationstar’s Motion

to Intervene, it did so because it erroneously found that Nationstar's motion was untimely and that it lacked standing. CP 55.

The court's finding of untimeliness was incorrect because it is undisputed that Nationstar sought to redeem the Property – an interest that still has not yet expired. *See* CP 243-245 (arguing in July 2013 that Nationstar should be allowed to redeem); CP 304 (establishing redemption period of one year from March 1, 2013 Sheriff's sale).¹⁹ Because Nationstar acted timely to assert its redemption rights, it was an abuse of discretion for the court to deny it formal intervention in the underlying lawsuit.

G. The Judgment is Void to the Extent the Foreclosure Decree Differs from the Relief Requested in the Complaint.

This Court reviews the trial court's denial of the motion to vacate the default order and judgment for abuse of discretion. *See Kennewick Irrigation Dist. v. 51 Parcels of Real Property*, 70 Wn. App. 368, 853 P.2d 488 (1993) (reversing default judgment; stating “[t]o the extent judgment exceeds the amount set forth in the complaint, it is void”); *Mosbrucker v. Greenfield Implement, Inc.*, 54 Wn. App. 647, 652-53, 774 P.2d 1267 (1989) (reversing denial of of motion to vacate and remanding for

¹⁹ *See also* App. Ex. E.

consideration of irregularity in obtaining default judgment arising from failure to annex lease referenced as an exhibit in the complaint).

Nationstar moved under CR 60(b)(1) and (11) for vacation. CP 233. Generally, the court looks to four factors when deciding a motion to vacate: (1) at least prima facie, a defense to the claim asserted by the opposing party; (2) that the moving party's failure to timely appear in the action, and answer the opponent's claim, was occasioned by mistake, inadvertence, surprise or excusable neglect; (3) that the moving party acted with due diligence after notice of entry of the default judgment; and (4) that no substantial hardship will result to the opposing party). See *White v. Holm*, 73 Wn.2d 348, 352, 438 P.2d 581 (1968) (creating the four-factor *White* test). The four-factor *White* test (applying to cases involving excusable neglect or inadvertence) does not control cases where there is a claim of irregularity. *Mosbrucker*, 54 Wn. App. at 652.

Nonetheless, Nationstar moved for relief under both tests. CP 233-245. The court's denial of the motion to vacate rests upon untenable factual grounds and untenable reasons; therefore, the denial was an abuse of discretion.

Applying the fourth *White* factor, the trial court erroneously ruled that the Association would suffer substantial hardship if vacation were granted. CP 53. The Association, however, would be paid in full for the

judgment and would suffer no hardship if Nationstar were permitted to exercise the statutory right of redemption.

Applying the second *White* factor, the court erroneously ruled that Nationstar did not act with excusable neglect. CP 53 Yet, the record demonstrates that that Nationstar did not willfully fail to appear (the failure was due to administrative error). CP 188. The failure to immediately appear is mitigated by strong or conclusive defenses.

Applying the first *White* factor, the court erroneously ruled that Nationstar did not have a meritorious defense. CP 53. Nationstar established that the complaint sought an amount in excess of the six months of assessments for common expenses preceding the sheriff's sale authorized under RCW 64.34.364(3). See CP 240-43. Six months of assessments were approximately \$1,794 (6 x \$299/month plus interest); yet, the complaint sought \$5,825 for past due assessments plus other fees and costs. CP 345. The court later entered judgment for an even greater amount of \$9,568.88. CP 303.

To remedy the omission of RCW 64.34.364(3)'s limited "six month" super-priority provision from the complaint, the judgment silently adds the limited "six month" super-priority provision without referencing the statute, as well as adding a new forfeiture provision and a new category "defendant mortgage lenders."

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the rights of **defendant mortgage lenders** be adjudged inferior and subordinate to the plaintiff's lien to the extent of assessments for common expenses based on the periodic budget adopted by the Association pursuant to RCW 64.34.360(1) which would have become due during the six months immediately preceding the date of any sheriff's sale conducted pursuant to this foreclosure decree;

...

that if the **defendant mortgage lenders**, and the persons claiming by, through or under them, do not satisfy the Association's lien priority as described in the preceding paragraph prior to any sheriff's sale conducted pursuant to this decree, their rights are forever foreclosed;

CP 304 (underlining and bolded text added).

Both underlined sections above use the term “defendant mortgage lenders” that the complaint does not use. *See* CP 344-347. The complaint does not use either the term “mortgage” or “lender.” *Id.* By expanding the description, the Association was making a de facto amendment of the complaint and should have served the amended new claims on, at a minimum, MERS and the original lender, Fremont, in order to comply with the requirements of due process. CP 162-163.

Next, the judgment adds the limited super-priority statute expanding the scope of complaint. The first underlined section of the judgment silently quotes the following underlined section of RCW 64.34.364(3) stating: “the lien shall also be prior to the mortgages ... to the extent of assessments for common expenses ... based on the periodic

budget adopted by the association pursuant to RCW 64.34.360(1) which would have become due during the six months immediately preceding the date of a sheriff's sale." CP 304.

Finally, the second underlined section of the judgment (above) imposes a new forfeiture provision. *See supra* ("if defendant mortgage lenders do not satisfy ... prior to any sheriff's sale their rights are forever foreclosed.") But Washington's version of the Uniform Condominium Act has no provision warning mortgagees that unless they exercise a **pre-sale** redemption right their rights will be "forever foreclosed." By way of contrast, RCW 60.10.050 governing the summary foreclosure of personal property liens has a pre-sale redemption and is restricted to tendering the required amounts before disposal (meaning sale) or contract for disposition of the personal property. RCW 60.10.050 ("Any time before the lien holder has disposed of collateral ... the lien debtor or any other secured creditor may redeem ...") (underline added). The Uniform Condominium Act refers to a redemption period that is not limited to the period before the sale: "Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months." RCW 64.34.364(9).

Due to the de facto amendments to the complaint, the default judgment is void. "A judgment different in kind from that requested in the

complaint is void. ... To the extent a default judgment exceeds relief requested in the complaint, that portion of the judgment is void.” *In re Marriage of Leslie*, 112 Wn.2d 618, 772 P.2d 1013 (1989); *see also* RAP 2.5(a)(3) (permitting constitutional claims to be raised on appeal). Due process required that the Association provide mortgage lenders with sufficient notice of the new claims curing the insufficient allegations in the complaint. Here, the original complaint was defective, failing to give Nationstar fair notice that the Association was invoking the super-priority lien. The complaint failed to give notice that the Association was asserting the absence of the statutory right to redemption and was asserting the complete forfeiture, forever, if sums were not tendered before the sheriff’s sale. But for the amended claims in the judgment, the lien was intrinsically defective – nullifying the lien or requiring its reduction. *Accord, Robinson v. Brooks*, 31 Wash. 60, 71 P. 721 (1903) (nullifying a bad faith lien).

The recorded claim of lien does not cure these omissions from the complaint. First, the complaint failed to mention the recorded claim of lien, so the complaint does not incorporate it by reference. Second, like

the complaint, the recorded claim of lien for unpaid assessments omits any reference to the super-priority provision.²⁰

A pleading is insufficient when it does not give the opposing party fair notice of what the claim is and the ground upon which it rests. *Kirby v. City of Tacoma*, 124 Wn. App. 454, 470, 98 P.3d 827, review denied 154 Wn.2d 1007, 114 P.3d 1198 (2004). The complaint failed to plead the time when MERS or Nationstar were notified of the lien, when they receive notice of its super-priority, and when they received notice that “defendant mortgage lender ... rights are forever foreclosed.” CP 304.

“A specific statement of time [in pleadings] has been required in numerous types of cases. ... because this helps identify the document that is subject matter of the dispute. The requirement of a specific allegation of time may be satisfied by appending a copy of the document to the complaint as provided by Rule 10(c).” 5A Charles Alan Wright *Fed. Practice and Procedure* § 1309 at 344-44 (2004); accord, *Mosbrucker*, 54 Wn. App. at 652-53 (irregularity from the omission of a lease which was referenced as an exhibit). “Generally, a copy of a written instrument referred to in a pleading must be annexed thereto.” *Mosbrucker*, 54 Wn.

