

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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<i>In re</i>	:	
	:	Chapter 11
WASHINGTON MUTUAL, INC., <i>et al.</i> , <sup>1</sup>	:	
	:	Case No. 08-12229 (MFW)
Debtors.	:	
	:	Jointly Administered
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JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
Plaintiff,	:	
v.	:	Adv. Pro. No. 09-50551 (MFW)
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP., <i>et al.</i>	:	<b>Objections Due: January 12, 2012 at 4:00 p.m.</b>
Defendants.	:	<b>Hearing Date: January 19, 2012 at 10:30 a.m.</b>
	:	
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PETER SZANTO	:	
Plaintiff,	:	DOCKET NO. BC 403022
v.	:	
WASHINGTON MUTUAL BANK, WAMU, FEDERAL DEPOSIT INSURANCE CORPORATION, JPMORGAN CHASE BANK, DOES 1-10	:	
Defendants.	:	
-----	X	

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors’ principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.



## MOTION TO REMAND

Pursuant to Rules 9014 and 9027(d) of the Federal Rules of Bankruptcy Procedure and Sections 1334, 1441 and 1447 of Title 28 of the United States Code, JPMorgan Chase Bank, N.A. ("JPMC") hereby moves this Court for an order pursuant to 28 U.S.C. § 1447(c), remanding the action *Szanto v. Washington Mutual Bank, et al.*, No. BC 403022, to the Superior Court of the State of California, County of Los Angeles, the court from which it was removed, because this Court lacks subject matter jurisdiction over the action and the notice of removal was improper, and respectfully represents as follows:

1. Peter Szanto is a *pro se* plaintiff in *Szanto v. Washington Mutual Bank, et al.*, No. BC 403022 (Cal. Sup. Ct. Dec. 2, 2008) (the "California Action"). Mr. Szanto filed his original complaint on December 2, 2008, and the First Amended Complaint on April 26, 2010, naming Washington Mutual Bank, the Federal Deposit Insurance Corporation ("FDIC"), and JPMC as defendants.<sup>2</sup> The First Amended Complaint asserts state-law claims seeking rescission or reformation of a loan issued by Washington Mutual Bank ("WMB") and damages for breach of contract and breach of fiduciary duty, premised primarily on the halt in dividend payments on Mr. Szanto's common and preferred stock following the commencement of Washington Mutual Inc's ("WMI") bankruptcy proceedings in this Court.<sup>3</sup> JPMC answered the First Amended Complaint on June 24, 2011, solely in its capacity as the acquirer of certain assets and liabilities of Washington Mutual Bank ("WMB") from the FDIC pursuant to the Purchase & Assumption

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<sup>2</sup> A copy of the First Amended Complaint is attached hereto as Exhibit A.

<sup>3</sup> A significant portion of the First Amended Complaint focuses on the loss of dividend revenue from "Washington Mutual Bank/WAMU" preferred equity, which was issued by WMI. Nonetheless, WMI is not named as a defendant, and could not be so named absent relief from the automatic stay. *See* 11 U.S.C. § 362.

Agreement dated September 25, 2008. JPMC's Motion for Summary Judgment in the California Action is currently *sub judice*.

2. Plaintiff filed a Notice of Removal in this Court on November 21, 2011, removing the California Action to this Court and purporting to join it with *In re Washington Mutual, Inc.*, No. 08-12229 [D.I. 9078] and *JPMorgan Chase Bank, N.A. v. Washington Mutual, Inc. (In re Washington Mutual, Inc.)*, No. 09-50551 [D.I. 192]. The removal was improper for both jurisdictional and procedural reasons, each of which requires remand.

3. First, this Court lacks subject matter jurisdiction over the California Action. Neither WMI or WMI Investment Corp. (together with WMI, the "Debtors") are named as a defendant in the California Action. Mr. Szanto's claims are state-law causes of action asserted against JPMC and the FDIC, non-debtor third-parties in these bankruptcy proceedings. While bankruptcy courts are vested with "related-to" jurisdiction over non-debtor third-party suits that "conceivably may have an effect on the bankruptcy estate," *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 226 (3d Cir. 2004), the Third Circuit has held that such jurisdiction is restricted to suits that "affect the bankruptcy without the intervention of [] another lawsuit." *In re W.R. Grace & Co.*, 591 F.3d 164, 173 (3d Cir. 2009). Here, Mr. Szanto seeks damages and the rescission of certain contracts from parties other than the Debtors. The California Action cannot affect the Debtors' estate.<sup>4</sup> Accordingly, the Court lacks jurisdiction over the action and removal was improper. *See* 28 U.S.C. §§ 1334(b), 1441(b).

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<sup>4</sup> Although barred by the automatic stay, any attempt to pursue state-law claims against the Debtors would also be subject to mandatory abstention. *See* 28 U.S.C. § 1334(c)(2); *Stoe v. Flaherty*, 436 F.3d 209, 213 (3d Cir. 2006) (Section 1334(c)(2) requires bankruptcy courts to abstain from hearing state-law claims commenced and adjudicable in state court that are only tangentially related to bankruptcy).

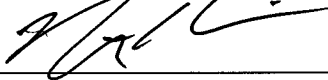
4. Second, the Notice of Removal is procedurally improper. The removal statute allows only a *defendant* to remove an action to federal court. 28 U.S.C. § 1446(a). Simply, plaintiffs enjoy the discretion to choose the forum for the case in the first instance so removal is not available. The Notice of Removal is also untimely. A defendant must seek removal within thirty days after the receipt of the initial pleading (or, in certain cases, the amended pleading, motion, or other paper indicating removal is proper). 28 U.S.C. § 1446(b); Federal Rule of Bankruptcy Procedure 9027(a)(3). Here, even if the First Amended Complaint is considered the pleading triggering removability, the Notice of Removal is untimely by almost nineteen months.

#### **CONCLUSION**

JPMC respectfully requests that the California Action be remanded to the Superior Court of the State of California, Los Angeles County, from which it was improperly removed. A proposed order is attached hereto as Exhibit B.

