

DOC # 0227345

05/27/2014

09:29 AM

Official Record

Recording requested By
FARM CREDIT SERVICES

Eureka County - NV

Mike Rebaleati - Recorder

Fee: **\$48.00**

Page 1 of 10

RPTT:

Recorded By LH

Book- 565 Page- 0353



0227345

WHEN RECORDED MAIL TO:

Farm Credit Services Southwest, PCA
1120 S. 20th Ave.
Safford, AZ 85546

**COLLATERAL ASSIGNMENT OF NOTE
AND BENEFICIAL INTEREST IN DEED OF TRUST**

This instrument is being re-recorded for the sole purpose of being recorded separately in two counties.

WHEN RECORDED MAIL TO:
Farm Credit Services Southwest PCA
3003 South Fair Lane
Tempe, AZ 85282
Attention: Douglas Norton

DOC # 815858

Official Records Nye County Nevada
Deborah Beatty - Recorder
05/06/2014 01:16:17 PM
Requested By: FARM CREDIT SERVICES
Recorded By: jb RPTT:\$0
Recording Fee: \$22.00
Non Conformity Fee: \$0.00
Page 1 of 9



**COLLATERAL ASSIGNMENT OF NOTE
AND BENEFICIAL INTEREST IN DEED OF TRUST**

This COLLATERAL ASSIGNMENT OF NOTE AND BENEFICIAL INTEREST IN DEED OF TRUST ("Collateral Assignment") is made this 26th day of February, 2014, by and between VINCENT FERREIRA, 953 Sutro Springs Rd., Dayton, NV, 89403 ("Debtor") and FARM CREDIT SERVICES SOUTHWEST, PCA, 3003 South Fair Lane, Tempe, Arizona 85282 ("Secured Party").

Background:

A. Debtor is indebted to Secured Party by a Promissory Note and Supplement to Master Loan Agreement dated of approximately even date herewith in the original principal balance of \$585,000.00 (the "Underlying Note"), evidencing Loan No. 9041346 (the "Loan").

B. Debtor is holder of a Promissory Note (the "Note") dated July 18, 2012, in the original principal balance of \$1,200,000.00 made by KEVIN R. BORBA and SUSAN A. BORBA, Husband and Wife ("Maker"). The Note is secured by a "Short Form Deed of Trust and Assignment of Rents" dated July 18, 2012, by Maker as Trustor in favor of Debtor as Beneficiary, recorded at Document No. 788800, in the Official Records of Nye County, Nevada (the "Nye Deed of Trust"), on the real property described therein (the "Nye Property"). The Note is further secured by a "Short Form Deed of Trust and Assignment of Rents" dated July 18, 2012, by Maker as Trustor in favor of Debtor as Beneficiary, recorded at Document No. 221029, in the Official Records of Eureka County, Nevada (the "Eureka Deed of Trust"), on the real property described therein (the "Eureka Property"). The Nye Deed of Trust and Eureka Deed of Trust are collectively the "Deed of Trust").



C. As material consideration for Lender extending Debtor the Loan, and for other good and valuable consideration, Debtor has agreed to assign to Secured Party all of Debtor's interest in the Note and Deeds of Trust, according to the terms of this Collateral Assignment.

D. For purposes of this Collateral Assignment, the term "Collateral" means the Note, secured by the Deed of Trust, including proceeds from title or other insurance collectable under the Deed of Trust, commitments or binders and all related general intangibles, contract rights, instruments and accounts, including all rights to payments, monies and claims for monies due and to become due under the Note, Deed of Trust, and all proceeds thereon, substitutions therefor, and all modifications and replacements thereof, including the Property if the Deed of Trust is foreclosed and the Property is purchased at any foreclosure sale.

FOR VALUABLE CONSIDERATION, the receipt and adequacy of which are hereby acknowledged, Debtor hereby agrees as follows:

1. **Grant of Security and Collateral Assignment.** Subject to the terms and conditions of this Agreement, Debtor hereby grants to Secured Party a security interest and collaterally assigns to Secured Party the Collateral to secure payment of the Underlying Note, all indebtedness whatsoever of all or any Debtor to Secured Party, any amendments, extensions or renewals thereof, and Debtor's performance of all agreements, warranties, covenants and conditions contained in this Collateral Assignment and any and all other agreements between Debtor and Secured Party relating to the Underlying Note. Debtor also hereby collaterally assigns to Secured Party all Debtor's interest, as beneficiary, under the Deed of Trust.