²⁰ Snohomish Cnty. No. 201203020114. The Court may take judicial notice of the recorded liens. See ER 201; RAP 9.11. The Association sought as an expense the recording fee for the March lien 2012. CP 323, 326 (referring to recording fees); Ex. A (Invoice 4005 for March 2012 recording fee). The Condo Group also referenced the lien notice. CP 127 (referring to the lien as an unmarked exhibit). See also CP 68.

App. at 652-53. Here, the Complaint failed to annex recorded instruments (the condominium declarations, deeds of trusts, and lien claims) or to provide citations to recording numbers for them, depriving the mortgagee of fair notice that the priority of its lien would be forfeited.

In these circumstances, the balance of equities favored Nationstar over the Association, given the substantial amount of the mortgage in comparison to the amount of the lien and the inadequate claims asserted in the complaint. The Uniform Condominium Act acknowledges that: “The principles of law and equity, ... the law of real property, and the law relative to ... principal and agent, ... estoppel, ... mistake, ... substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.” RCW 64.34.070. The Act has a liberal administration of remedies provision protecting aggrieved parties: “The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed.” RCW 64.34.100(1). Also, the Act imposes an obligation of good faith: “Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.” RCW 64.34.090. Consistent with these principles, the Association had a duty to act with good faith in the enforcement of the lien right and to provide MERS and

the mortgage lenders with notice of the de facto amendment of the complaint. Nationstar is an aggrieved party who is entitled to equitable relief vacating the order of default and default judgment.

Therefore, this Court should reverse the denial of the motion to vacate the default order and judgment and remand for further proceedings.

H. As Agent for the Beneficiary of the Deed of Trust and Mortgagee of Record, MERS Was Entitled to Service of Process.

Although the Association was careful to name and serve MERS when it filed its lawsuit, it nonetheless included in its default order language to the effect that MERS was not entitled to service of process. CP 243-245. The trial court's "finding"²¹ that MERS was not entitled to service of process was error. *See id.*

The undisputed evidence is that Nationstar held the Note, has serviced it since July 2007, and that MERS was agent for both Nationstar and its predecessors in interest, including Fremont, the original lender. CP 159; 187. The Association essentially acknowledges that it needed to serve MERS, despite the language it included in its default order. *See CP*

²¹ This Court treats incorrectly labeled findings as conclusions of law if they resolve the ultimate issue. *Inland Foundry Co. v. Dep't of Labor & Indus.*, 106 Wn. App. 333, 340, 24 P.3d 424 (2001). The Court's "finding" at CP 53 regarding MERS and Nationstar's interest or lack thereof in the Deed of Trust is a conclusion of law that should be reviewed de novo. *See Casterline v. Roberts*, 168 Wn. App. 376, 381, 284 P.3d 743 (2012) ("Where the trial court mislabels a conclusion of law as a finding of fact, we review the conclusion de novo.").

100 (Association accepting with approval MERS' and Nationstar's acknowledgement that "MERS was the proper party to serve" in its response to Nationstar's Motion to Vacate).

Nationstar held the Note and has serviced it since July 2007.²² CP 159. The Note is indorsed in blank. CP 198. As a "holder" of the Note, Nationstar was therefore a "beneficiary" of the Deed of Trust under the DTA. Since 1998, the DTA has defined a "beneficiary" as "the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation." *Bain*, 175 Wn.2d 83, 98-99. (citing RCW 61.24.005(2)). The Washington U.C.C. defines the "Holder" of a negotiable instrument in relevant part as "the person in possession if the instrument is payable to bearer. RCW 62A.1-201(21)(A); *Bain*, 175 Wn.2d at 104. A negotiable instrument is payable to bearer if, as is the case with the Note here, it is indorsed in blank. *See* RCW 62.A.3-205(b); CP 198.²³

²² Even if Nationstar was only a servicing agent and not a "holder" when the Association filed suit or thereafter, it still had authority to exercise the ultimate beneficiary's rights. *See Smith v. Keating*, 52 Wn.2d 391, 394, 326 P.2d 60 (1958) (stating "[r]epeated decisions of this court hold that the agent's possession or nonpossession of a note is merely evidence, but is not conclusive of authority or lack of authority to receive payment."). Here, it is undisputed Nationstar had the authority to receive payments under the Note. *See* CP 187. *See also Von Norman v. Woodson*, 182 Wash. 271, 275, 46 P.2d 1050 (1935) (recognizing ability of holder of mortgage note to use agent).

²³ "When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed." RCW 62A.3-205(b).

As the “holder” of the Note, Nationstar had an interest in redeeming the Property and restoring the Deed of Trust lien. As such, it clearly should have been allowed to formally intervene and assert its undisputed interest in the Property.

As mortgagee of record and agent for the note holder, MERS is entitled to service of process when a the holder of senior lien attempts to foreclose the note holder’s Deed of Trust lien. Under *Bain*, it is clear that MERS may serve as a beneficiary’s agent.²⁴ The *Bain* decision specifically recognizes that the DTA “approves of the use of agents.” *Bain*, 175 Wn.2d at 106.²⁵ The *Bain* Court was careful to make clear that

²⁴ Unfortunately, in certifying *Bain* (and the companion *Selkowitz* case) to the Washington Supreme Court, United States District Court Judge John Coughenour’s Order transmitted an incomplete and limited record (addressing exclusively legal, not factual, issues), and in the process omitted evidence in the record showing MERS *was* acting on behalf of known Note holders (i.e., principals) in both cases. *See, e.g., Bain v. Metro. Mortg. Group, Inc.*, No. 2:09-cv-149-JCC, Dkt. 159, Order Certifying Question to the Washington Supreme Court, at 4 (W.D. Wash. June 27, 2011) (listing docket entries for transmittal in *Bain* and *Selkowitz* cases); *compare id.* at Dkt. 150 & 150-1 (Declaration of Ronaldo Reyes identifying Deutsche Bank as Note holder and listing specific trust owning and holding the Note and the date of acquisition); *see also Selkowitz v. Litton Loan Servicing*, Case No. 3:10-cv-5523-JCC, Dkt. No. 15-1 (W.D. Wash. Aug. 24, 2010) (declaration stating Litton Loan Servicing was Note holder). Because this information was outside the appellate record, counsel for MERS was barred from referring to this evidence to the Washington Supreme Court. *State v. McFarland*, 127 Wn.2d 332, 335, 899 P.2d 1251 (1995). The incomplete record resulted in the mistaken impression at the Washington Supreme Court that MERS had no principal controlling MERS’s actions and was acting as beneficiary not as an agent, but for itself. *See Bain*, 175 Wn.2d at 90 & n.2, 97 & n.12. The complete record in both cases clarifies that even in *Bain* and *Selkowitz*, MERS did have a principal for whom it was acting. The assignment in *Bain* was poorly drafted, omitting the name of the lender before the “its successor and assigns” language, so that it appeared MERS was acting for itself, rather than a principal. *Id.* at 116-17.

²⁵ *See also Gossen v. JPMorgan Chase Bank*, 819 F. Supp. 2d 1162, 1169 (W.D. Wash. 2011) (recognizing “an agent of the beneficiary may issue the Notice of Default.”).

nothing in its “opinion should be construed to suggest an agent cannot represent the holder of a note.” *Id.* And it is now well-recognized that “[u]nder *Bain*, MERS may act as an agent of the note-holder.” *Petheram v. Wells Fargo*, No. C13–1016JLR, 2013 WL 6173806, at *3 (W.D. Wash. Nov. 21, 2013) (internal quotations omitted).²⁶

The Deed of Trust discloses that MERS is the beneficiary’s limited agent. CP 204 (“MERS is a separate corporation acting solely as nominee for Lender and Lender’s successors and assigns). In this capacity, MERS may serve as the agent of the beneficiary as mortgagee of record, including for the purpose of receiving notice of lawsuits that are served on junior lienholders, such as the Association’s lien foreclosure action here. *See* RCW 64.34.364(9) (permitting judicial foreclosure of assessment lien pursuant to procedures required by Chapter 61.12); *Worden v. Smith*, --- Wn. App. ---, --- P.3d ---, 2013 WL 6504409, at *4 (2013) (“It is a fundamental principle of mortgage law that a valid judicial foreclosure of a senior mortgage extinguishes all junior interests whose holders were named as defendants”) (citing *U.S. Bank of Wash. v. Hursey*, 116 Wn.2d 522, 526, 806 P.2d 245 (1991) and Restatement (Third) of Property: Mortgages § 7.1 cmt. a (1997)). This is because “[t]he principal is bound

