

**Cause No. 202339642**

**DHI HOLDINGS, LP,**

**Plaintiff,**

**v.**

**U.S. BANK TRUST NATIONAL  
ASSOCIATION, NOT IN ITS  
INDIVIDUAL CAPACITY BUT SOLELY  
AS OWNER TRUSTEE FOR LEGACY  
MORTGAGE ASSET TRUST 2018-RPL2;  
and RUSHMORE LOAN  
MANAGEMENT SERVICES, LLC,**

**Defendants.**

§ **IN THE DISTRICT COURT**

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**HARRIS COUNTY, TEXAS**

**190<sup>TH</sup> JUDICIAL DISTRICT**

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 166a of the Texas Rules of Civil Procedure, Defendants Rushmore Loan Management Services, LLC (“Rushmore”) and U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2018-RPL2, incorrectly identified in shorthand as “Legacy Mortgage” (“U.S. Bank”) file this Motion for Traditional and No-Evidence Summary Judgment. Rushmore and U.S. Bank ask the court to sign a final summary judgment against Plaintiff DHI Holdings, LP (“DHI”) on all of Plaintiff’s causes of action, and in support of the motion shows the Court the following:

**CASE HISTORY**

This suit was initiated by Plaintiff on June 28, 2023. In it, Plaintiff requests declaratory relief through claims against Rushmore and U.S. Bank that Defendants are barred by limitations from foreclosing an interest Plaintiff admits is superior to Plaintiff’s. In addition to his request for

declaratory judgment, Plaintiff sues to quiet title. Defendants now move for summary judgment against Plaintiff on all of its claims.

### **SUMMARY JUDGMENT EVIDENCE**

In support of this motion, Defendants rely upon and incorporates by reference the following true and correct evidence that is contemporaneously filed:

- Exhibit 1: Deed of Trust executed by Shawn Garvin
- Exhibit 2: Transfer of Lien from Fieldstone Mortgage Company to LSF9 Mater Participation Trust
- Exhibit 3: Transfer and Assignment from U.S. Bank Trust, N.A. as Trustee for LSF9 Mater Participation Trust to J.P. Morgan Acquisition Corp.
- Exhibit 4: Assignment of Deed of trust from J.P. Morgan Acquisition Corporation to Goldman Sachs Mortgage Company
- Exhibit 5: Transfer and Assignment from Goldman Sachs Mortgage Company to Legacy Mortgage Asset Trust 2018-RPL2
- Exhibit 6: Transfer and Assignment of Lien from Legacy Mortgage Asset Trust 2018-RPL2 to U.S. Bank National Association, Not in its individual capacity by solely as owner trustee for Legacy Mortgage Asset Trust 2018-RPL2 <sup>1</sup>
- Exhibit 7 Attorney's Fee Declaration of Robert L. Negrin

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<sup>1</sup> Pursuant to Rule 201 of the Texas Rules of Evidence, Defendants respectfully request that the Court take judicial notice of Exhibits 1 - 6, which were publicly recorded in the real property records of Harris County, Texas. TEX. R. EVID. 201(b); *see Johnson v. Johnson*, No. 03-02-00427-CV, 2005 Tex. App. LEXIS 10458, 2005 WL 3440773, at \*6 (Tex. App.—Austin Dec. 16, 2005, no pet.) (mem. op.); *see also Lockhill Ventures, LLC v. Ard Mor, Inc.*, No. 04-14-00796-CV, 2015 Tex. App. LEXIS 6975, 2015 WL 4113691, at \*1 n.2 (Tex. App.—San Antonio July 8, 2015, pet. denied) (mem. op.).

## BACKGROUND & FACTS

On or about January 3, 2006, Shawn Garvin (“Garvin”) granted a lien against the Property commonly known as 12973 Wirevine Lane, Houston, Texas 77072 (“Property”) as evidenced by a contemporaneously executed deed of trust (“Deed of Trust”). *See* Ex. 1. The lender under the Deed of Trust was Fieldstone Mortgage Company. *Id.* The Deed of Trust was recorded on January 11, 2006, as Instrument Number 201048848 in the Real Property Records of Harris County, Texas. *Id.* The Deed of Trust was assigned to U.S. Bank through a series of assignments and transfers as set out in Exhibits 2 – 6 attached hereto, the final assignment to U.S. Bank being recorded on May 3, 2023, under Harris County Clerk’s instrument number RP-2023-159292.

Garvin was in default on his monthly assessment payments to Wildflower Green Homeowners Association (the “HOA”), Garvin’s homeowners’ association. Accordingly, the HOA filed suit against Garvin on June 27, 2016, and obtained a judgment against him on August 4, 2017. On May 1, 2018, DHI purchased the Property at a foreclosure administered by the HOA. DHI paid \$14,000 for the Property.

This is the second suit brought by Plaintiff seeking to halt Defendants’ foreclosure proceedings. In prior litigation, namely case number 2019-44270 styled *DHI Holdings, L.P., v. Fieldstone Mortgage Company, et al.*, Plaintiff brought the first suit seeking to halt foreclosure claiming defects in conveyances and interests held by the lender and those in privity with the lender. The litigation ended with judgment for the Defendants in that case, which was affirmed on appeal. *DHI Holdings, LP v. Legacy Mortg. Asset Tr. 2018-RPLS2*, No. 14-19-00987-CV, 2021 WL 4957023, at \*1 (Tex. App. Oct. 26, 2021).

Faced again with the possibility of losing its interest to the superior lien interest of U.S. Bank, Plaintiff brings this suit in an effort to once again thwart U.S. Bank's effort at foreclosure of its superior interest in the property. Again, Plaintiff rings suit on claims baseless in law.

### **SUMMARY JUDGMENT STANDARD**

#### **A. Traditional Grounds for Summary Judgment**

A party who moves for traditional summary judgment must establish that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985). If the movant seeks summary judgment on a claim for which the movant does not bear the burden of proof, the movant may meet its burden by either conclusively negating at least one essential element of the respondent's claim or by pleading and conclusively establishing each element of an affirmative defense to the claim. *Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 644 (Tex. 1995).

#### **B. No-Evidence Grounds for Summary Judgment**

A party may move for summary judgment "on the ground that there is no evidence of one or more essential elements of a claim or defense on which the adverse party would have the burden of proof at trial." TEX. R. CIV. P. 166a(i). A no-evidence motion for summary judgment must specifically state the elements for which there is no evidence. *Id.* "The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact." *Id.* Any such evidence must be competent. *Dolcefino v. Randolph*, 19 S.W.3d 906, 917 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). If a party files a no-evidence motion for summary judgment, and the non-movant is unable to produce summary judgment evidence raising

a genuine issue of material fact, the court must grant the party's motion for summary judgment. *Id.*; Tex. R. Civ. P. 166a(i).

A party may move for no-evidence summary judgment after an adequate time for discovery has passed. *See* TEX. R. CIV. P. 166a(i). In this case an adequate time for discovery has passed, the case has been pending for over eight months.

