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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

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Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

**RESCAP BORROWER CLAIMS TRUST'S OMNIBUS REPLY IN SUPPORT OF ITS
EIGHTY-SECOND OMNIBUS OBJECTION TO CLAIMS (NO-LIABILITY
BORROWER CLAIMS) AS TO CLAIM NOS. 960, 1142, AND 4497**



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The ResCap Borrower Claims Trust (the “Borrower Trust”), established pursuant to the terms of the Plan¹ filed in the above-captioned Chapter 11 Cases, as successor in interest to the above-captioned Debtors with respect to Borrower Claims, by and through its undersigned counsel, hereby submits this reply (the “Reply”) and the Supplemental Declaration of Kathy Priore, Associate Counsel to the ResCap Liquidating Trust (the “Supplemental Declaration”), annexed hereto as Exhibit 1, to the responses filed by: (i) Michael E. Boyd (“Mr. Boyd”) [Docket Nos. 8190 and 8191] (the “Boyd Response”), (ii) Steven D. Rigel (“Mr. Rigel”) [Docket No. 8101] (the “Rigel Response”), and (iii) Harold Gay (“Mr. Gay” and collectively with Mr. Boyd and Mr. Rigel, the “Respondents”) [Docket No. 8188] (the “Gay Response” and collectively with the Boyd Response and the Rigel Response, the “Responses”) to the *ResCap Borrower Claims Trust’s Eighty-Second Omnibus Objection to Claims (No Liability Borrower Claims)* [Docket No. 8042] (the “Objection”) and in further support of the Objection.² The Borrower Trust respectfully states as follows:

PRELIMINARY STATEMENT

1. The Borrower Trust examined the Responses and the statements submitted in support thereof. For purposes of this Reply and the Objection, the Borrower Trust takes these statements at face value. If the Court is not prepared to rule on the Objection with respect to Respondents, then the Borrower Trust reserves the right to take discovery from the Respondents.

2. As described herein and in the Supplemental Declaration, the Borrower Trust thoroughly examined the Debtors’ books and records that were prepared and kept in the course of their regularly conducted business activities (the “Books and Records”) in an effort to validate the accuracy of the allegations made in the Responses and the claims at issue, and for the reasons

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Objection.

² The hearing on claim number 3732 filed by Kenneth Dlin has been adjourned to the April 16, 2015 hearing.

described herein, the Books and Records do not show any liability due and owing to any of the Respondents.

3. Moreover, as the Objection shifted the burden of proof back to the Respondents, the Respondents must demonstrate a valid claim against the Debtors' estates by a preponderance of the evidence. For the reasons set forth in the Objection, this Reply, and the Supplemental Declaration, the Respondents have failed to provide any explanation as to why their respective claims are valid and should be allowed against the Debtors' estates. For example, Mr. Boyd has failed to put forward a reason that his claim should not be barred by the doctrine of res judicata, as it is predicated on a lawsuit that has been dismissed pursuant to a final judgment of an appellate court. In addition, Mr. Rigel has failed to proffer any documentation in support of his claim. Finally, Mr. Gay has failed to demonstrate any liability of the Debtors for their connection to his loan, as the Debtors merely acted as purchaser and servicer of his loan while Mr. Gay's allegations relate solely to the loan's origination. Therefore, the Respondents have failed to meet their burden of proof, and the relief sought in the Objection should be granted with respect to each of the Respondents.

BACKGROUND

4. In connection with the claims reconciliation process, the Borrower Trust identified certain claims filed by Borrowers that it believed did not constitute valid liabilities of the Debtors (together, the "No Liability Borrower Claims"). See Supplemental Declaration ¶ 5.

5. The Debtors sent Request Letters to certain Borrowers, including all of the Respondents, requesting additional documentation in support of the No Liability Borrower Claims.³ See Supplemental Declaration ¶ 6. The Request Letters state that the claimant must

³ A Request Letter was sent to Mr. Rigel and Mr. Gay on June 21, 2013 and to Mr. Boyd on July 21, 2013. See Supplemental Declaration n. 3.

respond within 30 days with an explanation that states the legal and factual reasons why the claimant believes he or she is owed money or is entitled to other relief from the Debtors, and the claimant must provide copies of any and all documentation that the claimant believes supports the basis for his or her claim. The Request Letters further state that if the claimant does not provide the requested explanation and supporting documentation within 30 days, the Debtors may file a formal objection to the claimant's claim, seeking to have the claim disallowed and permanently expunged. See Supplemental Declaration ¶ 6.

6. The Debtors received responses to the Request Letters from the Respondents⁴ (the "Diligence Responses"), copies of which are attached to the Supplemental Declaration as Exhibit A. However, the Diligence Responses fail to allege bases for claims against the Debtors' estates. Further, as stated in the Objection, the Books and Records do not show any liability due and owing to the Respondents. See Supplemental Declaration ¶ 7.

Background Facts

A. Boyd Claim

7. On or around October 4, 2012, Mr. Boyd filed a proof of claim against Debtor GMAC Mortgage, LLC ("GMACM"), designated as Claim No. 960 (the "Claim"), asserting a secured claim for \$186,000.00. See Exhibit B to the Supplemental Declaration. See Exhibit A to the proposed order to the Objection ("Exhibit A to the Objection").

8. According to the Debtors' books and records, non-Debtor Plaza Home Mortgage, Inc. ("Plaza") originated a loan in the amount of \$647,000.00 to Mr. Boyd on January 16, 2007 (the "Soquel Loan"), secured by a mortgage on property located at 5439 Soquel Drive, Soquel, CA 95073 (the "Soquel Property"). See Exhibit A to the Objection; see also Soquel Note,

⁴ The Debtors received a Diligence Response from Mr. Boyd on July 23, 2013 and from Mr. Gay on July 22, 2013. See Supplemental Declaration n. 4. The Debtors did not receive a diligence response from Mr. Rigel.

attached to the Supplemental Declaration as Exhibit C, and Soquel Deed of Trust, attached to the Supplemental Declaration as Exhibit D. Plaza originated a second loan to Mr. Boyd on December 22, 2006 (the “Lakebird Loan,” and collectively with the Soquel Loan, the “Loans”), secured by a mortgage on property located at 1090-1092 Lakebird Drive, Sunnyvale, CA 94089 (the “Lakebird Property”). See Exhibit A to the Objection; see also Lakebird Note, attached to the Supplemental Declaration as Exhibit E, and Lakebird Deed of Trust, attached to the Supplemental Declaration as Exhibit F. No Debtor ever owned either of the Loans. See Exhibit A to the Objection.

9. GMACM serviced the Soquel Loan from April 10, 2007 until servicing was transferred to Ocwen Loan Servicing, LLC (“Ocwen”) on February 16, 2013. GMACM serviced the Lakebird Loan from March 13, 2007 until servicing was transferred to Ocwen on February 16, 2013. See Exhibit A to the Objection.

10. At the time servicing of the Soquel Loan was transferred to Ocwen, it was due for the November 1, 2011 payment. See Supplemental Declaration ¶ 11. On February 9, 2011, the Soquel Loan was referred to foreclosure. See id. On March 1, 2011, ETS Services, LLC (“ETS”), acting as beneficiary for GMACM, recorded a notice of default. See Soquel Notice of Default, attached to the Supplemental Declaration as Exhibit G.

11. The Lakebird Loan was due for the April 1, 2011 payment when servicing was transferred to Ocwen. See Supplemental Declaration ¶ 12. On August 9, 2011, the Lakebird Loan was referred to foreclosure. See id. On September 14, 2011, ETS recorded a notice of default. See Lakebird Notice of Default, attached to the Supplemental Declaration as Exhibit H.

12. On September 11, 2011, Mr. Boyd filed a complaint in the United States District Court for the Northern District of California (the “District Court”), Case No. 5:11-CV-05018, for

“unconscionability to contract and adhesion to real property” (the “Complaint”). See District Court Docket, attached hereto as Exhibit 2.⁵ The District Court dismissed the Complaint without prejudice on December 5, 2011. See id. Mr. Boyd filed an amended complaint on May 22, 2012 (the “Amended Complaint”). See Exhibit 3 to attached hereto. The claims in the Amended Complaint were to invalidate/contest the liens on the Soquel and Lakebird Properties with regard to the mortgage loans.⁶

13. The case was dismissed with prejudice on August 22, 2012 by an Order Granting Defendants’ Motion to Dismiss Plaintiff’s First Amended Complaint (the “District Court Order”). A copy of the District Court Order is attached hereto as Exhibit 4. The United States Court of Appeals for the Ninth Circuit (the “Ninth Circuit”) affirmed the district court’s order dismissing the case on August 22, 2014 (the “Appellate Court Order”). A copy of the Appellate Court Order is attached hereto as Exhibit 5.⁷

14. On September 9, 2014, Mr. Boyd petitioned for a panel rehearing (the “Panel Petition”). See Court of Appeals Docket, attached to hereto as Exhibit 6. On December 23, 2014, the Ninth Circuit entered an order denying Mr. Boyd’s Panel Petition and further

⁵ The District Court had diversity jurisdiction over the case.

⁶ The Amended Complaint alleged that Mr. Boyd had unencumbered title to the Properties because the deeds of trust were reconveyed to him. See Amended Complaint at p. 16. The Debtors argued that the reconveyances that Mr. Boyd referenced in the Amended Complaint paid off older loans that were not related to the Soquel or Lakebird Loans. Therefore, neither reconveyance released Mr. Boyd’s obligations under the Soquel or Lakebird Loans. Mr. Boyd also argued that MERS did not have authority to enforce and assign the Soquel deed of trust, and therefore could not assign the interest in the Soquel deed of trust to the Debtors. See Amended Complaint, at 19. The Debtors argued that California law clearly states that MERS has the authority to both enforce and assign deeds of trust. See Gomes v. Countrywide Home Loans, Inc., 121 Cal. Rptr. 3d 819, 826-827 (Cal. Ct. App. 2011) (finding that MERS has authority enforce and assign deeds of trust where it is named as a beneficiary in a deed of trust). Finally, Mr. Boyd alleges that because the property was part of a joint living trust, he did not have authority to execute the loan agreements. See Amended Complaint at 19. In its motion to dismiss, the Debtors argued that Mr. Boyd was the trustee of the joint living trust at the time the loan documents were executed. See Amended Complaint at 10.

⁷ All activity in the case that occurred after February 16, 2013 was managed by Ocwen.

indicated it would not entertain any further filings in the case. See Panel Order, attached to the Objection as Exhibit 5.⁸

15. On January 30, 2015, Mr. Boyd filed a letter to the Court [Docket No. 8065] stating that his claims were against the U.S. Treasury Department and attached a claim that was filed against the Treasury Department.

16. On March 20, 2015, Mr. Boyd filed a petition for a writ of certiorari with the United States Supreme Court. See Petition for Writ of Certiorari, attached hereto as Exhibit 7.

B. Rigel Claim

17. On or around October 10, 2012, Mr. Rigel filed a proof of claim against GMACM, designated as Claim No. 1142 (the “Rigel Claim”), asserting a general unsecured claim in an unliquidated amount. See Exhibit I to the Supplemental Declaration. See Exhibit A to the Objection. The Rigel Claim was reclassified as a general unsecured claim against Debtor Homecomings Financial LLC (“Homecomings”) pursuant to the Court’s *Supplemental Order Granting Debtors’ Thirty-Sixth Omnibus Objection to Claims (Wrong Debtor Borrower Claims)* [Docket No. 5895], entered November 20, 2013.

18. According to the Debtors’ books and records, Homecomings originated a loan to Mr. Rigel on October 9, 2007 (the “Rigel Loan”), secured by a deed of trust on 751 NE Becker Ave., Palm Bay, FL 32905 (the “Rigel Property”). See Exhibit A to the Objection; see also Rigel Note, attached to the Supplemental Declaration as Exhibit J, and Rigel Mortgage, attached to the Supplemental Declaration as Exhibit K.

⁸ The Debtors previously objected to the Boyd Claim as part of the *ResCap Borrower Claims Trust’s Seventy-Fifth Omnibus Objection to Claims (No Liability Borrower Claims)* [Docket No. 7552] (the “Seventy-Fifth Omnibus Objection”). The Court overruled the Seventy-Fifth Omnibus Objection without prejudice as it related to the Boyd Claim (Docket No. 7859], finding that res judicata could not be applied until the Panel Petition was ruled on and the District Court Order was final.

19. Non-Debtor GMAC Bank purchased the Rigel Loan from Homecomings. GMACM purchased the Rigel Loan from GMAC Bank and then transferred its interest to Freddie Mac on or about November 20, 2007. See Exhibit A to the Objection. Homecomings serviced the Rigel Loan from October 9, 2007 until on or about July 1, 2009 when the servicing of the Rigel Loan was transferred to GMACM. See id. GMACM serviced the loan from July 1, 2009 until servicing was transferred to Ocwen Loan Servicing, LLC (“Ocwen”) on February 16, 2013. See id. At the time the Rigel Loan was transferred to Ocwen it was owing for the June 1, 2012 payment. See id.

20. The Rigel Loan was referred to foreclosure on May 22, 2012 because it was owing for the March 1, 2012 payment. See Supplemental Declaration ¶ 16. A foreclosure complaint was filed on January 3, 2013. See id. On January 7, 2013, the Debtors approved Mr. Rigel for a trial HAMP modification plan (the “Trial Plan”) and the foreclosure was placed on hold on January 18, 2013. See id. Upon information and belief, Mr. Rigel completed the Trial Plan and was approved for a permanent HAMP modification on April 25, 2013. See id. Upon information and belief, the foreclosure file was closed in May 2013 and Mr. Rigel continues to live in the property. See id.

C. Gay Claim

21. On or around November 13, 2012, Mr. Gay filed a proof of claim against Debtor Residential Capital, LLC (“ResCap”), designated as Claim No. 4497 (the “Gay Claim”), asserting a general unsecured claim of \$42,336.00. See Exhibit L to the Supplemental Declaration. See Exhibit A to the Objection. The Gay Claim was reclassified as a general unsecured claim against Homecomings pursuant to the Court’s *Supplemental Order Granting Debtors’ Thirty-Eighth Omnibus Objection to Claims (Wrong Debtor Borrower Claims)* [Docket No. 5898], entered November 20, 2013.

22. According to the Debtors' books and records, non-Debtor Trust One Mortgage Corporation ("Trust One") originated a loan to Mr. Gay on May 17, 2006 (the "Gay Loan"). See Exhibit A to the Objection; see also Gay Note, attached to the Supplemental Declaration as Exhibit M, and Gay Mortgage, attached to the Supplemental Declaration as Exhibit N. Debtor Residential Funding Company, LLC purchased the Gay Loan from Trust One and subsequently transferred its interest to ETrade Financial Corporation on or about May 30, 2006. See Exhibit A to the Objection. Homecomings servicing the loan from June 9, 2006 until servicing transferred to GMACM on or about July 1, 2009. See id. GMACM serviced the Gay Loan from July 1, 2009 until servicing transferred to Ocwen on February 16, 2013. See id. At the time servicing transferred to Ocwen, Mr. Gay's account was owing for the January 30, 2013 payment. See id.

REPLY

23. A filed proof of claim is "deemed allowed, unless a party in interest ... objects." 11 U.S.C. § 502(a). Section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed to the extent that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law...." 11 U.S.C. § 502(b)(1). As noted previously by the Court, claims objections have a shifting burden of proof. Pursuant to Federal Rule of Bankruptcy Procedure 3001(f), a claimant establishes a prima facie case against a debtor upon filing a proof of claim alleging facts sufficient to support the claim. The objecting party is thereafter required to produce evidence equal in force to that provided by the claimant to rebut the presumption of the claimant's prima facie case. In re Residential Capital, LLC, 507 B.R. 477, 490 (Bankr. S.D.N.Y. 2014). See also Allegheny Int'l, Inc. v. Snyder (In re Allegheny Int'l, Inc.), 954 F.2d 167, 173-74 (3d Cir. 1992).

24. Once an objection refutes an essential allegation of the claim, the burden of persuasion is on the holder of a proof of claim to establish a valid claim against a debtor by a

preponderance of the evidence. Residential Capital, 507 B.R. at 490; Feinberg v. Bank of N.Y. (In re Feinberg), 442 B.R. 215, 220-22 (Bankr. S.D.N.Y. 2010); In re Oneida Ltd., 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009); In re Adelphia Commc'ns Corp., Case No. 02-41729 (REG), 2007 Bankr. LEXIS 660, at *15 (Bankr. S.D.N.Y. Feb. 20, 2007), aff'd sub nom., Peter J. Solomon Co. v. Oneida Ltd., No. 09-cv-2229 (DC), 2010 U.S. Dist. LEXIS 6500 (S.D.N.Y. Jan. 22, 2010); In re Rockefeller Ctr. Props., 272 B.R. 524, 539 (Bankr. S.D.N.Y. 2000), aff'd sub nom., NBC v. Rockefeller Ctr. Props. (In re Rockefeller Ctr. Props.), 266 B.R. 52 (S.D.N.Y. 2001), aff'd, 46 Fed. Appx. 40 (2d Cir. 2002).