²⁶ Moreover, the Ninth Circuit has explicitly held that MERS may act as the Note holder’s agent. *Cervantes v. Countrywide Home Loans, Inc. et al.*, 656 F.3d 1034 (9th Cir. 2011).

by a notification directed towards an agent who “has, or appears to have, authority in connection with it, either to receive it, to take action upon it, or to inform the principal or some other agent who has duties in regard to it.” *Goodman v. Boeing Co.*, 75 Wn. App. 60, 85-86, 877 P.2d 703 (1994) (quoting *Roderick Timber Co. v. Willapa Harbor Cedar Prods., Inc.*, 29 Wn. App. 311, 317, 627 P.2d 1352 (1981)). Indeed, the Deed of Trust permits MERS “exercise any or all of [the original lender and its successors and assigns’] interests...and to take any action required of [these entities].” CP 164. Because MERS was the party appearing in the public record as the nominee of the holder of the beneficial interests secured by the Deed of Trust, it was entitled to notice of the lawsuit to foreclose a lien with priority over the Deed of Trust lien.

I. The Trial Erred in its Attorney Fee Award Against Nationstar.

Whether an award of attorney fees is authorized is reviewed *de novo* and the reasonableness of the fees awarded, is reviewed for an abuse of discretion. *Wash. State Comm’n Access Project v. Regal Cinemas, Inc.*, 293 P.3d 413, 433 (2013).²⁷

The trial court’s award of attorney fees and costs against Nationstar were for those that the Association incurred in defending against Nationstar’s Motion to Vacate, which included a request that the

²⁷ Washington Appellate Reports citation forthcoming.

Court determine that Nationstar was allowed to redeem the Property. CP 45; 243-245. The bases for the Court's award were two sections of the Condominium Act – RCW 64.34.364(14) and .455 and equitable considerations under CR 60. CP 10. None of these bases support the fees and costs award and even if the decision to award fees and costs was not error, the award itself was too high.

First, the plain language of RCW 64.34.364(14) only allows an Association to recover the a limited sub-set of trial court level fees and costs. These fees and costs must be incurred “in connection with the collection of delinquent assessments,” or “in the enforcement of a judgment.” RCW 64.34.364(14). The Association collected its delinquent assessments and ceased enforcing its judgment no later than May 1, 2013, when it recorded a Full Satisfaction of its Judgment against the Berglunds. CP 255. After this date, there were no delinquent assessments to “collect,” nor any judgment to “enforce.” Moreover, the Association's Judgment did not name Nationstar, so it did not have a judgment against it. Nationstar and MERS did not obtain an order to show cause regarding the judgment until July 26, 2013. CP 149-150. The first basis for the Superior Court's fees and costs award was incorrect.

Second, the plain language of RCW 64.34.455 cannot support a fees and costs award against Nationstar in these circumstances and is

specifically inapplicable to conveyances of condominium units by foreclosure. This statute is set forth in the article of the Condominium Act enacted to protect unit purchasers and authorizes a discretionary fee award for a prevailing party if the declarant or other persons subject to the Condominium Act fails to comply with the Act, the condominium's declaration, or its bylaws. *See* RCW 64.34.400; .455. However, the article (including RCW 64.34.455) "shall not apply in the case of...a conveyance pursuant to court order...[or] by foreclosure." RCW 64.34.400(2)(b), (d).

Because the conveyance of the condominium here was pursuant to a judicial foreclosure action and Sheriff's Sale, RCW 64.34.455 does not apply and it was error to award fees and costs against Nationstar under that statute. *See also One Pac. Towers HOA v. HAL Real Est. Invsmts., Inc.*, 108 Wn. App. 330, 354, 30 P.3d 504 (2001) (fee award appropriate where "the Owners' action was a legitimate to enforce the condominium act's consumer protection provisions."); *Park Ave. Condo Owners' Assoc. v. Buchan Devel., L.L.C.*, 117 Wn. App. 369, 388, 71 P.3d 692 (2003) (fee award against developer upheld in construction defect lawsuit).

Third, there was no basis for a fee award under CR 60. The Association's asserted basis for a fees and costs award was the equitable nature of CR 60 proceedings and the "upon such terms as are just"

language in CR 60(b)(1). CP 48-49. It was error for the Superior Court to accept the Association's clear misinterpretation or misapprehension of CR 60.

Contrary to the Association's argument below, the equitable nature of CR 60 proceedings does not translate into an "equitable basis" for an attorney fees award that could support the Association's award in the absence of contractual or statutory support. *See In re Impoundment of Chevrolet Truck, Wash. License No. A00125A*, 148 Wn.2d 145, 160, 60 P.3d 53 (2002) (attorney fees and costs may be awarded only if authorized by contract, statute, or a recognized ground in equity.) Moreover, the "on such terms as are just" language in CR 60(b)(1) refers to the *granting* of a motion for relief from judgment, not a denial as happened here. There is no authority for the Association's equitable argument for fees and costs. Nor is there any factual support. The Association had the Sheriff sell a unit worth over \$100,000 pursuant to a foreclosure decree for \$14,000, only a few thousand dollars more than the amount of the assessment delinquency. *See* CP 312; 301; 291-292; 275; 260; 115. That the holder of the Deed of Trust lien extinguished by this sale would pursue a statutory right of redemption (which has been affirmed to exist by the 2013 amendment to RCW 6.23.010(1)(b)) is hardly surprising or

unexpected. It would hardly be equitable to allow the Association to recover fees and costs against a lienholder in these circumstances.

Fourth and finally, if the decision to award fees is upheld, the amount awarded should be reduced because it is unreasonable and exceeds the amount of the underlying judgment for delinquent assessments. *See Bentzen v. Demmons*, 68 Wn. App. 339, 350, 842 P.2d 1015 (1993) (amount at stake in the litigation is a factor in Court's attorney fees and costs calculation). The Court awarded \$8,868.50 in fees and \$386.00 in costs. CP 9. This amount greatly exceeds the \$4,892.50 in principal judgment amounts the Association obtained by default and the \$3,654.00 in attorney fees and \$614.00 in costs it was awarded under the Condominium Act in connection with collecting Berglund's overdue assessments. *See* CP 301-303.

CONCLUSION

For the reasons above, Nationstar and MERS respectfully request that this Court remand with instructions to vacate the default judgment and decree of foreclosure or to allow Nationstar to redeem the Property, vacate the attorney fees and costs award, and clarify that MERS was entitled to service of the Association's lawsuit.

DATED this 6th day of January, 2014.

LANE POWELL, PC

By: 
Andrew G. Yates, WSBA No. 34239
David C. Spellman, WSBA No. 15884

Attorneys for Appellants Nationstar
Mortgage LLC and Mortgage Electronic
Registration Systems, Inc.

APPENDIX

EXHIBIT A: Eighth Amendment to Declaration of Galleon Condominium (Snohomish County Recorder's No. 200611210732);

EXHIBIT B: Laws of 2013, ch. 53 § 1(Senate Bill 5541);

EXHIBIT C: Final Bill Report for Senate Bill 5541;

EXHIBIT D: Excerpt from Petition for Review of Bank of America, N.A. in *Bank of Am. V. Fulbright*, Washington Supreme Court Case No. 88853-1;

EXHIBIT E: January 6, 2014 correspondence from counsel to the Snohomish County Sheriff

EXHIBIT F: Act of Mar. 8, 1899, ch. 53, § 7, 1899 Wash. Laws 85

DECLARATION OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the 10th day of January 2014, I caused a true and correct copy of NATIONSTAR AND MERS' OPENING BRIEF to be served on the following via the method indicated below as indicated below:

VIA EMAIL / MAIL

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VIA MAIL

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Sabrina Koskinen
Sabrina Koskinen

Return Address:

Law Office of Kris J. Sundberg
P.O. Box 1577
Mercer Island, WA 98040



200611210732 5 PGS
11/21/2006 2 21pm \$36.00
SNOHOMISH COUNTY, WASHINGTON

Document Title(s) (or transactions contained therein):

1. AMENDMENT (EIGHTH AMENDMENT TO DECLARATION OF GALLEON CONDOMINIUM)
- 2.
- 3.
- 4.

Grantor(s) (Last name first, then first name and initials)

1. GALLEON HOMEOWNERS ASSOCIATION
- 2.
- 3.
- 4.
5. Additional names on page ___ of document.

Grantee(s) (Last name first, then first name and initials)

1. GALLEON HOMEOWNERS ASSOCIATION
- 2.
- 3.
- 4.
5. Additional names on page ___ of document.

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)

GALLEON, A CONDOMINIUM, ACCORDING TO THE DECLARATION THEREOF, RECORDED UNDER SNOHOMISH COUNTY RECORDING NUMBER 7804240368, AND ANY AMENDMENTS THERETO; SURVEY MAP AND PLANS RECORDED IN VOLUME 38 OF PLATS, PAGES 40 THROUGH 43, INCLUSIVE, RECORDS OF SNOHOMISH COUNTY, WASHINGTON. SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

Additional legal description is on page ___ of document.