Defendants are entitled to summary judgment because Plaintiff cannot demonstrate through admissible evidence that there is any evidence to support its claims and causes of action. As shown below Plaintiff's claims fail because there are no genuine issues of material fact, and Defendants are entitled to summary judgment as a matter of law.

### **ARGUMENTS AND AUTHORITIES**

#### **A. Third Cause of Action – Declaratory Relief: Notice of Sale does not Match Last Assignee of Record**

Defendants address this cause of action first because it is the simplest to review. There are no genuine issues of material fact on this claim and Defendants are entitled to judgment on the claim as a matter of law. By the cause of action, Plaintiff asserts that it is entitled to a judgment declaring that “any foreclosure sale on July 5, 2023, would be void due to the fact that the mortgagee named on the notice of sale is not the same as the last assignee of record of the deed of trust.”

The claim is moot, as the Court can enter no judgment declaring that a foreclosure that did not occur is or would have been void. In short, no controversy concerning a formerly scheduled foreclosure sale that did not occur exists. Plaintiff will be able to come forward with no evidence that its claim constitutes a justiciable controversy.

A declaratory judgment is appropriate only if a justiciable controversy exists as to the rights and status of the parties and the controversy will be resolved by the declaration sought. *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995) citing *Texas Ass'n of Business v. Texas Air Control Bd.*, 852 S.W.2d 440, 446 (Tex.1993). “To constitute a justiciable controversy, there must exist a real and substantial controversy involving genuine conflict of tangible interests and not merely a theoretical dispute.” *Bexar–Medina–Atascosa Counties Water Control & Improvement Dist. No. 1 v. Medina Lake Protection Ass'n*, 640 S.W.2d 778, 779–80 (Tex.App.—San Antonio 1982, writ ref'd n.r.e.); *Chapman v. Marathon Mfg. Co.*, 590 S.W.2d 549, 552 (Tex.Civ.App.—Houston [1st Dist.] 1979, no writ); *Davis v. Dairyland County Mut. Ins. Co.*, 582 S.W.2d 591, 593 (Tex.Civ.App.—Dallas 1979, writ ref'd n.r.e.); *Sub–Surface Constr. Co. v. Bryant–Curington, Inc.*, 533 S.W.2d 452, 456 (Tex.Civ.App.—Austin 1976, writ ref'd n.r.e.); *Littlejohn v. Johnson*, 332 S.W.2d 439, 441 (Tex.Civ.App.—Waco 1960, no writ).

An issue becomes moot when the controversy no longer exists and there ceases to be a live controversy. *Valley Baptist Med. Ctr. v. Gonzalez*, 33 S.W.3d 821, 822 (Tex. 2000). For this Court to enter a judgment declaring that had the July 5, 2023, sale occurred it would have been void would be nothing more than an advisory judgment or opinion. Accordingly, the court has a duty to dismiss this moot claim, “which arises from a proper respect for the judicial branch's unique role under our constitution: to decide contested cases. Under our constitution, courts simply have no jurisdiction to render advisory opinions. Tex. Const. art. II, § 1.” *Speer v. Presbyterian Children's Home & Serv. Agency*, 847 S.W.2d 227, 229 (Tex. 1993)

Moreover, even if the Court did have jurisdiction to review the claim, which it does not, the Plaintiff still loses because Plaintiff simply failed to perform a thorough examination of the

chain of title and assignments. Exhibit 6 is a Transfer and Assignment of Lien from Legacy Mortgage Asset Trust 2018-RPL2 to U.S. Bank National Association, Not in its individual capacity by solely as owner trustee for Legacy Mortgage Asset Trust 2018-RPL2; the precise assignment completing the chain of assignments Plaintiff complains is missing. Exhibit 6 was recorded on May 3, 2023, almost two months prior to June 28, 2023, the day Plaintiff filed this action. The correct party to foreclose is U.S. Bank and Defendants are entitled to a judgment that Plaintiff take nothing by its third cause of action.

**B. First Cause of Action - Declaratory Relief: Violation of the Statute of Limitations to Foreclose**

Plaintiff sues for a declaratory judgment to the effect that Defendants' foreclosure of its security interest in real property is barred by limitations. There are no genuine issues of material fact on this claim and Defendants are entitled to judgment that Plaintiff take no declaratory judgment on the claim as a matter of law.

Plaintiff is not in privity with Defendants' borrower, Garvin. As a general rule and as a matter of law, the defense of limitation may not be interposed by one not in the position of the debtor. There is a plethora of cases that support this historically accepted premise: *Kiel v. Staber*, 116 S.W.2d 809, 811 (Tex.Civ.App.—Amarillo 1938, writ ref'd); *Johnson v. Snaman*, 76 S.W.2d 824, 828 (Tex.Civ.App.—Austin 1934, writ ref'd); *Fenstermaker v. City of San Antonio*, 283 S.W. 883, 884 (Tex.Civ.App.—San Antonio 1926), *aff'd*, 290 S.W. 532 (Tex.Comm'n App.1927, judgm't adopted); *Stewart v. Tolar & Daniel*, 250 S.W. 274, 276 (Tex.Civ.App.—Beaumont 1923, no writ); *Raley v. D. Sullivan Co.*, 159 S.W. 99, 102 (Tex.Civ.App.—San Antonio 1913), *rev'd on other grounds*, 207 S.W. 906 (Tex.Comm'n

App.1919). *Columbia Ave. Saving Fund, etc. v. Strawn* (1899), 93 Tex. 48, 53 S.W. 342; and is a personal privilege which may be asserted or waived at the election of the debtor or those in privity. *Gallaher v. American-Amicable Life Ins. Co.*, 462 S.W.2d 626, 628 (Tex. Civ. App.—Waco 1971, writ ref'd n.r.e.); accord *Miller, Hiersche, Martens & Hayward, P.C. v. Bent Tree Nat'l Bank*, 894 S.W.2d 828, 829 (Tex. App.—Dallas 1995, no writ); *Woodside Assurance, Inc. v. N.K. Res., Inc.*, 175 S.W.3d 421, 425-26 (Tex. App.—Houston [1st Dist.] 2005, no pet.). “Privity, in this connection, means the mutual or successive relationship to the same rights of property.” *Amstadt v. United States Brass Corp.*, 919 S.W.2d 644, 653 (Tex. 1996) (quoting *Kirby Lumber Corp. v. S. Lumber Co.*, 145 Tex. 151, [154,] 196 S.W.2d 387, 388 (1946)). The ability of Plaintiff to prevent U.S. Bank from foreclosing through an offensive assertion of limitations is simply not available to Plaintiff as a matter of Texas law. Plaintiff’s cause of action seeking declaratory judgment to deny U.S. Bank’s right to foreclose its lien interest as against Garvin, its Debtor, must be denied. Defendants request that Plaintiff take nothing by the claim.