A. Boyd Claim

25. In the Boyd Response, Mr. Boyd asserts that even though the Ninth Circuit affirmed the dismissal of his lawsuit against the Debtors (which is the basis for his claim), res judicata does not prevent him from asserting his claim because he still has the opportunity to submit a petition for a writ of certiorari to the United States Supreme Court and his pending lawsuit against the Treasury Department.⁹

26. Although Mr. Boyd has filed a petition for a writ of certiorari, the petition does not prevent res judicata from precluding the Boyd Claim. “A petition for a writ of certiorari to the United States Supreme Court does not affect the finality of the judgment below nor does it stay the mandate of the court below.” Kendrick v. City of Eureka, 98 Cal. Rptr. 2d 153, 158, 371 (Cal. Ct. App. 2000); see also Sacramento Cnty. Dep't of Social Welfare v. Javier (In re Christy L), 187 Cal. App. 3d 753, 758-59 (Cal. Ct. App. 1986) (“It is immaterial that appellants have

⁹ Mr. Boyd also objects to the motion of the *ResCap Liquidating Trust for Final Decree Closing Certain Jointly Administered Chapter 11 Cases* [Docket No. 8107]. See Boyd Response p. 2. That motion is not at issue in the Objection and therefore is not addressed in this Reply.

filed a petition for writ of certiorari with the United States Supreme Court, because the filing of that petition has no effect on the finality of [the California Court of Appeal's] opinion.”).

27. Furthermore, the filing of a lawsuit against the Treasury Department also does not affect the finality of the District Court Decision, as it is not an appeal of the Ninth Circuit's decision nor has Mr. Boyd put forward any evidence to suggest that the entry of a final order in his lawsuit is stayed pending the outcome of his lawsuit against the Treasury Department. As a result, Mr. Boyd has failed to demonstrate why the dismissal of his lawsuit against the Debtors, which forms the basis of the Boyd Claim, is not barred by the doctrine of res judicata.

B. Rigel Claim

28. As stated in the Objection, Mr. Rigel did not provide sufficient documentation to support the Rigel Claim. The Rigel Response does not provide any additional information, merely stating that “they have access to all of my mortgage paperwork in which there name is on it” and that “these people have been proven in a court of law of wrongdoing.” See Rigel Response. Nowhere in the Rigel Response does Mr. Rigel allege a basis for a claim against the Debtors' estates. As a result, the Rigel Response does not show by a preponderance of the evidence how the Debtors' connection to Mr. Rigel gives rise to liability, and is not a sufficient response to the Objection that amounts to a colorable claim against the Debtors.

C. Gay Claim

29. In the Gay Response, Mr. Gay merely restates his assertions that he has a valid claim because “the lender was fully aware of my inability to afford and repay this loan, at such outrageous extortionate interest rate of 11%.”¹⁰ However, as noted in Exhibit A to the Objection

¹⁰ Mr. Gay also asserts that his claim has already been allowed as part of the Plan. However, Mr. Gay is mistaken as to the treatment of the Gay Claim as a result of the Plan. The Plan did not allow any claims against the Debtors' estates, but vested the power to object to Borrower Claims with the Borrower Trust. Per this Court's *Order Granting Motion to Extend Date By Which Objections to Claims Must Be Filed* [Docket No. 7445], entered on August 26,

and in ¶ 22 *supra*, the Gay Loan was not originated by the Debtors, which Mr. Gay does not refute. As a result, the Debtors cannot be liable for providing Mr. Gay with a loan or an interest rate that he could not afford, and the Gay Claim should be disallowed and expunged as no other basis for liability has been identified against a Debtor entity.

CONCLUSION

30. WHEREFORE, the Borrower Trust respectfully submits that the relief requested in the Objection should be granted in its entirety.

Dated: March 26, 2015
New York, New York

/s/ Norman S. Rosenbaum
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Counsel for the ResCap Borrower Claims Trust

2014, the Borrower Trust has until June 15, 2015 to object to Borrower Claims. This date is subject to further extension with the approval of the Court.

Exhibit 1

Supplemental Declaration

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

)	
In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,)	Chapter 11
)	
Debtors.)	Jointly Administered
)	

**DECLARATION OF KATHY PRIORE IN SUPPORT OF THE RESCAP BORROWER
CLAIMS TRUST’S OMNIBUS REPLY IN SUPPORT OF ITS EIGHTY-SECOND
OMNIBUS OBJECTION TO CLAIMS (NO-LIABILITY BORROWER CLAIMS) AS TO
CLAIM NOS. 960, 1142, AND 4497**

I, Kathy Priore, hereby declare as follows:

1. I serve as Associate Counsel for the ResCap Liquidating Trust (the “Liquidating Trust”), established pursuant to the terms of the *Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors* [Docket No. 6030] confirmed in the above-captioned Chapter 11 Cases. During the Chapter 11 Cases, I served as Associate Counsel in the legal department of Residential Capital, LLC (“ResCap”), a limited liability company organized under the laws of the state of Delaware and the parent of the other debtors in the above-captioned Chapter 11 Cases (collectively, the “Debtors”). I joined ResCap on May 1, 2008 as in-house litigation counsel. Prior to my in-house litigation counsel position, I held various roles within the legal department at ResCap.

2. In my role as Associate Counsel at ResCap, I was responsible for the management of litigation, including, among others, residential mortgage-related litigation. In connection with ResCap’s chapter 11 filing, I also assisted the Debtors and their professional advisors in connection with the administration of the chapter 11 cases, including the borrower litigation matters pending before this Court. In my current position as Associate Counsel to the

Liquidating Trust, among my other duties, I continue to assist the Liquidating Trust and the Borrower Claims Trust (the “Borrower Trust”) in connection with the claims reconciliation process.¹ I am authorized to submit this declaration (the “Declaration”) in support of the *Rescap Borrower Claims Trust’s Omnibus Reply In Support of Its Eighty-Second Omnibus Objection to Claims (No-Liability Borrower Claims) As To Claim Nos. 960, 1142, and 4497* (the “Reply”).²

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors’ operations, information learned from my review of relevant documents and information I have received through my discussions with other former members of the Debtors’ management or other former employees of the Debtors, the Liquidating Trust, and the Borrower Trust’s professionals and consultants. If I were called upon to testify, I could and would testify competently to the facts set forth in the Objection on that basis.

4. In my current and former capacities as Associate Counsel to the Liquidating Trust and ResCap, I am intimately familiar with the Debtors’ claims reconciliation process. Except as otherwise indicated, all statements in this Declaration are based upon my familiarity with the Debtors’ Books and Records (the “Books and Records”), as well as the Debtors’ schedules of assets and liabilities and statements of financial affairs filed in these Chapter 11 Cases (collectively, the “Schedules”), my review and reconciliation of claims, and/or my review of relevant documents. I or other Liquidating Trust personnel have reviewed and analyzed the proof of claim form and supporting documentation filed by the Claimants. Since the Plan went effective and the Borrower Trust was established, I, along with other members of

¹The ResCap Liquidating Trust and the ResCap Borrower Claims Trust are parties to an Access and Cooperation Agreement, dated as December 17, 2013, which, among other things, provides the Borrower Trust with access to the books and records held by the Liquidating Trust and Liquidating Trust’s personnel to assist the Borrower Trust in performing its obligations.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Reply.

the Liquidating Trust have consulted with the Borrower Trust to continue the claims reconciliation process, analyze claims, and determine the appropriate treatment of the same. In connection with such review and analysis, where applicable, I or other Liquidating Trust personnel, together with professional advisors, have reviewed (i) information supplied or verified by former personnel in departments within the Debtors' various business units, (ii) the Books and Records, (iii) the Schedules, (iv) other filed proofs of claim, and/or (vi) the official claims register maintained in the Debtors' Chapter 11 Cases.

5. In connection with the claims reconciliation process, the Borrower Trust identified certain claims filed by Borrowers that are not liabilities of the Debtors (together, the "No Liability Borrower Claims").

6. The Debtors sent Request Letters to certain Borrowers, including all of the Respondents, requesting additional documentation in support of the No Liability Borrower Claims.³ The Request Letters state that the claimant must respond within 30 days with an explanation that states the legal and factual reasons why the claimant believes he is owed money or is entitled to other relief from the Debtors, and the claimant must provide copies of any and all documentation that the claimant believes supports the basis for his claim. The Request Letters further state that if the claimant does not provide the requested explanation and supporting documentation within 30 days, the Debtors may file a formal objection to the claimant's claim, seeking to have the claim disallowed and permanently expunged.

7. The Debtors received responses to the Request Letters from the Respondents⁴ (the "Diligence Responses"), attached hereto as Exhibit A. However, the Diligence Responses fail to allege bases for valid claims against the Debtors' estates. Further, as

³ A Request Letter was sent to Mr. Rigel and Mr. Gay on June 21, 2013 and to Mr. Boyd on July 21, 2013.

⁴ The Debtors received a Diligence Response from Mr. Boyd on July 23, 2013 and from Mr. Gay on July 22, 2013. The Debtors did not receive a diligence response from Mr. Rigel.

stated in the Objection, the Books and Records do not show any liability due and owing to the Respondents.

Boyd Claim

8. On or around October 4, 2012, Mr. Boyd filed a proof of claim against Debtor GMAC Mortgage, LLC (“GMACM”), designated as Claim No. 960 (the “Claim”), asserting a secured claim for \$186,000.00. See Exhibit B attached hereto.

9. According to the Debtors’ books and records, non-Debtor Plaza Home Mortgage, Inc. (“Plaza”) originated a loan in the amount of \$647,000.00 to Mr. Boyd on January 16, 2007 (the “Soquel Loan”), secured by a mortgage on property located at 5439 Soquel Drive, Soquel, CA 98073 (the “Soquel Property”). See Soquel Note, attached hereto as Exhibit C, and Soquel Deed of Trust, hereto as Exhibit D. Plaza originated a second loan to Mr. Boyd on December 22, 2006 (the “Lakebird Loan,” and collectively with the Soquel Loan, the “Loans”), secured by a mortgage on property located at 1090-1092 Lakebird Drive, Sunnyvale, CA 94089 (the “Lakebird Property”). See Lakebird Note, attached hereto as Exhibit E, and Lakebird Deed of Trust, attached hereto as Exhibit F. No Debtor ever owned either of the Loans.

10. GMACM serviced the Soquel Loan from April 10, 2007 until servicing was transferred to Ocwen Loan Servicing, LLC (“Ocwen”) on February 16, 2013. GMACM serviced the Lakebird Loan from March 13, 2007 until servicing was transferred to Ocwen on February 16, 2013.

11. At the time servicing of the Soquel Loan was transferred to Ocwen, it was due for the November 1, 2011 payment. On February 9, 2011, the Soquel Loan was referred to foreclosure. On March 1, 2011, ETS Services, LLC (“ETS”), acting as beneficiary for

GMACM, recorded a notice of default. See Soquel Notice of Default, attached hereto as Exhibit G.

12. The Lakebird Loan was due for the April 1, 2011 payment when servicing was transferred to Ocwen. On August 9, 2011, the Lakebird Loan was referred to foreclosure. On September 14, 2011, ETS recorded a notice of default. See Lakebird Notice of Default, attached hereto as Exhibit H.

Rigel Claim

13. On or around October 10, 2012, Mr. Rigel filed a proof of claim against GMACM, designated as Claim No. 1142 (the “Rigel Claim”), asserting a general unsecured claim in an unliquidated amount. See Exhibit I attached hereto.

14. According to the Debtors’ books and records, Homecomings originated a loan to Mr. Rigel on October 9, 2007 (the “Rigel Loan”), secured by a deed of trust on 751 NE Becker Ave., Palm Bay, FL 32905 (the “Rigel Property”). See Rigel Note, attached hereto as Exhibit J, and Rigel Deed of Trust, attached hereto as Exhibit K.

15. Non-Debtor GMAC Bank purchased the Rigel Loan from Homecomings. GMACM purchased the Rigel Loan from GMAC Bank and then transferred its interest to Freddie Mac on or about November 20, 2007. Homecomings serviced the Rigel Loan from October 9, 2007 until on or about July 1, 2009 when the servicing of the Rigel Loan was transferred to GMACM. GMACM serviced the loan from July 1, 2009 until servicing was transferred to Ocwen Loan Servicing, LLC (“Ocwen”) on February 16, 2013. At the time the Rigel Loan was transferred to Ocwen it was owing for the June 1, 2012 payment.

16. The Rigel Loan was referred to foreclosure on May 22, 2012 because it was owing for the March 1, 2012 payment. A foreclosure complaint was filed on January 3,

2013. On January 7, 2013, the Debtors approved Mr. Rigel for a trial HAMP modification plan (the “Trial Plan”) and the foreclosure was placed on hold on January 18, 2013. Upon information and belief, Mr. Rigel completed the Trial Plan and was approved for a permanent HAMP modification on April 25, 2013. Upon information and belief, the foreclosure file was closed in May 2013 and Mr. Rigel continues to live in the property.

The Gay Claim

17. On or around November 13, 2012, Mr. Gay filed a proof of claim against Debtor Residential Capital, LLC (“ResCap”), designated as Claim No. 4497 (the “Gay Claim”), asserting a general unsecured claim of \$42,336.00. See Exhibit L attached hereto.

18. According to the Debtors’ books and records, non-Debtor Trust One Mortgage Corporation (“Trust One”) originated a loan to Mr. Gay on May 17, 2006 (the “Gay Loan”). See Gay Note, attached hereto as Exhibit M, and Gay Mortgage, attached hereto as Exhibit N. Debtor Residential Funding Company, LLC purchased the Gay Loan from Trust One and subsequently transferred its interest to ETrade Financial Corporation on or about May 30, 2006. Homecomings servicing the loan from June 9, 2006 until servicing transferred to GMACM on or about July 1, 2009. GMACM serviced the Gay Loan from July 1, 2009 until servicing transferred to Ocwen on February 16, 2013. At the time servicing transferred to Ocwen, Mr. Gay’s account was owing for the January 30, 2013 payment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 26, 2015

/s/ Kathy Priore
Kathy Priore
Associate Counsel for ResCap Liquidating
Trust

Exhibit A-1

Sent/Received

JUL 23 2013

RESCAP

To _____
By KT

MORRISON

FOERSTER

Claim Information

Claim Number	960
Basis of Claim Explanation that states the legal and factual reasons why you believe you are owed money or are entitled to other relief from one of the Debtors as of May 14, 2012 (the date the Debtors filed their bankruptcy cases) and, you must provide copies of any and all documentation that you believe supports the basis for your claim.	In January 2001 Plaintiff and his spouse formed a "Joint Living Trust" which states, [Exhibit A page 1] "The purpose of this Agreement is to establish a Trust to receive and manage assets for the benefit of the Grantors during the Grantors' lifetimes, and to further manage and distribute the assets of the Trust upon the death of the surviving Grantor." Plaintiff Michael E. Boyd ("Plaintiff") hereby complains of unconscionability contract adhesion by Defendants' GMAC Mortgage LLC ("GMAC LLC" or "GMACM") and Mortgage Electronic Registration Systems ("MERS") to breach said "Joint Living Trust" through the use of standard form loans and promissory notes [referred herein as "Deeds of Trust" or "DOTs"] signed by Plaintiff in and about January 2007. Even if a DOT signed are found to be valid irrespective of the fact that Plaintiff lacked authority to enter in to the DOT outside of his powers as a trustee to his "Joint Living Trust", Plaintiff never signed any loan documents or DOTs with GMAC LLC. Plaintiff alleges that because MERS failed to make a substitution of trustee to GMAC LLC in 2007 with consent under Plaintiff's powers as a living trustee therefore and when such substitutions occurred in 2011, in addition to GMAC LLC defrauding Plaintiff of approximately \$186,000 in fraudulent payments extracted by Defendants. The Defendants continue to defraud Plaintiff under this contract of adhesion under his Chapter 13 Bankruptcy Plan. This also violated Plaintiff's right to due process, forcing the bankruptcy of Plaintiff and his spouse in December 2011.

If your claim relates to a mortgage loan that you believe was originated or serviced by one of the Debtors, please be sure to include the following loan information, so that we can effectively search our records for information on your property and loan, and evaluate your claim.

Loan Number: Account# [REDACTED] 5915; and Account# [REDACTED] 1412		
Address of property related to the above loan number: 1090-1092 Lakebird Drive, Sunnyvale, CA 94089; and 5439 Soquel Drive, Soquel, CA 95073		
City:	State:	ZIP Code:

See attached Notice[s] 2 each from Ocwen Loan Servicing, LLC

Additional resources may be found at - <http://www.kccllc.net/rescap>

Residential Capital, LLC P.O. Box 385220 Bloomington, MN 55438

Claim Number: 960
MICHAEL E BOYD v GMAC MORTGAGE LLC MERS INC
Type: POC



Ocwen Loan Servicing, LLC

PO Box 780

Waterloo LA 50704-0780

HELPING HOMEOWNERS IS WHAT WE DO!™

OCWEN.MORTGAGEBANKSITE.COM

June 13, 2013

**MICHAEL E BOYD
PATRICIA L PARAMOURE
5439 SOQUEL DRIVE
SOQUEL CA 95073**

**RE: Account Number [REDACTED] 5915
Property Address 1090-1092 LAKEBIRD DRIVE
SUNNYVALE CA 94089-0000**

****IMPORTANT NOTICE REGARDING INTEREST RATE AND/OR INTEREST
ONLY PAYMENT CHANGES****

The interest rate on your loan is scheduled to adjust on 7/1/2013. Your new interest-only payment will begin effective with the 8/1/2013 payment.

Projected principal balance after 7/1/2013 payment \$ 566,244.98

Current Interest Rate	2.7500%	New Index Value	.4140%
Current Pmt	\$1297.64	New Interest Rate	2.6250%
Margin	2.25%	New Int-only pmt	\$1,238.66

Rate Next Change Date	1/1/2014
Principal and Interest Next Change	2/1/2014

Your new interest rate is calculated by adding the margin to the new index value, as defined in your mortgage documents. The result of this addition is subject to rounding and rate cap limitations according to the terms of your mortgage documents.

PLEASE NOTE: If you make additional principal payments, your monthly payment may be adjusted depending on the terms of your mortgage documents.

A Mortgage Account Statement will be sent under separate cover. If your payments are made through our automatic payment program, your new payment amount will be deducted on your scheduled draft date.