Assessor's Master Property Tax Parcel or Account Number: 00669500-

Reference Number(s) of Documents assigned or released: 7804240368

Additional references on page ___ of document.

EIGHTH AMENDMENT TO DECLARATION OF
GALLEON CONDOMINIUM

Whereas a certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ESTABLISHING THE CONDOMINIUM TO BE KNOWN AS GALLEON, (the "Declaration"), was recorded on April 24, 1978 under Snohomish County recording number 7804240368, records of Snohomish County, Washington, as amended by filings recorded under the following recording number(s): 8608130297, 8304130130, 7912200283, 7903120268, 7902210310, 7901050207 and 7806060289, and whereas under the provisions of Section 31 of the Declaration it may be amended, and

Whereas the procedures for such amendment have been followed,

Now, therefore, the undersigned do hereby certify that, after approval by a majority of the Board prior to its adoption by the Owners, the vote or written consent to this amendment was obtained from sixty percent (60%) of the owners to hereby declare and adopt the following amendments to the Declaration:

Delete Declaration Section 14. COMMON EXPENSES: ASSESSMENTS, subsection (a), second paragraph, in its entirety.

Delete Declaration Section 15. DEFAULT IN PAYMENT OF ASSESSMENTS - COLLECTION - NOTICE OF OBLIGATION, subsection (a), last sentence, in its entirety.

Delete Declaration Section 15. DEFAULT IN PAYMENT OF ASSESSMENTS - COLLECTION - NOTICE OF OBLIGATION, subsection (b), last sentence, in its entirety.

Add Declaration Section 15. DEFAULT IN PAYMENT OF ASSESSMENTS - COLLECTION - NOTICE OF OBLIGATION, subsection (i) as follows:

15(1)(1) All sums assessed by the Association to any apartment but unpaid together with interest, expenses, costs and reasonable attorney fees, shall constitute a lien on such apartment. A lien under this Section shall be prior to all other liens and encumbrances on an apartment except: (a) liens and encumbrances recorded before the recording of the Declaration; (b) a mortgage on the apartment recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental

assessments or charges against the apartment. A lien under this Section is not subject to the provisions of chapter 6.13 RCW.

15(1)(2) Except as provided in subparagraphs 15(i)(3) and 15(1)(4), the lien shall also be prior to the mortgages described in subparagraph 15(1)(1) to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the Association which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the Association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.

15(1)(3) The priority of the Association's lien against apartments encumbered by a mortgage held by a mortgagee which has given the Association a written request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent that the lien priority under subparagraph 15(1)(2) includes delinquencies which relate to a period after such holder has given such notice and before the Association gives the holder a written notice of the delinquency.

15(1)(4) If the Association forecloses its lien under this Section nonjudicially pursuant to chapter 61.24 RCW, as otherwise provided by this Section, the Association shall not be entitled to the lien priority provided for under this Section.

15(i)(5) Lien May be Foreclosed; Judicial Foreclosure. The lien arising under this Section may be enforced judicially by the Association or its authorized representative in the manner set forth in RCW 61.12, or nonjudicially in the manner set forth as follows. The Association or its authorized representative shall have the power to purchase the Apartment at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this Section shall prohibit the Association from taking a deed in lieu of foreclosure. Except as provided in RCW 64.34.364(3) and (4) and this Section of the Declaration, the holder of a mortgage or the purchaser of an apartment who obtains the right of possession of an apartment through foreclosure shall not be liable for any assessments or installment thereof that became

due prior to such right of possession. Such unpaid assessments shall be deemed to be common expenses collectible from all the owners, including such mortgagee or other purchaser of the apartment. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the apartment prior to the date of the sheriff's deed.

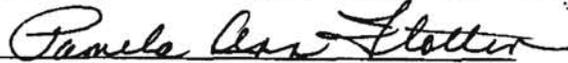
15(i)(6) Nonjudicial Foreclosure. A lien arising under this Section may be foreclosed nonjudicially in the manner set forth in RCW 61.24 for nonjudicial foreclosure of a deed of trust. For the purpose of preserving the Association's nonjudicial foreclosure option, this Declaration shall be considered to create a grant of each Apartment in trust to Old Republic Title Insurance Company or its successors or assigns ("Trustee") to secure the obligation of each apartment owner ("Grantor") to the Association ("Beneficiary") for the payment of assessments. Grantor shall retain the right to possession of Grantor's Apartment so long as Grantor is not in default of an obligation to pay assessments. The Trustee shall have a power of sale with respect to each apartment, which becomes operative in the case of a default in a Grantor's obligation to pay assessments. The apartments are not used principally for agricultural or farming purposes. If the Association forecloses its lien nonjudicially pursuant to this section, it shall not be entitled to the lien priority over mortgages provided in RCW 64.34.364(3).

Replace Declaration Section 16. MORTGAGEE PROTECTION, subsection (a), with the following:

a. After the foreclosure of any mortgage or deed of trust there may be a lien created pursuant to the provisions hereof upon the interest of the purchaser at such sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an owner after the date of such sale, which said lien shall have the same effect and be enforced in the same manner as provided herein.

Delete Declaration Section 20. LIMITATION ON USE OF APARTMENTS AND COMMON AREAS, subsection (i), previously adopted on April 13, 1983, by Declaration amendment recorded under Snohomish County recording number 8304130130, in its entirety.

Dated this 15th day of NOVEMBER, 2006.


President, Galleon
Homeowner Association

ATTEST: The above amendment was properly adopted.

By: Lynne Ann Dasher
Secretary, Galleon Homeowner Association

STATE OF WASHINGTON)
) SS
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Pamela Ann Flotten is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the President of Galleon Homeowner Association to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: November 15, 2006

Maydene K.T. Pang
(Signature)
MAYDENE K.T. PANG
(Print Name)

NOTARY PUBLIC in and for the State of Washington, residing at 1121 N 205th St
My commission expires: 06-15-2010

Shoreline, WA 98133



STATE OF WASHINGTON)
) SS
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Lynne Ann Dasher is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Secretary of Galleon Homeowner Association to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: November 15, 2006

Maydene K.T. Pang
(Signature)
MAYDENE K.T. PANG
(Print Name)

NOTARY PUBLIC in and for the State of Washington, residing at 1121 N 205th St
My commission expires: 06-15-2010

Shoreline, WA 98133



CERTIFICATION OF ENROLLMENT

SENATE BILL 5541

Chapter 53, Laws of 2013

63rd Legislature
2013 Regular Session

REAL PROPERTY--REDEMPTION

EFFECTIVE DATE: 07/28/13

Passed by the Senate March 11, 2013
YEAS 47 NAYS 2

BRAD OWEN

President of the Senate

Passed by the House April 9, 2013
YEAS 93 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 23, 2013, 4:34 p.m.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5541** as passed by the Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

April 24, 2013

**Secretary of State
State of Washington**

EXHIBIT B

SENATE BILL 5541

Passed Legislature - 2013 Regular Session

State of Washington

63rd Legislature

2013 Regular Session

By Senators Hobbs, Fain, Hatfield, and Harper

Read first time 02/04/13. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to redemption of real property; and amending RCW
2 6.23.010.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 6.23.010 and 1987 c 442 s 701 are each amended to read
5 as follows:

6 (1) Real property sold subject to redemption, as provided in RCW
7 6.21.080, or any part thereof separately sold, may be redeemed by the
8 following persons, or their successors in interest:

9 (a) The judgment debtor, in the whole or any part of the property
10 separately sold.