**C. Second Cause of Action – Quiet Title**

Like its First Cause of Action, Plaintiff seeks to quiet title in itself claiming that by virtue of limitations, Defendants are unable to foreclose the security interest conveyed by Defendants’ Debtor, Garvin. There are no genuine issues of material fact on this claim and Defendants are entitled to judgment that Plaintiff take no declaratory judgment on the claim as a matter of law.

By the claim, Plaintiff seeks “a declaration of quiet title because the Deed of Trust is void due to the expiration of the statute of limitations to foreclose.” (Petition ¶ 32). As in response to Plaintiff’s first cause of action, this one also fails for the same reason. Plaintiff is not in privity



with Defendants' borrower, Garvin. And the same general rule that the defense of limitation may not be interposed by one not in the position of the debtor applies.

Moreover, even if limitations did apply to bar Defendants; foreclosure, which it does not, such, Plaintiff will still be unable to show its entitlement to quiet title in itself. A quiet title cause of action is an equitable remedy that exists "to enable the holder of the feeblest equity to remove from his way to legal title any unlawful hindrance having the appearance of better right." *Vernon v. Perrien*, 390 S.W.3d 47, 61 (Tex. App.—El Paso 2012, pet. denied) (quotation omitted). The effect of a suit to quiet title is to declare invalid or ineffective the defendant's claim to title. *Id.* The elements of a suit to quiet title are (1) plaintiff has an interest in a specific property; (2) title to the property is affected by a claim by the defendant; and (3) the defendant's claim, though facially valid is invalid and unenforceable. *Montenegro v. Ocwen Loan Servicing, LLC*, 419 S.W.3d 561, 572 (Tex. App.—Amarillo 2013, pet. denied) (citing *Vernon*, 390 S.W.3d at 61.)

In light of the failure of Plaintiff's theory of limitations as a bar to Defendants ability to foreclose, Plaintiff can produce no evidence that Defendants' claim against the Property, "though facially valid, is invalid and unenforceable." *Montenegro*, 419 S.W.3d at 572. Defendants' right to foreclose is shown through the facial validity of Exhibit 6, namely that U.S. Bank is the last assignee with power to foreclose. Further, Plaintiff, not being in privity with the only person holding the power of the defense of limitations – Garvin – is legally prohibited from presenting any evidence that Defendants' foreclosure rights as to Garvin is invalid or unenforceable. Plaintiff's request for declaratory relief for quiet title under its second cause of action must be denied.

## **ATTORNEY FEES**

Pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 37.009, any proceeding under the Texas Declaratory Judgment Act, the court may award costs and reasonable and necessary attorney's fees as are equitable and just. Defendants accordingly request that the Court include an award of attorneys' fees to Defendants in the amounts shown in the attorneys' fee declaration of Robert L. Negrin, attached to this motion as Exhibit 7. It would be equitable and just to award Defendants attorney fees in this proceeding based on the legal baselessness of the claims presented and that Defendants were compelled to defend against them.

## **CONCLUSION**

The record demonstrates that the Deed of Trust encumbering the Property is properly assigned to U.S. Bank. The summary judgment record further shows that Plaintiff is not entitled to raise defenses to prevent Defendant's foreclosure. Plaintiff is prohibited from offering any evidence to support its cause of action to quiet title. Plaintiff's claims therefore fail as a matter of law. Defendants are entitled to a judgment that Plaintiff take nothing by its suit and that Defendants recover attorney fees and costs.

## **PRAYER**

**WHEREFORE,** Defendants pray for summary judgment that grants this motion. Defendants pray that the Court sign a judgment that Plaintiff take nothing by any of its claims and that Plaintiff take nothing by its suit. Defendants further pray for an award of attorney fees as proved and shown herein. Defendants pray for all other relief the Court to which they are entitled.

Respectfully Submitted,  
**MCCARTHY & HOLTHUS, LLP**

/s/ Robert L. Negrin

Robert L. Negrin / TBN: 14865550

Cole Patton / TBN: 24037247

1255 West 15th Street, Suite 1060

Plano, TX 75075

Phone: 214.291.3800

Fax: 214.291.3801

Rnegrin@mccarthyholthus.com

ATTORNEY FOR DEFENDANTS RUSHMORE  
AND U.S. BANK

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing motion was served upon the following parties/counsel of record pursuant to the Texas Rules of Civil Procedure on February 22, 2024.

Jeffrey C. Jackson  
2500 E. TC Jester Blvd.  
Ste. 285  
Houston, TX 77008

/s/ Robert L. Negrin

Robert L. Negrin

DT  
88  
2

Return to:  
AmeriPoint Title  
777 S. Post Oak Lane, Ste 180  
Houston, TX 77056

Exhibit 1

**HOLD FOR**  
**AMERIPOINT TITLE**  
GF# 0519883EW

Return To:

FIELDSTONE MORTGAGE COMPANY  
11000 BROKEN LAND PKWY, #600  
COLUMBIA, MD 21044

2023017  
01/11/06 201048848 \$88.00

Prepared By:

GREGG & VALBY, L.L.P. 1700 W. LOOP S., STE 260 , HOUSTON, TX 77027

[Space Above This Line For Recording Data]

**DEED OF TRUST**  
MIN

**NOTICE OF CONFIDENTIALITY RIGHTS:**

If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: your social security number or your driver's license number.

**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 **January 3, 2006** together with all Riders to this document.
- (B) "Borrower" is

**SHAWN GARVIN, AN UNMARRIED PERSON, ,**

Borrower is the grantor under this Security Instrument.

(C) "Lender" is **FIELDSTONE MORTGAGE COMPANY**

Lender is a **CORPORATION** organized and existing under the laws of **MARYLAND**

TEXAS -Single Family- Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3044 1/01

VMP -6A(TX) (0307)

Page 1 of 16

Initials: *SG*

VMP Mortgage Solutions (800)521-7291



Vertical text on the left margin, possibly a recording or filing stamp.

Lender's address is 11000 BROKEN LAND PKWY, #600  
COLUMBIA, MD 21044

Lender includes any holder of the Note who is entitled to receive payments under the Note.

(D) "Trustee" is ROB V. BUDHWA

Trustee's address is  
11000 BROKEN LAND PKWY, STE 600, COLUMBIA, MD 21044

(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 a beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

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

The Note states that Borrower owes Lender

SEVENTY FIVE THOUSAND & 00/100

Dollars

(U.S. \$ 75,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JANUARY 1, 2036

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

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

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

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

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

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

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

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

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

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

Initials: RL

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

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

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

#### TRANSFER OF RIGHTS IN THE PROPERTY

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

COUNTY

[Type of Recording Jurisdiction]

of

Harris

[Name of Recording Jurisdiction]

All that tract or parcel of land as shown on Schedule "A" attached hereto which is incorporated herein and made a part hereof.

Parcel ID Number: 1127800080002  
12973 WIREVINE LANE  
HOUSTON  
("Property Address"):

which currently has the address of

[Street]  
[City], Texas 77072 [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.

Initials: 

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

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

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

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

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

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

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

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

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

Initials: 

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.