Dated: December 21, 2011  
Wilmington, Delaware

**LANDIS BATH & COBB LLP**



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*Counsel for JPMorgan Chase Bank, N.A.*

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FOR THE DISTRICT OF DELAWARE**

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**NOTICE OF MOTION**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.

PLEASE TAKE NOTICE THAT on December 21, 2011, JPMorgan Chase Bank, N.A. filed the attached *Motion to Remand* (the "Motion") the action captioned *Szanto v. Washington Mutual Bank, et al.*, No. BC 403022, with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court").

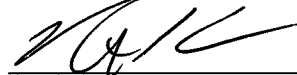
PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion must be made in writing, filed with the Bankruptcy Court, 824 Market Street, Wilmington, Delaware 19801, and be served and received by undersigned counsel for JPMorgan Chase Bank, N.A. on or before **January 12, 2012 at 4:00 p.m. (Eastern Standard Time)**.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion shall be held before The Honorable Mary F. Walrath at the Bankruptcy Court, 824 Market Street, 5th Floor, Courtroom 4, on **January 19, 2012 at 10:30 a.m. (Eastern Standard Time)**.

**PLEASE TAKE FURTHER NOTICE THAT IF NO RESPONSES TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: December 21, 2011  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**



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Fax: (212) 558-3588

*Counsel for JPMorgan Chase Bank, N.A.*

# **EXHIBIT A**



**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

APR 26 2010

John A. Clarke / Executive Officer / Clerk  
Deputy  
JAMES R. CLAYTON

1 Peter Szanto phone 949.887.2369  
2 P. O. Box 10451  
3 Newport Beach CA 92658

4 **SUPERIOR COURT OF CALIFORNIA IN LOS ANGELES COUNTY**

5 111 N. Hill Street, Los Angeles 90012

6 Case No.: BC 403 022

7 Peter Szanto, plaintiff

8 vs.

9 **First Amended Complaint**

10 Washington Mutual Bank, WAMU,  
11 Federal Deposit Insurance Corporation,  
12 JPMorgan Chase Bank, Does 1-10,  
13 defendants

14 HON. Judge James R. Dunn

15 Trial: October 18, 2010 9 A.M.

16 COURTROOM: Department 26

- 17
- 18 1. Plaintiff, Peter Szanto, appearing as an individual, is a natural person over 18 years of age.
  - 19 2. Defendants Washington Mutual Bank, WAMU, and JPMorgan Chase Bank are corporations licensed by the state of California to carry on banking activities in this state.
  - 20 3. Defendant Federal Deposit Insurance Corporation (FDIC) is an agency of the United States government charged with insuring deposits at financial institutions.
  - 21 4. Venue in Los Angeles County is appropriate because Washington Mutual Bank / WAMU has its agent for service of process in Los Angeles County.
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## FACTS

This case concerns the two most important aspects of plaintiff's financial life and the fundamental foundation of his business activities: his mortgage / deed of trust from Washington Mutual Bank / WAMU and his investments in Washington Mutual Bank and JPMorgan Chase Bank.

Plaintiff has been a shareholder of Washington Mutual Bank and its earlier predecessor / acquired companies since 1985. Plaintiff has been a shareholder of JPMorgan Chase Bank and its predecessor / acquired companies since 1961. Plaintiff reserves right to amend this action as to an additional shareholders' derivative action. Plaintiff hereby incorporates the entirety of the within complaint to give due and proper notice to Washington Mutual Bank and JPMorgan Chase Bank of his qualification and capacity to bring such a derivative action. Plaintiff has also sent notice to the secretaries of both corporations of his intentions to incorporate all of his shareholder's derivative claims into the proceedings herein.

Defendant banks in their publicity, promotions, solicitations, face-to-face meetings and general business practices always (and in all ways) emphasized the 'relationship' nature of their business models and their avowed goals for expansion and improvement of doing additional and higher value business with plaintiff. Defendants' on-going, efforts, solicitations, advertisements and representations were consistently relied on by plaintiff greatly to expand, enhance and build strong multi-dimensional business relationships with both banks. Among other things, and not limited to these services, enhancements and privileges, plaintiff had -- and / or still has: life insurance,

1 home insurance, boat insurance, property tax payment services, escrow services,  
2 brokerage services, credit cards, business banking services, mortgages, deeds of  
3 trusts, checking accounts, savings accounts, time deposits, business letters of credit  
4 and lines of credit and notary services from one, or both defendant banks. In short,  
5 defendant banks behaved as, and took on the role of a financial supermarkets – trusted  
6 fiduciaries in their relationships, which continue now with plaintiff. Indeed, the breadth  
7 of plaintiff's relationships with defendant banks extended outside and beyond the  
8 ordinary business day and business activities, such that plaintiff participated with  
9 defendant banks' executives in attendance at professional sports events, yachting,  
10 fishing and NASCAR racing activities among others.

11  
12 In addition to investments in the common shares of defendant banks'  
13 corporations, plaintiff has, and is, invested in the bonds, notes, debentures, options,  
14 warrants and preferred shares thereof. Since 1988, plaintiff has repeatedly employed  
15 the following business strategy in his servicing of various loans (credit card, business  
16 and real estate): buying the common shares and debt of defendant corporations and  
17 using payments received from defendant banks' financial instruments to service his  
18 indebtedness to the defendants.