IF YOU ARE IN DEFAULT AT THE TIME THIS NOTICE IS DELIVERED TO YOU, OCWEN LOAN SERVICING, LLC WILL CONTINUE WITH THE DEFAULT PROCESS EVEN THOUGH THE INTEREST RATE AND PAYMENT AMOUNT ARE BEING ADJUSTED.



Ocwen Loan Servicing, LLC

PO Box 780

Waterloo IA 50704-0780

HELPING HOMEOWNERS IS WHAT WE DO!™

OCWEN.MORTGAGESERVICE.COM

July 12, 2013

**MICHAEL BOYD
PATRICIA L PARAMOURE
5439 SOQUEL DRIVE
SOQUEL CA 95073**

RE: Account Number [REDACTED] 412
Property Address **5439 SOQUEL DRIVE
SOQUEL CA 95073-0000**

****IMPORTANT NOTICE REGARDING INTEREST RATE AND/OR INTEREST
ONLY PAYMENT CHANGES****

The interest rate on your loan is scheduled to adjust on 8/1/2013. Your new interest-only payment will begin effective with the 9/1/2013 payment.

Projected principal balance after 8/1/2013 payment \$ 711,216.07

Current Interest Rate	2.7500%	New Index Value	.4130%
Current Pmt	\$1629.87	New Interest Rate	2.6250%
Margin	2.25%	New Int-only pmt	\$1,555.79

Rate Next Change Date	2/1/2014
Principal and Interest Next Change	3/1/2014

Your new interest rate is calculated by adding the margin to the new index value, as defined in your mortgage documents. The result of this addition is subject to rounding and rate cap limitations according to the terms of your mortgage documents.

PLEASE NOTE: If you make additional principal payments, your monthly payment may be adjusted depending on the terms of your mortgage documents.

A Mortgage Account Statement will be sent under separate cover. If your payments are made through our automatic payment program, your new payment amount will be deducted on your scheduled draft date.

IF YOU ARE IN DEFAULT AT THE TIME THIS NOTICE IS DELIVERED TO YOU, OCWEN LOAN SERVICING, LLC WILL CONTINUE WITH THE DEFAULT PROCESS EVEN THOUGH THE INTEREST RATE AND PAYMENT AMOUNT ARE BEING ADJUSTED.

The Debtor has listed your claim as Contingent, Unliquidated, and/or Unsettled. You must file a Proof of Claim in this case to have your claim considered for payment from the Debtor's estate. Claim #960 Date Filed: 10/4/2012

B-10 Modified (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM
Name of Debtor: GMAC Mortgage, LLC	Case Number: 12-12032	
NOTE: This form should not be used to make a claim for an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(7)) arising after the commencement of the case. A "request" for payment of an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(7)) may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): MICHAEL E BOYD v GMAC MORTGAGE LLC MERS INC Name and address where notices should be sent: Michael E Boyd MICHAEL E BOYD v GMAC MORTGAGE LLC MERS INC 5439 SOQUEL DR SOQUEL, CA 95073		<input checked="" type="checkbox"/> Check this box if this claim attends a previously filed claim. Court Claim Number: _____ (if known) Filed on: _____
Telephone number: _____ email: _____ Name and address where payment should be sent (if different from above): <div style="border: 1px solid black; padding: 5px; text-align: center;"> Date Stamped Copy Returned <input type="checkbox"/> No self-addressed stamped envelope <input type="checkbox"/> No copy to return </div> Telephone number: _____ email: _____		<input checked="" type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars. 5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,400* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(). Amount entitled to priority: \$ _____
1. Amount of Claim as of Date Case Filed: <u>\$ 186,000</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>Mortgage notes (2 each) US District Court Northern District CA Case # 11-cv-5018</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: <u>8141</u>	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required reduced documents, and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Description: <u>1010-1032 L. Keeling Dr., Sunnyvale CA 95039 Soquel Dr. Soquel CA</u> Value of Property: <u>\$ 975,000</u> Annual Interest Rate: _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable (when case was filed) Amount of arrearage and other charges, as of the time case was filed, included in secured claim. If any: <u>\$ 84,000</u> Basis for perfection: _____ Amount of Secured Claim: <u>\$ 186,000</u> Amount Unsecured: <u>\$ Unknown</u>		
6. Claim Pursuant to 11 U.S.C. § 503(b)(9): Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before May 14, 2012, the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim. \$ _____ (See instruction #6)		
7. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #7)		
8. Documents: Attached are reduced copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and reduced copies of documents providing evidence of perfection of a security interest are attached. (See instruction #8, and the definition of "reduced".) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: <u>GMAC Mortgage, LLC has all docs in their possession</u>		
9. Signature: (See instruction #9) Check the appropriate box. <input checked="" type="checkbox"/> I am the creditor. <input type="checkbox"/> I am the creditor's authorized agent. <input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. <input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.) (Attach copy of power of attorney, if any.) I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief. Print Name: <u>Michael E. Boyd</u> <u>Michael E. Boyd</u> 10/2/12 Title: <u>Trustee</u> Company: <u>Att: ETS Remington Michael Boyd, L.P. (Signature)</u> Address and telephone number (if different from notice address above): _____ Telephone number: _____ Email: _____		

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

RECEIVED
OCT 04 2012
MURTHAN CARSON CONSULTANTS
COURT USE ONLY

Residential Capital, LLC
c/o KCC
2335 Alaska Ave
El Segundo, CA 90245

000227

PRF # 59050***
Case No.: 12-12020
Svc: 3

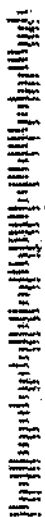
PackID: 227
NameID: 10993624

MICHAEL E. BOYD v GMAC MORTGAGE LLC MERS INC
5439 SOQUEL DR
SOQUEL, CA 95073

Dr. Nikolai E. Los
5439 Soquel Dr.
Soquel, CA 95073

Residential Capital, LLC
P.O. Box 385220
Bloomington, Minnesota

SE438522020



55438

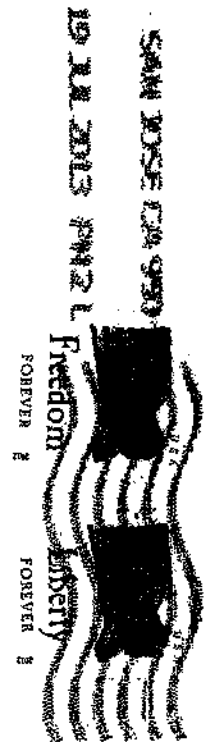


Exhibit A-2

RESCAP

JUL 22 2013

MORRISON | FOERSTER

To: _____
By: _____

Claim Information

Claim Number	4497
Basis of Claim <small>Explanation that states the legal and factual reasons why you believe you are owed money or are entitled to other relief from one of the Debtors as of May 14, 2012 (the date the Debtors filed their bankruptcy cases) and, you must provide copies of any and all documentation that you believe supports the basis for your claim.</small>	I was force & <u>pressured</u> into obtaining this <u>high</u> interest rate home equity loan in 2006 in the amount of 60,000 by calculation I have been paying this interest since 2006 to date!

If your claim relates to a mortgage loan that you believe was originated or serviced by one of the Debtors, please be sure to include the following loan information, so that we can effectively search our records for information on your property and loan, and evaluate your claim.

Loan Number: [REDACTED] 2980		
Address of property related to the above loan number: 7070 NW 65th. TERRACE		
City: PARKLAND	State: FL	ZIP Code: 33067

Additional resources may be found at - <http://www.kccllc.net/rescap>

Residential Capital, LLC P.O. Box 385220 Bloomington, MN 55438

Claim Number: 4497
Herold Gay
Type: POC

#BWNFNYZ
#ZRZSYSQYXZ0#

+ 0119318 000007907 09HFS1 0932710 PA
Herold Gay
7070 NW 65th Ter
Parkland FL 33067-1434
|||||

CUSTOMER INFORMATION

Borrower: Herold Gay
Property Address: 7070 Northwest 65th Terrac
Parkland FL 33067
Home Phone #: 954 227 2981
Work Phone #1: 516 792 0984
Work Phone #2: 000000000000

Please use the form on the back of the coupon to update this information.

CURRENT ACCOUNT DETAILS

Mortgage Amount(s) Due
Principal 38.99
Interest 549.88

MORTGAGE ACCOUNT SUMMARY

Payment Due Date: 08/30/06
Statement Date: 08/07/06
Account Information as of 08/07/06
Current Principal Balance * 59,899.47
Year to Date Interest 1,099.54
Interest Rate: 11.000%

PRIOR PERIOD ACTIVITY

Activity from 07/08/06 to 08/07/06
07/27/06 07/30/06 Payment: 38.53 principal, 549.54 interest 588.07
07/27/06 Additional Principal Payment 12.00

Information About Your Account

Make same-day mortgage
payments with your ATM/Debit card.
Call 1.800.206.2901 or visit
www.homecomings.com.

Like
Coming
Home

* The Current Principal Balance does not reflect the total amount required to pay your loan in full.
Please call 1.800.206.2901 to obtain the payoff amount for your loan.

Pay or line: www.homecomings.com

PLEASE INCLUDE LOAN NUMBER(S) ON YOUR CHECK

Homecomings Financial
P. O. Box 105682
Atlanta, GA 30348-5682

If sending more than total amount due,
please show how it should be applied and the
total amount enclosed.

Total Amount Due \$
+ Additional Principal \$
+ Additional Escrow \$
+ Future or Partial Payment(s) \$
= Total Amount Enclosed \$

|||||
Homecomings Financial
P. O. Box 105682
Atlanta, GA 30348-5682
|||||

*Caught
napping?*

We make it easy to make your last-minute payments

Have you ever been so busy that you overlooked your mortgage payment until the last minute? When it happens, using an overnight service may seem like your only option. It keeps your credit record clean and keeps late fees from piling up. But it's also expensive and it can be a headache to put the package together and find a drop-off site.

ATM/Debit cards for same-day payments if done by 6 p.m. CST

All you need is a bank card with a Pulse[®], Star[®], NYCE or ACCEL logo. Just enter your card number when you call us at 1.800.206.2901 or visit www.homecomings.com. Your payment will be posted that day and your account information will be protected by

our state-of-the-art security systems. Best of all, it is a lot less expensive than next-day package delivery charges — and a lot easier.

Save time and money next time you need to make a last-minute mortgage payment. Use your ATM/Debit card at www.homecomings.com or call 1.800.206.2901.

CUSTOMER SERVICE PHONE NUMBERS - PLEASE HAVE YOUR LOAN NUMBER AVAILABLE.

Customer Service

1.800.206.2901

Monday-Thursday 8 a.m.–9 p.m. CST

Friday 8 a.m.–6 p.m. CST

Refinance/New Loans

1.877.695.3633

Monday-Thursday 8 a.m.–8 p.m. CST

Friday 8 a.m.–5 p.m. CST

Saturday 10 a.m.–3 p.m. CST

Property Insurance Only

1.800.237.6787

Monday-Thursday 8 a.m.–9 p.m. CST

Friday 8 a.m.–5 p.m. CST

MAILING ADDRESSES

Please use the appropriate address and include your loan number on all correspondence.

Overnight Mortgage Payments

Homecomings Financial
1820 E. Sky Harbor Circle South
Phoenix, AZ 85034-9700

Payments With or Without Coupon

Homecomings Financial
P.O. Box 650515
Dallas, TX 75265-0515

Use this address if no coupon is
available

General Correspondence

Homecomings Financial
P.O. Box 890036
Dallas, TX 75389

Insurance Bills

Homecomings Financial
P.O. Box 100585
Florence, SC 29501-0585
Fax 1.843.413.2035

For First Mortgages Only

Bankruptcy Correspondence

All bankruptcy correspondence including any notices of bankruptcy filings, must be delivered or mailed to Homecomings Financial at the following address:
Bankruptcy Department
P.O. Box 939072
San Diego, CA 92193-9072.

Homecomings Financial cannot accept wire transfer, credit card, or cash payments.

PAYMENT OPTIONS

- Check or Money Order via U.S. Mail or Overnight Mail.
- ATM/Debit Card: Call 1.800.206.2901
- MoneyGram[®]. Receive code 3149
- Western Union Quick Collect[®]. Code City: Cityplace, Texas.

- Automated Payment System
 - One-time payments (at least 2 business days prior to your desired payment date).
 - Monthly recurring payments on the date you choose.
 - Pay online at www.homecomings.com or call 1.800.206.2901.

- By sending your check to us, you authorize Homecomings Financial to convert the check into an electronic fund transfer. Please be aware that your bank account may be debited as soon as the same day we receive your payment and you will no longer receive a canceled check.
- Partial payment funds, if not specified, will be posted to outstanding fees, escrow shortages or as a principal reduction in accordance with the terms of your Note.
- Homecomings Financial requires all payments greater than \$25,000 or if the amount is 50 percent of the unpaid principal balance to be in the form of certified funds. We will return any checks which do not meet this criteria.
- If you have multiple accounts with Homecomings Financial, please submit all coupons with your payment.

LATE CHARGES/CREDIT REPORTING/RETURNED CHECK FEES

Payments are not considered paid until received. All payments received after the "late charge date" must include the late charge. Postal delays do not result in a waiver of late charges; therefore, please allow adequate time for mail service. Homecomings Financial reports to various credit agencies and we may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report. We will assess a returned check fee consistent with the laws of your state and your mortgage contract on all checks returned unpaid by your financial institution.

ADDRESS INFORMATION CHANGE

Please print only the information that requires a change. Check box on reverse side.

Name/Social Security Number Updates

Borrower* _____

Co-Borrower* _____

Borrower's SS# _____

Co-Borrower's SS# _____

* For spelling corrections only. For all other name changes, please contact us.

Mailing Address/Phone Updates

Street _____

City _____ State _____ Zip _____

Home Phone () _____

Work Phone 1 () _____

Work Phone 2 () _____

E-mail Address _____

Address/Information changes—and online payments—may be made through our Web site:
www.homecomings.com.

PRINT YOUR NAME AND ADDRESS ABOVE

HEROLD GRAY

2020 NW 65TH TER.

BLOOMINGTON, IL 61706

TO

CLAIMS.MANAGEMENT@GMAESCA.COM

RESIDENTIAL CAPITAL, LLC.

P.O. Box 385220

Bloomington

ILLINOIS 61706-5220

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

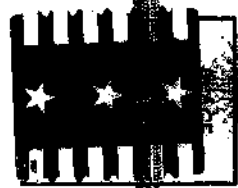


Exhibit B

B 10 Modified (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM
Name of Debtor: GMAC Mortgage, LLC	Case Number: 12-12032	
NOTE: This form should not be used to make a claim for an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) arising after the commencement of the case. A "request" for payment of an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): MICHAEL E BOYD v GMAC MORTGAGE LLC MERS INC		<input type="checkbox"/> Check this box if this claim amends a previously filed claim.
Name and address where notices should be sent: NameID: 10993624 MICHAEL E BOYD v GMAC MORTGAGE LLC MERS INC 5439 SOQUEL DR SOQUEL, CA 95073		Court Claim Number: (If known) Filed on:
Telephone number:	email:	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
Name and address where payment should be sent (if different from above): <input checked="" type="checkbox"/> Date Stamped Copy Returned <input type="checkbox"/> No self addressed stamped envelope <input type="checkbox"/> No copy to return		
Telephone number:	email:	
1. Amount of Claim as of Date Case Filed: \$ <u>186,000</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)().
2. Basis for Claim: <u>mortgage notes (2 each) US District Court Northern District CA case # 11-cv-5018</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: <u>8141</u>	3a. Debtor may have scheduled account as: (See instruction #3a)	3b. Uniform Claim Identifier (optional): (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: <u>1090-1092 Lakebird Dr., Sunnyvale CA 94089 Soquel Dr. Soquel CA</u> Value of Property: \$ <u>975,000</u> Annual Interest Rate _____ % <input type="checkbox"/> Fixed <input checked="" type="checkbox"/> Variable (when case was filed) Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ <u>84,000</u> Basis for perfection: _____ Amount of Secured Claim: \$ <u>186,000</u> Amount Unsecured: \$ <u>unknown</u>		
6. Claim Pursuant to 11 U.S.C. § 503(b)(9): Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before May 14, 2012, the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim. \$ _____ (See instruction #6)		
7. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #7)		
8. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #8, and the definition of "redacted") DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: <u>GMAC Mortgage LLC has all docs in their possession</u>		
9. Signature: (See instruction #9) Check the appropriate box. <input checked="" type="checkbox"/> I am the creditor. <input type="checkbox"/> I am the creditor's authorized agent. <input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. <input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.) I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief. Print Name: <u>Michael E. Boyd</u> Signature: <u>Michael E. Boyd</u> Date: <u>10/2/12</u> Title: <u>Trustee</u> Company: <u>Est. c/o Pinnacle + Michael Boyd Living Trust</u> Address and telephone number (if different from notice address above): _____ Telephone number: _____ Email: _____		

RECEIVED

OCT 04 2012

KURTZMAN CARSON CONSULTANTS

COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Exhibit C

SEE "PREPAYMENT PENALTY ADDENDUM TO NOTE" ATTACHED HERETO AND MADE A PART HEREOF.
SEE "PREPAYMENT ADDENDUM TO NOTE" ATTACHED HERETO AND MADE A PART HEREOF.

ADJUSTABLE RATE NOTE

(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)

LOAN NO.: [REDACTED] 1055

MIN: [REDACTED] 3612
MERS Phone: 1-888-679-6377

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY. THIS NOTE ALLOWS MONTHLY PAYMENT OPTIONS FOR AN INITIAL PERIOD. THIS NOTE MAY REQUIRE UNPAID INTEREST TO BE ADDED TO LOAN PRINCIPAL AND REQUIRE ME TO PAY ADDITIONAL INTEREST ON THE UNPAID INTEREST (NEGATIVE AMORTIZATION).