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(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.

Initials: BM

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

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

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

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

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

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

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

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

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

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

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

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

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a

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notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

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

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

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice will result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option 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 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. For the purposes of this Section 22, the term "Lender" includes any holder of the Note who is entitled to receive payments under the Note.

If Lender invokes the power of sale, Lender or Trustee shall give notice of the time, place and terms of sale by posting and filing the notice at least 21 days prior to sale as provided by Applicable Law. Lender shall mail a copy of the notice to Borrower in the manner prescribed by Applicable Law. Sale shall be made at public venue. The sale must begin at the time stated in the notice of sale or not later than three hours after that time and between the hours of 10 a.m. and 4 p.m. on the first Tuesday of the month. Borrower authorizes Trustee to sell the property to the highest bidder for cash in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying indefeasible title to the Property with covenants of general warranty from Borrower. Borrower covenants and agrees to defend generally the purchaser's title to the Property against all claims and demands. 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.

If the Property is sold pursuant to this Section 22, Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at that sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession or other court proceeding.

**23. Release.** Upon payment of all sums secured by this Security Instrument, Lender shall provide a release of this Security Instrument to Borrower or Borrower's designated agent in accordance with Applicable Law. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

**24. Substitute Trustee; Trustee Liability.** All rights, remedies and duties of Trustee under this Security Instrument may be exercised or performed by one or more trustees acting alone or together. Lender, at its option and with or without cause, may from time to time, by power of attorney or otherwise, remove or substitute any trustee, add one or more trustees, or appoint a successor trustee to any Trustee without the necessity of any formality other than a designation by Lender in writing. Without any further act or conveyance of the Property the substitute, additional or successor trustee shall become vested with the title, rights, remedies, powers and duties conferred upon Trustee herein and by Applicable Law.

Trustee shall not be liable if acting upon any notice, request, consent, demand, statement or other document believed by Trustee to be correct. Trustee shall not be liable for any act or omission unless such act or omission is willful.

Initials: 



**25. Subrogation.** Any of the proceeds of the Note used to take up outstanding liens against all or any part of the Property have been advanced by Lender at Borrower's request and upon Borrower's representation that such amounts are due and are secured by valid liens against the Property. Lender shall be subrogated to any and all rights, superior titles, liens and equities owned or claimed by any owner or holder of any outstanding liens and debts, regardless of whether said liens or debts are acquired by Lender by assignment or are released by the holder thereof upon payment.

**26. Partial Invalidity.** In the event any portion of the sums intended to be secured by this Security Instrument cannot be lawfully secured hereby, payments in reduction of such sums shall be applied first to those portions not secured hereby.

**27. Purchase Money; Owelty of Partition; Renewal and Extension of Liens Against Homestead Property; Acknowledgment of Cash Advanced Against Non-Homestead Property.** Check box as applicable:

**Purchase Money.**

The funds advanced to Borrower under the Note were used to pay all or part of the purchase price of the Property. The Note also is primarily secured by the vendor's lien retained in the deed of even date with this Security Instrument conveying the Property to Borrower, which vendor's lien has been assigned to Lender, this Security Instrument being additional security for such vendor's lien.

**Owelty of Partition.**

The Note represents funds advanced by Lender at the special instance and request of Borrower for the purpose of acquiring the entire fee simple title to the Property and the existence of an owelty of partition imposed against the entirety of the Property by a court order or by a written agreement of the parties to the partition to secure the payment of the Note is expressly acknowledged, confessed and granted.

**Renewal and Extension of Liens Against Homestead Property.**

The Note is in renewal and extension, but not in extinguishment, of the indebtedness described on the attached Renewal and Extension Exhibit which is incorporated by reference. Lender is expressly subrogated to all rights, liens and remedies securing the original holder of a note evidencing Borrower's indebtedness and the original liens securing the indebtedness are renewed and extended to the date of maturity of the Note in renewal and extension of the indebtedness.

**Acknowledgment of Cash Advanced Against Non-Homestead Property.**

The Note represents funds advanced to Borrower on this day at Borrower's request and Borrower acknowledges receipt of such funds. Borrower states that Borrower does not now and does not intend ever to reside on, use in any manner, or claim the Property secured by this Security Instrument as a business or residential homestead. Borrower disclaims all homestead rights, interests and exemptions related to the Property.

**28. Loan Not a Home Equity Loan.** The Loan evidenced by the Note is not an extension of credit as defined by Section 50(a)(6) or Section 50(a)(7), Article XVI, of the Texas Constitution. If the Property is used as Borrower's residence, then Borrower agrees that Borrower will receive no cash from the Loan evidenced by the Note and that any advances not necessary to purchase the Property, extinguish an owelty lien, complete construction, or renew and extend a prior lien against the Property, will be used to reduce the balance evidenced by the Note or such Loan will be modified to evidence the correct Loan balance, at Lender's option. Borrower agrees to execute any documentation necessary to comply with this Section 28.

Initials: 

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:

\_\_\_\_\_  
SHAWN GARVIN (Seal)  
-Borrower

\_\_\_\_\_  
\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

Unofficial Copy Office of Marilyn Burgess District Clerk

STATE OF TEXAS

County of

Harris

Before me

Crystal A Wharton

on this day personally appeared

SHAWN GARVIN

known to me (or proved to me on the oath of or through TX DL

n/a

) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she/they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this

3

day of

January, 2004

(Seal)



Crystal A Wharton  
Notary Public

My Commission Expires:

6-11-08

VMP-6A(TX) (0307)

Page 16 of 16

Initials:

SG

Form 3044 1/01

SG

Unofficial Copy Office of Marilyn Burgess District Clerk

## PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 3rd day of January, 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 FIELDSTONE MORTGAGE COMPANY

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:  
12973 WIREVINE LANE, HOUSTON, Texas 77072

[Property Address]

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

### CONDITIONS, COVENANTS AND RESTRICTIONS FILED OF RECORD

(the "Declaration"). The Property is a part of a planned unit development known as WILDFLOWER GREEN, SECTION TWO (2)

[Name of Planned Unit Development]

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

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

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

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3150 1/01

Page 1 of 3

Initials: BJ

VMP-7R (0405)

VMP Mortgage Solutions, Inc. (800)521-7291



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

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

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


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

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

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

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

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

Initials: 

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

\_\_\_\_\_(Seal) Shawn Garvin \_\_\_\_\_(Seal)  
-Borrower SHAWN GARVIN -Borrower

\_\_\_\_\_(Seal) \_\_\_\_\_(Seal)  
-Borrower -Borrower

\_\_\_\_\_(Seal) \_\_\_\_\_(Seal)  
-Borrower -Borrower

\_\_\_\_\_(Seal) \_\_\_\_\_(Seal)  
-Borrower -Borrower

VMP® -7R (0405)

Page 3 of 3

Form 3150 1/01

Unofficial Copy Office of Marilyn Burgess District Clerk

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.  
THE STATE OF TEXAS  
COUNTY OF HARRIS  
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