19  
20 At all times (between 1988 and continuing to the present) when plaintiff had  
21 occasion to speak with various officers of defendant banks (whether at branches,  
22 shareholder meetings, at brokerage offices, or other business and private settings) his  
23 strategy has been praised, lauded and encouraged. Bank officers' consensus has been  
24 plaintiff is the ultimately loyal customer / client / debt holder/ shareholder whose long  
25 term stability, consistent renewal of business products use and expansion of business

1 forms the ground and foundation for the banks growth and success. More importantly,  
2 the cumulative entirety of plaintiff's relation extending through many decades forged an  
3 ongoing union that was the epitome of the type of business relationship for which  
4 defendant banks strive and upon which they have spent and continue to spend  
5 hundreds of millions of dollars for advertising, promotion and business improvement.  
6

7 In sum, plaintiff was pleased with his banking and business relationships with  
8 defendants and looked forward to further expansions and additions to those relationship  
9 for decades to come. The point, in fact, being that all parties have and would benefit by  
10 this on-going course of conduct between all the parties. Defendants are now estopped  
11 from pleading that the scenario described herein was not ( or is not) their ultimate plan,  
12 goal and objective.  
13

#### 14 Disruption of the Parties Business Relationship

15

16 In 2003, plaintiff secured a home loan through Washington Mutual Bank at  
17 400 East Main Street, Stockton CA [EXHIBIT A – p.1]. Plaintiff knew he was dealing  
18 with the California subsidiary of the Washington state bank in which he is a shareholder.  
19 Plaintiff was told by numerous officers of the bank that the loan he was obtaining was  
20 an exceptional combination of loan rate, points, fees, term and rate cap that was not  
21 available to persons "without the track-record of impeccable performance" that plaintiff  
22 had been maintained and developed between Washington Mutual and himself.  
23

24 On, or about, March 17, 2008, defendant JPMorgan acquired Bear Stearns  
25 Corp. That transaction was publicly financed by the U.S. Federal Reserve Bank. After

1 acquisition, JPMorgan has continued to pay dividends on the preferred shares of the  
2 acquired company. Identical to the facts of this case, Bear Stearns became available  
3 for acquisition because of financial problems relating to decline and disruption in the  
4 banking industry and the national real estate market.

5  
6 On, or about, September 25, 2008, defendant JPMorgan bought defendant  
7 Washington Mutual / WAMU with public assistance from the Federal Office of Thrift  
8 Supervision and the Federal Deposit Insurance Corporation.

9  
10 On, or about, September 26, 2008, defendant Washington Mutual Bank /  
11 WAMU filed for bankruptcy protection under Chapter 11 of the bankruptcy code. Since  
12 that time, defendant Washington Mutual Bank / WAMU has made none of the payments  
13 required to be made to plaintiff under various covenants and provisions of preferred  
14 shares owned and held by plaintiff in Washington Mutual Bank / WAMU. Likewise,  
15 Washington Mutual Bank / WAMU has made no dividend payments on its common  
16 shares. Plaintiff did, however, continue to make payments, as agreed, and as required  
17 under the terms of the Deed of Trust between the parties [EXHIBIT A].

18  
19 The gravaman of this action is that plaintiff seeks that defendants make  
20 good and continue their performance as to servicing of the debt (payments due and  
21 past due) on the preferred shares held by plaintiff. Plaintiff also seeks reasonable  
22 assurances that the principle on those preferred shares is safe, secure and guaranteed  
23 (as had always been the case during the course of contract conduct and performance  
24 between the parties). Plaintiff's estimate for the value of preferred and common shares  
25 he holds of defendants' securities is approximately \$3,000,000.00. Alternatively plaintiff

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1 seeks the value of his preferred and common shares of Washington Mutual Bank /  
2 WAMU be offset against any and all balances due on his loan with Washington Mutual /  
3 WAMU and any residual amount, after plaintiff's loan is extinguished, be reimbursed to  
4 plaintiff in the common / preferred shares of JPMorgan Chase.

5  
6 **FIRST CAUSE OF ACTION – BREACH of CONTRACT**

- 7
- 8 1. Plaintiff incorporates here all facts outlined above.
  - 9 2. There exist valid contracts-in-fact, contracts-by-conduct between plaintiff and the  
10 defendants that encompass the entirety of the parties' business relationships.  
11 Presently at issue before this honorable court are the two most significant  
12 aspects of the parties' contractual relationship: the money owed to plaintiff upon  
13 the preferred shares, and accrued interest thereon. That indebtedness is held by  
14 plaintiff and securitized by defendant banks. And the deed of trust which plaintiff  
15 has signed in favor of Washington Mutual Bank / WAMU.
  - 16 3. As of September 25, 2008, plaintiff was, and is, the owner of Washington Mutual  
17 Bank / WAMU preferred shares of various classes.
  - 18 4. Plaintiff estimates that the principle value, at time of redemption, of those  
19 preferred shares will be approximately \$2,420,000.00.
  - 20 5. Plaintiff calculates that the yearly income from those preferred shares should be,  
21 and is nominally stated to be, \$187,550.00.
  - 22 6. Since September 25, 2008, plaintiff has received no payments of any sort  
23 from Washington Mutual Bank / WAMU or its acquirer JPMorgan Chase Bank.

24 **Thereon defendants are in breach of, and in default of their preferred share**  
25 **agreement with plaintiff**, because defendants have not paid as agreed or as

1 contractually obligated, upon their indebtedness to plaintiff. Plaintiff seeks all  
2 accrued dividend payments now in arrears -- interest on those late payments --  
3 and reasonable assurance of future dividend payments being made as agreed  
4 and reasonable assurances regarding ultimate return of plaintiff's underlying  
5 principle / capital.

6 7. Plaintiff has not, and has never, excused defendants' failure to perform.

7 **8. Plaintiff contends that defendants are capable of at least immediate partial**  
8 **performance by offsetting their indebtedness to plaintiff against the Deed**  
9 **of Trust upon which plaintiff is liable to defendants.**

10 9. Plaintiff has been harmed, because he has detrimentally relied, justifiably and  
11 with good cause, upon defendants to pay dividends on preferred shares which  
12 plaintiff has used as income and to service the indebtedness upon which plaintiff  
13 is liable to defendants. Plaintiff's damage is that he has had to find alternate  
14 sources of income to meet the deficiencies in his budget because of defendants'  
15 failures to pay as agreed and as required by the parties contractual relationship.