2. **General Warranties and Representations of Debtor.** Debtor hereby warrants and covenants to Secured Party the following:

a. **No Liens.** Except for the security interest and assignment granted in this Collateral Assignment, Debtor is and will continue to be the owner of the Collateral, free from any other prior lien, security interest or assignment. Debtor will defend Secured Party's interest under this Agreement against any adverse claims or demands.

b. **Valid Note.** The Note and Deed of Trust are valid and enforceable, free of dispute, setoffs, counterclaims and defenses.

c. **Performance of Covenants.** Debtor will perform all agreements and obligations, if any, required to be performed by or under the terms of the instrument or documents constituting the Collateral.

d. Amendments. Debtor will not, without Secured Party's prior written consent, modify or amend the instruments or documents constituting the Collateral, accept a deed in lieu of foreclosure or make any compromise, adjustment, settlement or forbearance with respect to any of the Collateral.

e. Taxes. Debtor will pay before delinquent all taxes, assessments and other charges on or against the Collateral, the Property, or both.

f. Authority. The execution, delivery and performance of this Collateral Assignment are within Debtor's powers and have been duly authorized, and are not in contravention with law or any terms of any indenture, agreement or understanding to which the Debtor is a party or by which it is bound, and the individual signing below on behalf of Debtor has full power and authority to do so.

3. Possession of the Note. Secured Party hereby hires Title Service and Escrow Company, a Nevada corporation, 25 West Street, P.O. Box 855, Fernley, NV 89408, Tel 775-575-2286, attn.: Monica Castro, Escrow Officer ("Collection Agent") to act as its bailee pursuant to the provisions of Uniform Commercial Code for the purposes of holding the Note to perfect Secured Party's security interest in it. Collection Agent, by signature below, hereby agrees to perform the duties of Collection Agent for and on behalf of Secured Party. Collection Agent agrees to hold the Note as bailee for the Secured Party and will continue to hold all Collateral proceeds coming into its possession, any substitutions thereof and any proceeds therefrom on behalf of and for the benefit of the Secured Party as provided in this Collateral Assignment. Possession of the Collateral by the Collection Agent shall be possession by the Secured Party for purposes of lodging in favor of, and perfecting for, the Secured Party a possessory pledge lien.

4. Additional Documentation. Debtor hereby authorizes Secured Party to file, record, or both, any financing statements covering the Collateral. Secured Party agrees to execute a Release of Collateral Assignment to be recorded on the earlier of the date (a) the Note is paid in full, or (b) the date the Underlying Note is paid in full.

5. Release of Collateral Assignment. Collection Agent is hereby authorized to record a Release of Collateral Assignment to be deposited with Collection Agent by Secured Party. The Release of Collateral Assignment shall be recorded only when Collection Agent is notified in writing by Secured Party that the Underlying Note has been paid in full. Collection Agent is authorized to complete and record the Release of Collateral Assignment upon receipt of that written notice.

6. Collection of Accounts and Rights to Payment; Enforcement of Contract Right. Secured Party has the right, at any time and whether or not Debtor is in default, to notify the Maker to make payment directly to Secured Party. All proceeds so received and collected will be applied to the Underlying Note as Secured Party elects. Debtor authorizes Secured Party, in Debtor's or Secured Party's name, to receive and enforce all contract rights and benefits now or hereafter due and payable to Debtor in connection with the Collateral as well as *Debtor might do but for this Collateral Assignment*. Debtor hereby irrevocably appoints Secured Party as Debtor's attorney-in-fact for that purpose, which power of attorney is coupled with an interest.

7. Rights of Secured Party. The following rights given to Secured Party are coupled with an interest, are irrevocable until authorized release of this Collateral Assignment and may be exercised by Secured Party in its sole discretion, from time to time, and whether or not Debtor is in default:

a. To give notice of Secured Party's rights in and to the Collateral and to enforce those rights; to make extension agreements with respect to the Collateral; to release persons or security; to compromise disputes; to endorse, collect and receive payments on the Note; to receive any mail addressed to Debtor related to the Collateral; to prepare, execute, file or record financing statements, continuation statements, and termination statements related to the Collateral; to perfect, preserve or release the interest evidenced by the Collateral; and to exercise all rights, powers and remedies which Debtor would have under the Collateral, including commencement of a trustee's sale or foreclosure action pursuant to the Deed of Trust, or suit to enforce collection of the Note. For example, in the event of the commencement of a trustee's sale pursuant to the power of sale contained in the Deed of Trust, Debtor agrees that Secured Party can elect to direct the trustee under the Deed of Trust in every aspect of the conduct of that sale, including the amount of the credit bid or whether to accept any discounted amount in satisfaction of the Note. This power of attorney includes, but is not limited to, the power to sign any and all documents on behalf of Debtor as its attorney-in-fact, bidding on behalf of Debtor at any foreclosure sale, appointing and instructing the trustee or sheriff in all aspects of the foreclosure, and endorsing or assigning the Note and Deed of Trust to any successful bidder at that sale or at a foreclosure of Secured Party's interest in the Note and Deed of Trust. Secured Party agrees to bid at that sale on behalf of Debtor an amount no greater than the credit bid permitted Debtor by statute. Debtor acknowledges and agrees that Secured Party may determine the bid amount in its sole discretion and instruct the trustee or sheriff accordingly. If Lender, as attorney-in-fact for Debtor, is not the successful bidder at the foreclosure, the trustee or sheriff immediately will deliver to Secured Party the sale proceeds received as a result of the sale up to the amount necessary to satisfy Debtor's indebtedness to Secured Party. Any excess proceeds will be delivered to Debtor.

This Special Power of Attorney includes the power to pursue Maker in Debtor's name for any deficiency which may arise as a result of the foreclosure or any suit on the Note. Any proceeds received as a result of the successful prosecution of that action against Maker will be applied first, to the recovery of all Secured Party's attorneys' fees and costs associated with that action, second to Debtor's obligations to Secured Party and, finally, any sums remaining will be delivered to Debtor. This power of attorney in no way obligates Secured Party to commence or pursue any such action against Maker. Secured Party will notify Debtor no later than sixty days after completion of the foreclosure of its election to pursue a deficiency. If Secured Party elects not to pursue a deficiency, Debtor may elect to do so. At any time, in Secured Party's discretion, Secured Party can elect not to continue to pursue any deficiency.

b. If title to any of the Property subject to the Deed of Trust vests in Debtor, Collection Agent, on written instruction from Secured Party, shall immediately cause a deed of trust to be recorded in favor of Secured Party on the Property. This deed of trust must be a first lien on the Property or Debtor will be deemed in default and Secured Party will be entitled to pursue all remedies, including foreclosure, for that default. This deed of trust will constitute substitute collateral security for the payment and performance of the Note. In any event, if Debtor does acquire title to any of the Property, that property will be proceeds of the Collateral.

8. Miscellaneous Duties of Collection Agent. In addition to the duties described herein, Collection Agent shall distribute the appropriate portion of the proceeds of the Note to Secured Party, or as Secured Party from time to time may notify Collection Agent in writing. Collection Agent shall deliver to Secured Party copies of all statements it prepares with respect to the Collection Account, copies of any notices it receives with respect to the Collection Account or the Collateral and, on Secured Party's request, any information in Collection Agent's possession or control Secured Party from time to time may request with respect to the Collection Account, the Maker, the Debtor or the Collateral. Collection Agent is authorized to deduct from any payments it receives its then current and reasonable fees for services performed hereunder. Collection Agent further agrees that unless otherwise provided in this Collateral Assignment, any releases, dispositions, modifications or substitutions of Collateral shall be made only on Secured Party's prior written consent and on the terms and in such manner as would be mutually agreeable to the Secured Party and the Collection Agent. Collection Agent may resign as Collection Agent at any time upon thirty-days' written notice to Secured Party. In that event, Secured Party in its sole discretion, may appoint a successor, which successor shall agree to be bound by this Collateral Assignment.

9. **Protection of Collateral.** If Secured Party makes any payment or performs any act to protect or realize on the Collateral after Debtor's default under this Collateral Assignment, or after giving notice to Debtor of that default and opportunity to cure (if applicable), or should Secured Party make any payment or perform any action under the Collateral documents that the Debtor has failed to do despite an obligation to do so, Secured Party is hereby specifically authorized to pay or perform that act on behalf of the Debtor in the name of the Debtor. In that event, Debtor agrees to reimburse Secured Party for any reasonable payment made or any reasonable expense incurred, including interest at the default rate set forth in the Underlying Note, and all such sums will be secured by this Collateral Assignment.