11 (b) A creditor having a lien by judgment, decree, deed of trust, or
12 mortgage, on any portion of the property, or any portion of any part
13 thereof, separately sold, subsequent in (~~time~~) priority to that on
14 which the property was sold. The persons mentioned in this subsection
15 are termed redemptioners.

16 (2) As used in this chapter, the terms "judgment debtor,"
17 "redemptioner," and "purchaser(~~(7)~~)" refer also to their respective

1 successors in interest.

Passed by the Senate March 11, 2013.

Passed by the House April 9, 2013.

Approved by the Governor April 23, 2013.

Filed in Office of Secretary of State April 24, 2013.

FINAL BILL REPORT

SB 5541

C 53 L 13
Synopsis as Enacted

Brief Description: Concerning the redemption of real property.

Sponsors: Senators Hobbs, Fain, Hatfield and Harper.

Senate Committee on Financial Institutions, Housing & Insurance
House Committee on Judiciary

Background: Dating back to the 19th century, a debtor whose real property is sold at a sheriff's foreclosure sale may have the opportunity to purchase back the real property by reimbursing the winning bid amount to the sheriff sale purchaser. This process is known as redemption. Redemption voids the sheriff's sale.

Redemption can occur:

- within eight months after the date of the sale if the sale is pursuant to judgment and decree of foreclosure of any mortgage executed after June 30, 1961, which mortgage declares in its terms that the mortgaged property is not used principally for agricultural or farming purposes, and in which complaint the judgment creditor has expressly waived any right to a deficiency judgment; or
- within one year after the date of the sale.

Parties entitled to redeem include the judgment debtor and creditors who have a lien on the real property by judgment, decree, deed of trust, or mortgage on any portion of the property, or any portion separately sold subsequent in time to when the property was sold. In other words, the time that a creditor's interest is recorded determines a creditor's priority to redeem a foreclosure sale.

Super Lien Priority. Under RCW 64.34.364 condominium associations have super lien priority. If a unit holder is delinquent in assessments, the association can file a lien against a unit. The association lien is limited to the assessment amount for the six months prior to foreclosure. When an association forecloses upon a lien, and there is a mortgage on the unit recorded before the date on which the assessment became delinquent, the mortgagee must receive notice of the pending foreclosure and has the opportunity to pay off the lien prior to the sheriff's sale to preserve its deed of trust lien. If the mortgage lender does not pay the off the lien in this instance, the mortgage lender's lien is extinguished.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summerhill Village Homeowner's Association v. Roughley. In a recent Court of Appeals Division 1 case, a unit owner was delinquent in paying the condominium association assessments, and the condominium association placed a lien on the unit and moved to foreclose on the lien. The condominium association named and served the mortgage lender in its judicial lien foreclosure action. Because the lender did not respond or pay the six-month priority before the sheriff's sale, the lender's deed of trust was extinguished. The lender's servicer subsequently instituted foreclosure proceedings against the borrower who was in default. According to the case, it was at this time the lender learned of the association's lien and foreclosure sale and tried to redeem. The court held that the lender was not a redemptioner. By not paying off the association's lien, the lender's rights were extinguished and they were not considered a redemptioner.

Summary: A creditor's priority to redeem an interest in foreclosed real property is determined by the creditor's priority, not the time in which the interest was recorded.

In the instance where a condominium association uses its super lien priority to foreclose on a unit owner for unpaid assessments, the lender's priority is not extinguished for failing to pay off the association's lien.

Votes on Final Passage:

Senate	47	2
House	93	0

Effective: July 28, 2013.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 MAY -6 PM 3:44

Court of Appeals Cause No. 67608-3-I

No. 88853-1

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

BANK OF AMERICA, N.A., *Petitioner,*

v.

MICHAEL FULBRIGHT, *Respondent.*

FILED
MAY 24 2013
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

**PETITION FOR REVIEW
of
BANK OF AMERICA, N.A.**

Of A Published Decision Of
The Court of Appeals (Division One), No. 67608-3-I

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(202) 508-6000 tel
(202) 508-6200 fax

Brian S. Sommer (No. 37019)
Steven K. Linkon (No. 34896)
RCO LEGAL, P.S.
13555 SE 36th Street, Ste. 300
Bellevue, WA 98006
(425) 586-1972 tel
(425) 283-5972 fax

Attorneys for *Petitioner* BANK OF AMERICA, N.A.

EXHIBIT D

IDENTITY OF PETITIONER

Petitioner Bank of America, N.A., is the successor-in-interest to BAC Home Loans Servicing, LP.

COURT OF APPEALS DECISION

Bank of America seeks review of the published opinion in *BAC Home Loans Servicing, LP v. Fulbright*, Court of Appeals (Division One) No. 67608-3-I, filed on April 8, 2013. The Appendix provides a copy of the decision at pages A-1 through A-7.

ISSUES PRESENTED FOR REVIEW

1. Whether, as confirmed by the recent enactment of SB 5541 (effective July 28, 2013), the Court of Appeals erred in denying Bank of America rights under the Redemption Act, RCW 6.23.010, as a holder of a deed of trust subsequent in priority to the foreclosing lien.
2. Whether the Court of Appeals erred in failing to apply the plain language of the Condominium Act, RCW 64.34.364(7), which states that “[r]ecording of the [condominium] declaration constitutes record notice and perfection of the lien for assessments,” by holding that a deed of trust recorded subsequent to the condominium declaration is not subsequent in time and not subject to redemption under RCW 6.23.010.
3. Whether SB 5541 applies retroactively to authorize redemption of a foreclosed property by a junior lienholder when the sheriff’s deed or title has not issued.

January 6, 2014

Snohomish County Sheriff's Office
Attn: Mindy Richardson
3000 Rockefeller Avenue
Everett, WA 98201

Re: **REDEMPTION REQUEST ***TIME SENSITIVE*****
Galleon Homeowners Association v. Maria Berglund and John Doe Berglund;
Mortgage Electronic Registration Systems, Inc.
Snohomish County Superior Court Cause No.: 12-2-04938-4
Our Client / Redemptioner: Nationstar Mortgage LLC
Snohomish County Parcel No.: 00669500260500

Dear Ms. Richardson:

This law firm represents redemptioner Nationstar Mortgage LLC (Nationstar). Pursuant to an Assignment of Deed of Trust recorded under Snohomish County Auditor's File No.: 201305280040, Nationstar is the beneficiary under a deed of trust recorded under Snohomish County Auditor's File No.: 200701100873 (Deed of Trust). The Deed of Trust encumbers the condominium purportedly foreclosed in the above-referenced lawsuit. Nationstar is the holder of the promissory note secured by the Deed of Trust. Please see the enclosed affidavit and supporting exhibits pursuant to RCW 6.23.080. Nationstar is a qualified redemptioner under RCW 6.23.010.

Without waiving the right to protest to the substantive or procedural nature of the lawsuit and purported foreclosure, Nationstar hereby asserts its right of redemption pursuant to RCW 6.23 *et seq.* Nationstar also requests pursuant to RCW 6.23.090 a written and verified statement of the amounts of rent and profits thus received and expenses paid and incurred by The Condo Group, LLC and/or Lakewood Commons 234 LLC. Please immediately provide an itemized redemption quote good through February 6, 2014. Nationstar reserves any and all rights with respect to tolling of the time for redemption and/or any and all other rights of redemption.

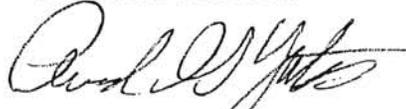
EXHIBIT *e*

Snohomish County Sheriff's Office
January 6, 2014
Page 2

Thank you in advance for your immediate assistance.

Very truly yours,

LANE POWELL PC

A handwritten signature in black ink, appearing to read "Andrew G. Yates", with a long horizontal flourish extending to the right.