16 10. Defendants were the proximate and legal cause of plaintiff's damages, because  
17 they have unjustifiably refused to pay plaintiff. Plaintiff seeks compensatory  
18 damages, and such other relief as this Court may deem appropriate, so  
19 as to return plaintiff to the financial position he was in prior to the occurrence  
20 of any breach by the defendants, as will be shown by proof.

21 11. The resultant harm has caused consequential damages to the entirety of  
22 plaintiff's financial life, day-to-day budgeting and his plans for retirement.

23 12. Additional harm has been caused to plaintiff's expectations for the future stream  
24 of income and return of principle on preferred shares on which plaintiff relied.

1 13. The terms of the preferred share indebtedness agreement between plaintiff and  
2 defendant were originally entirely written. Likewise, the original terms of the Deed  
3 of Trust between plaintiff and defendant banks were originally entirely written.  
4 Subsequently oral assurances were given to plaintiff by various officers of  
5 defendant banks – that plaintiff would be paid upon common and preferred  
6 shares that he owned and upon which defendant banks were in arrears. At all  
7 times, officers of defendant banks assured plaintiff that plaintiff's capital was safe  
8 solid and secure. By these actions defendants transformed the originally written  
9 agreements (the Deed of Trust and the preferred share indebtedness between  
10 the parties into modified oral contracts and implied-in-fact and performance-by-  
11 conduct contracts. The transformation from entirely written contracts into  
12 modified oral contracts and implied-in-fact and performance-by-conduct contracts  
13 was justified under contract law, by among other statutes: Civil Code § 1636  
14 which seeks to guarantee that the mutual intention of parties' agreements be  
15 given complete effect: "CONTRACTS, HOW TO BE INTERPRETED. A contract must be  
16 so interpreted as to give effect to the mutual intention of the parties as it existed  
17 at the time of contracting, so far as the same is ascertainable and lawful." In this  
18 case, plaintiff's additional consideration of forbearance to declare defendants'  
19 default, on those preferred shares held by plaintiff, amended the original terms of  
20 the parties agreements. Additionally, other implied-in-fact terms of the contracts,  
21 such as continuation of Deed of Trust loan servicing by plaintiff, caused novation  
22 of both contracts between the parties and created modified new contracts  
23 between Washington Mutual Bank / WAMU, JPMorgan Chase and plaintiff that  
24 are of broader scope than the original written agreements between the parties.  
25

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1  
2 SECOND CAUSE OF ACTION – BREACH of FIDUCIARY DUTY  
3

4 14. Plaintiff incorporates at this point, all matters previously stated herein.

5 15. "A 'fiduciary relation' in law is ordinarily synonymous with a 'confidential relation.'

6 It is also founded upon the trust or confidence reposed by one person in the  
7 integrity and fidelity of another, and likewise precludes the idea of profit or  
8 advantage resulting from the dealings of the parties and the person in whom the  
9 confidence is reposed." *Bacon v. Soule* (1912) 19 Cal.App. 428, 434,

10 16. Plaintiff contends that as a shareholder of defendant banks, defendant banks  
11 have violated their fiduciary duties of care, loyalty, candor, good faith, fair and  
12 honest dealing and fidelity which they have owed him as a public shareholder  
13 justifiably reposing trust, faith and confidence in their management and execution  
14 of banking business for plaintiff's benefit. And the various duties of fidelity to the  
15 corporation that is required of corporate officers.

16 17. Plaintiff contends that defendants violated their fiduciary duties by failing to warn,  
17 or disclose, the possibility that the defendants' consolidation would result in  
18 defendants failing to perform, as contractually agreed, on regular payments of  
19 indebtedness to plaintiff upon which they are liable to plaintiff.

20 18. Because of defendants dominant position in the banking business, plaintiff  
21 justifiably relied on the officers of the corporations of which he is a shareholder  
22 to deliver to him information concerning any likelihood or potential or possibility of  
23 breach of the contracts between the parties. **It is impossible that the officers of**  
24 **defendant corporations were unaware of the possibility of their possible**  
25 **combination or bankruptcy !!!!!** That is, only by fraud or conscious and

1 knowing disregard of their duties would officers of defendant corporations be  
2 unaware of the possibility of combination or bankruptcy and fail to apprise  
3 shareholders of those facts.

4 19. Plaintiff contends that defendants unique position in regard of his financial life,  
5 creates a fiduciary duty that precludes profiting from dislocations and  
6 disruptions in the financial markets that were known beforehand by defendants  
7 and could easily have been disseminated to plaintiff in his capacity as a loyal  
8 shareholder with an extensive business relationship with the defendants who  
9 could have averted financial loss by that knowledge.

10 20. Defendants breached their affirmative fiduciary obligations to plaintiff by failing  
11 to disclose – and intentionally omitting to reveal – and neglecting to divulge --  
12 matters of which they had advance knowledge, by not refraining from self-dealing  
13 and by not acting in the best interests of shareholders, clients and customers.

14 21. By defendants' various breaches of their fiduciary obligations, plaintiff sustained  
15 financial damage, because dividend income upon which he relied, which is  
16 entirely within the control of defendants to pay, has been unavailable to him.

17 22. Defendants are the sole and proximate cause of plaintiff's harm, because the  
18 actions of defendants of failing to carry out their fiduciary responsibilities as  
19 described herein resulted in financial injury to plaintiff.

20 23. Thereon, plaintiff seeks an award of money to offset dividend payments which  
21 defendants have failed to make and reimbursement to him at par value of the  
22 whole of his investment in defendant banks' preferred shares. And such other  
23 equitable relief as this Court may deem appropriate and proper in the  
24 circumstances described herein.

1 THIRD CAUSE OF ACTION -- PROMISSORY ESTOPPEL

2

3 24. Plaintiff reaffirms, at this point, all matters previously stated herein.

4 25. Promissory estoppel is that principle of law which relies on this honorable Court's  
5 equitable jurisdiction to ascertain and articulate that the giving of consideration in  
6 exchange for a promise which plaintiff seeks to enforce has occurred and that  
7 defendant may not plead that no contract exists for want of consideration or a  
8 meeting of the parties' minds. *Cotta v. City and County of San Francisco* (2007)  
9 157 Cal. App.4<sup>th</sup> 1550.