JANUARY 16, 2007

HUNTINGTON BEACH

CALIFORNIA

[Date]

[City]

[State]

5439 SOQUEL DRIVE, SOQUEL, CA 95073-

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 647,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is
PLAZA HOME MORTGAGE, INC.

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.250 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will make my monthly payments on the first day of each month beginning on MARCH, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal, if any. If, on FEBRUARY 01, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at PLAZA HOME MORTGAGE, INC.
5090 SHOREHAM PLACE #206, SAN DIEGO, CA 92122
or at a different place if required by the Note Holder.

(B) Amount of My Monthly Payments

I will pay interest by making payments in the amount of US \$ 2,291.46 (the "Minimum Payment") month until either (i) the first Interest Rate Change Date set forth in Section 4(A), or (ii) payment of the Minimum Payment on my next scheduled payment date would cause my principal balance to exceed the Maximum Limit set forth in Section 3(D), whichever event occurs first (the "Option Period"). The minimum Payment is calculated based upon the amount of interest that will accrue each month at a rate equal to 4.250 %. Payment of the Minimum Payment amount will result in accrued but unpaid interest being added to Principal. The unpaid Principal and any accrued but unpaid interest will then accrue additional interest at the rate then in effect. This practice is known as negative amortization.

After the expiration of the Option Period, I will pay interest by making payments in an amount sufficient to pay interest as it accrues every month until FEBRUARY 01, 2017 (the "Interest Only Period"). This amount will be determined by the Note Holder as set forth in Section 4(C). In addition, if I make payments of principal and/or accrued unpaid interest during the Interest Only Period, my monthly interest-only payment amount will change and will be based on the remaining Principal and my then current interest rate.

After the expiration of the Interest Only Period, I will pay principal and interest by making payments every month for the remaining term (the "Full Amortization Period"). The amount of payments during the Full Amortization Period will be determined by the Note Holder as set forth in Section 4(C).

(C) Additions to My Unpaid Principal

During the Option Period, my monthly payment could be less than or greater than the amount of interest owed each month. For each month that my monthly payment is less than the interest owed, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal. Interest will accrue on the amount of this difference at the interest rate required by Section 2 or Section 4. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment to interest before Principal.

(D) Limit on My Unpaid Principal; Increased Minimum Payment

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED TEN AND 000/1000THS percent of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to additions to my unpaid Principal described in Section 3(C). If on any payment due date I would exceed the Maximum Limit by paying my Minimum Payment, then my monthly payment will be adjusted to an amount equal to the Interest Only Payment described in Section 3(E)(i). I will continue to pay that amount until the Interest Only Period expires.

(E) Additional Payment Options

During the Option Period, the Note Holder may provide me with up to three (3) additional payment options (the "Payment Options"). I will be eligible to select one of the Payment Options if it results in a larger monthly payment than my regular Minimum Payment. I may be given the following Payment Options:

(i) Interest Only Payment: Pay only the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) Fully Amortized Payment: Pay the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments, at the then current interest rate.

(iii) 15 Year Amortized Payment: Pay the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments, at the then current interest rate. These Payment Options are only applicable if they are greater than the Minimum Payment.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my Minimum Payment before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

4. ADJUSTABLE INTEREST RATE

(A) Interest Rate Change Dates

The interest rate I will pay will change on the first day of FEBRUARY, 2012 and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my interest rate changes is called an "Interest Rate Change Date."

(B) The Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent index figure available as of the first business day of the month immediately preceding the month in which the Interest Rate Change Date occurs is called the "Current Index."

If the index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Interest Rate Change Date.

The Note Holder will then determine the amount of the monthly payment. If the Interest Rate Change Date occurs during the Interest-Only Period, the new monthly interest-only payment will be based on the unpaid Principal that I am expected to owe at the Interest Rate Change Date and my new interest rate. If the Interest Rate Change Date occurs during the Full Amortization Period, my new monthly payment will be in an amount sufficient to repay the unpaid Principal that I am expected to owe at the Interest Rate Change Date at my new interest rate in substantially equal payments.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Interest Rate Change Date will not be greater than 12.250 % or less than 2.250 %. Thereafter, my interest rate will never be increased or decreased on any single Interest Rate Change Date by more than ONE AND 000/1000THS percentage point(s) (1.000 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 12.250 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Interest Rate Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Interest Rate Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO REPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRE

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by applicable law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is mailed or delivered 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.

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


MICHAEL BOYD

(Seal)

-Borrower


PATRICIA L. PARAMOURE

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

[Sign Original Only]

Pay to the order of
Without Recourse:



Cynthia Corbett, Operation Manager
Plaza Home Mortgage, Inc.

PREPAYMENT PENALTY ADDENDUM TO NOTE

LOAN NO.: 1055

MIN: 8612
MERS Phone: 1-888-679-6377

This "PREPAYMENT PENALTY ADDENDUM TO NOTE" (hereinafter "Addendum") is made this 16th day of JANUARY, 2007, and is incorporated into and shall be deemed to amend and supplement the Promissory Note (the "Note") of same date made by the undersigned (the "Borrower") to PLAZA HOME MORTGAGE, INC.

(the "Lender") which is secured by a Deed Of Trust or Mortgage ("Security Instrument") on real property located at:

5439 SOQUEL DRIVE, SOQUEL, CA 95073-

[Property Address]

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Note, Borrower and Lender further covenant and agree that the paragraph entitled either "Borrower's Right To Prepay" or "Borrower's Payments Before They Are Due", whichever is applicable, is replaced with the following new section:

I have the right to make payments of Principal at any time before they are due. A prepayment of all of the unpaid principal is known as a "Full Prepayment." A prepayment of only part of the unpaid principal is known as a "Partial Prepayment."

Except as provided below, I may make a Full or Partial Prepayment without paying any penalty. If I make a Partial Prepayment equal to one or more of my monthly payments, my due date may be advanced no more than one month. If I make any other Partial Prepayments, I must still make each later payment as it becomes due and in the same amount. I may make a Full or Partial Prepayment at any time.

In the event, during the first TWELVE (12) months after the execution of the Deed of Trust, I make a Full Prepayment or Partial Prepayment and the total of such prepayments in any twelve (12) month period exceeds TWENTY percent (20.00 %) of the original Principal amount of the loan, I will pay a prepayment charge in an amount equal to the payment of SIX (6) months' advance interest on the amount prepaid which is in excess of TWENTY percent (20.00 %) of the original Principal amount.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Prepayment Penalty Addendum To Note.

Michael Boyd
MICHAEL BOYD Borrower

1/17/07
Date

Patricia L. Paramoure
PATRICIA L. PARAMOURE Borrower

1/17/07
Date

Borrower

Date

Borrower

Date

LOAN NO.: [REDACTED] 1055

PREPAYMENT NOTE ADDENDUM
(Multi-State)MIN: [REDACTED] 8612
MERS Phone: 1-888-679-6377

This Prepayment Note Addendum is made this 16th day of JANUARY, 2007 and is incorporated into and shall be deemed to amend and supplement the Note of the same date (the "Note") made by the undersigned (the "Borrower") to evidence indebtedness to
PLAZA HOME MORTGAGE, INC. SAN BRANCH
(the "Lender") which debt is secured by a Mortgage or Deed of Trust or comparable security instrument (the "Security Instrument") of the same date and covering the property described in the Security Instrument and located at
5439 SOQUEL DRIVE, SOQUEL, CA 95073-
(the "Property").

Additional Covenants. Notwithstanding anything to the contrary set forth in the Note, any addenda to the Note or the Security Instrument, Borrower and Lender covenant, and agree, that the provisions of the section of the Note entitled "BORROWER'S RIGHT TO PREPAY" or "BORROWER'S PAYMENTS BEFORE THEY ARE DUE" are amended to read as follows:

Subject to the prepayment penalty provided below, I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment". A "full prepayment" is the prepayment of the entire unpaid principal due under this Note. A payment of only part of the unpaid principal is known as a "partial prepayment". When I make a prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a prepayment if I have not made all the monthly payments due under this Note.

If within the 12 -month period beginning with the date I execute this Note (the "Penalty Period"), I make a full prepayment, or partial prepayment in any twelve (12)-month period that exceeds 20% of the original principal loan amount, I will pay a prepayment charge as consideration for the Note Holder's acceptance of such prepayment. The prepayment charge will equal the lesser of (a) the amount of interest that would accrue during a six (6)-month period on the amount prepaid that exceeds 20% of the original principal balance of this Note, calculated at the rate of interest in effect under the terms of this Note at the time of the prepayment; or (b) the maximum allowable prepayment penalty permitted by applicable law or regulation. No prepayment charge will be assessed for any prepayment occurring after the Penalty Period.

The Note Holder will apply all prepayments to reduce the amount of principal that I owe under this Note. However, the Note Holder may apply my prepayment to the accrued and unpaid interest on the prepayment amount, before applying my prepayment to reduce the principal amount of this Note. If I make a partial prepayment, there will be no change in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes.

If this Note is an Adjustable Rate Note, partial prepayments may reduce the amount of my monthly payment after the first interest rate Change Date following the partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase. If this Note is not an Adjustable Rate Note, partial prepayments will not change the amount of my monthly payments unless the Note Holder agrees in writing to these changes.

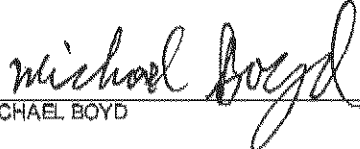
The Note Holder's failure to collect a prepayment charge at the time a prepayment is received shall not be deemed a waiver of such charge. Any prepayment charge not collected at the time the payment is received shall be payable on demand.

All other provisions of the Note are unchanged and remain in full force and effect.

NOTE TO BORROWER

Do not sign this Addendum before you read it. This Addendum provides for the payment of a prepayment charge if you wish to repay the loan prior to the date provided for repayment in the Note.

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


MICHAEL BOYD (Seal)
-Borrower


PATRICIA L. PARAMORE (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

Exhibit D

CERTIFIED TO BE A TRUE & CORRECT COPY
OF THE ORIGINAL DOCUMENT
CENTRAL ESCROW, INC.

BY 

Recording Requested By:
PLAZA HOME MORTGAGE, INC.

Return To:
PLAZA HOME MORTGAGE, INC.

5090 SHOREHAM PLACE #208
SAN DIEGO, CA 92122

Prepared By:

PLAZA HOME MORTGAGE, INC.
5090 SHOREHAM PLACE #208
SAN DIEGO, CA 92122
(858) 348-1200

[Space Above This Line For Recording Data]

DEED OF TRUST

LOAN NO.: 1055
ESCROW NO.: 8023273-NC

MIN 8612
MERS Phone: 1-888-878-8377

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated JANUARY 18, 2007 ,
together with all Riders to this document.

(B) "Borrower" is
MICHAEL BOYD AND PATRICIA L. PARAMOURE, HUSBAND AND WIFE AS JOINT TENANTS

Borrower's address is 5439 SOQUEL DRIVE, SOQUEL, CA 95073-
Borrower is the trustor under this Security Instrument.

(C) "Lender" is
PLAZA HOME MORTGAGE, INC.

Lender is a CORPORATION
organized and existing under the laws of CALIFORNIA

Lender's address is

6090 SHOREHAM PLACE #206, SAN DIEGO, CA 92122

(D) "Trustee" is

FIRST AMERICAN TITLE

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

(F) "Note" means the promissory note signed by Borrower and dated JANUARY 16, 2007

The Note states that Borrower owes Lender

SIX HUNDRED FORTY SEVEN THOUSAND AND NO/100 X

Dollars

(U.S. \$ 647,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than FEBRUARY 01, 2037

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

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

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

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input 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 checked="" type="checkbox"/> Other(s) [specify]		

Prepayment Rider

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

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

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

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

COUNTY
[Type of Recording Jurisdiction]

of

SANTA CRUZ
[Name of Recording Jurisdiction]

:

SEE COMPLETE LEGAL DESCRIPTION DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: 037-094-29

which currently has the address of

5439 SOQUEL DRIVE

[Street]

SOQUEL

[City], California

95073-

[Zip Code]

("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

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

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

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

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

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

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

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

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

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

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

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

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

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of 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 Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an 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 may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. 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.

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.

Witnesses:

-Witness

-Witness


MICHAEL BOYD (Seal)
-Borrower


PATRICIA L. PARAMOURE (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

State of CALIFORNIA
County of Santa Cruz

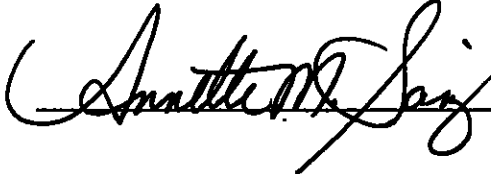
} ss.

On January 17, 2007 before me, Annette-Marie Saiz, Notary Public
personally appeared

MICHAEL BOYD AND PATRICIA L. PARAMOURE

, 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.

 (Seal)



CERTIFIED TO BE A TRUE & CORRECT COPY
OF THE ORIGINAL DOCUMENT
CENTRAL ESCROW, INC.

BY _____

ADJUSTABLE RATE RIDER

(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)

LOAN NO.: 1055

MIN: 8612
MERS Phone: 1-888-679-6377

THIS ADJUSTABLE RATE RIDER is made this 16th day of JANUARY, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to PLAZA HOME MORTGAGE, INC.

("Lender") of the same date and covering the property described in the Security Instrument and located at: 5439 SOQUEL DRIVE, SOQUEL, CA 95073-

[Property Address]

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY. THIS NOTE ALLOWS MONTHLY PAYMENT OPTIONS FOR AN INITIAL PERIOD. THIS NOTE MAY REQUIRE UNPAID INTEREST TO BE ADDED TO LOAN PRINCIPAL AND REQUIRE ME TO PAY ADDITIONAL INTEREST ON THE UNPAID INTEREST (NEGATIVE AMORTIZATION).

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 7.250 %. The Note also provides for a change in the initial rate to an adjustable interest rate and changes to payments, as follows:

3. PAYMENTS

(A) Time and Place of Payments

I will make my monthly payments on the first day of each month beginning on MARCH, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal, if any. If, on FEBRUARY 01, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

CERTIFIED TO BE A TRUE & CORRECT COPY
OF THE ORIGINAL DOCUMENT
CENTRAL ESCROW, INC.

BY _____

I will make my monthly payments at PLAZA HOME MORTGAGE, INC.
5090 SHOREHAM PLACE #206, SAN DIEGO, CA 92122
or at a different place if required by the Note Holder.

(B) Amount of My Monthly Payments

I will pay interest by making payments in the amount of US \$ 2,291.46 (the "Minimum Payment") every month until either (i) the first Interest Rate Change Date set forth in Section 4(A), or (ii) payment of the Minimum Payment on my next scheduled payment date would cause my principal balance to exceed the Maximum Limit set forth in Section 3(D), whichever event occurs first (the "Option Period"). The Minimum Payment is calculated based upon the amount of interest that will accrue each month at a rate equal to 4.250 %. Payment of the Minimum Payment amount will result in accrued but unpaid interest being added to Principal. The unpaid Principal and any accrued but unpaid interest will then accrue additional interest at the rate then in effect. This practice is known as negative amortization.

After the expiration of the Option Period, I will pay interest by making payments in an amount sufficient to pay interest as it accrues every month until FEBRUARY 01, 2017 (the "Interest Only Period"). This amount will be determined by the Note Holder as set forth in Section 4(C). In addition, if I make payments of principal and/or accrued unpaid interest during the Interest Only Period, my monthly interest-only payment amount will change and will be based on the remaining Principal and my then current interest rate.

After the expiration of the Interest Only Period, I will pay principal and interest by making payments every month for the remaining term (the "Full Amortization Period"). The amount of payments during the Full Amortization Period will be determined by the Note Holder as set forth in Section 4(C).

(C) Additions to My Unpaid Principal

During the Option Period, my monthly payment could be less than or greater than the amount of interest owed each month. For each month that my monthly payment is less than the interest owed, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal. Interest will accrue on the amount of this difference at the interest rate required by Section 2 or Section 4. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment to interest before Principal.

(D) Limit on My Unpaid Principal; Increased Minimum Payment

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED TEN AND 000/1000THS percent of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to additions to my unpaid Principal described in Section 3(C). If on any payment due date I would exceed the Maximum Limit by paying my Minimum Payment, then my monthly payment will be adjusted to an amount equal to the Interest Only Payment described in Section 3(E)(i). I will continue to pay that amount until the Interest Only Period expires.

(E) Additional Payment Options

During the Option Period, the Note Holder may provide me with up to three (3) additional payment options (the "Payment Options"). I will be eligible to select one of the Payment Options if it results in a larger monthly payment than my regular Minimum Payment. I may be given the following Payment Options:

(i) **Interest Only Payment:** Pay only the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) **Fully Amortized Payment:** Pay the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments, at the then current interest rate.

(iii) **15 Year Amortized Payment:** Pay the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments, at the then current interest rate.

These Payment Options are only applicable if they are greater than the Minimum Payment.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my Minimum Payment before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

4. ADJUSTABLE INTEREST RATE

(A) Interest Rate Change Dates

The interest rate I will pay will change on the first day of **FEBRUARY, 2012** and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my interest rate changes is called an "Interest Rate Change Date."

(B) The Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent index figure available as of the first business day of the month immediately preceding the month in which the Interest Rate Change Date occurs is called the "Current Index."

If the index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding **TWO AND ONE QUARTER** percentage points (**2.250 %**) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Interest Rate Change Date.