JAN 11 2006



Brenda B. Kayman  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

2006 JAN 11 PM 2:23  
FILED  
Brenda B. Kayman  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

Exhibit 2

TRANSFER OF LIEN

MERS MIN#: 100052643939724763 PHONE#: (888) 679-6377  
Customer#: 1/1 Service#: 91629AS1  
Loan#: 9804827864

FOR VALUE RECEIVED, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS), AS NOMINEE FOR FIELDSTONE MORTGAGE COMPANY, ITS SUCCESSORS AND ASSIGNS, 1901 E VOORHEES ST. SUITE C DANVILLE,, IL 61834-0000, hereby assign and transfer to LSF9 MASTER PARTICIPATION TRUST, 13801 WIRELESS WAY, OKLAHOMA CITY, OK 73134-0000, all its right, title and interest in and to said Deed of Trust in the amount of \$75,000.00, recorded in the State of TEXAS, County of HARRIS Official Records, dated JANUARY 03, 2006 and recorded on JANUARY 11, 2006, as Instrument No. Z023017, in Book No. ---, at Page No. ---, and Re-Recorded on: FEBRUARY 20, 2006 as Instrument No. Z103648,.

Executed by: SHAWN GARVIN, AN UNMARRIED PERSON (Original Mortgagor).  
Original Mortgagee: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR FIELDSTONE MORTGAGE COMPANY, ITS SUCCESSORS AND ASSIGNS. Original Trustee: ROB V. BUDHWA. Property Address: 12973 WIREVINE LANE, HOUSTON, TX 77072-0000.

Date: SEPTEMBER 16, 2016  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS), AS NOMINEE FOR FIELDSTONE MORTGAGE COMPANY, ITS SUCCESSORS AND ASSIGNS

By: \_\_\_\_\_  
Kendra Cook, Assistant Secretary

State of OKLAHOMA }  
County of OKLAHOMA } ss.

On SEPTEMBER 16, 2016, before me, B. Coulter, a Notary Public, personally appeared Kendra Cook, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.  
Witness my hand and official seal.

*B. Coulter*



(Notary Name): B. Coulter  
My commission expires: 05/14/2020

Recording Requested & Prepared By:  
Caliber Home Loans, Inc. 13801 Wireless Way Oklahoma City, OK 73134 BALAKRISHNA PENTA  
And When Recorded Mail To:  
T.D. Service Company 4000 W. Metropolitan Dr. Suite# 400 Orange, CA 92868

RP-2016-447976

Unofficial Copy

RP-2016-447976

RP-2016-447976  
# Pages 2  
10/04/2016 09:17 AM  
e-Filed & e-Recorded in the  
Official Public Records of  
HARRIS COUNTY  
STAN STANART  
COUNTY CLERK  
Fees \$16.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS  
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



*Stan Stanart*

COUNTY CLERK  
HARRIS COUNTY, TEXAS

Unofficial Copy Office of Marilyn Burgess District Clerk



Exhibit 3

### TRANSFER AND ASSIGNMENT

TEXAS

COUNTY OF HARRIS

LOAN NO.: [REDACTED]

PREPARED BY: \_\_\_\_\_, PH. \_\_\_\_\_


WHEN RECORDED MAIL TO: \_\_\_\_\_

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned **U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST**, located at **13801 WIRELESS WAY, OKLAHOMA CITY, OK 73134**, Assignor, does hereby grant, assign, and transfer to **J.P. MORGAN MORTGAGE ACQUISITION CORP.**, located at **383 MADISON AVE 8 FL, NEW YORK, NY 10179**, Assignee, its successors and assigns, all Assignor's rights, title and interest in and to that certain Deed of Trust/Security Instrument dated **JANUARY 03, 2006**, in the amount of **\$75,000.00**, executed by **SHAWN GARVIN, AN UNMARRIED PERSON**, Trustor/Grantor, to **ROB V. BUDHWA**, Original Trustee, for the benefit of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., SOLELY AS NOMINEE FOR FIELDSTONE MORTGAGE COMPANY, ITS SUCCESSORS AND ASSIGNS**, the Original Beneficiary/Grantee, recorded on **JANUARY 11, 2006** in Volume **016-57** at Page **1481** under Instrument No. **Z023017** in the Real Property Records of the County Clerk in and for **HARRIS** County, State of **TEXAS**, said property described on said Deed of Trust/Security Instrument referred to herein:

**AS DESCRIBED IN SAID DEED OF TRUST/SECURITY INSTRUMENT**

IN WITNESS WHEREOF, the undersigned has caused this Instrument to be executed this DEC 19 2017

**U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST, BY CALIBER HOME LOANS, INC., AS ITS ATTORNEY IN FACT**

  
**JAMIE M. VAN KEIRSBELK, AUTHORIZED SIGNATORY**

[REDACTED]

MIN: [REDACTED]  
MERS PHONE: [REDACTED]

Unofficial Copy Office of Maricopa County District Clerk

RP-2018-237452

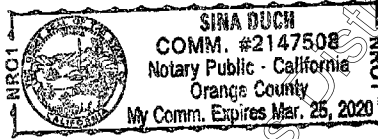
A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA COUNTY OF ORANGE ) ss.

On DEC 19 2017, before me, **SINA DUCH**, a Notary Public, personally appeared **JAMIE M. VAN KEIRSBELK** who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her signature on the instrument the person(s), or the entity upon behalf of which the person acted, executed the instrument.

I certify under Penalty of Perjury, under the laws of the State of California, that the forgoing paragraph is true and correct.

*S. DUCH*  
SINA DUCH (COMMISSION EXP. 3/25/2020)  
NOTARY PUBLIC



Unofficial Copy Office of Marilyn Burgess, Notary Public

RP-2018-237452

RP-2018-237452

RP-2018-237452  
# Pages 3  
05/30/2018 02:46 PM  
e-Filed & e-Recorded in the  
Official Public Records of  
HARRIS COUNTY  
STAN STANART  
COUNTY CLERK  
Fees \$20.00

Unofficial Copy Office of Marilyn Burgess District Clerk

**RECORDERS MEMORANDUM**

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS  
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



*Stan Stanart*

COUNTY CLERK  
HARRIS COUNTY, TEXAS

Exhibit 4

Investor ID: [REDACTED]  
Alternate ID: [REDACTED]  
WLTIC UID: [REDACTED]  
Alternate UID: [REDACTED]  
MIN Number: [REDACTED]

After Recording Return To:  
Westcor Investor Services  
600 West Germantown Pike, Ste. 450  
Plymouth Meeting, PA 19462

**RECORD FIRST**

**ASSIGNMENT OF DEED OF TRUST**

For valuable consideration paid, **J.P. Morgan Mortgage Acquisition Corporation**, whose address is **383 MADISON AVENUE 8TH FLOOR, NEW YORK, NEW YORK 10179** the holder of the deed of trust described as follows:

**That certain deed of trust described as follows: made by SHAWN GARVIN, AN UNMARRIED PERSON to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR FIELDSTONE MORTGAGE COMPANY in the amount of \$75,000.00, dated 1/3/2006, recorded on 1/11/2006, at Book: 016-57, Page: 1481, Instrument: Z023017, relating to that property commonly known as: 12973 Wirewine Lane, Houston, TX 77072, in the county of Harris and described as parcel number: 112-780-008-2002. Trustee: ROB V. BUDHWA**

Which is a lien on the real property described below in **Exhibit A**, attached hereto, does hereby convey, grant, sell, 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 **Goldman Sachs Mortgage Company** whose mailing address is **2001 ROSS AVENUE, SUITE 2800, DALLAS, TX 75201**.