10. **Events of Default.** Any one of the following will constitute an event of default:

a. The occurrence of any default or event of default under the Collateral (whether by Maker or Debtor) or by Debtor under the Underlying Note or any other agreement executed by Debtor in connection with the Underlying Note;

b. If any warranty, representation or statement made by Debtor in this Collateral Assignment, or any other document delivered by Debtor to Secured Party is false or misleading in any material respect;

c. If Debtor attempts to modify, extend or renew the Note, or attempts to release any of the Property, subject to the Deed of Trust other than as permitted herein, accepts a deed in lieu of foreclosure, or enters into any forbearance agreement related to the Note or Deed of Trust without first obtaining Secured Party's prior written consent; or

d. If Debtor should substitute a new trustee under the Deed of Trust without Secured Party's prior written consent.

11. **Remedies.** On the occurrence of an event of default at any time after the expiration of applicable notice and cure periods, Secured Party may at its option and without further notice to Debtor, do one or more of the following:

a. Sell, assign and deliver any or all of the Collateral at public or private sale;

b. Advise the Maker, if that notice has not already been given, that all the amounts then and after due and owing under the Note are to be paid to Secured Party directly, and collect and apply those proceeds to Secured Party's costs and expenses and all obligations secured hereby; and

c. Take any other action and remedies provided for under the Arizona Uniform Commercial Code and otherwise allowed by law.

Any and all remedies conferred on Secured Party are deemed cumulative with and nonexclusive with any other remedies available to Secured Party at law or in equity. The exercise of any remedy by the Secured Party does not preclude the exercise of any other. Secured Party may delay exercising any right or remedy hereunder without waiving that, or any other past, present or future right or remedy.

12. No Duty to Protect. Secured Party has no duty to collect or protect the Collateral, nor to preserve any rights pertaining thereto. Secured Party, however, will exercise such care of the Collateral as Secured Party gives to the safekeeping of its own property of like kind, which will constitute reasonable care and satisfy any duties the Secured Party may have to safekeep and preserve the Collateral. Secured Party will account for and properly apply those proceeds as are actually received by it, and Secured Party agrees to cooperate with Debtor in Debtor's collection efforts and to join in any necessary notices or other pleadings provided all costs and expenses thereof are paid by Debtor. By acceptance of this pledge and secured interest created hereby, Secured Party does not assume any of the Debtor's obligations under the terms of the documents making up the Collateral.

13. Miscellaneous.

a. This Collateral Assignment inures to the benefit of Secured Party and its successors and assigns and is binding on Debtor and its successors or assigns.

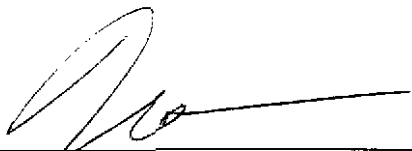
b. The word "including" means in this Collateral Assignment, "including, but not limited to."

c. All terms used in this Collateral Assignment which are defined in the Uniform Commercial Code have the same meaning as in the Code. Any provisions found to be invalid will not invalidate the remainder hereof.

d. This Collateral Assignment is governed by, and is to be construed in accordance with, Arizona law.

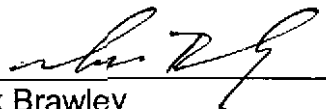
e. The prevailing party in any action to enforce this Collateral Assignment is entitled to receive its court costs and reasonable attorneys' fees.

Dated as set forth above.


VINCENT FERREIRA

"Debtor"

Farm Credit Services Southwest, PCA

By: 
Mark Brawley
Its: Vice President/Branch Manager

"Secured Party"

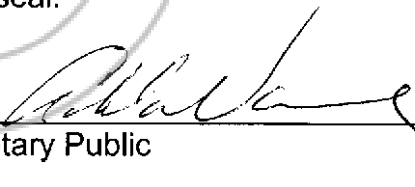
NOTARIES FOR DEBTOR:

STATE OF ARIZONA

COUNTY OF PINAL

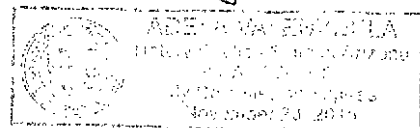
On April 10, 2014 before me, the undersigned Notary Public, personally appeared VINCENT FERREIRA, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her authorized capacity, and that by his or her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.


Notary Public

My commission expires:

11-23-15



NOTARY FOR SECURED PARTY:

STATE OF ARIZONA

COUNTY OF Cochise

On 4-16-14 before me, the undersigned Notary Public, personally appeared Mark Brawley, the Vice President/Branch Manager of Farm Credit Services Southwest, PCA, personally known to me (or 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 or she executed the same in his or her authorized capacity, and that by his or her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Kathrine J. Penn

Notary Public

My commission expires:

May 15, 2016