The Note Holder will then determine the amount of the monthly payment. If the Interest Rate Change Date occurs during the Interest-Only Period, the new monthly interest-only payment will be based on the unpaid Principal that I am expected to owe at the Interest Rate Change Date and my new interest rate. If the Interest Rate Change Date occurs during the Full Amortization Period, my new monthly payment will be in an amount sufficient to repay the unpaid Principal that I am expected to owe at the Interest Rate Change Date at my new interest rate in substantially equal payments.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Interest Rate Change Date will not be greater than 12.250 % or less than 2.250 %. Thereafter, my interest rate will never be increased or decreased on any single Interest Rate Change Date by more than ONE AND 000/1000THS percentage point(s) (1.000 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 12.250 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Interest Rate Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Interest Rate Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.


MICHAEL BOYD (Seal)
-Borrower


PATRICIA L. PARAMOURE (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

DECLINED TO BE A TRUE & CORRECT COPY
OF THE ORIGINAL DOCUMENT
CENTRAL ESCROW, INC.

BY _____

LOAN NO.: [REDACTED] 1055

**PREPAYMENT RIDER
(Multi-State)**

MIN: [REDACTED] 8612
MERS Phone: 1-888-679-6377

This Prepayment Rider is made this 16th day JANUARY, 2007 of and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note (the "Debt Instrument") to PLAZA HOME MORTGAGE, INC.

(the "Lender") of the same date and covering the property described in the Security Instrument and located at
5439 SOQUEL DRIVE, SOQUEL, CA 95073-
(the "Property")

Additional Covenants. Notwithstanding anything to the contrary set forth in the Debt Instrument, any addenda to the Debt Instrument or the Security Instrument, Borrower and Lender covenant, and agree as follows:

Subject to the prepayment penalty provided below, I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment". A "full prepayment" is the prepayment of the entire unpaid principal due under the Debt Instrument. A payment of only part of the unpaid principal is known as a "partial prepayment". When I make a prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a prepayment if I have not made all the monthly payment due under the Debt Instrument.

If, within the 12 -month period beginning with the date I execute the Debt Instrument (the "Penalty Period"), I make a full prepayment, or partial prepayment in any twelve (12)-month period that exceeds 20% of the original principal loan amount, I will pay a prepayment charge as consideration for the Note Holder's acceptance of such prepayment. The prepayment charge will equal the lesser of (a) the amount of interest that would accrue during a six (6)-month period on the amount prepaid that exceeds 20% of the original principal balance of the Debt Instrument, calculated at the rate of interest in effect under the terms of the Debt Instrument at the time of the prepayment; or (b) the maximum allowable prepayment penalty permitted by applicable law or regulation. No prepayment charge will be assessed for any prepayment occurring after the Penalty Period.

The Note Holder will apply all prepayments to reduce the amount of principal that I owe under the Debt Instrument. However, the Note Holder may apply my prepayment to the accrued and unpaid interest on the prepayment amount, before applying my prepayment to reduce the principal amount of the Debt Instrument. If I make a partial prepayment, there will be no change in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes.

If the Debt Instrument is an Adjustable Rate Note, partial prepayments may reduce the amount of my monthly payment after the first interest rate Change Date following the partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase. If the Debt Instrument is not an Adjustable Rate Note, partial prepayments will not change the amount of my monthly payments unless the Note Holder agrees in writing to these changes.

The Note Holder's failure to collect a prepayment charge at the time a prepayment is received shall not be deemed a waiver of such charge. Any prepayment charge not collected at the time the payment is received shall be payable on demand.

All other provisions of the Security Instrument are unchanged and remain in full force and effect.

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


MICHAEL BOYD (Seal)
-Borrower


PATRICIA L. PARAMOURE (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

Exhibit E

12-12020-mg Doc 8366-7 Filed 03/26/15 Entered 03/26/15 16:32:46 Priore

Declaration Exhibit E Pg 2 of 10

SEE "PREPAYMENT PENALTY ADDENDUM TO NOTE" ATTACHED HERETO AND MADE A PART HEREOF.
 SEE "PREPAYMENT ADDENDUM TO NOTE" ATTACHED HERETO AND MADE A PART HEREOF.

ADJUSTABLE RATE NOTE(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)

LOAN NO.: 2127

 MIN: 3168
 MERS Phone: 1-888-679-6377

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY. THIS NOTE ALLOWS MONTHLY PAYMENT OPTIONS FOR AN INITIAL PERIOD. THIS NOTE MAY REQUIRE UNPAID INTEREST TO BE ADDED TO LOAN PRINCIPAL AND REQUIRE ME TO PAY ADDITIONAL INTEREST ON THE UNPAID INTEREST (NEGATIVE AMORTIZATION).

DECEMBER 22, 2006

HUNTINGTON BEACH

CALIFORNIA

[Date]

[City]

[State]

1090-1092 LAKEBIRD DRIVE, SUNNYVALE, CA 94089-

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 515,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is
 PLAZA HOME MORTGAGE, INC. SAN BRANCH

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.250 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS**(A) Time and Place of Payments**

I will make my monthly payments on the first day of each month beginning on FEBRUARY, 2007 . I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal, if any. If, on JANUARY 01, 2037 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at PLAZA HOME MORTGAGE, INC. SAN BRANCH
 5090 SHOREHAM PLACE #206, SAN DIEGO, CA 92122
 or at a different place if required by the Note Holder.

(B) Amount of My Monthly Payments

I will pay interest by making payments in the amount of US \$ 1,823.96 (the "Minimum Payment") month until either (i) the first Interest Rate Change Date set forth in Section 4(A), or (ii) payment of the Minimum Payment on my next scheduled payment date would cause my principal balance to exceed the Maximum Limit set forth in Section 3(D), whichever event occurs first (the "Option Period"). The minimum Payment is calculated based upon the amount of interest that will accrue each month at a rate equal to 4.250 %. Payment of the Minimum Payment amount will result in accrued but unpaid interest being added to Principal. The unpaid Principal and any accrued but unpaid interest will then accrue additional interest at the rate then in effect. This practice is known as negative amortization.

After the expiration of the Option Period, I will pay interest by making payments in an amount sufficient to pay interest as it accrues every month until **JANUARY 01, 2017** (the "Interest Only Period"). This amount will be determined by the Note Holder as set forth in Section 4(C). In addition, if I make payments of principal and/or accrued unpaid interest during the Interest Only Period, my monthly interest-only payment amount will change and will be based on the remaining Principal and my then current interest rate.

After the expiration of the Interest Only Period, I will pay principal and interest by making payments every month for the remaining term (the "Full Amortization Period"). The amount of payments during the Full Amortization Period will be determined by the Note Holder as set forth in Section 4(C).

(C) Additions to My Unpaid Principal

During the Option Period, my monthly payment could be less than or greater than the amount of interest owed each month. For each month that my monthly payment is less than the interest owed, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal. Interest will accrue on the amount of this difference at the interest rate required by Section 2 or Section 4. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment to interest before Principal.

(D) Limit on My Unpaid Principal; Increased Minimum Payment

My unpaid Principal can never exceed the Maximum Limit equal to **ONE HUNDRED TEN AND 000/1000THS** percent of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to additions to my unpaid Principal described in Section 3(C). If on any payment due date I would exceed the Maximum Limit by paying my Minimum Payment, then my monthly payment will be adjusted to an amount equal to the Interest Only Payment described in Section 3(E)(i). I will continue to pay that amount until the Interest Only Period expires.

(E) Additional Payment Options

During the Option Period, the Note Holder may provide me with up to three (3) additional payment options (the "Payment Options"). I will be eligible to select one of the Payment Options if it results in a larger monthly payment than my regular Minimum Payment. I may be given the following Payment Options:

(i) Interest Only Payment: Pay only the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) Fully Amortized Payment: Pay the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments, at the then current interest rate.

(iii) 15 Year Amortized Payment: Pay the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments, at the then current interest rate. These Payment Options are only applicable if they are greater than the Minimum Payment.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my Minimum Payment before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

4. ADJUSTABLE INTEREST RATE

(A) Interest Rate Change Dates

The interest rate I will pay will change on the first day of **JANUARY, 2012** and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my interest rate changes is called an "Interest Rate Change Date."

(B) The Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent index figure available as of the first business day of the month immediately preceding the month in which the Interest Rate Change Date occurs is called the "Current Index."

If the index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding

TWO AND ONE QUARTER percentage points (**2.250** %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Interest Rate Change Date.

The Note Holder will then determine the amount of the monthly payment. If the Interest Rate Change Date occurs during the Interest-Only Period, the new monthly interest-only payment will be based on the unpaid Principal that I am expected to owe at the Interest Rate Change Date and my new interest rate. If the Interest Rate Change Date occurs during the Full Amortization Period, my new monthly payment will be in an amount sufficient to repay the unpaid Principal that I am expected to owe at the Interest Rate Change Date at my new interest rate in substantially equal payments.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Interest Rate Change Date will not be greater than **12.250** % or less than **2.250** %. Thereafter, my interest rate will never be increased or decreased on any single Interest Rate Change Date by more than **ONE AND 000/1000THS** percentage point(s) (**1.000** %) from the rate of interest I have been paying for the preceding **6** months. My interest rate will never be greater than **12.250** %.

(E) Effective Date of Changes

My new interest rate will become effective on each Interest Rate Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Interest Rate Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO REPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRE**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:


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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by applicable law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is mailed or delivered 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.

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


MICHAEL E. BOYD

(Seal)
-Borrower


PATRICIA L. PARAMORE

(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower


_____(Seal)
-Borrower

[Sign Original Only]

144476123

VAULT

Original Document



Michael Andrew, Wholesale Lending Manager
First Home Mortgage, Inc.

PREPAYMENT PENALTY ADDENDUM TO NOTE

LOAN NO.: 127

MIN: 3168
MERS Phone: 1-888-879-8377

This "PREPAYMENT PENALTY ADDENDUM TO NOTE" (hereinafter "Addendum") is made this 22nd day of DECEMBER 2006, and is incorporated into and shall be deemed to amend and supplement the Promissory Note (the "Note") of same date made by the undersigned (the "Borrower") to PLAZA HOME MORTGAGE, INC. SAN BRANCH

(the "Lender") which is secured by a Deed Of Trust or Mortgage ("Security Instrument") on real property located at: 1090-1092 LAKEBIRD DRIVE, SUNNYVALE, CA 94089-

(Property Address)

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Note, Borrower and Lender further covenant and agree that the paragraph entitled either "Borrower's Right To Prepay" or "Borrower's Payments Before They Are Due", whichever is applicable, is replaced with the following new section:

I have the right to make payments of Principal at any time before they are due. A prepayment of all of the unpaid principal is known as a "Full Prepayment." A prepayment of only part of the unpaid principal is known as a "Partial Prepayment."

Except as provided below, I may make a Full or Partial Prepayment without paying any penalty. If I make a Partial Prepayment equal to one or more of my monthly payments, my due date may be advanced no more than one month. If I make any other Partial Prepayments, I must still make each later payment as it becomes due and in the same amount. I may make a Full or Partial Prepayment at any time.

In the event, during the first TWELVE (12) months after the execution of the Deed of Trust, I make a Full Prepayment or Partial Prepayment and the total of such prepayments in any twelve (12) month period exceeds TWENTY percent (20.00 %) of the original Principal amount of the loan, I will pay a prepayment charge in an amount equal to the payment of SIX (6) months' advance interest on the amount prepaid which is in excess of TWENTY percent (20.00 %) of the original Principal amount.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Prepayment Penalty Addendum To Note.

Michael E. Boyd
MICHAEL E BOYD Borrower

12/26/06
Date

Patricia L. Paramore
PATRICIA L. PARAMORE Borrower

12/26/06
Date

Borrower

Date

Borrower

Date

LOAN NO.: [REDACTED] 2127

PREPAYMENT NOTE ADDENDUM
(Multi-State)MIN: [REDACTED] 3168
MERS Phone: 1-888-679-6377

This Prepayment Note Addendum is made this 22nd day of **DECEMBER, 2006** and is incorporated into and shall be deemed to amend and supplement the Note of the same date (the "Note") made by the undersigned (the "Borrower") to evidence indebtedness to **PLAZA HOME MORTGAGE, INC. SAN BRANCH** (the "Lender") which debt is secured by a Mortgage or Deed of Trust or comparable security instrument (the "Security Instrument") of the same date and covering the property described in the Security Instrument and located at **1080-1092 LAKEBIRD DRIVE, SUNNYVALE, CA 94089-** (the "Property").

Additional Covenants. Notwithstanding anything to the contrary set forth in the Note, any addenda to the Note or the Security Instrument, Borrower and Lender covenant, and agree, that the provisions of the section of the Note entitled "**BORROWER'S RIGHT TO PREPAY**" or "**BORROWER'S PAYMENTS BEFORE THEY ARE DUE**" are amended to read as follows:

Subject to the prepayment penalty provided below, I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment". A "full prepayment" is the prepayment of the entire unpaid principal due under this Note. A payment of only part of the unpaid principal is known as a "partial prepayment". When I make a prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a prepayment if I have not made all the monthly payments due under this Note.

If within the 12 -month period beginning with the date I execute this Note (the "Penalty Period"), I make a full prepayment, or partial prepayment in any twelve (12)-month period that exceeds 20% of the original principal loan amount, I will pay a prepayment charge as consideration for the Note Holder's acceptance of such prepayment. The prepayment charge will equal the lesser of (a) the amount of interest that would accrue during a six (6)-month period on the amount prepaid that exceeds 20% of the original principal balance of this Note, calculated at the rate of interest in effect under the terms of this Note at the time of the prepayment; or (b) the maximum allowable prepayment penalty permitted by applicable law or regulation. No prepayment charge will be assessed for any prepayment occurring after the Penalty Period.

The Note Holder will apply all prepayments to reduce the amount of principal that I owe under this Note. However, the Note Holder may apply my prepayment to the accrued and unpaid interest on the prepayment amount, before applying my prepayment to reduce the principal amount of this Note. If I make a partial prepayment, there will be no change in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes.

If this Note is an Adjustable Rate Note, partial prepayments may reduce the amount of my monthly payment after the first interest rate Change Date following the partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase. If this Note is not an Adjustable Rate Note, partial prepayments will not change the amount of my monthly payments unless the Note Holder agrees in writing to these changes.

The Note Holder's failure to collect a prepayment charge at the time a prepayment is received shall not be deemed a waiver of such charge. Any prepayment charge not collected at the time the payment is received shall be payable on demand.

All other provisions of the Note are unchanged and remain in full force and effect.

12-12020-mg Doc 8366-7 Filed 03/26/15 Entered 03/26/15 16:32:46 Priore
Declaration Exhibit E Pg 10 of 10

NOTE TO BORROWER

Do not sign this Addendum before you read it. This Addendum provides for the payment of a prepayment charge if you wish to repay the loan prior to the date provided for repayment in the Note.

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

Michael E. Boyd (Seal)
MICHAEL E. BOYD -Borrower

Patricia L. Paramoure (Seal)
PATRICIA L. PARAMOURE -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

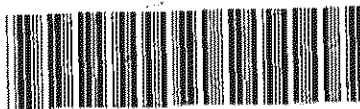
____ (Seal)
____ -Borrower

Exhibit F

12-12020-mg Doc 8366-8 Filed 03/26/15 Entered 03/26/15 16:32:46 Priore
Declaration Exhibit F Pg 2 of 28

DOCUMENT: 19250966

Pages: 27



Fees.... 87.00
Taxes....
Copies...
AMT PAID 87.00

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
First American Title Company

RDE # 006
1/04/2007
8:00 AM

Recording Requested By:
PLAZA HOME MORTGAGE, INC. SAN BRANCH

Return To:
PLAZA HOME MORTGAGE, INC. SAN BRANCH

5090 SHOREHAM PLACE #206
SAN DIEGO, CA 92122
Prepared By:

PLAZA HOME MORTGAGE, INC.
5090 SHOREHAM PLACE #206
SAN DIEGO, CA 92122
(858) 346-1200

3169393-1A

[Space Above This Line For Recording Data]

DEED OF TRUST

LOAN NO.: [REDACTED] 2127
ESCROW NO.: 9023150-NC

MIN [REDACTED] 3168
MERS Phone: 1-888-679-6377

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **DECEMBER 22, 2006**, together with all Riders to this document.

(B) "Borrower" is
MICHAEL E BOYD AND PATRICIA L. PARAMOURE, HUSBAND AND WIFE AS JOINT TENANTS

Borrower's address is 5439 SOQUEL DRIVE, SOQUEL, CA 95073-
Borrower is the trustor under this Security Instrument.

(C) "Lender" is
PLAZA HOME MORTGAGE, INC. SAN BRANCH

Lender is a CORPORATION
organized and existing under the laws of CALIFORNIA

Lender's address is

5090 SHOREHAM PLACE #206, SAN DIEGO, CA 92122

(D) "Trustee" is
FIRST AMERICAN TITLE

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

(F) "Note" means the promissory note signed by Borrower and dated DECEMBER 22, 2006
The Note states that Borrower owes Lender

FIVE HUNDRED FIFTEEN THOUSAND AND NO/100 X

Dollars

(U.S. \$ 515,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JANUARY 01, 2037

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

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

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

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input checked="" 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 checked="" type="checkbox"/> Other(s) [specify] Prepayment Penalty Rider		

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

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

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

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

COUNTY of SANTA CLARA :
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SEE COMPLETE LEGAL DESCRIPTION DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: 110-23-025

which currently has the address of

1090-1092 LAKEBIRD DRIVE

[Street]

SUNNYVALE

[City], California

94089-

[Zip Code]

("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

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

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

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

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

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

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

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

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

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

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

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

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

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of 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 Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an 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 may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. 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.

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.

