



4. Defendant The United States of America for and on behalf of its agency, the Department of Housing and Urban Development is sued in an *in rem* capacity only. The United States has entered an appearance and is before this Court.

5. Plaintiff requests the Court grant default judgment against the Obligors and summary judgment in its favor as to Purchaser, including but not limited to Purchaser's counterclaim for suit to quiet title.

### **FACTUAL BACKGROUND**

6. On or about January 29, 2021, Obligors took out a loan in favor of Thrive Mortgage, LLC (hereinafter "Thrive"), in the original principal sum of \$281,310.00 (hereinafter the "Note") to purchase the Property. The Note was memorialized in a written promissory note which obligated Obligors to repay the Loan through monthly payments of principal and interest. The Note defines "Lender" to include successors and assigns. A true and correct copy of the Note is attached hereto as Exhibit "A-1".

7. On January 29, 2021, Obligors executed a Deed of Trust (hereinafter "Deed of Trust") granting a first lien on the real property and improvements commonly known as 14202 Redbud Valley Trail, Houston, Texas 77062 ("Property"). A true and correct copy of the Deed of Trust is attached hereto as Exhibit "A-2".

8. The Deed of Trust identifies MERS as the beneficiary under the Deed of Trust acting solely as nominee for the lender and lender's successors and assigns. The Deed of Trust was recorded in the Official Public Records of Harris County, Texas under Instrument No. RP-2021-60864.

9. Thrive Mortgage, LLC, via its nominee Mortgage Electronic Registration Systems, Inc., assigned the Deed of Trust to Planet Home Lending, LLC on July 31, 2024 recorded under Instrument No. RP-2024-276619. Planet is the holder of the Note, assignee and beneficiary of the

Deed of Trust and is the mortgagee for the subject mortgage as that term is defined in TEX. PROP. CODE §51.0001(4). A true and correct copy of the Assignment is attached hereto as Exhibit "A-3".

10. On February 27, 2025, Planet filed this lawsuit seeking an order allowing judicial foreclosure of its lien pursuant to TEX.R.CIV.P. 309.

11. Defendant John Steven Milian was served with process on March 8, 2025, and the return of service for this Defendant has been on file with the Court for at least ten (10) days, excluding the day of filing. Therefore, the deadline for John Steven Milian to file an answer has passed, yet he has not filed an answer or any pleading constituting an answer and has not entered an appearance in this lawsuit.

12. Defendant Nicole Marie Milian was served with process on March 8, 2025, and the return of service for this Defendant has been on file with the Court for at least ten (10) days, excluding the day of filing. Therefore, the deadline for Nicole Marie Milian to file an answer has passed, yet he has not filed an answer or any pleading constituting an answer and has not entered an appearance in this lawsuit.

13. Defendant Pineloch Community Association, Inc. was served with process on March 12, 2025, and the return of service for this Defendant has been on file with the Court for at least ten (10) days, excluding the day of filing. Pineloch Community Association, Inc. filed an answer on March 14, 2025 and a reasonable time for discovery has passed.

14. Plaintiff Planet Home Lending, LLC's evidence conclusively establishes Plaintiff is entitled to the relief sought.

#### **A. Default Judgment Standard**

15. The plaintiff's petition will support a default judgment if the petition (1) attempts to state a cause of action within the jurisdiction of the court; (2) gives fair notice to the defendant of the claim asserted; and (3) does not affirmatively disclose the invalidity of the claim on its face.

*Paramount Pine & Sap Co. v. Muhr*, 749 S.W.2d. 491, 494 Tex. 1998. A defendant who defaults admits all allegations of facts in the plaintiff's petition except unliquidated damages. The court may render a default judgment on the pleadings against a Defendant that has not filed an answer. *Jackson v. Biotronics, Inc.* 937 S.W. 2d 38, 41 (ex App – Houston (Tex. App.—Houston [14<sup>th</sup> Dist] 1996, no writ).

16. Defendant John Steven Milian was personally served with citation on March 8, 2025. Name has neither filed an answer nor entered an appearance herein and thus is wholly in default.

17. Defendant Nicole Marie Milian was personally served with citation on March 8, 2025. Name has neither filed an answer nor entered an appearance herein and thus is wholly in default.

## **B. Damages**

18. Plaintiff seeks an order to judicially foreclose on its lien pursuant to TEX. R. CIV. P. 309.

19. *Judgment.* After allowing all just and lawful credits and offsets, as of June 15, 2025, Obligors are indebted and Plaintiff seeks judgment for the following: (1) “293,093.56”, with interest continuing to accrue at the per diem rate of 3.875%; and (2) post judgment interest accruing on the balance at the rate of 5% per annum until the property is sold at a foreclosure sale under TEX. R. CIV. P. 309; (3) court costs as determined by the Clerk of the Court; (4) fees and costs due the Sheriff or Constable's office that conducts the foreclosure sale under TEX. R. CIV. P. 308.