Unofficial Copy Office of Mortgages District Clerk

RP-2018-557555

Executed by the undersigned this 7-27, 2018.

**J.P. Morgan Mortgage Acquisition Corporation, By: Westcor Land Title Insurance Company, its attorney-in-fact\***

By: [Signature]

Name: Jeremiah McPherson

Its: Authorized Signatory

\*Power of Attorney recorded on 8/8/2017 as Document #20170579681 in the public records of Maricopa County, AZ.

STATE OF PENNSYLVANIA  
COUNTY OF MONTGOMERY

The foregoing instrument was acknowledged before me on 7-27, 2018 by **Jeremiah McPherson, Authorized Signatory of Westcor Land Title Insurance Company, its attorney-in-fact\*** for **J.P. Morgan Mortgage Acquisition Corporation** who is personally known to me or has produced \_\_\_\_\_ as identification, and furthermore, the aforementioned person has acknowledged that his/her signature was his/her free and voluntary act for the purposes set forth in this instrument.

[Signature]  
Notary Public

Barbara A. Joachim

My commission expires:  
3/10/2019

This instrument prepared by:  
Jay A. Rosenberg, Esq., Texas Bar Number 24094479, Rosenberg LPA, Attorneys At Law, 3805 Edwards Road, Suite 550, Cincinnati, Ohio 45209 (513) 247-9605 Fax: (866) 611-0170.

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
Barbara A. Joachim, Notary Public  
Springfield Twp., Delaware County  
My Commission Expires March 10, 2019

RP-2018-557555

Unofficial Copy Office of Marilyn S. Smith, District Clerk

**EXHIBIT A (LEGAL DESCRIPTION)**

BEING A TRACT OR PARCEL CONTAINING 0.0364 ACRE OF LAND BEING UNIT 402, BUILDING 40 OUT OF UNRESTRICTED RESERVE "E" OF WILDFLOWER GREEN, SECTION 2 A SUBDIVISION OF RECORD IN VOLUME 265, PAGE 111 OF THE HARRIS COUNTY MAP RECORDS, HARRIS COUNTY, TEXAS, BEING THAT SAME CALLED 0.0364 ACRE TRACT OF RECORD UNDER HARRIS COUNTY CLERK'S FILE NUMBER (H.C.C.F. NO.) P136601, SAID 0.0364 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH ALL BEARINGS REFERENCED TO SAID SECTION 2: BEGINNING AT AN IRON ROD SET FOR THE COMMON NORTHEAST CORNER TO SAID UNIT 402, THE HEREIN DESCRIBED TRACT AND THAT CERTAIN CALLED 0.0364 ACRE TRACT (UNIT 403) OF RECORD UNDER H.C.C.F. NO. W321751; THENCE, SOUTH 01°53'44" EAST, 21.17 FEET TO THE CORNER OF A BRICK WALL FOUND FOR THE COMMON SOUTHEAST CORNER TO SAID UNIT 402, THE HEREIN DESCRIBED TRACT AND THE NORTHEAST CORNER TO THAT CERTAIN CALLED 0.0379 ACRE TRACT (UNIT 401) OF RECORD UNDER H.C.C.F. NO. T676043; THENCE, SOUTH 88°06'16" WEST, 75.00 FEET TO A BUILDING CORNER FOUND FOR THE COMMON SOUTHWEST CORNER TO SAID UNIT 402, THE HEREIN DESCRIBED TRACT AND THE NORTHWEST CORNER TO SAID UNIT 401; THENCE, NORTH 01°53'44" WEST, 21.17 FEET TO A BUILDING CORNER FOUND FOR THE COMMON NORTHWEST CORNER TO SAID UNIT 402, THE HEREIN DESCRIBED TRACT AND THE SOUTHWEST CORNER TO SAID UNIT 403; THENCE, NORTH 88°06'16" EAST, 75.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.0364 ACRE OF LAND.  
Parcel Number: 112-780-008-2002

Unofficial Copy Office of McMillan & Associates

RP-2018-557555

RP-2018-557555

RP-2018-557555  
# Pages 4  
12/13/2018 11:27 AM  
e-Filed & e-Recorded in the  
Official Public Records of  
HARRIS COUNTY  
STAN STANART  
COUNTY CLERK  
Fees \$24.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS  
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



*Stan Stanart*

COUNTY CLERK  
HARRIS COUNTY, TEXAS

Unofficial Copy Office of Marilyn Burgess District Clerk

Exhibit 5

**TRANSFER AND ASSIGNMENT**

**TEXAS**

COUNTY OF **HARRIS**

LOAN NO.: [REDACTED]

WHEN RECORDED MAIL TO: ATTN: ASSIGNMENT DEPT., RUSHMORE LOAN MANAGEMENT SERVICES LLC C/O FIRST AMERICAN MORTGAGE SOLUTIONS, LLC, 1795 INTERNATIONAL WAY, IDAHO FALLS, ID 83402

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned **GOLDMAN SACHS MORTGAGE COMPANY**, located at **2001 ROSS AVENUE SUITE 2800, DALLAS, TX 75201**, Assignor, does hereby grant, assign, and transfer to **LEGACY MORTGAGE ASSET TRUST 2018-RPL2**, located at **60 LIVINGSTON AVENUE EP-MN-WS3D, ST. PAUL, MN 55107**, Assignee, its successors and assigns, all Assignor's rights, title and interest in and to that certain Deed of Trust/Security Instrument dated **JANUARY 03, 2006**, in the amount of **\$75,000.00**, executed by **SHAWN GARVIN, AN UNMARRIED PERSON**, Trustor/Grantor, to **ROB V. BUDHWA**, Original Trustee, for the benefit of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS")**, AS NOMINEE FOR **FIELDSTONE MORTGAGE COMPANY, ITS SUCCESSORS AND ASSIGNS**, the Original Beneficiary/Grantee, recorded on **JANUARY 11, 2006** in Volume **016-57** at Page **1481** under Instrument No. **2023017** in the Real Property Records of the County Clerk in and for **HARRIS** County, State of **TEXAS**, said property described on said Deed of Trust/Security Instrument referred to herein:

**AS DESCRIBED IN SAID DEED OF TRUST/SECURITY INSTRUMENT**

IN WITNESS WHEREOF, the undersigned has caused this Instrument to be executed on NOV 13 2018.