Witnesses:

Maboo
Ma S. Oo -Witness

Maboo
Ma S. Oo -Witness

Michael E. Boyd (Seal)
MICHAEL E. BOYD -Borrower

Patricia L. Paramoure (Seal)
PATRICIA L. PARAMOURE -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

State of CALIFORNIA

County of Santa Cruz

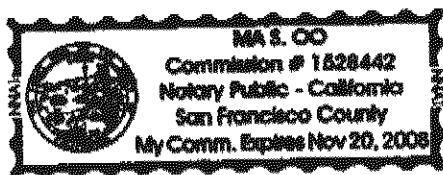
} ss.

On 12-26-2006 before me, Ma S. Co, Notary Public
personally appeared

MICHAEL E. BOYD AND PATRICIA L. PARAMOURE

(or proved to me on the basis of satisfactory evidence) to be the person(s) ^{ma} personally known to me
to the within instrument and acknowledged to me that ^{ma} he/she/they executed the same in ^{ma} his/her/their
authorized capacity(ies), and that by ^{ma} 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.



Ma S. Co (Seal)
Ma S. Co, Notary Public

12-12020-mg Doc 8366-8 Filed 03/26/15 Entered 03/26/15 16:32:46 Priore
Declaration Exhibit F Pg 17 of 28

Order Number: **3169393c**

Reference No: **Boyd**

Title Officer: **Kristi Adams**

DESCRIPTION

All that certain land situated in the State of California, County of **SANTA CLARA**, City of **SUNNYVALE**, described as follows:

ALL OF LOT 1101, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "TRACT NO. 2010 LAKEWOOD VILLAGE NO. 5", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON DECEMBER 18, 1957 IN BOOK 89 OF MAPS, PAGES 16, 17 AND 18.

APN No: **110-23-025**

ADJUSTABLE RATE RIDER(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)

LOAN NO.: [REDACTED] 2127

MIN: [REDACTED] 3168
MERS Phone: 1-888-679-6377

THIS ADJUSTABLE RATE RIDER is made this 22nd day of DECEMBER, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to PLAZA HOME MORTGAGE, INC. SAN BRANCH ("Lender") of the same date and covering the property described in the Security Instrument and located at: 1090-1092 LAKEBIRD DRIVE, SUNNYVALE, CA 94089- [Property Address]

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY. THIS NOTE ALLOWS MONTHLY PAYMENT OPTIONS FOR AN INITIAL PERIOD. THIS NOTE MAY REQUIRE UNPAID INTEREST TO BE ADDED TO LOAN PRINCIPAL AND REQUIRE ME TO PAY ADDITIONAL INTEREST ON THE UNPAID INTEREST (NEGATIVE AMORTIZATION).

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 7.250 %. The Note also provides for a change in the initial rate to an adjustable interest rate and changes to payments, as follows:

3. PAYMENTS**(A) Time and Place of Payments**

I will make my monthly payments on the first day of each month beginning on FEBRUARY, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal, if any. If, on JANUARY 01, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at PLAZA HOME MORTGAGE, INC. SAN BRANCH
5090 SHOREHAM PLACE #206, SAN DIEGO, CA 92122
or at a different place if required by the Note Holder.

(B) Amount of My Monthly Payments

I will pay interest by making payments in the amount of US \$ 1,823.96 (the "Minimum Payment") every month until either (i) the first Interest Rate Change Date set forth in Section 4(A), or (ii) payment of the Minimum Payment on my next scheduled payment date would cause my principal balance to exceed the Maximum Limit set forth in Section 3(D), whichever event occurs first (the "Option Period"). The Minimum Payment is calculated based upon the amount of interest that will accrue each month at a rate equal to 4.250 %. Payment of the Minimum Payment amount will result in accrued but unpaid interest being added to Principal. The unpaid Principal and any accrued but unpaid interest will then accrue additional interest at the rate then in effect. This practice is known as negative amortization.

After the expiration of the Option Period, I will pay interest by making payments in an amount sufficient to pay interest as it accrues every month until JANUARY 01, 2017 (the "Interest Only Period"). This amount will be determined by the Note Holder as set forth in Section 4(C). In addition, if I make payments of principal and/or accrued unpaid interest during the Interest Only Period, my monthly interest-only payment amount will change and will be based on the remaining Principal and my then current interest rate.

After the expiration of the Interest Only Period, I will pay principal and interest by making payments every month for the remaining term (the "Full Amortization Period"). The amount of payments during the Full Amortization Period will be determined by the Note Holder as set forth in Section 4(C).

(C) Additions to My Unpaid Principal

During the Option Period, my monthly payment could be less than or greater than the amount of interest owed each month. For each month that my monthly payment is less than the interest owed, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal. Interest will accrue on the amount of this difference at the interest rate required by Section 2 or Section 4. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment to interest before Principal.

(D) Limit on My Unpaid Principal; Increased Minimum Payment

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED TEN AND 000/1000THS percent of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to additions to my unpaid Principal described in Section 3(C). If on any payment due date I would exceed the Maximum Limit by paying my Minimum Payment, then my monthly payment will be adjusted to an amount equal to the Interest Only Payment described in Section 3(E)(i). I will continue to pay that amount until the Interest Only Period expires.

(E) Additional Payment Options

During the Option Period, the Note Holder may provide me with up to three (3) additional payment options (the "Payment Options"). I will be eligible to select one of the Payment Options if it results in a larger monthly payment than my regular Minimum Payment. I may be given the following Payment Options:

(i) Interest Only Payment: Pay only the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) Fully Amortized Payment: Pay the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments, at the then current interest rate.

(iii) 15 Year Amortized Payment: Pay the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments, at the then current interest rate.

These Payment Options are only applicable if they are greater than the Minimum Payment.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my Minimum Payment before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

4. ADJUSTABLE INTEREST RATE

(A) Interest Rate Change Dates

The interest rate I will pay will change on the first day of JANUARY, 2012 and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my interest rate changes is called an "Interest Rate Change Date."

(B) The Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent index figure available as of the first business day of the month immediately preceding the month in which the Interest Rate Change Date occurs is called the "Current Index."

If the index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding TWO AND ONE QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Interest Rate Change Date.

The Note Holder will then determine the amount of the monthly payment. If the Interest Rate Change Date occurs during the Interest-Only Period, the new monthly interest-only payment will be based on the unpaid Principal that I am expected to owe at the Interest Rate Change Date and my new interest rate. If the Interest Rate Change Date occurs during the Full Amortization Period, my new monthly payment will be in an amount sufficient to repay the unpaid Principal that I am expected to owe at the Interest Rate Change Date at my new interest rate in substantially equal payments.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Interest Rate Change Date will not be greater than 12.250 % or less than 2.250 %. Thereafter, my interest rate will never be increased or decreased on any single Interest Rate Change Date by more than ONE AND 000/1000THS percentage point(s) (1.000 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 12.250 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Interest Rate Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Interest Rate Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.


MICHAEL E. BOYD (Seal)
-Borrower


PATRICIA L. PARAMOURE (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

LOAN NO.: [REDACTED] 2127

**PREPAYMENT RIDER
(Multi-State)**MIN: [REDACTED] 3168
MERS Phone: 1-888-679-6377

This Prepayment Rider is made this 22nd day DECEMBER, 2006 of and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note (the "Debt Instrument") to PLAZA HOME MORTGAGE, INC. SAN BRANCH (the "Lender") of the same date and covering the property described in the Security Instrument and located at 1090-1092 LAKEBIRD DRIVE, SUNNYVALE, CA 94089- (the "Property")

Additional Covenants. Notwithstanding anything to the contrary set forth in the Debt Instrument, any addenda to the Debt Instrument or the Security Instrument, Borrower and Lender covenant, and agree as follows:

Subject to the prepayment penalty provided below, I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment". A "full prepayment" is the prepayment of the entire unpaid principal due under the Debt Instrument. A payment of only part of the unpaid principal is known as a "partial prepayment". When I make a prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a prepayment if I have not made all the monthly payment due under the Debt Instrument.

If, within the 12 -month period beginning with the date I execute the Debt Instrument (the "Penalty Period"), I make a full prepayment, or partial prepayment in any twelve (12)-month period that exceeds 20% of the original principal loan amount, I will pay a prepayment charge as consideration for the Note Holder's acceptance of such prepayment. The prepayment charge will equal the lesser of (a) the amount of interest that would accrue during a six (6)-month period on the amount prepaid that exceeds 20% of the original principal balance of the Debt Instrument, calculated at the rate of interest in effect under the terms of the Debt Instrument at the time of the prepayment; or (b) the maximum allowable prepayment penalty permitted by applicable law or regulation. No prepayment charge will be assessed for any prepayment occurring after the Penalty Period.

The Note Holder will apply all prepayments to reduce the amount of principal that I owe under the Debt Instrument. However, the Note Holder may apply my prepayment to the accrued and unpaid interest on the prepayment amount, before applying my prepayment to reduce the principal amount of the Debt Instrument. If I make a partial prepayment, there will be no change in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes.

If the Debt Instrument is an Adjustable Rate Note, partial prepayments may reduce the amount of my monthly payment after the first interest rate Change Date following the partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase. If the Debt Instrument is not an Adjustable Rate Note, partial prepayments will not change the amount of my monthly payments unless the Note Holder agrees in writing to these changes.

The Note Holder's failure to collect a prepayment charge at the time a prepayment is received shall not be deemed a waiver of such charge. Any prepayment charge not collected at the time the payment is received shall be payable on demand.

All other provisions of the Security Instrument are unchanged and remain in full force and effect.

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

 MICHAEL E. BOYD	(Seal) -Borrower	 PATRICIA L. PARAMOURE	(Seal) -Borrower
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_____ (Seal) -Borrower	_____ (Seal) -Borrower
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_____ (Seal) -Borrower	_____ (Seal) -Borrower
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_____ (Seal) -Borrower	_____ (Seal) -Borrower
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1-4 FAMILY RIDER (Assignment of Rents)

LOAN NO.: [REDACTED] 2127

MIN: [REDACTED] 3168
MERS Phone: 1-888-679-6377

THIS 1-4 FAMILY RIDER is made this 22nd day of DECEMBER, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to PLAZA HOME MORTGAGE, INC. SAN BRANCH

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

1090-1092 LAKEBIRD DRIVE, SUNNYVALE, CA 94089-

[Property Address]

1-4 FAMILY COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT. In addition to the Property described in the Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

B. USE OF PROPERTY; COMPLIANCE WITH LAW. Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

C. SUBORDINATE LIENS. Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

D. RENT LOSS INSURANCE. Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

MULTISTATE 1-4 FAMILY RIDER - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3170 1/01

V-57R (0411).01

Page 1 of 3

LENDER SUPPORT SYSTEMS INC. 57R.NEW (06/06)

E. "BORROWER'S RIGHT TO REINSTATE" DELETED. Section 19 is deleted.

F. BORROWER'S OCCUPANCY. Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

G. ASSIGNMENT OF LEASES. Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until: (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument, and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

I. CROSS-DEFAULT PROVISION. Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this 1-4 Family Rider.


MICHAEL E BOYD (Seal)
-Borrower


PATRICIA L. PARAMOURE (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

Exhibit G

RECORDING REQUESTED BY:

LSI TITLE COMPANY, INC.

WHEN RECORDED MAIL TO:

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120

THIS IS TO CERTIFY THAT THIS IS A FULL,
TRUE AND CORRECT COPY OF THE ORIGINAL
RECORDED IN THE OFFICE OF THE COUNTY

RECORDING FEE: **\$21.00**

RECORDED ON: **March 1, 2011**

AS DOCUMENT NO: **2011-0009161**

BY: **s/ menghong but**

FIDELITY NATIONAL TITLE INSURANCE CO. (LSI DIVISION)

TS No. : **027-C** Loan No.: **1412**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

**IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN
YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION,**

and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is **\$22,284.40** as of **2/25/2011**, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact,
GMAC MORTGAGE, LLC
C/O ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1600 phone

TS NO.: [REDACTED] 027-C

LOAN NO.: [REDACTED] 412

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That **Executive Trustee Services, LLC dba ETS Services, LLC** is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated **1/16/2007**, executed by **MICHAEL BOYD AND PATRICIA L PARAMOURE, HUSBAND AND WIFE AS JOINT TENANTS**, as Trustor, to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR PLAZA HOME MORTGAGE, INC. A CORPORATION**, as beneficiary, recorded **1/24/2007**, as Instrument No. **2007-0004088**, in Book **XX**, Page **XX**, of Official Records in the Office of the Recorder of **Santa Cruz County, California** describing land therein as:

AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

including **ONE NOTE FOR THE ORIGINAL** sum of **\$647,000.00**; that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

Installment of Principal and Interest plus impounds and/or advances which became due on 11/1/2010 plus late charges, and all subsequent installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

The undersigned declares that the beneficiary or its authorized agent has declared that they have complied with California Civil Code Section 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower as required by California Civil Code Section 2923.5.

Dated: 2/25/2011

ETS Services, LLC as Agent for Beneficiary

BY: 

Sandra Guevara
TRUSTEE SALE OFFICER

Exhibit H

THIS IS TO CERTIFY THAT THIS IS A FULL, TRUE AND
CORRECT COPY OF THE ORIGINAL RECORDED
IN THE OFFICE OF SANTA CLARA COUNTY

RECORDING REQUESTED BY:

LSI TITLE COMPANY, INC.

WHEN RECORDED MAIL TO:
Executive Trustee Services, LLC
dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
APN: 110-23-025

RECORDING FEE: \$21.00

RECORDED ON: September 14, 2011

AS DOCUMENT NO: 21316462

BY: s/ ANDRES CORTEZ

LSI TITLE COMPANY

TS No. : [REDACTED] 2300 Loan No.: [REDACTED] 5915

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

**IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN
YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION,**

and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$17,675.41 as of **Sep 13, 2011**, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact, GMAC Mortgage, LLC.

C/O Executive Trustee Services, LLC dba ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, CA 91504-3120
800.665.3932 phone

TS NO.: [REDACTED] 2300

LOAN NO.: [REDACTED] 5915

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That **Executive Trustee Services, LLC dba ETS Services, LLC** is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated 12/22/2006, executed by ***MICHAEL E BOYD* AND *PATRICIA L PARAMOURE*, HUSBAND AND WIFE AS JOINT TENANTS**, as Trustor, to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR PLAZA HOME MORTGAGE, INC. SAN BRANCH**, as beneficiary, recorded 01/04/2007, as Instrument No. 19250966, in Book XX, Page XX, of Official Records in the Office of the Recorder of Santa Clara County, California describing land therein as:

AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

including **ONE NOTE FOR THE ORIGINAL** sum of **\$515,000.00**; that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

Installment of Principal and Interest plus impounds and/or advances which became due on 5/1/2011 plus late charges, and all subsequent installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

The undersigned declares that the beneficiary or its authorized agent has declared that they have complied with California Civil code Section 2923.5 by making contact with the borrower or tried with due diligence to contact the borrower as required by California Civil Code Section 2923.5

Dated: Sep 13, 2011

ETS Services, LLC as Agent for Beneficiary

BY: 

Dee Ortega
TRUSTEE SALE OFFICER

Exhibit I

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK			PROOF OF CLAIM
Name of Debtor and Case Number: <u>STEVEN D. RIGEL 12-12020 (MG)</u>			
NOTE: This form should not be used to make a claim for an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) arising after the commencement of the case. A "request" for payment of an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) may be filed pursuant to 11 U.S.C. § 503.			
Name of Creditor (the person or other entity to whom the debtor owes money or property): <u>GMAC MORTGAGE</u>			<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where notices should be sent: <u>STEVEN D. RIGEL</u> <u>751 BECKER AVE N.E.</u> <u>PALM BAY, FL, 32905</u>			<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars. 5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5). <input checked="" type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a) _____. Amount entitled to priority: <u>\$ 9,600.00</u> <small>* Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
Telephone number: <u>321-684-3476</u> email: <u>STEVE.RIGEL21@YAHOO</u>			
Name and address where payment should be sent (if different from above):			
Telephone number: _____ email: _____			5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5). <input checked="" type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a) _____. Amount entitled to priority: <u>\$ 9,600.00</u> <small>* Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
1. Amount of Claim as of Date Case Filed: \$ _____ If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.			
2. Basis for Claim: <u>MORTGAGE NOTE</u> (See instruction #2)			
3. Last four digits of any number by which creditor identifies debtor: <u>4189</u>	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)	
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ <u>165,000</u> Annual Interest Rate <u>6.25</u> % <input checked="" type="checkbox"/> Fixed <input type="checkbox"/> Variable (when case was filed) Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ <u>48,000</u>			
6. Claim Pursuant to 11 U.S.C. § 503(b)(9): Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before May 14, 2012, the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim. \$ _____ (See instruction #6)			
7. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #7)			
8. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #8, and the definition of "redacted".) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:			
9. Signature: (See instruction #9) Check the appropriate box. <input type="checkbox"/> I am the creditor. <input type="checkbox"/> I am the creditor's authorized agent. <input checked="" type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. <input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.) I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief. Print Name: <u>STEVEN D. RIGEL</u> Title: <u>MR.</u> Company: _____ (Signature) <u>Steven D Rigel</u> (Date) <u>5 Oct 2012</u> Address and telephone number (if different from notice address above):			
Telephone number: _____ Email: _____			<div style="border: 1px solid black; padding: 10px; margin: 0 auto; width: 150px;"> RECEIVED OCT 10 2012 </div> <div style="margin-top: 10px;">KURTZMAN CARSON CONSULTANTS</div>
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both			



121202012101000000000029

THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR

Contract For Sale And Purchase

FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR

1* **PARTIES:** Tracy Kuehne ("Seller"),
2* and Steven & Lourdes Rigel (H/W) ("Buyer"),

3 hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property")
4 pursuant to the terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract"):

I. DESCRIPTION:

6* (a) Legal description of the Real Property located in Brevard County, Florida: Tax ID: 5931

7* Parcel ID: 28-37-27-75-0013.0-0004.00

8* Lot 4 Block 130 Port Malabar Unit 5

9* (b) Street address, city, zip, of the Property: 751 NE Becker Ave Palm Bay, FL

10 (c) Personal Property includes existing range(s), refrigerator(s), dishwasher(s), ceiling fan(s), light fixture(s), and window treatment(s) unless 32905
11 specifically excluded below.