20. *Credit Bid.* Plaintiff requests that it be allowed to credit bid toward the purchase of the Property. The credit bid toward the purchase of the Property may not exceed the cumulative amount set forth below. However, Plaintiff may bid a lesser amount at its discretion.

21. *Attorney's Fees.* Plaintiff is also entitled to recover its reasonable attorney fees incurred in prosecuting this suit. Plaintiff seeks an award of attorney's fees as a further obligation on the subject Note and a further encumbrance on the Property. Plaintiff is entitled to recover these fees pursuant to the terms of the Note and the Deed of Trust.

### **C. Certificate of Last Known Address**

22. Plaintiff is filing a separate Certificate of Last Known Address for the Defendants who were personally served.

### **D. Soldiers and Sailors Affidavit**

23. Plaintiff is filing supplemental documentation to serve as confirmation that the Defendants who were personally served are not in active military service.

### **SUMMARY JUDGMENT EVIDENCE**

24. In support of this Motion, Plaintiff relies upon and incorporates herein by reference all pleadings on file with the Court as well as the following summary judgment evidence:

Exhibit A:	Affidavit of Corporate Representative;
Exhibit A-1:	Note
Exhibit A-2	Deed of Trust
Exhibit A-3	Assignment(s)
Exhibit A-4	Notice of Default
Exhibit A-5	Payoff Statement
Exhibit B:	Affidavit of Joseph M. Vacek as to Attorney's Fees..

### **SUMMARY JUDGMENT STANDARD**

25. Summary judgment is proper if the movant establishes that there are no genuine issues of material fact and that he/she is entitled to judgment as a matter of law. *Nixon v. Mr. Property Management Co.*, 690 S.W. 2d 546, 548 (Tex. 1985). Once the plaintiff establishes its right to summary judgment as a matter of law, the burden then shifts to the defendant to present evidence raising a genuine issue or material fact, thereby precluding summary judgment. In this instance, Plaintiff's summary judgment motion must be granted on Purchaser's claims against Short as well as Short's claims against Defendants.

## **ARGUMENTS AND AUTHORITIES**

### **A. Planet is Entitled to an Order Allowing Judicial Foreclosure.**

26. The summary judgment evidence conclusively establishes the Loan Agreement is secured by a vendor's lien against the Property, Planet is the payee of, and the holder of the Note, Planet is the beneficiary of the Deed of Trust, Planet is the mortgagee as that term is defined by 510.0001(4) of the Texas Property Code, Obligors failed to pay the amounts due under the Note when due, and Obligors were provided the proper notice to cure the default and failed to do so.

27. To obtain a judicial foreclosure, Planet is required to demonstrate there is a Deed of Trust, Obligors defaulted on the mortgage, some of the money is due and unpaid, and the property subject to the lien is the same property on which it seeks to enforce the lien. See *Kyle v. Countrywide Home Loans, Inc.*, 232 S.W.3d 355, 362 (Tex.App Dallas 2007, pet denied).

28. As shown by the attached affidavit and exhibits, Planet has shown it is the holder of the wet ink Note and beneficiary of the Deed of Trust. Planet has shown Obligors defaulted on the loan obligations as Obligor's loan is due and owing for the May 2024 and all subsequent payments and there exists an outstanding balance due and owing. Obligors were presented with an opportunity to cure the default, but failed to do so.

29. Planet has proven there is no genuine issue of material fact controverting that it is entitled to a judicial foreclosure. Thus, Planet is entitled to a judgment for judicial foreclosure of the Property, which divests Defendants of all right, title, and interest in the Property. An Order of Sale shall be issued to the sheriff or constable of the county where the Property is located directing the sheriff or constable to seize and sell the Property in satisfaction of the judgment pursuant to TEX. R. CIV. P. 309.

### **B. Damages.**

30. *Judgment.* After allowing all just and lawful credits and offsets, as of February 12, 2019, Obligors are indebted and Plaintiff seeks judgment for the following: (1) 293,093.57, with interest continuing to accrue at the per diem rate of 3.875%; (2) post judgment interest accruing on the balance at the rate of 5% per annum until the property is sold a foreclosure sale under TEX. R. CIV. P. 309, (3) court costs as determined by the Clerk of the Court, (4) fees and costs due the Sheriff or Constable's office that conducts the foreclosure sale under TEX. R. CIV. P. 309.

31. *Credit Bid.* Planet requests it be allowed to credit bid toward the purchase of the Property. The credit bid toward the purchase of the Property may not exceed the cumulative amount set forth above. However, EMC may bid a lesser amount at his discretion.

32. *Attorneys' Fees.* Planet is also entitled to recover its reasonable attorney fees incurred in prosecuting this suit. Planet seeks an award of attorney's fees as a further obligation on the subject Note and a further encumbrance on the Property. Planet is entitled to recover these fees pursuant to the terms of the Note and the Deed of Trust.