10 26. In this case, plaintiff gave consideration to defendants by maintaining extensive  
11 business relationships with defendants. Plaintiff serviced his various accounts  
12 with the highest diligence and circumspect efficiency, thereby giving additional  
13 consideration of being a desirable customer rather than a marginal difficulty or  
14 loss causing client. Plaintiff read nearly each and every Securities and Exchange  
15 Commission (SEC) filing by defendants. Plaintiff scoured FDIC news releases to  
16 be certain that there were no looming problems with defendant banks. Plaintiff  
17 regularly (as his own personal expense, attended shareholder meetings to be  
18 more informed about his investments and the quality of business defendants  
19 were doing. All of these actions by plaintiff were plaintiff's continuing reliance on  
20 defendants' conduct of business in a manner which was profitable and beneficial  
21 to plaintiff and plaintiff's business and personal and professional needs.

22 27. Plaintiff read completely every piece of shareholder mail sent to him by  
23 defendants. Plaintiff personally spoke with members of defendants Boards of  
24 Directors at shareholder meetings. All of these actions by plaintiff were additional  
25 consideration and were also plaintiff's continuing reliance on defendants' to

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1 conduct the business of defendants in manners which were profit making and  
2 advantageous to plaintiff and plaintiff's needs and daily financial life.

3 28. Because of all of these many and various promissory acts which are the  
4 functional equivalent of additional consideration in furtherance of defendants'  
5 business relationship with plaintiff --- consistently and for **many many** decades  
6 providing plaintiff with a wide range of banking and profitable investment  
7 products --- defendants are now estopped from claiming that money  
8 invested by plaintiff in their corporations has now disappeared - evaporated. Or  
9 that plaintiff's investment somehow is not fungible with all the other money that  
10 forms the assets of defendant JPMorgan Chase - which is a highly profitable and  
11 fully capitalized and asset-rich corporation. And, further, defendants are thereby  
12 estopped from alleging that indebtedness owed to plaintiff by defendants is not  
13 capable of offset against monies which plaintiff owes to defendants.

14 29. Promissory estoppel law in this case is that defendants, as promisors on their  
15 own debt, cannot now claim that plaintiff was unjustified in relying on the ongoing  
16 business relationship between the parties. Defendants are bound to carry out  
17 and fulfill their preferred share promises to plaintiff, because defendants should  
18 reasonably have expected and anticipated that plaintiff would rely, to his  
19 detriment, upon his business and banking relationships with defendants being as  
20 free of problems and honest (ie, consistent payment on debt by defendants as  
21 had been the case for many previous years during the course of the parties' on-  
22 going business relationship).

23 **30. In this case, injustice to plaintiff can only be avoided by enforcement of**  
24 **defendants' promises to pay upon their indebtedness to plaintiff. *Patriot***  
25 ***Scientific v. Korodi* (2007) 504 F.Supp.2d 852, 967.**

1 31. Enforcement of defendants' promises can, as a judgment by this honorable  
2 Court, equitably be made an offset against money owed by plaintiff to defendants  
3 or as a constructive trust – the corpus amount of which can be a lien upon other  
4 of defendants income generating assets from which plaintiff can derive the  
5 income stream on which he has relied for income to make payments upon his  
6 Deed of Trust with defendants.

7 32. Thereon, plaintiff seeks an award of money to offset dividend payments which  
8 defendants have failed to make and restoration to him at par value of the whole  
9 of his investment in defendant banks' preferred shares.

10  
11 **FOURTH CAUSE OF ACTION – COMMON COUNTS**  
12

13 33. Plaintiff references all previous statements as though set forth completely at this  
14 point.

15 34. Plaintiff alleges that defendants became indebted to plaintiff within the last four  
16 years because of accounts and contractual relationships stated in writing.

17 35. Those writings evidence that it was agreed and stated that defendant was  
18 indebted to plaintiff.

19 36. Money was given by plaintiff to defendants upon defendants solicitation,  
20 insistence and specific request.

21 37. Plaintiff received assurances from defendants that the money would be repaid.

22 38. Approximately \$281,325.00 of unpaid dividends are now unpaid and in arrears as  
23 well as a principle balance of \$2,420,000.00. Despite demand, defendants have  
24 refused to pay.

25 39. Plaintiff pays judgment in the amount of the repayment amount forthwith.

21/5/10

1 **FIFTH CAUSE OF ACTION – NEGLIGENT INFLECTION of EMOTIONAL DISTRESS**

2  
3 40. Plaintiff incorporates all previous statements as though stated at this point.

4 41. As previously described in detail, defendants occupied a place of special and  
5 uniquely high duty to plaintiff because of the lengthy and extensively developed  
6 business contacts and relationships between the parties. Based on the unique  
7 position of defendants in plaintiff's financial life, defendants' duties were broader  
8 and more significant than that of mere fiduciaries, bankers or corporate directors.  
9 In fact, based on the decades long relationship between the parties, plaintiff gave  
10 and reposed the highest possible level of trust and confidence in his relationship  
11 with the defendants; and justifiably relied on defendants for his banking needs  
12 and business requirements and other aspects of banking related business.

13 42. Because plaintiff's trust and confidence in defendants was supported by valuable  
14 consideration in the form of a very profitable business relationship between the  
15 parties – and because that relationship depended on defendants duties of trust  
16 towards plaintiff – defendants are now estopped from pleading that there was  
17 no duty or that no potential for breach existed.

18 43. Because of the character of the parties relationship, because of the depth and  
19 extent of the multitude of contracts between the parties, because of the length of  
20 time that the parties have, and continue to, do business – and most importantly –  
21 because of the profits which defendants derived from their relationship with  
22 plaintiff --- defendants are now estopped from claiming that they owed no duties  
23 to plaintiff or that those duties were merely just duties of regular or ordinary care.  
24 Or that the duties were merely the ordinary result of random, speculative contact  
25 between the parties without.