12* Other items included are: range, microwave, dishwasher, garbage disposal SDR LR

13* Items of Personal Property (and leased items, if any) excluded are:

14* _____

15* _____

16* **II. PURCHASE PRICE** (U.S. currency): \$ 165,000.00

17 PAYMENT:

18* (a) Deposit held in escrow by State Title Partners (Escrow Agent) in the amount of (checks subject to clearance) \$ 1,000.00

19* (b) Additional escrow deposit to be made to Escrow Agent within _____ days after Effective Date
20* (see Paragraph III) in the amount of. \$ _____

21* (c) Financing (see Paragraph IV) in the amount of. \$ 165,000.00

22* (d) Other. \$ _____

23 (e) Balance to close by cash, wire transfer or LOCALLY DRAWN cashier's or official bank check(s), subject
24* to adjustments or prorations. \$ 0.00

25 III. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:

26 (a) If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or
27* before 9/7/2007, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. **UNLESS OTH-**
28 **ERWISE STATED, THE TIME FOR ACCEPTANCE OF ANY COUNTEROFFERS SHALL BE 2 DAYS FROM THE DATE THE COUN-**
29 **TEROFFER IS DELIVERED.**

30 (b) The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed or initialed this offer or the
31 final counteroffer. If such date is not otherwise set forth in this Contract, then the "Effective Date" shall be the date determined above for
32 acceptance of this offer or, if applicable, the final counteroffer.

33 IV. FINANCING:

34* ☐ (a) This is a cash transaction with no contingencies for financing;

35* ☒ (b) This Contract is contingent on Buyer obtaining approval of a loan ("Loan Approval") within 30 days (if blank, then 30 days) after
36* Effective Date ("Loan Approval Date") for (CHECK ONLY ONE): ☒ a fixed; ☐ an adjustable; or ☐ a fixed or adjustable rate loan, in the prin-
37* cipal amount of \$ 165,000.00, at an initial interest rate not to exceed TBD %, discount and origination fees not to exceed

38* TBD % of principal amount, and for a term of 30 years. Buyer will make application within 2 days (if blank, then 5 days) after
39 Effective Date. Buyer shall use reasonable diligence to: obtain Loan Approval and notify Seller in writing of Loan Approval by Loan

40 Approval Date; satisfy terms and conditions of the Loan Approval; and close the loan. Loan Approval which requires a condition related to
41 the sale of other property shall not be deemed Loan Approval for purposes of this subparagraph. Buyer shall pay all loan expenses. If Buyer
42 does not deliver written notice to Seller by Loan Approval Date stating Buyer has either obtained Loan Approval or waived this financing con-
43 tingency, then either party may cancel this Contract by delivering written notice ("Cancellation Notice") to the other, not later than seven (7)
44 days prior to Closing. Seller's Cancellation Notice must state that Buyer has three (3) days to deliver to Seller written notice waiving this
45 financing contingency. If Buyer has used due diligence and has not obtained Loan Approval before cancellation as provided above, Buyer
46 shall be refunded the deposit(s). Unless this financing contingency has been waived, this Contract shall remain subject to the satisfaction,
47 by Closing, of those conditions of Loan Approval related to the Property;

48* ☐ (c) Assumption of existing mortgage (see rider for terms); or

49* ☐ (d) Purchase money note and mortgage to Seller (see Standards B and K and riders; addenda; or special clauses for terms).

50* **V. TITLE EVIDENCE:** At least _____ days (if blank, then 5 days) before Closing a title insurance commitment with legible copies of instruments
51 listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see Standard A for terms) shall
52 be obtained by:

53* (CHECK ONLY ONE): ☒ (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or

54* ☐ (2) Buyer at Buyer's expense.

55* (CHECK HERE): ☐ If an abstract of title is to be furnished instead of title insurance, and attach rider for terms. or Before SDR

56* **VI. CLOSING DATE:** This transaction shall be closed and the closing documents delivered on 10/7/2007 ("Closing"), unless
57 modified by other provisions of this Contract. If Buyer is unable to obtain Hazard, Wind, Flood, or Homeowners' insurance at a reasonable rate
58 due to extreme weather conditions, Buyer may delay Closing for up to 5 days after such coverage becomes available.

59 **VII. RESTRICTIONS; EASEMENTS; LIMITATIONS:** Seller shall convey marketable title subject to: comprehensive land use plans, zoning,
60 restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise

SDR

LR

OCTOBER 9, 2007

Date

418-9

Loan Number

Dear Borrower:

We wish to take this opportunity to welcome you as a customer of HOMECOMINGS FINANCIAL, LLC (F/K/A HOMECOMINGS FINANCIAL NETWORK, INC.) and to provide you with the following information regarding your loan.

In accordance with the terms of the Note and Mortgage, your first monthly payment is due and payable on or before DECEMBER 1, 2007. All succeeding payments are due and payable on the first day of the month.

Your initial monthly payment will be as follows:

Monthly Principal and Interest:	\$ 1,056.51
Monthly Property Tax Deposit:	\$ 126.17
Monthly Hazard Insurance Deposit:	\$ 87.25
Monthly Annual Assessment Amount:	\$
Monthly Flood Insurance Deposit:	\$
Monthly Mortgage Insurance Deposit:	\$ 133.32
	\$
	\$
	\$
Total Initial Monthly Payment:	\$ 1,403.25

You will be provided with monthly payment coupons for your convenience. However, if your initial payment coupon has not arrived by the time you need to make your payment, please detach and mail the coupon below along with your check to the address indicated. Our mailing address for all correspondence is:

GMAC Mortgage, LLC
 P.O. Box 4622
 Waterloo, IA 50704-4622
 800-766-4622

Please include your loan number on all correspondence.

Please provide us with the following information in order for us to assure timely receipt of your monthly mortgage billing statements and to correspond with you on any other matters of importance. Please sign below and return to the mailing address provided above.

*Mailing Address/P.O. Box _____

(* Indicate mailing address after loan settlement)

City, State & Zip Code _____

Present Telephone Number (include area code) _____

If I/We the Borrower(s) desire the mailing address to be different than the address of the Property indicated on the Deed of Trust, Borrower(s) must provide the correct mailing address. I/We certify the above mailing information to be true and correct and further agree to notify the holder of service of the note immediately of any change of address by certified mail, return receipt requested, to the above referenced address. No other knowledge, whether actual or constructive by the holder of the Note or any of its agents or employees, will be sufficient to put the holder of the Note on notice of any change of Borrower(s) mailing address and/or telephone number.

STEVEN D RIGEL	-Borrower	LOURDES L RIGEL	-Borrower
	-Borrower		-Borrower

FIRST PAYMENT COUPON

NAME: STEVEN D RIGEL
 AMOUNT: \$1,403.25

LOAN NUMBER: 418-9
 DATE DUE: DECEMBER 1, 2007

A late charge will be assessed if payment is received at this designated location after the 15th calendar day following the due date indicated above.

Send payment to:
 GMAC Mortgage, LLC

Using overnight mail service, send payment to:
 GMAC Mortgage, LLC

P.O. Box 780
 Waterloo, IA 50704-0780

6716 Grade Lane, Bldg 9, Suite 910
 Louisville, KY 40213-1407

GENERAL LOAN PARAMETERS:

Purchase Price: 165,000.00
Appraisal Price: 165,000.00
Down Payment: 0.00
Original Balance: 165,000.00
Term In Months: 360
Interest Rate: 6.6250%

AMORTIZATION SCHEDULE

Borrower: RIGEL, STEVEN

Loan #: [REDACTED] 418-9

Pmt #	Interest	Principal	P&I	PMI	Tot Pmt	Balance	LTV
1	910.94	145.57	1056.51	133.32	1189.83	164854.43	99.9117%
2	910.13	146.38	1056.51	133.32	1189.83	164708.05	99.8230%
3	909.33	147.18	1056.51	133.32	1189.83	164560.87	99.7338%
4	908.51	148.00	1056.51	133.32	1189.83	164412.87	99.6441%
5	907.70	148.81	1056.51	133.32	1189.83	164264.06	99.5539%
6	906.87	149.64	1056.51	133.32	1189.83	164114.42	99.4632%
7	906.05	150.46	1056.51	133.32	1189.83	163963.96	99.3720%
8	905.22	151.29	1056.51	133.32	1189.83	163812.67	99.2804%
9	904.38	152.13	1056.51	133.32	1189.83	163660.54	99.1882%
10	903.54	152.97	1056.51	133.32	1189.83	163507.57	99.0954%
11	902.70	153.81	1056.51	133.32	1189.83	163353.76	99.0022%
12	901.85	154.66	1056.51	133.32	1189.83	163199.10	98.9085%
13	901.00	155.51	1056.51	133.32	1189.83	163043.59	98.8142%
14	900.14	156.37	1056.51	133.32	1189.83	162887.22	98.7195%
15	899.27	157.24	1056.51	133.32	1189.83	162729.98	98.6242%
16	898.41	158.10	1056.51	133.32	1189.83	162571.88	98.5284%
17	897.53	158.98	1056.51	133.32	1189.83	162412.90	98.4320%
18	896.65	159.86	1056.51	133.32	1189.83	162253.04	98.3351%
19	895.77	160.74	1056.51	133.32	1189.83	162092.30	98.2377%
20	894.88	161.63	1056.51	133.32	1189.83	161930.67	98.1398%
21	893.99	162.52	1056.51	133.32	1189.83	161768.15	98.0413%
22	893.09	163.42	1056.51	133.32	1189.83	161604.73	97.9422%
23	892.19	164.32	1056.51	133.32	1189.83	161440.41	97.8426%
24	891.29	165.22	1056.51	133.32	1189.83	161275.19	97.7425%
25	890.37	166.14	1056.51	133.32	1189.83	161109.05	97.6418%
26	889.46	167.05	1056.51	133.32	1189.83	160942.00	97.5406%
27	888.53	167.98	1056.51	133.32	1189.83	160774.02	97.4388%
28	887.61	168.90	1056.51	133.32	1189.83	160605.12	97.3364%
29	886.67	169.84	1056.51	133.32	1189.83	160435.28	97.2335%
30	885.74	170.77	1056.51	133.32	1189.83	160264.51	97.1300%
31	884.79	171.72	1056.51	133.32	1189.83	160092.79	97.0259%
32	883.85	172.66	1056.51	133.32	1189.83	159920.13	96.9212%
33	882.89	173.62	1056.51	133.32	1189.83	159746.51	96.8160%
34	881.93	174.58	1056.51	133.32	1189.83	159571.93	96.7102%
35	880.97	175.54	1056.51	133.32	1189.83	159396.39	96.6038%
36	880.00	176.51	1056.51	133.32	1189.83	159219.88	96.4968%
37	879.03	177.48	1056.51	133.32	1189.83	159042.40	96.3893%
38	878.05	178.46	1056.51	133.32	1189.83	158863.94	96.2811%
39	877.06	179.45	1056.51	133.32	1189.83	158684.49	96.1724%
40	876.07	180.44	1056.51	133.32	1189.83	158504.05	96.0630%
41	875.07	181.44	1056.51	133.32	1189.83	158322.61	95.9530%
42	874.07	182.44	1056.51	133.32	1189.83	158140.17	95.8425%
43	873.07	183.44	1056.51	133.32	1189.83	157956.73	95.7313%
44	872.05	184.46	1056.51	133.32	1189.83	157772.27	95.6195%
45	871.03	185.48	1056.51	133.32	1189.83	157586.79	95.5071%
46	870.01	186.50	1056.51	133.32	1189.83	157400.29	95.3941%
47	868.98	187.53	1056.51	133.32	1189.83	157212.76	95.2804%
48	867.95	188.56	1056.51	133.32	1189.83	157024.20	95.1661%
49	866.90	189.61	1056.51	133.32	1189.83	156834.59	95.0512%
50	865.86	190.65	1056.51	133.32	1189.83	156643.94	94.9357%
51	864.81	191.70	1056.51	133.32	1189.83	156452.24	94.8195%
52	863.75	192.76	1056.51	133.32	1189.83	156259.48	94.7027%
53	862.68	193.83	1056.51	133.32	1189.83	156065.65	94.5852%
54	861.61	194.90	1056.51	133.32	1189.83	155870.75	94.4671%
55	860.54	195.97	1056.51	133.32	1189.83	155674.78	94.3483%
56	859.45	197.06	1056.51	133.32	1189.83	155477.72	94.2289%
57	858.37	198.14	1056.51	133.32	1189.83	155279.58	94.1088%
58	857.27	199.24	1056.51	133.32	1189.83	155080.34	93.9880%
59	856.17	200.34	1056.51	133.32	1189.83	154880.00	93.8666%
60	855.07	201.44	1056.51	133.32	1189.83	154678.56	93.7445%
61	853.95	202.56	1056.51	133.32	1189.83	154476.00	93.6218%
62	852.84	203.67	1056.51	133.32	1189.83	154272.33	93.4983%
63	851.71	204.80	1056.51	133.32	1189.83	154067.53	93.3742%
64	850.58	205.93	1056.51	133.32	1189.83	153861.60	93.2494%
65	849.44	207.07	1056.51	133.32	1189.83	153654.53	93.1239%

GMAC Mortgage
3451 Hammond Ave
PO Box 780
Waterloo, IA 50704-0780

GMAC Mortgage

September 26, 2012

STEVEN D RIGEL
LOURDES L RIGEL
751 NE BECKER AVENUE
PALM BAY, FL 32905

RE: Account Number [REDACTED] 4189
Property Address 751 NE BECKER AVENUE
PALM BAY, FL 32905

Dear STEVEN D RIGEL LOURDES L RIGEL

Congratulations! Your request for a loan modification has been approved subject to the following:

- Receipt of your contribution in the form of certified funds
- Receipt of the signed and (if applicable) notarized and/or witnessed loan modification agreement and any attachments
- Receipt of clear title, if applicable

Highlights of the enclosed Loan Modification Agreement and instructions for completing and returning it are as follows:

- The contribution amount of \$1,500.00 in the form of certified funds is due in our office by October 06, 2012.
- The beginning interest rate is 4.625%. If you are approved for a step rate modification, the adjustment terms are listed in the Modification Agreement.
- This modification may incorporate principal deferment of \$48,479.00 that will result in a principal payment that will be due when the term of your loan expires October 01, 2052 (Maturity Date).
- This type of modification may incorporate some forgiveness of principal and/or interest, resulting in a reduction of your New Principal Balance. The amount of your principal forgiveness will be \$0.00 and interest will be \$0.00. **This may result in a tax consequence to you and we encourage you to contact a tax professional to discuss any questions you may have.**
- The first modified payment begins November 01, 2012.
- **Modified Payment Amount**

Principal and Interest	\$521.26
Escrow	\$396.84
Total Payment	\$918.10
- **If executing an ink signature (paper), enclosed are multiple copies of the Modification Agreement; please retain one copy for your records and return all other original Modification Agreements. You must sign and return the Modification Agreements to us in the enclosed, pre-paid envelope. The signed Modification Agreement must be received in our office on or before October 06, 2012. If the Modification Agreements have notary provisions at the end; do NOT sign the enclosed Loan Modification Agreements unless you are in the presence of a notary.**

Now, therefore, in consideration of the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows (notwithstanding anything to the contrary contained in the Note or Security Instrument):

1. Borrower acknowledges that as of the Effective Date, the amount payable under the Note and Security Instrument (New Principal Balance) is \$162,384.88. The "New Principal Balance" less the deferred and forgiven Principal Balance shall be referred to as the "Interest Bearing Principal Balance" and this amount is \$113,905.88. This represents a reduction in my old principal balance (the balance due prior to the date of this loan modification) by \$48,479.00 (Total Deferred + Forgiven Principal) of which \$0.00 is being forgiven in full and \$48,479.00 is being deferred (the "Deferred Principal Balance") until the Term of my loan expires (the Maturity Date), or when I payoff my loan at the time when I sell or transfer any interest in my home, refinance the loan, or when the last scheduled payment is due, and the Lender will be under no obligation to refinance my loan. Until I am required to payoff the Deferred Principal Balance, I will not be required to pay interest or make monthly payments on the deferred amount.
2. The Maturity Date is October 01, 2052.
3. Borrower hereby renews and extends such indebtedness and promises to pay jointly and severally to the order of Lender the Principal Balance, consisting of the amount(s) loaned to Borrower by Lender and any accrued but unpaid interest capitalized to date as applicable, along with any other amounts that may come due under the terms of the original Note and Security Instrument.
4. Interest will be charged on the unpaid, non-deferred, "New Principal Balance" until the non-deferred principal has been paid in full. Borrower promises to pay interest at the rate of 4.625% from October 01, 2012 until I payoff my loan at the time when I sell or transfer any interest in my home, refinance the loan, or when the last scheduled payment is due. If Step Rate: The rate of interest I pay will change based upon Payment Schedule below.
5. Borrower promises to make monthly principal and interest payments of \$521.26, beginning on November 01, 2012, and continuing thereafter on the same day of each succeeding month, according to the Payment Schedule below until all principal and interest is paid in full. Borrower will make such payments at 3451 Hammond Avenue, Waterloo, Iowa, 50702 or at such other place as Lender may require. The amounts indicated in this paragraph do not include any required escrow payments for items such as hazard insurance or property taxes; if such escrow payments are required the monthly payments will be higher and may change as the amounts required for escrow items change.