Andrew G. Yates

AGY

Enclosure

cc: Nationstar Mortgage LLC
Roy B. Brewer
Jordan M. Hecker

128018.0001/5903217.1

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

GALLEON HOMEOWNERS ASSOCIATION)

Plaintiff,)

No. 12-2-04938-4

v.)

AFFIDAVIT IN SUPPORT OF
NATIONSTAR MORTGAGE LLC
REDEMPTION REQUEST PURSUANT
TO RCW 6.23.080

MARIA BERGLUND and JOHN DOE
BERGLUND, wife and husband, and their
marital community; and MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC., a Delaware corporation)

Defendants.)

I, A.J. LOLL ("Affiant"), state as follows:

1. Affiant is over eighteen years of age and is employed by Nationstar Mortgage LLC ("Nationstar"). Affiant's title with Nationstar is VICE PRESIDENT.

2. With respect to the promissory note and deed of trust described herein, Nationstar maintains a computer database of acts, transactions, payments, communications, escrow account activity, disbursements, events and analyses with respect to the subject loan in which Nationstar services (collectively described as the "Loan Records"). The information described herein and referenced below is found in the Loan Records. The entries in those Loan Records are made at the time of the events and conditions they describe either by people with first-hand knowledge of those events and conditions or from information provided by

1 people with such first-hand knowledge. Recording such information is regularly conducted
2 business activity. Affiant has access to the Loan Records with respect to the subject loan, and
3 has knowledge of how the records are maintained. Based upon a review of the Loan Records
4 I have gained knowledge of the facts set forth herein and, if called upon as a witness to testify,
5 I could and would competently testify as to those facts. To the extent that the Loan Records
6 referenced herein are created by third parties, the statements herein are based upon Affiant's
7 review of third party business records and documents.

8 3. The Loan records reflect that on or about December 29, 2006, Maria Berglund
9 (Borrower) borrowed \$166,500, which is evidenced by a promissory note executed by the
10 Borrower (Note). The Note was secured by a deed of trust recorded under Snohomish County
11 Auditor's File No.: 200701100873(Deed of Trust). The collateral secured by the Deed of
12 Trust is property with a site address of 8517 242nd Street SW #B605, Edmonds, WA 98026
13 (Property). A true and correct copy of the Note is attached hereto as Exhibit A and
14 incorporated by reference.

15 4. Nationstar is the holder of the Note secured by the Deed of Trust. Nationstar's
16 beneficiary status is evidenced in part by an Assignment of Deed of Trust recorded under
17 Snohomish County Auditor's File No.: 201305280040. A true and correct copy of the Deed
18 of Trust and the Assignment of Deed of Trust are attached hereto as Exhibit B and
19 incorporated by reference.

20 5. The Loan Records reflect that the Note remains unpaid. The Loan Records
21 reflect that the principal balance due as of January 6, 2013, totals \$164,896.58.
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1 I declare under penalty of perjury under the laws of the States of Washington and
2 Texas that the foregoing is true and correct to the best of my knowledge.

3 DATED THIS 6 day of JAN 2014.

4 NATIONSTAR MORTGAGE LLC

5
6 By: A. J. Loll
7 Printed Name: A. J. Loll
8 Title: VICE PRESIDENT

9 STATE OF TEXAS)
10 COUNTY OF Denton) ss.

11 Before me, Sharon Bruner, the undersigned officer, on this 6th
12 day of January, 2014, personally appeared A. J. Loll
13 known to me, or through production of as
14 identification, who identified her/himself to be the Vice President of
15 Nationstar Mortgage LLC, the person and officer whose name is subscribed to the foregoing
16 instrument, and being authorized to do so, acknowledge that (s)he had executed the foregoing
17 instrument as the act of such corporation for the purposes and consideration described and in
18 the capacity stated.

19 DATED this 6th day of January, 2014.
20 DATED this 6 day of December 2013.

21 Sharon Bruner
22 NOTARY PUBLIC in and for the
23 State of Texas
24 Residing in Denton County
25 My Commission Expires: 1/29/2016
26 Printed Name: Sharon Bruner



EXHIBIT A

ADJUSTABLE RATE NOTE
(6-Month LIBOR Index - Rate Caps)

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.

December 27, 2006
[Date]

BREA
[City]

CA 92821
[State]

8517 242ND STREET SW #8605, Edmonds, WA 98026

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 166,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Fremont Investment & Loan

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 8.450 %. 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 ** SEE BALLOON PAYMENT RIDER ATTACHED HERETO AND MADE A PART HEREOF **

(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 February 01, 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 January 01, 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 2727 East Imperial Highway, Brea, CA 92821

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. \$ 1,190.10. 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.

MULTISTATE ADJUSTABLE RATE NOTE - 6-Month LIBOR Index - Single Family - Freddie Mac UNIFORM INSTRUMENT

www-818N (p404)

Form 8820 3/04

VMP Mortgage Solutions (800)521-7281

Page 1 of 4

Initial: *mb*

ORIGINAL NOTE & RIDERS

Original Note & Riders

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of January, 2009, and may change on that day every sixth 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 six month London Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for six-month U.S. dollar-denominated deposit in the London market, as published in *The Wall Street Journal*. The most recent Index figure available 45 days first 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 $51x$ and $063/1000$ percentage point(s) (6.063%) 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 11.450% or less than 8.450% . Thereafter, my interest rate will never be increased or decreased on any subsequent Change Date by more than 1.500% from the rate of interest I have been paying for the preceding period. My interest rate will never be greater than 14.450% or less than 8.450% .

(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 ** SEE PREPAYMENT RIDER ATTACHED HERETO AND MADE A PART HEREOF **

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 6.000 % 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:

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.

**** SEE PREPAYMENT RIDER ATTACHED HERETO AND MADE A PART HEREOF ****
**** SEE BALLOON PAYMENT RIDER ATTACHED HERETO AND MADE A PART HEREOF ****

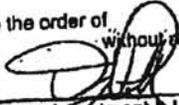
WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Maria Berglund
MARIA BERGLUND

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

Pay to the order of  without recourse.
Fremont Investment & Loan
Doug Pollock
Assistant Vice President.

PREPAYMENT RIDER TO NOTE

30000001034353

THIS PREPAYMENT RIDER is made this 27th day of December, 2006, and is incorporated into and shall be deemed to amend and supplement the Adjustable Rate Note ("Note") made by the undersigned (the "Borrower") to:

Fremont Investment & Loan

(the "lender") of the same date and covering the property located at:

8517 242ND STREET SW #8605, Edmonds, WA 98026

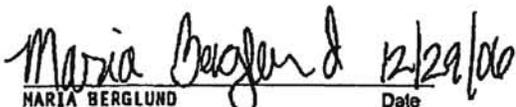
(Property Address)

BORROWER'S RIGHT TO PREPAY

This Prepayment Rider Supersedes Section 5 of the Note

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 a letter that I am doing so. A prepayment of all of the unpaid principal is known as a "full prepayment." A prepayment of only part of the unpaid principal is known as a "partial prepayment."

I may make a full or partial prepayment; however, the Note Holder may charge me for the privilege of prepayment. If more than 20% of the original principal amount of this note is prepaid in any 12-month period within [2 Years] after the date of this loan, I agree to pay a prepayment charge equal to six months interest on the amount prepaid which is in excess of 20% of the original principal amount of this Note. If I make prepayment, there will be no delays in the due dates or changes in the amounts of my monthly payments unless the Note Holder agrees in writing to those delays or changes. I may make full prepayment at any time.

 MARIA BERGLUND	12/29/06 Date	_____	Date
_____	Date	_____	Date
_____	Date	_____	Date
_____	Date	_____	Date

MSPPY1 10/11/2005

Balloon Payment Rider to Note
(Adjustable Rate)

THIS LOAN IS PAYABLE IN FULL AT MATURITY. YOU MUST REPAY THE ENTIRE UNPAID PRINCIPAL BALANCE OF THE LOAN, TOGETHER WITH ALL UNPAID INTEREST AND LOAN CHARGES THEN DUE, IN A SINGLE BALLOON PAYMENT. THE LENDER IS UNDER NO OBLIGATION TO REFINANCE THIS LOAN AT THAT TIME. YOU WILL, THEREFORE, BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT YOU MAY OWN, OR YOU WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER YOU HAVE THIS LOAN WITH, WILLING TO LEND YOU THE MONEY. IF YOU REFINANCE THIS LOAN AT MATURITY, YOU MAY HAVE TO PAY HIGHER INTEREST RATES ON THE NEW LOAN THAN THE INTEREST RATE PAID ON THIS LOAN. FURTHER, IF YOU REFINANCE, YOU MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF YOU OBTAIN REFINANCING FROM THE SAME LENDER.