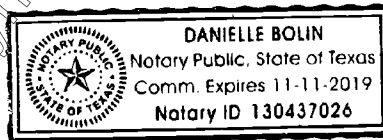
**GOLDMAN SACHS MORTGAGE COMPANY**

*Andrea Rhinehardt*  
**ANDREA RHINEHARDT, VICE PRESIDENT**

STATE OF TEXAS COUNTY OF **DALLAS** ) ss.

On NOV 13 2018, before me, Danielle Bolin, personally appeared **ANDREA RHINEHARDT** known to me to be the **VICE PRESIDENT** of **GOLDMAN SACHS MORTGAGE COMPANY** the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

*Danielle Bolin*  
NOV 11 2019 (COMMISSION EXP.)  
Danielle Bolin  
NOTARY PUBLIC



MIN: [REDACTED]  
MERS PHONE: [REDACTED]

Unofficial Copy Office of Marilyn Morgan

RP-2018-557556



RP-2018-557556

RP-2018-557556  
# Pages 2  
12/13/2018 11:27 AM  
e-Filed & e-Recorded in the  
Official Public Records of  
HARRIS COUNTY  
STAN STANART  
COUNTY CLERK  
Fees \$16.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS  
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



*Stan Stanart*

COUNTY CLERK  
HARRIS COUNTY, TEXAS

Unofficial Copy Office of Marilyn Burgess District Clerk

Exhibit 6

### TRANSFER AND ASSIGNMENT OF LIEN

TEXAS

COUNTY OF HARRIS

LOAN NO.: [REDACTED]

Once recorded, please return to: McCarthy & Holthus, LLP 1255 West 15th Street, Suite 1060 Plano, TX 75075

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned **LEGACY MORTGAGE ASSET TRUST 2018-RPL2**, located at **60 LIVINGSTON AVENUE EP-MN-WS3D, ST. PAUL, MN 55107**, Assignor, does hereby grant, assign, and transfer to **U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR LEGACY MORTGAGE ASSET TRUST 2018-RPL2**, located at **60 LIVINGSTON AVENUE EP-MN-WS3D, ST. PAUL, MN 55107**, Assignee, its successors and assigns, all Assignor's rights, title and interest in and to that certain Deed of Trust or Mortgage dated **JANUARY 03, 2006**, in the amount of **\$75,000.00**, executed by **SHAWN GARVIN, AN UNMARRIED PERSON**, Trustor or Grantor, to **ROB V. BUDHWA**, Original Trustee, to or for the benefit of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS")**, AS BENEFICIARY, AS NOMINEE FOR **FIELDSTONE MORTGAGE COMPANY, ITS SUCCESSORS AND ASSIGNS**, the Original Beneficiary or Grantee, recorded on **JANUARY 11, 2006** in Volume **RP 016-57** at Page **1481** under Instrument No. **Z023017; RE-RECORDED ON 02/20/2006 IN BOOK RP 018-09, PAGE 0068 AS DOCUMENT/INSTRUMENT # Z103648**. in the Real Property Records of the County Clerk in and for **HARRIS** County, State of **TEXAS**, said property described on said Deed of Trust or Mortgage referred to herein:

**AS DESCRIBED IN SAID DEED OF TRUST OR MORTGAGE**

IN WITNESS WHEREOF, the undersigned has caused this Instrument to be executed on APR 24 2023  
**LEGACY MORTGAGE ASSET TRUST 2018-RPL2**, BY ITS ATTORNEY IN FACT **RUSHMORE LOAN MANAGEMENT SERVICES LLC**

**DAVID SEGOVIA, ASSISTANT SECRETARY**

Unofficial Copy Office of Marilyn Burgess, Clerk of the County of Harris, Texas

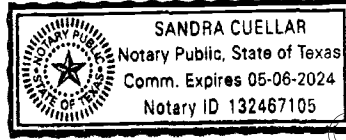
RP-2023-159292

STATE OF ~~TEXAS~~  
APR 24 2023

COUNTY OF DALLAS ) ss.

On \_\_\_\_\_, before me, SANDRA CUELLAR, personally appeared DAVID SEGOVIA known to me to be the ASSISTANT SECRETARY of RUSHMORE LOAN MANAGEMENT SERVICES LLC AS ATTORNEY-IN-FACT FOR LEGACY MORTGAGE ASSET TRUST 2018-RPL2 the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

  
SANDRA CUELLAR (COMMISSION EXP. 05/06/2024)  
NOTARY PUBLIC



LOAN NO. 

Unofficial Copy Office of Marilyn Burgess District Clerk

RP-2023-159292

RP-2023-159292

RP-2023-159292  
# Pages 3  
05/03/2023 11:25 AM  
e-Filed & e-Recorded in the  
Official Public Records of  
HARRIS COUNTY  
TENESHIA HUDSPETH  
COUNTY CLERK  
Fees \$22.00

Unofficial Copy Office of Marilyn Burgess District Clerk

**RECORDERS MEMORANDUM**

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS  
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



*Teneshia Hudspeth*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

Cause No. 202339642

**DHI HOLDINGS, LP,**

**Plaintiff,**

**v.**

**U.S. BANK TRUST NATIONAL  
ASSOCIATION, NOT IN ITS  
INDIVIDUAL CAPACITY BUT SOLELY  
AS OWNER TRUSTEE FOR LEGACY  
MORTGAGE ASSET TRUST 2018-RPL2;  
and RUSHMORE LOAN  
MANAGEMENT SERVICES, LLC,**

**Defendants.**

§ **IN THE DISTRICT COURT**

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**HARRIS COUNTY, TEXAS**

**190<sup>TH</sup> JUDICIAL DISTRICT**

**DECLARATION OF ROBERT L. NEGRIN**

I, Robert L. Negrin, the attorney of record for Defendants, Rushmore Loan Management Services, LLC (“Rushmore”) and U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2018-RPL2 (U.S. Bank”) (collectively “Defendants”), hereby declare under penalty of perjury that the following is true and correct:

“My name is Robert L. Negrin. I am an attorney duly admitted to practice, among others, in all Texas state courts, as well as all federal district courts, bankruptcy courts, the United States Court of Appeals for the 5<sup>th</sup> Circuit and the Court of Federal Claims. I am over the age of eighteen (18) years. I have personal knowledge of the facts contained herein and they are true and correct.

“I am an attorney with the law firm of McCarthy & Holthus LLP. The firm maintains an office for the practice of law at 1255 West 15<sup>th</sup> Street, Suite 1060, Plano, TX 75075. I am the attorney responsible for this file, and I am familiar with its contents and the time expended thereon. I am custodian of the records of the *DHI Holdings, L.P. v. U.S. Bank National Association, Not in its individual capacity by solely as owner trustee for Legacy Mortgage Asset Trust 2018-RPL2 and Rushmore Loan Management Services, LLC* file. My personal knowledge of the file comes from my having personally reviewed the salient documents related to this matter, and having acted as lead counsel on the matter for all the Defendants. I have previously represented clients in connection with claims such as the suit presently before the court. I am familiar with the attorneys’ fees customarily charged by attorneys in the Houston, Harris County, Texas vicinity for handling

suits on these types of claims and am familiar with the attorney services required for the proper prosecution and defense of suits founded upon similar claims, including the Uniform Declaratory Judgments Act.