### **C. Planet's Summary Judgment Evidence Establishes the Priority of Liens**

33. The summary judgment evidence conclusively establishes Planet is the beneficiary of the Deed of Trust and has a senior mortgage lien, and Purchaser, as the successful bidder at a junior lien foreclosure, took title subject to Planet's lien.

34. Under Texas common law, foreclosure does not terminate interests in foreclosed real estate that are senior to the lien being foreclosed, and the successful bidder at a junior lien foreclosure takes title subject to the prior liens. *DTND Sierra Investments LLC v. Bank of America*, 871 F.Supp.2d 567, 573 (W.D.Tex. 2012); see also *Disanti v. Wachovia Bank, N.A.*, Civ. A. No. 2-08-330-CV, 2009 WL 1372970 (Tex.App.-Fort Worth May 14, 2009, pet. denied).

35. Here, Obligors executed a Note and Deed of Trust on January 29, 2021 with Thrive Mortgage, LLC. In that Deed of Trust, Mortgage Electronic Registration Systems, Inc. (hereinafter

"MERS") was the beneficiary (solely as nominee for Lender and Lender's successors and assigns). On July 31, 2024, MERS, acting solely as nominee for Thrive Mortgage, LLC, executed an Assignment of Deed of Trust transferring title to Planet. The Assignment of Deed of Trust was recorded in the Official Public Records of Harris County, Texas on July 31, 2024 under Instrument No. RP-2024-276619. Planet is the last assignee and beneficiary of the Deed of Trust and is the mortgagee for the subject mortgage as that term is defined in TEX. PROP. CODE §51.0001(4)

### **CONCLUSION**

36. The summary judgment evidence establishes that Obligor defaulted on the Loan, and Short is entitled to default and summary judgment allowing judicial foreclosure of the lien secured by the Property as well as an Order of Sale allowing the sheriff or constable to seize and sell the Property.

37. Planet requests it be awarded a judgment for judicial foreclosure of the Property and an Order of Sale pursuant to Rule 309 of the Texas Rules of Civil Procedure, which Order pursuant to Rule 310 of the Texas Rules of Civil Procedure shall have the force and effect of a writ of possession. Short further requests the Court dismiss Purchaser's counterclaim for suit to quiet title with prejudice.

WHEREFORE, Planet prays that this Court grant this motion and enter a Final Judgment ordering:

1. Planet has a lien against the Property equal to the total amount of the payoff, plus interest, fees and costs;
2. Planet is authorized to foreclose as holder of the Note and beneficiary of the Deed of Trust pursuant to TEX. R. CIV. P. RULE 309;
3. Planet recover the amount owed under the Loan Agreement with a foreclosure of the Loan Agreement against the Property and that an Order of Sale shall issue to any sheriff or constable within the State of Texas directing him or her to seize and sell the same as under execution, to be paid towards the satisfaction of Short;



4. that this judgment for foreclosure shall have all the force and effect of a writ of possession as between the Parties to this suit and also as to any person claiming a right in the Property under the Grants that was acquired pending this suit;
5. the Order of Sale shall provide that Planet, its successors or assigns, have the right to become the purchaser of the Property at the sale conducted pursuant to the Order of Sale, and Planet, its successors or assigns, shall have the right to credit upon amount of the bid made to the extent necessary to satisfy such bid, the amount of the Judgment owing to Planet;
6. the sheriff or constable conducting the sale shall deduct out of the proceeds of the foreclosure sale its reasonable fees for conducting the sale and shall distribute the remaining proceeds in accordance with the terms of the Deed of Trust. If any sales proceeds remain, they shall be distributed then to inferior lienholders in order of lien priority and then to the Obligor;
7. awarding Planet its reasonable and necessary attorneys fees and costs; and
8. further awarding Planet such other and further relief, general and special, in law and in equity, to which they are justly entitled.

Respectfully submitted,

**ROBERTSON, ANSCHUTZ, SCHNEID,  
CRANE & PARTNERS, PLLC**

By: /s/ Joseph M. Vacek

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Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Default and Summary Judgment has been served as set forth below pursuant to the Texas Rules of Civil Procedure.

**Via E-Service**

Catina Haynes Perry  
Attorney for USA

**Via E-Service**

Eric B. Tonsul  
Attorney for HOA

\_\_\_\_/s/ Joseph M. Vacek\_\_\_\_\_  
Joseph M. Vacek

Unofficial Copy Office of Marilyn Burgess District Clerk

### 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.

Katie Lech on behalf of Joseph Vacek

Bar No. 24039948

katlech@raslg.com

Envelope ID: 102412864

Filing Code Description: Motion (No Fee)

Filing Description: Motion for Default and Summary Judgment

Status as of 6/25/2025 12:21 PM CST

#### Case Contacts

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