THIS BALLOON PAYMENT RIDER TO NOTE (the "Note Rider") is made this 27th day of December, 2006, and is incorporated into and shall be deemed to amend and supplement the Adjustable Rate Note (the "Note") made by the undersigned (the "Borrower") in favor of Fremont Investment & Loan (the "Lender") and dated the same date as this Note Rider.

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

1. **Payments**
Sections 3 and 4 of the Note are modified, amended and supplemented to read, in their entirety, as follows:

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 02/01/2007. 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. On January 01, 2037 (which is called the "Maturity Date"), I will pay the entire unpaid Principal balance of this Note, together with all accrued and unpaid interest and all charges due under this Note, in a single payment (the "Balloon Payment"). I understand and acknowledge that the Balloon Payment due on the Maturity Date will be much larger than a regular monthly payment and that the Note Holder has no obligation to refinance the Balloon Payment.

I will make my monthly payments at 2727 East Imperial Highway, Brea, CA 92821 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,190.10. 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 January, 2009, and may change on that day every sixth 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 six month London Interbank Offered Rate ("LIBOR"), which is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market, as published in The Wall Street Journal. The most recent Index figure available 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 and adjust the Margin described below. The Note Holder will give me notice of these changes.

(C) **Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding 51x and 063/1000 percentage point(s) (6.063 %) (the "Margin") 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 1/1/2057 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 11.450 % or less than 8.450 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than One and 500/1000 percentage point(s) (1.500 %) from the rate of interest I have been paying for the preceding six months. In any event, my interest rate will never be greater than 14.450 % and will never be less than 8.450 %.

(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 such notice of any changes in my interest rate and monthly payment as may be required by law. 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 questions I may have regarding the notice."

2. **Uniform Secured Note**

Section 11 of the Note is modified, amended and supplemented to read, in its entirety, as follows:

"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.

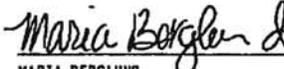
To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements 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 13 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."

3. Effect of Note Rider

This Note Rider modifies, amends and supplements the Note. To the extent of any inconsistency between the provisions of this Note Rider and the provisions of the Note, the provisions of this Note Rider shall prevail over and supersede the inconsistent provisions of the Note. Except as modified, amended or supplemented by this Note Rider, the Note shall remain in full force and effect.

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



MARIA BERGLUND (Seal)
- Borrower

(Seal)
- Borrower

(Sign Original Only)

EXHIBIT B

Return To

Fremont Investment & Loan
P.O. BOX 34078
FULLERTON, CA 92834-34078



200701100873 23 PGS
01-10-2007 01:44pm \$55.00
SNOHOMISH COUNTY, WASHINGTON

Assessor's Parcel or Account Number 00009500260500

Abbreviated Legal Description Unit 605, Bldg B, Gallean Condos, vol. 38 pg 40
[Include lot, block and plat or section, township and range] Full legal description located on page 3

Trustee FIRST AMERICAN TRANSPORTATION TITLE INSURANCE CO
Additional Grantees located on page

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN 1001944-3001034353-4

FIRST AMERICAN 939256

23/56

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 December 27, 2006 together with all Riders to this document.
- (B) "Borrower" is MARIA BERGLUND, AS HER SOLE AND SEPARATE PROPERTY.

Borrower is the trustor under this Security Instrument
(C) "Lender" is Fremont Investment & Loan

Initials MB



Lender is a CORPORATION
organized and existing under the laws of CALIFORNIA
Lender's address is 2727 East Imperial Highway, Brea, CA 92821

(D) "Trustee" is FIRST AMERICAN TRANSPORTATION TITLE INSURANCE CO

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

(F) "Note" means the promissory note signed by Borrower and dated December 27, 2006

The Note states that Borrower owes Lender One Hundred Sixty-Six Thousand Five Hundred and 0/100ths Dollars
(U S \$166,500.00) plus interest Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than January 01, 2037

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

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

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

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

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

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

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

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

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

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

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

Initials 

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note, and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the _____ County _____ [Type of Recording Jurisdiction] of _____ Snohomish _____ [Name of Recording Jurisdiction].
SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

Parcel ID Number
8517 242ND STREET SW #B605
Edmonds
("Property Address")

which currently has the address of

[Street]
_____, Washington 98026 [City] , Washington 98026 [Zip Code]

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

Initials *MP*

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

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

UNIFORM COVENANTS Borrower and Lender covenant and agree as follows

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's

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

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

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

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

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

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

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

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

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 at public auction at a date not less than 120 days in the future. The notice shall further inform Borrower of the right to reinstate after acceleration, 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, and any other matters required to be included in the notice by Applicable Law. If the default is not cured on or before the date specified in the notice, Lender at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and/or 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 give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, 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 the Property for a period or periods permitted by Applicable Law by public announcement at the time and place fixed in the notice of 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 or to the clerk of the superior court of the county in which the sale took place.

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 and the Trustee's fee for preparing the reconveyance.

24. Substitute Trustee. In accordance with Applicable Law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. 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.

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

25. Use of Property. The Property is not used principally for agricultural purposes

26. Attorneys' Fees. Lender shall be entitled to recover its reasonable attorneys' fees and costs in any action or proceeding to construe or enforce any term of this Security Instrument. The term "attorneys' fees," whenever used in this Security Instrument, shall include without limitation attorneys' fees incurred by Lender in any bankruptcy proceeding or on appeal

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON 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

Witnesses


MARIA BERGLUND (Seal)
-Borrower

_____ (Seal)
-Borrower

STATE OF WASHINGTON

County of

Snohomish

} ss:

On this day personally appeared before me

Maria Berglund

to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that he/she/they signed the same as his/her/their free and voluntary act and deed, for the uses and purposes therein mentioned

GIVEN under my hand and official seal this

29

day of

Dec 2000



[Signature]
 Notary Public and for the State of Washington, residing at
 My Appointment Expires on *Edmonds 7-9-07*

Jennifer Nilsen

mb

EXHIBIT A

LEGAL DESCRIPTION:

Unit 605, Building B of Galleon, a Condominium, according to the Declaration thereof recorded under Snohomish County Recording No. 7804240368 and any amendments thereto, said Unit is located on Survey Map and Plans filed in Volume 38 of Condominiums, at Pages 40 through 43, in Snohomish County, Washington.

MB

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this 27th day of December, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to Fremont Investment & Loan

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

8517 242ND STREET SW #B605, Edmonds, WA 98026
[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as

GALLEON
[Name of Condominium Project]

(the "Condominium Project") If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest

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

A. Condominium Obligations. Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the (i) Declaration or any other document which creates the Condominium Project, (ii) by-laws, (iii) code of regulations, and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, from which Lender requires insurance, then (i) Lender waives the provision in

MULTISTATE CONDOMINIUM RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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VMP Mortgage Solutions, Inc
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Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property, and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy

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

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

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

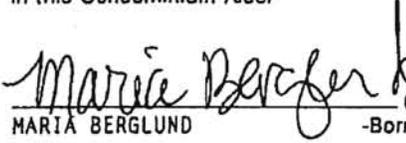
C. **Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender

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

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

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

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



MARIA BERGLUND (Seal)
-Borrower

(Seal)
-Borrower

ADJUSTABLE RATE AND BALLOON PAYMENT RIDER

(LIBOR SIX-Month Index (As Published in The Wall Street Journal) - Rate Caps)

THIS ADJUSTABLE RATE AND BALLOON PAYMENT RIDER (the "Security Instrument Rider") is made this 27th day of December, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to Fremont Investment & Loan ("Lender") of the same date and covering the property described in the Security Instrument and located at

8517 242ND STREET SW #B605, Edmonds, WA 98026
[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. THE NOTE IS PAYABLE IN FULL AT MATURITY. BORROWER MUST REPAY THE ENTIRE UNPAID PRINCIPAL BALANCE OF THE NOTE, TOGETHER WITH ALL UNPAID INTEREST AND LOAN CHARGES THEN DUE, IN A SINGLE BALLOON PAYMENT. THE LENDER IS UNDER NO OBLIGATION TO REFINANCE THE NOTE AT THAT TIME. BORROWER WILL, THEREFORE, BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT BORROWER MAY OWN, OR BORROWER WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER NAMED IN THE NOTE, WILLING TO LEND BORROWER THE MONEY. IF BORROWER REFINANCES THE NOTE AT MATURITY, BORROWER MAY HAVE TO PAY HIGHER INTEREST RATES ON THE NEW LOAN THAN ARE PAID ON THE NOTE. FURTHER, IF BORROWER REFINANCES, BORROWER MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF BORROWER OBTAINS REFINANCING FROM THE SAME LENDER.