8/15/10

1 44. Additionally based on the monetary value of the parties relationship, it was  
2 reasonable for the defendants to anticipate that a sudden, unexplained, total  
3 disruption of the income that plaintiff derived from his investments in defendants'  
4 common and preferred shares would cause plaintiff harm and emotional distress.

5 45. Defendants breached their various duties to plaintiff by allowing their businesses  
6 to seek bankruptcy protection without warning and for reasons unknown.

7 Defendants breached their duties by failing, without justification or explanation, to  
8 make dividend and interest payments on common and preferred shares as had  
9 been agreed. Defendants breached their duties to plaintiff by failing to explain the  
10 status and standing of his investments in defendant corporations.

11 46. The California Supreme Court has settled that when "defendants ... assumed a  
12 duty to plaintiff in which the emotional condition of the plaintiff is an object,  
13 recovery is available (when) the emotional distress arises out of the defendant's  
14 breach of some other legal duty and the emotional distress is proximately caused  
15 by that breach of duty." *Potter v. Firestone Tire & Rubber* (1993) 6 Cal.4<sup>th</sup> 965  
16 accord *Erich v. Menezes* (1999) 21 Cal.4<sup>th</sup> 543, 555.

17 47. Legal duties "may be imposed by law, be assumed by the defendant, or exist by  
18 virtue of a special relationship." *Potter, supra*, 6 Cal.4th at p. 985 accord *Marlene*  
19 *F. v. Affiliated Psychiatric Medical Clinic* (1989) 48 Cal.3<sup>rd</sup> 583 at 590. Here, by  
20 virtue of the parties' special relationship (as well as additional relationship based  
21 on alleged business assumption made by defendant JPMorgan when it combined  
22 with defendant Washington Mutual) the duties, and breach thereof, which are  
23 predicate for maintaining an action in negligent infliction of emotional distress  
24 were satisfied as to the within defendants, because defendants knew, or should  
25

1 have known, that the evaporation of \$2,420,000 of investment and the stream of  
2 income derived therefrom would cause plaintiff extreme emotional anguish.

3 48. Here, defendants were the proximate and legal cause of engendering extreme  
4 and outrageous fear and distress in plaintiff by their cavalier approach to simply  
5 keeping plaintiff confused, in-the-dark and uninformed as to what has occurred  
6 with his investments in defendant.

7 49. Likewise during the course of this action defendants have sought further to  
8 embarrass and distress plaintiff by unconscionable litigation tactics: 1) failing  
9 timely to respond to discovery as required by law; 2) Responding to discovery  
10 via jingoistic and incomprehensible statements; 3) Responding to discovery  
11 by 19 times sending plaintiff a copy of the deed of trust [EXHIBIT A] – which was  
12 never requested; 4) Duplicating, triplicating, quadruplicating each and every  
13 legal paper or notice sent to plaintiff – the effort of which is to focus this case on  
14 mailing rather than on the merits of the case; 5) Intentionally sending documents  
15 to plaintiff with postage due; 6) Sending legal staff to Court who were unprepared  
16 for hearings, thereby necessitating unnecessary delays. And many other matters  
17 inappropriate and improper to the litigation herein; 7) Advocating ex-parte  
18 applications in Court based on matters which were different from what was  
19 represented in the ex-parte notices; 8) creating confusion and brouha before  
20 the Court over the improper issue of where to send notices to plaintiff when  
21 the receipt of notices has never been an issue and 9) in fact the only issue  
22 regarding service was that defendants intentionally misrepresenting to this Court  
23 that a process server had served plaintiff, when in-fact no such service had  
24 occurred (defendants sought to ameliorate their false statement of service by  
25 multiple instances of resending service copies back-dated to the time of service.



1 50. The California Supreme Court has ruled recovery of damages for negligent  
2 infliction of emotional distress engendered by fear is allowed where the plaintiff  
3 pleads and proves that the fear stems from his knowledge proximately caused by  
4 defendants breach of its legal duties properly to disclose warnings of potential  
5 breaches of duties reasonably and regularly owed to plaintiff. And the resultant  
6 fear when plaintiff recognizes that warnings have been neglected and that his  
7 financial life has devolved and been subsumed by defendant's bankruptcy and  
8 simultaneous combination with another defendant whose financial strength is that  
9 of the most profitable bank on earth.

10 51. Whether the defendant has assumed a duty that would give rise to a claim for  
11 negligent infliction of emotional distress if the duty is breached was addressed by  
12 the California Supreme Court in *Huggins v. Longs Drug Stores California, Inc.*  
13 (1993) 6 Cal.4<sup>th</sup> 124. In that case, the California Supreme Court recognized that it  
14 is the on-going and regular nature of a relationship that establishes grounds for  
15 the type of breach that will cause emotional distress.

16 52. As the facts herein demonstrate, plaintiff has had the type of on-going business  
17 relationship with defendants which would necessarily establish grounds for a  
18 a claim for negligent infliction of emotional distress, because of its duration and  
19 the depth of its involvement in plaintiff's personal and business life.

20 53. Thereon plaintiff seeks an award of damages commensurate with the depth  
21 harm of emotional distress he has suffered as will be shown by proof.

22  
23 **ADDITIONAL REMEDIES**

24 54. Previous paragraphs herein are incorporated as though fully set forth at this point

1 55. Plaintiff seeks an award in restitution by the complete return to him the value of  
2 his investments in defendant corporations as well as payment of arrearages of  
3 dividends on those investments.

4 56. Plaintiff seeks revision of any and all contracts he has with defendants so as  
5 more fully to reflect the actual intent of the parties pursuant to Civil Code §  
6 3399.

7 57. Civil Code § 3399 states: "WHEN CONTRACT MAY BE REVISED. When, through fraud  
8 or a mutual mistake of the parties, or a mistake of one party, which the other at  
9 the time knew or suspected, a written contract does not truly express the  
10 intention of the parties, it may be revised on the application of a party aggrieved,  
11 so as to express that intention, so far as it can be done without prejudice to rights  
12 acquired by third persons, in good faith and for value.