“From on or about July 1, 2023, through the date of the hearing on Defendants’ Motion for Summary Judgment, and to continue through post-judgment phases, McCarthy & Holthus LLP has provided and will continue to provide services to Defendants. The services charged Defendants by McCarthy & Holthus were reasonable at the time and place the service was provided.

“It is the practice of the firm of McCarthy & Holthus LLP to maintain time records, and our fee is generally computed on an hourly basis or on a percentage of the recovery. In addition, we consider the following factors in setting our fees for clients:

- a. the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly;
- b. likelihood that the acceptance of the particular employment would preclude other employment by the firm;
- c. the fee customarily charged in the locality for similar legal services;
- d. the dollar amount involved, and the results obtained;
- e. the time limitations imposed by the client or the circumstances;
- f. the nature and length of the professional relationship with the client; and
- g. the experience, reputation, and ability of the firm.

“The following services were rendered in connection with the above-entitled and numbered cause relative to Plaintiff’s claims asserted under the Uniform Declaratory Judgments act:

DATE	COMMENTS	TIME <sup>1</sup>
07/17/2023	Analyze pleadings and correspondence with counsel to determine course of action in declaratory judgment litigation in light of fact that property was purchased by Plaintiff at HOA sale.	0.40
07/26/2023	Analyze docket and case file for requested payoff.	0.30
10/18/2023	Analyze case history, request for issuance of citation and Court’s notice of intention to dismiss this declaratory judgments action for want of	0.30

<sup>1</sup> Attorneys’ time is calculated in increments of 6 minutes. Thus, an entry of .1 = 6 minutes; .2 = 12 minutes; .3 = 30 minutes, etc.

DATE	COMMENTS	TIME <sup>1</sup>
	prosecution. (.2) Draft correspondence to counsel for Plaintiff on resolution and litigation exit strategy. (.1)	
10/19/2023	Analyze and draft correspondence with counsel for Plaintiff regarding loan payoff.	0.10
11/30/2023	Draft and file Original Answer for Rushmore to Plaintiff's claims sounding in part under the Uniform Declaratory Judgments Act.	0.80
12/11/2023	Analyze case docket for pre-trial scheduling order and to plan for next step in light of Plaintiff's declaratory judgment claims and others asserted in Plaintiff's pleading requesting declaratory judgment that clients' pursuit of loan remedies is barred by limitations.	0.20
01/26/2024	Analyze written discovery submitted by Plaintiff. (.4) Legal research for responding to discovery	1.30
02/21/2024	Receive and review case file and analyze to confirm that investor was in fact served with process (0.2); Correspondence to client requesting authority to answer for investor. (0.1)	0.30
02/21/2024	Draft, initial review and revision of Motion for Summary Judgment; Draft, review and edit Declaration of Attorney Fees. (2/3 on declaratory judgment, 1/3 on other claims).	4.00
02/22/2024	Finalize motion for summary judgment on claims of declaratory judgment and limitations. (2/3 on declaratory judgment, 1/3 on other claims).	3.00
02/22/2024	Draft objections to Plaintiff's discovery in light of baselessness of claims. (2/3 on declaratory judgment, 1/3 on other claims).	3.00

"The above services are reasonable and necessary to the proper resolution of this case. The above services were rendered to the Defendants - the firm's clients - in response and defense to claims made by Plaintiffs related to Plaintiff's declaratory judgment claims. Furthermore, if a judgment is granted, services will have to be rendered on behalf of Defendants such as arranging for a writ of execution or other post judgment remedied to collect any attorney fees and costs awarded Defendants.

"In my professional opinion, in view of the time expended on this matter, the services provided to Defendants and the other factors considered by me, a reasonable and necessary attorneys' fees through the date of the summary judgment hearing, in light of the actions of Plaintiff, DHI Holdings, L.P. on claims asserted under the Uniform Declaratory Judgments Act would be 9.1 hours at \$300.00 per hour or \$2,730.00. The Defendants in this case are intertwined and the work outlined above in this declaration was performed for both of the Defendants as if they were a single client. No differentiation was required because Plaintiff made its claims not individually against a single defendant but as to both throughout this proceeding. The exception is as to discovery propounded by Plaintiff, which was directed solely toward Rushmore. Despite this fact, Defendants seek a single award for all attorney fees incurred.

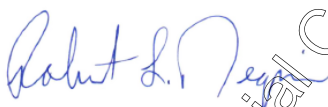
In addition to the foregoing, I reasonably anticipate an additional 4 hours to reply to Plaintiff's response to the motion for summary judgment and an additional 4 hours will be needed for a hearing, if necessary, for a total of an additional \$1,200.00 in attorneys' fees. In the event Plaintiff unsuccessfully appeals Defendants' Motion for Summary Judgment, it is my opinion that a reasonable and necessary attorney's fee for the appeal would be \$7,500.00. In the event Plaintiff files an unsuccessful Motion for Rehearing to the Court of Appeals, a reasonable attorney's fee for Defendants would be \$2,500.00. In the event Plaintiff prosecutes an unsuccessful petition for review by the Texas Supreme Court that requires briefing on the part of Defendants, \$7,500.00 would be a reasonable and necessary attorney's fee to be recovered by Defendants. In the event Plaintiff's petition for review to the Texas Supreme Court is granted, but the Texas Supreme Court's review results in the affirming of this Court's judgment for Defendants, an additional \$15,000.00 would be a reasonable attorneys' fee to be received by defendants.

### UNSWORN DECLARATION

**(Pursuant to Chapter 132, Texas Civil Practice & Remedies Code)**

My name is Robert L. Negrin, my date of birth is August 23, 1960, and my office address is 1255 West 15th Street, Suite 1060, Plano, Texas 75075. I am the attorney of record for the Defendants and have authority on behalf of the Defendants to make this declaration. I have personal knowledge of the factual allegations contained within the foregoing Attorney's Fee Declaration, and each of the facts set forth therein are true and correct. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 22<sup>nd</sup> day of February 2024.

  
\_\_\_\_\_  
Declarant  
Robert L. Negrin  
rnegrin@mccarthyholthus.com



### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 84817382

Filing Code Description: No Fee Documents

Filing Description: Defendants' Motion for Summary Judgment

Status as of 2/23/2024 8:36 AM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Robert Negrin		RNegrin@McCarthyHolthus.com	2/22/2024 6:03:58 PM	SENT
Ashley Crout		acrout@mccarthyholthus.com	2/22/2024 6:03:58 PM	SENT

Unofficial Copy Office of Marilyn Burgess, District Clerk