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

Section 2 of the Note provides for an initial interest rate of 8.450% and states that the interest rate of the Note will change in accordance with Section 4 of the Note. Borrower has executed a Balloon Payment Rider to Note (the "Note Rider") dated the same date as this Security Instrument Rider. Among other things, the Note Rider modifies, amends, and supplements Sections 3 and 4 of the Note to read, in their entirety, as follows

"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 02/01/2007 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 On January 01, 2037 (which is called the "Maturity Date"), I will pay the entire unpaid Principal balance of this Note, together with all accrued and unpaid interest and all charges due under this Note, in a single payment (the "Balloon Payment") I understand and acknowledge that the Balloon Payment due on the Maturity Date will be much larger than a regular monthly payment and that the Note Holder has no obligation to refinance the Balloon Payment

I will make my monthly payments at 2727 East Imperial Highway, Brea, CA 92821 or at a different place if required by the Note Holder

(B) Amount of Monthly Payments

Each of my initial monthly payments will be in the amount of US \$ 1,190.10 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 January, 2009, and may change on that day every sixth 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 six month London Interbank Offered Rate ("LIBOR"), which is the average of interbank offered rates for six-month U S dollar-denominated deposits in the London market, as published in The Wall Street Journal The most recent Index figure available 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 and adjust the Margin described below The Note Holder will give me notice of these changes

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding $51x$ and $063/1000$ percentage point(s) (6.063%) (the "Margin") 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 1/1/2057 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 11.450 % or less than 8.450 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than 1.500 percentage point(s) (One and 500/1000 %) from the rate of interest I have been paying for the preceding six months. In any event, my interest rate will never be greater than 14.450 % and will never be less than 8.450 %.

(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 such notice of any changes in my interest rate and monthly payment as may be required by law. 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 EFFECT OF NOTE RIDER

The Note Rider contains the following provisions:

"This Note Rider modifies, amends and supplements the Note. To the extent of any inconsistency between the provisions of this Note Rider and the provisions of the Note, the provisions of this Note Rider shall prevail over and supersede the inconsistent provisions of the Note. Except as modified, amended or supplemented by this Note Rider, the Note shall remain in full force and effect."

C TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1. **Until Borrower's initial interest rate changes under the terms described 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 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 Borrower's initial interest rate changes under the terms described in Section A above, Uniform Covenant 18 of the Security Instrument described in Section C.1. above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall then be modified, amended and supplemented to read, in its entirety, 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 And Balloon Payment Rider.


MARIA BERGLUND

(Seal)
- Borrower

(Seal)
- Borrower

When Recorded Return To:
Nationstar Mortgage LLC
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

201305280040



CORPORATE ASSIGNMENT OF DEED OF TRUST

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR FREMONT INVESTMENT & LOAN, ITS SUCCESSORS AND ASSIGNS, WHOSE ADDRESS IS PO BOX 2026, FLINT, MI, 48501, (ASSIGNOR), by these presents does convey, grant, assign, transfer and set over the described Deed of Trust together with all interest secured thereby, all liens, and any rights due or to become due thereon to NATIONSTAR MORTGAGE LLC, WHOSE ADDRESS IS 350 HIGHLAND DRIVE, LEWISVILLE, TX 75067 (469)549-2000

Said Deed of Trust is dated 12/27/2006 and executed by MARIA BERGLUND and recorded in Book page /Instr# 200701100873 in the office of the Recorder of SNOHOMISH County, WA.

UNIT 605, BLDG B, GALLEON CONDOS, VOL. 38 PG 40
Parcel ID #: 00669500260500

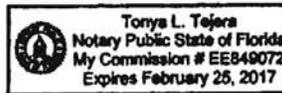
Dated this 24th day of May in the year 2013
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR FREMONT INVESTMENT & LOAN, ITS SUCCESSORS AND ASSIGNS

MARGUERITA WITZIGMAN
ASST. SECRETARY

All Authorized Signatories whose signatures appear above are employed by NTC and have reviewed this document and supporting documentation prior to signing.

STATE OF FLORIDA COUNTY OF PINELLAS
The foregoing instrument was acknowledged before me on this 24th day of May in the year 2013, by Marguerita Witzigman as ASST. SECRETARY for MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR FREMONT INVESTMENT & LOAN, ITS SUCCESSORS AND ASSIGNS, who, as such ASST. SECRETARY being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

TONYA L. TEJERA - NOTARY PUBLIC
COMM EXPIRES: 02/25/2017



Document Prepared By: E.Lance/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
NSDAV 20389046 -- SugarBeet MIN 100194430010343534 MERS PHONE 1-888-679-6377 DOCR
T2413054911 [C] EFRMWA1



SESSION LAWS

OF THE

STATE OF WASHINGTON

SESSION OF 1899.

COMPILED IN CHAPTERS, WITH MARGINAL NOTES,
BY WILL D. JENKINS, SECRETARY OF STATE.

LANE, POWELL, MOSS & MILLER
3800 RAINIER BANK TOWER
SEATTLE, WASHINGTON 98101

PUBLISHED BY AUTHORITY.

OLYMPIA, WASH.:
GWIN HICKS, . . . STATE PRINTER.
1899.

EXHIBIT F

, by its title, on the
 the same: "Sale of
 following proceedings
 or ten days from the
 ed, on motion there-
 the sale, unless the
 is death, his repre-
 within ten days after
 tions thereto. 2. If
 shall, notwithstand-
 e sale, unless on the
 satisfactorily appear
 ularities in the pro-
 the probable loss or
 the latter case, the
 and direct that the
 in part, as the case
 ceived of that date.
 ecution, the sheriff
 the clerk, who shall
 h thereof as may be
 dgment. If an order
 the property sell for
 her than the former
 ay to such purchaser
 proceeds of the latter
 the purchaser at the
 e renewed and con-
 e taken, except for a
 ming a sale shall be
 regularity of the pro-
 to all persons in any
 whatever. 5. If, after
 here be any proceeds
 all pay such proceeds
 representative, as the
 e order is made upon
 Provided, Such party
 objections made or to

be made to the proceedings concerning the sale; but if the sale be confirmed, such proceeds shall be paid to said party of course; otherwise they shall remain in the custody of the clerk until the sale of the property has been disposed of.

SEC. 7. Property sold subject to redemption, as above ^{Redemption.} provided, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

58 Pac. 223
 30 W. 77
 26 W. 77

1. The judgment debtor or his successor in interest, in the whole or any part of the property separately sold.

2. A creditor having a lien by judgment, decree or mortgage, on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time to that on which the property was sold. The persons mentioned in sub-division two of this section are termed redemptioners.

SEC. 8. The judgment debtor or his successor in interest, or any redemptioner, may redeem the property ^{Who may redeem.} at any time within one year after the sale, on paying the amount of the bid, with interest thereon at the rate of eight per cent. per annum to the time of redemption, together with the amount of any assessment or taxes which the purchaser or his successor in interest may have paid thereon after purchase, and like interest on such amount; and if the purchaser be also a creditor having a lien, by judgment, decree or mortgage, prior to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien with interest.

SEC. 9. If property be so redeemed by a redemptioner, ^{Re-redemption.} another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner by paying the sum paid on such last redemption with interest at the rate of eight per cent. per annum, and the amount of any taxes or assessment which the last redemptioner may have paid thereon after the redemption by him, with like interest on such amount, and in addition thereto by paying the amount of any liens, by judgment, decree or mortgage, held by said

SESSION LAWS

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