13 58. Civil Code § 1689 allows for rescission of the contracts between the parties when  
14 subsection (4) "If the consideration for the obligation of the rescinding party,  
15 before it is rendered to him, fails in a material respect from any cause." Upon the  
16 facts stated herein, plaintiff contends that consideration of dividend and interest  
17 payments which induced him to enter into a deed of trust agreement with  
18 defendants has failed. Thereon prays rescission of that deed of trust by complete  
19 reconveyance of that Deed of Trust.

20 **59. Plaintiff has qualified under Civil Code § 1691 to obtain rescission relief.**

21 60. Under CC § 1691(a) plaintiff has previously given notice of rescission to the  
22 defendants; and (b) has offered to restore to defendants everything of value  
23 which he has received from defendants under the Deed of Trust in exchange  
24 for return of his investments in defendant corporations as well accrued  
25 dividends and interest thereon as provided under this statute.

1 61. In previous pleadings defendants have claimed no notice of offer of rescission.

2 However, CC § 1691 states: "When notice of rescission has not otherwise been  
3 given or an offer to restore the benefits received under the contract has not  
4 otherwise been made, the service of a pleading in an action or proceeding that  
5 seeks relief based on rescission shall be deemed to be such notice or offer or  
6 both."

7 62. Plaintiff seeks such other and further relief as this Court may deem appropriate.  
8  
9

10 EXEMPLARY DAMAGES  
11

12 63. All ¶¶ previous are incorporated here as though fully set forth at this point.

13 64. Peter Szanto alleges further damages against defendants by alleging that  
14 the defendants have been and are guilty of fraud, oppression and malice.

15 65. Malice means conduct by defendants carried out in conscious disregard of the  
16 rights of plaintiff. Here, defendants pursued a course of business conduct  
17 knowingly designed to deprive plaintiff of his investments in defendant  
18 corporations. Defendants actions were contrary to truth and law and thereby  
19 ignored defendants legal and contractual obligations to plaintiff.  
20

21 69. Oppression is despicable conduct that subjected plaintiff to cruel and unjust  
22 hardship in conscious disregard of plaintiff's rights. Here defendants despicable  
23 conduct was pursuit of business practices contrary to logic and reality that  
24 when two banks combine, plaintiff's investments somehow evaporated and  
25 disappeared .

1 70. Thereon, Peter Szanto seeks a further award commensurate to the harm  
2 caused by defendants as shall be shown by proof.  
3

4  
5 Plaintiff seeks costs and expenses of suit as provided by law and  
6 such equitable relief as this Court may deem appropriate to the facts.  
7

8  
9 DATED April 26, 2010  Peter Szanto  
10

11 **Proof of Service**

12 My name is Susan Szanto, I am over 18 years of age and not a party to the within  
13 action. My business address is P.O. Box 10451, Newport Beach CA 92658. On April 26,  
14 2010, I personally served, by 1<sup>st</sup> class mail, postage thereon fully prepaid, a copy of  
15 the within: First Amended Complaint to the law offices of Adorno, Yoss, Alvarado and  
16 Smith addressed to # 1 Mac Arthur Place # 200, Santa Ana CA 92707. Said mailing  
17 took place in Newport Beach, California where I am employed.  
18

19  
20 **I declare under penalty of perjury under the laws of the state of  
California that the foregoing is true and correct.**

21  
22 Dated April 26, 2010   
23  
24  
25

AFTER RECORDING RETURN TO:  
Washington Mutual Bank, FA  
C/O ACS Image Solutions  
12691 Pala Drive MS156DPCA  
Garden Grove, California 92841

[Space Above This Line For Recording Data]

United Title Co 30333971

## DEED OF TRUST

Loan Number: 0082156332

### 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 OCTOBER 24, 2003, together with all Riders to this document.

(B) "Borrower" is PETER SZANTO, A MARRIED MAN BY DEED WHICH RECITES AS HIS SOLE AND SEPARATE PROPERTY

Borrower is the trustor under this Security Instrument.

(C) "Lender" is Washington Mutual Bank, FA, a federal association. Lender is a BANK organized and existing under the laws of UNITED STATES OF AMERICA. Lender's address is 400 East Main Street, Stockton, California 95290.

Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is CALIFORNIA RECONVEYANCE COMPANY

(E) "Note" means the promissory note signed by Borrower and dated OCTOBER 24, 2003. The Note states that Borrower owes Lender ONE MILLION AND 00/100

Dollars (U.S. \$ 1,000,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than NOVEMBER 1, 2043.

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

(G) "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.

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

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

(I) "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.

(J) "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.

(K) "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.

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

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds, whether by way of judgment, settlement or otherwise, 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.

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

(O) "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.

(P) "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.

(Q) "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

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 ORANGE County, California:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

which currently has the address of 11 SHORE PINE DRIVE  
[Street]

NEWPORT BEACH, California 92657 ("Property Address");  
[City] [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 COVENANTS** that Borrower is lawfully seised 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 part of a 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 of the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than twelve 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 twelve 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. Lender may purchase such insurance from or through any company acceptable to Lender including, without limitation, an affiliate of Lender, and Borrower acknowledges and agrees that Lender's affiliate may receive consideration for such purchase. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

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

Borrower hereby absolutely and irrevocably assigns to Lender all of Borrower's right, title and interest in and to all proceeds from any insurance policy (whether or not the insurance policy was required by Lender) that are due, paid or payable with respect to any damage to such property, regardless of whether the insurance policy is established before, on or after the date of this Security Instrument. By absolutely and irrevocably assigning to Lender all of Borrower's rights to receive any and all proceeds from any insurance policy, Borrower hereby waives, to the full extent allowed by law, all of Borrower's rights to receive any and all of such insurance proceeds.

Borrower hereby absolutely and irrevocably assigns to Lender all of Borrower's right, title and interest in and to (a) any and all claims, present and future, known or unknown, absolute or contingent, (b) any and all causes of action, (c) any and all judgments and settlements (whether through litigation, mediation, arbitration or otherwise), (d) any and all funds sought against or from any party or parties whatsoever, and (e) any and all funds received or receivable in connection with any damage to such property, resulting from any cause or causes whatsoever, including but not limited to, land subsidence, landslide, windstorm, earthquake, fire, flood or any other cause.

Borrower agrees to execute, acknowledge if requested, and deliver to Lender, and/or upon notice from Lender shall request any insurance agency or company that has issued any insurance policy to execute and deliver to Lender, any additional instruments or documents requested by Lender from time to time to evidence Borrower's absolute and irrevocable assignments set forth in this paragraph.

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 sixty 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, or remove or demolish any building thereon, 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 good condition and repair 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 in good and workmanlike manner if damaged to avoid further deterioration or damage. Lender shall, unless otherwise agreed in writing between Lender and Borrower, have the right to hold insurance or condemnation proceeds. 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. Lender does not make any warranty or representation regarding, and assumes no responsibility for, the work done on the Property, and Borrower shall not have any right to rely in any way on any inspection(s) by or for Lender or its agent. Borrower shall be solely responsible for determining that the work is done in a good, thorough, efficient and workmanlike manner in accordance with all applicable laws.

Borrower shall (a) appear in and defend any action or proceeding purporting to affect the security hereof, the Property or the rights or powers of Lender or Trustee; (b) at Lender's option, assign to Lender, to the extent of Lender's interest, any claims, demands, or causes of action of any kind, and any award, court judgement, or proceeds of settlement of any such claim, demand or cause of action of any kind which Borrower now has or may hereafter acquire arising out of or relating to any interest in the acquisition or ownership of the Property. Lender and Trustee shall not have any duty to prosecute any such claim, demand or cause of action. Without limiting the foregoing, any such claim, demand or cause of action arising out of or relating to any interest in the acquisition or ownership of the Property may include (i) any such injury or damage to the Property including without limit injury or damage to any structure or improvement situated thereon, (ii) or any claim or cause of action in favor of Borrower which arises out of the transaction financed in whole or in part by the making of the loan secured hereby, (iii) any claim or cause of action in favor of Borrower (except for bodily injury) which arises as a result of any negligent or improper construction, installation or repair of the Property including without limit, any surface or subsurface thereof, or of any building or structure thereon or (iv) any proceeds of insurance, whether or not required by Lender, payable as a result of any damage to or otherwise relating to the Property or any interest therein. Lender may apply, use or release such monies so received by it in the same manner as provided in Paragraph 5 for the proceeds of insurance.

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

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the

Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgement, 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 judgement, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

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

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** This Security Instrument cannot be changed or modified except as otherwise provided herein or by agreement in writing signed by Borrower, or any Successor in Interest of Borrower and Lender. 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 Successor 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. No waiver by Lender of any right under this Security Instrument shall be effective unless in writing. Waiver by Lender of any right granted to Lender under this Security Instrument or of any provision of this Security Instrument as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence.

**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. Borrower shall pay such other charges as Lender may deem reasonable for services rendered by Lender and furnished at the request of Borrower, any Successor in interest to Borrower or any agent of Borrower. 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 mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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

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

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

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

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

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

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgement 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 uncharged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency,

instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

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



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

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option 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. If Borrower or any successor in interest to Borrower files (or has filed against Borrower or any successor in interest to Borrower) a bankruptcy petition under Title 11 or any successor title of the United States Code which provides for the curing of prepetition default due on the Note, interest at a rate determined by the Court shall be paid to Lender on post-petition arrears.

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

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

**23. Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender or the Trustee (whether or not the Trustee is affiliated with Lender) may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

**24. Substitute Trustee.** Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument is recorded and the name and address of the successor trustee. Without conveyance of the Property, the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by Applicable Law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution. Trustee may destroy the Note and the Security Instrument three (3) years after issuance of a full reconveyance or release (unless directed in such request to retain them).

**25. Statement of Obligation Fee.** Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

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.

\_\_\_\_\_  
PETER SZANTO

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_(Space Below This Line For Acknowledgement)\_\_\_\_\_

State of CALIFORNIA )  
County of ) SS.  
)

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for the State of  
California, personally appeared \_\_\_\_\_

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their 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

Signature \_\_\_\_\_  
Notary Public in and for the State of California

# **EXHIBIT B**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----	X	
<i>In re</i>	:	
	:	Chapter 11
WASHINGTON MUTUAL, INC., <i>et al.</i> , <sup>1</sup>	:	
	:	Case No. 08-12229 (MFW)
Debtors.	:	
	:	Jointly Administered
-----	X	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
Plaintiff,	:	
v.	:	Adv. Pro. No. 09-50551 (MFW)
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP., <i>et al.</i>	:	
Defendants.	:	Ref. No. _____
-----	X	
-----	X	
PETER SZANTO	:	
Plaintiff,	:	DOCKET NO. BC 403022
v.	:	
WASHINGTON MUTUAL BANK, WAMU, FEDERAL DEPOSIT INSURANCE CORPORATION, JPMORGAN CHASE BANK, DOES 1-10	:	
Defendants.	:	
-----	X	

**ORDER GRANTING MOTION TO REMAND**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.

Upon consideration of the motion of JPMorgan Chase Bank, National Association, to remand the action *Szanto v. Washington Mutual Bank, et al.*, No. BC 403022 (Cal. Sup. Ct. Dec. 2, 2008) as improperly removed; and the Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1134; and the Court having determined that granting the relief requested in the Motion is appropriate for the reasons set forth in support of the Motion; and it appearing that due and adequate notice of the Motion has been given, and that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted.
2. The action *Szanto v. Washington Mutual Bank* is hereby remanded to the Superior Court of California, Los Angeles County.
3. This Court shall maintain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: January \_\_, 2012  
Wilmington, Delaware

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Honorable Mary F. Walrath  
United States Bankruptcy Judge