If Step Rate:

PAYMENT SCHEDULE

Interest Rate	Interest Rate Change Date	Monthly Principal and Interest Payment Amount	Monthly Escrow Payment Amount	Total Monthly Payment	Payment Begins On	Payment Ends on
4.625%	October 01, 2012	\$521.26	\$396.84, may adjust periodically	\$918.10, may adjust periodically	November 01, 2012	October 01, 2052

Credit Reports: ScoreSense.com

Not Open	Unknown	Current	30 days late	60 days late	90 days late	120 days late	150+ days late	Payment plan	Repossession Foreclosure	Collection Chargeoff
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Real Estate Accounts: Primary and secondary mortgages on your home

GMAC MORT.

More about this account >>

	TransUnion	Experian	Equifax
Account #:	47568****	47568****	47568****
Condition:	Derogatory	Derogatory	Derogatory
Balance:	\$161599	\$161599	\$161599
Type:	Conventional real estate mortgage	Conventional real estate mortgage	Real estate mortgage
Pay Status:	Late 120 Days	Foreclosure	Late 120 Days

Two-Year payment history

Legend >>

[illegible]

Exhibit J

NOTE

OCTOBER 9TH, 2007

[Date]

MELBOURNE

[City]

FLORIDA

[State]

751 NE BECKER AVENUE, PALM BAY, FL 32905

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 165,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is HOMECOMINGS FINANCIAL, LLC (F/K/A HOMECOMINGS FINANCIAL NETWORK, INC.)

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.6250 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the FIRST day of each month beginning on DECEMBER 1ST, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on NOVEMBER 1ST, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 800 CORPORATE DRIVE, SUITE 424, FT. LAUDERDALE, FL 33334 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1,056.51 .

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

FLORIDA FIXED RATE NOTE-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT



5N(FL) 10006

Form 3210 1/01

VMP MORTGAGE FORMS - (900)521-7291

Page 1 of 3

Initials

SDR/242

MFFL0054 - (08/2006) / 047-688418-0



5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

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 1.5 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.


11. DOCUMENTARY TAX

The state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

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



(Seal)
STEVEN D. RIGEL
-Borrower




(Seal)
LOURDES L. RIGEL
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

Without Recourse
Pay to the Order of

GMAC Bank




(Seal)
Kasia Janeczko
Assistant Secretary
Homecomings Financial, LLC
A Delaware Corporation
-Borrower

(Seal)
-Borrower

PAY TO THE ORDER OF
GMAC MORTGAGE, LLC
WITHOUT RECOURSE

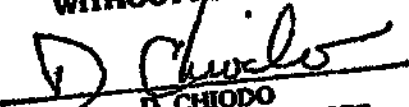
(Seal)
-Borrower



J. GRAY
ASSISTANT SECRETARY
GMAC BANK

PAY TO THE ORDER OF

(Seal)
-Borrower

WITHOUT RECOURSE


D. CHIODO
LIMITED SIGNING OFFICER
GMAC MORTGAGE, LLC w/a
GMAC MORTGAGE CORPORATION

[Sign Original Only]

Exhibit L

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM
Name of Debtor and Case Number:		
NOTE: This form should not be used to make a claim for an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) arising after the commencement of the case. A "request" for payment of an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): HEROLD GAY		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where notices should be sent: HEROLD GAY 31 ROSEDALE RD. NORTH WOODMERE, NY 11581		
Telephone number: 917-434-9808 email: HEROLDGAY@YAHOO.COM		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars. 5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a) _____. Amount entitled to priority: \$ _____ * Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
Name and address where payment should be sent (if different from above):		
Telephone number: _____ email: _____		
1. Amount of Claim as of Date Case Filed: \$ <u>42,336</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>HIGH INTEREST RATE 11% ABOVE</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: <u>9405</u>	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ <u>60,000</u> Annual Interest Rate <u>11.25</u> % <input checked="" type="checkbox"/> Fixed <input type="checkbox"/> Variable (when case was filed) Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Claim Pursuant to 11 U.S.C. § 503(b)(9): Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before May 14, 2012, the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim. \$ _____ (See instruction #6)		
7. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #7)		
8. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #8, and the definition of "redacted".) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
9. Signature: (See instruction #9) Check the appropriate box. <input checked="" type="checkbox"/> I am the creditor. <input type="checkbox"/> I am the creditor's authorized agent. <input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. <input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.) I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief. Print Name: <u>HEROLD GAY</u> Title: _____ Company: _____ (Signature) _____ (Date) <u>11/8/12</u> Address and telephone number (if different from notice address above): <u>917-434-9808</u> <u>HEROLDGAY@YAHOO.COM</u> Telephone number: _____ Email: _____		

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



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RECEIVED

NOV 13 2012

KURTZMAN CARSON CONSULTANTS

COURT USE ONLY

Homecomings Financial

A GMAC Company

PO Box 205

Waterloo, IA 50704-0205

10/18/07

HEROLD GAY

31 ROSEADALE RD

N WOODMERE NY 11581

RE: Account Number [REDACTED] 2980
Property Address 7070 NORTHWEST 65TH TERRACE
PARKLAND FL 33067

Loan No.: [REDACTED] 01WH

NOTE

May 17, 2006

PARKLAND, FLORIDA

Date
7070 NW 65TH TERRACE, PARKLAND, FLORIDA 33067
Property Address City State ZIP Code

1. DEFINITIONS

The headings at the beginning of each section are for convenience only and are not to be used in interpreting the text of the section. "X" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). The Lender is TRUST ONE MORTGAGE CORPORATION, a CALIFORNIA Corporation. "You" or "your" means the Lender and its successors and assigns.

2. BORROWER'S PROMISE TO PAY

For value received, I promise to pay to you, or your order, the PRINCIPAL sum of Sixty Thousand And 00/100 Dollars \$ 60,000.00, plus interest. No additional advances are contemplated under this Note.

3. INTEREST

I agree to pay interest on the outstanding principal balance at the rate of 11.000% per year until the full amount of principal has been paid. Interest accrues on the principal remaining unpaid from time to time, until paid in full. The interest rate and other charges on this loan will never exceed the highest rate or charge allowed by law for this loan.

ACCRUAL METHOD: Interest will be calculated on a 30/360 basis. For interest calculation, the accrual method will determine the number of days in a year. If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, at the rate of 18% or the maximum interest rate allowable by Applicable Law whichever is less.

For purposes of this paragraph, maturity occurs:

- (1) On the date of the last scheduled payment of principal; or
- (2) On the date you accelerate the due date of this loan (demand immediate payment).

4. PAYMENTS

I agree to pay this note in monthly payments. I will make my monthly payment on the SIXTEENTH day of each month beginning on June 16, 2006. The monthly payment will be \$ 588.07. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this note or until my balloon payment is due, if a balloon payment is indicated below. Unless otherwise required by law, each payment I make on this loan will be applied first to any charges I owe other than principal and interest, then to interest that is due, and finally to principal. The final payment of the entire unpaid balance of principal and interest will be due May 16, 2031, which is called the "Maturity Date."

The actual amount of my final payment will depend on my payment record. If any payment due under this loan does not equal or exceed the amount of interest due, you may, at your option, increase the amount of the payment due and all future payments to an amount that will pay off this loan in equal payments over the remaining term of this loan, subject to any balloon payment indicated below.

I will make my monthly payments 108 PACIFICA, SUITE 300, IRVINE, CALIFORNIA 92618 or at a different place if required by you.

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell you in writing that I am doing so. I may make a full prepayment or partial prepayments without paying any prepayment penalty. You will use all of my prepayments to reduce the amount of principal that I owe under this note. I must still make each later payment in the original amount as it becomes due until this note is paid in full.

[] **BALLOON PAYMENT.** This loan is payable in full at maturity. I must repay the entire principal balance of the loan and unpaid interest then due. The Lender is under no obligation to refinance the loan at that time. I will, therefore, be required to make payment out of other assets that I may own, or I will have to find a Lender, which may be the Lender I have this loan with, willing to lend me the money. If I refinance this loan at maturity, I may have to pay some or all of the closing costs normally associated with a new loan even if I obtain refinancing from the same Lender.

LATE CHARGE: I agree to pay a late charge on the portion of any payment made more than fifteen (15) calendar days after it is due equal to 5% of the unpaid amount. I will pay this late charge only once on each late payment. No late charge will be assessed on any payment when the only delinquency is due to late fees assessed on earlier payments and the payment is otherwise a full payment.

5. SECURITY

My obligations under this note are separately secured by a Mortgage dated the same date as this note.

Any present or future agreement securing any other debt I owe you also will secure the payment of this loan. Property securing another debt will not secure this loan if such property is my principal dwelling and you fail to provide any required notice of right of rescission. Also, property securing another debt will not secure this loan to the extent such property is in household goods.

6. APPLICABLE LAW: This note and any agreement securing this note will be governed by the laws of the state of FLORIDA. The fact that any part of this note cannot be enforced will not affect the rest of this note. Any change to this note or any agreement securing this note must be in writing and signed by you and me.

7. PAYMENTS BY LENDER: If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

8. REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by this agreement.

9. ASSUMPTION: This note and any document securing it cannot be assumed by someone buying the secured property from me. This will be true unless you agree in writing to the contrary. Without such an agreement, if I try to transfer any interest in the property securing this note, I will be in default on this loan. You may proceed against me under any due on sale clause in the security agreement, which is incorporated by reference.

10. DEFAULT: Subject to any limitations in the "REAL ESTATE OR RESIDENCE SECURITY" paragraph above, I will be in default on this note if any of the following occur:

(page 1 of 2)

Declaration Exhibit L Pg 5 of 8

- (1) I engage in fraud or material misrepresentation, by my actions or failure to act, in connection with any phase of this note;
- (2) I fail to make a payment on time or in the amount due;
- (3) I take any action or inaction which adversely affects the collateral or your rights in the collateral, including but not limited to: (a) failure to maintain property insurance and flood insurance, if required, on the dwelling; (b) transfer of the property; (c) failure to maintain the property; (d) use of the property in a destructive manner; (e) failure to pay taxes on the property; (f) death; (g) the property is taken through eminent domain; (h) a judgment is filed against me and subjects the property to action that adversely affects your interest; or (i) a prior lien holder forecloses on the property and as a result, your interest is adversely affected.
11. **REMEDIES:** Subject to the limitations of any applicable right to cure and any limitations in the "REAL ESTATE OR RESIDENCE SECURITY" paragraph above, if I am in default on this loan or any agreement securing this loan, you may:
- (1) Make unpaid principal, earned interest and all other agreed charges I owe you under this loan immediately due;
- (2) Demand more security or new parties obligated to pay this loan (or both) in return for not using any other remedy;
- (3) Make a claim for any and all insurance benefits or refunds that may be available on my default;
- (4) Attach or garnish my salary or earnings to the extent allowed under applicable law;
- (5) Use any remedy you have under state or federal law; and
- (6) Use any remedy given to you in any agreement securing this loan.
- By choosing any one or more of these remedies you do not give up your right to use another remedy later. By deciding not to use any remedy should I be in default, you do not give up your right to consider the event a default if it happens again.
12. **COLLECTION COSTS AND ATTORNEY'S FEES:** I agree to pay you all reasonable costs you incur to collect this debt or realize on any security. This includes your reasonable attorney's fees of (10%) of the principal sum due on this note or such larger amount as may be reasonable and just. This provision also shall apply if I file a petition or any other claim for relief under any bankruptcy rule or law of the United States, or if such petition or other claim for relief is filed against me by another.
13. **WAIVER:** I waive (to the extent permitted by law) demand, presentment, protest, notice of dishonor and notice of protest.
14. **OBLIGATIONS INDEPENDENT:** I understand that my obligation to pay all of the amounts owed under this loan is independent of the obligation of any other person who has also agreed to pay it. You may, without notice, release me or any of us, give up any right you may have against any of us, extend new credit to any of us, or renew or change this note one or more times and for any term, and I will still be obligated to pay this loan. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.
15. **CREDIT INFORMATION:** I agree that from time to time you may receive credit information about me from others, including other lenders and credit reporting agencies. I agree that you may furnish on a regular basis credit and experience information regarding my loan to others seeking such information. To the extent permitted by law, I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others. I will give you any financial statements or information that you feel is necessary. All financial statements and information I give you will be correct and complete.
16. **PURCHASE MONEY LOAN:** If this is a purchase money loan, you may include the name of the seller on the check or draft for this loan.

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE. I have received a copy of this note.

Date HEROLD GAY [Signature] -Borrower


Date 5/12/06 -Borrower

Date _____ -Borrower

Date _____ -Borrower

(Sign Original Only)

PAY TO THE ORDER OF WITHOUT RECOURSE



TRUST ONE MORTGAGE CORPORATION
A CALIFORNIA CORPORATION
SUSAN WOOD
VICE PRESIDENT

TRUST ONE MORTGAGE CORPORATION
PRIORITY ONE MORTGAGE

108 Pacifica, Suite 300
Irvine, CA 92618
(949) 450 1800

HEROLD GAY
7070 NW 65TH TERRACE
PARKLAND, FL 33067

Loan Number: [REDACTED] 01WH
Property: 7070 NW 65TH TERRACE
PARKLAND, FL 33067

MODIFICATION TO PAYMENT DATE/REVISED PAYMENT COUPON

May 31, 2006

Dear Borrower(s),

Congratulations on your new home loan. Enclosed please find your final closing statement and checks for the debts to be paid. Please verify all information on the face/stub of the check(s), and then forward the checks to the appropriate parties. Check stubs are provided for the items we have already paid directly to the creditor.

We thank you for doing business with Trust One Mortgage Corporation / Priority One Mortgage. Please be advised that we will be collecting your payments until further notice. Attached is a temporary payment coupon for you to use until your permanent payment book or coupons arrive. Please include this coupon with your payment.

This payment coupon reflects a change in your first payment due date from the original due date listed on your \$ 60,000.00 Note dated 05/17/2006. The revised payment date is based on the date your funds were disbursed which is 05/31/2006. Your new first payment due date will be on 06/30/2006. Your payment will continue to be due on the same date of each month until 05/30/2031. All other terms of your loan will remain unchanged. Questions regarding this matter should be directed to our Equity Funding Department at 949-450-1800.

If, for any reason, you were dissatisfied please take the time to let me know. We sincerely appreciate your business and we understand that our future growth depends upon you and your referrals.

Sincerely,

Equity Funding Department
Trust One Mortgage Corporation
Priority One Mortgage

TEMPORARY PAYMENT COUPON

Loan Number: [REDACTED] 01WH
Total Monthly Payment: \$ 588.07
Borrower(s): HEROLD GAY
Date Due: 06/30/2006
Your Phone #: _____

Mail Payment to: Trust One Mortgage Corporation
108 Pacifica, Suite 300
Irvine, CA 92618
Attn: Servicing Department

Please use this payment coupon to make your mortgage payment. If you have any questions regarding your payment, please contact us toll-free at 888-508-7878 and ask for the Servicing Department. It is your responsibility to ensure that your payment is made on time.

TRUST ONE MORTGAGE CORPORATION

ALLONGE TO NOTE


This Allonge to Note is to that certain Note dated **05/17/2006** and executed by:

HEROLD GAY A SINGLE MAN

In favor of **Trust One Mortgage Corporation, A California Corporation** as payee.


Without Recourse, Pay to the order of:

**Trust One Mortgage Corporation,
A California Corporation**

By: 

Susan Wood

Its: Vice President

Loan Number:  01WH
Loan Amount: \$ 60,000.00
Property Address: 7070 NW 65TH TERRACE
PARKLAND, FL 33067

Date: June 1, 2006

Exhibit K

12-12020-mg Doc 8366-13 Filed 03/26/15 Entered 03/26/15 16:32:46 Priore
Declaration Exhibit K Pg 2 of 18

Record & Return To:

State Title Partners, LLP,
300 W. Fee Ave., Ste. B
Melbourne, FL 32901
SIP-13172

Return To:

Homecomings Financial
One Meridian Crossing, Ste. 100
Minneapolis MN 55423
Loan Number: 047-568418-9

CFN 2007239833, OR BK 5818 Page 832,
Recorded 10/11/2007 at 11:05 AM, Scott Ellis, Clerk of
Courts, Brevard County
Doc M: \$577.50 Int. Tax: \$330.00 # Pgs: 17

This document was prepared by: Homecomings Financial
800 Corporate Drive, Suite 424
Fort Lauderdale, FL 33334

[Space Above This Line For Recording Data]

MORTGAGE

MIN 1898

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 9TH, 2007, together with all Riders to this document.

(B) "Borrower" is

STEVEN D RIGEL AND LOURDES L RIGEL, HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.

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

(D) "Lender" is HOMECOMINGS FINANCIAL, LLC (F/K/A HOMECOMINGS FINANCIAL NETWORK, INC.)

FLORIDA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS
MFFL7770 (09/2006) / 047-568418-9

Form 3010 1/01

VMP -6A(FL) (0005).02

Page 1 of 18

Initials: *SDR*

VMP Mortgage Solutions, Inc.



Lender is a LIMITED LIABILITY COMPANY
organized and existing under the laws of DELAWARE
Lender's address is 800 CORPORATE DRIVE, SUITE 424
FT. LAUDERDALE, FL 33334

(E) "Note" means the promissory note signed by Borrower and dated OCTOBER 9TH, 2007
The Note states that Borrower owes Lender ONE HUNDRED SIXTY FIVE THOUSAND AND
NO/100 Dollars

(U.S. \$ 165,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than NOVEMBER 1ST, 2037

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

(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 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 does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the COUNTY [Type of Recording Jurisdiction] of BREVARD [Name of Recording Jurisdiction]:
Legal description attached hereto and made a part hereof

Parcel ID Number: 28372775001300000400
751 NE BECKER AVENUE
PALM BAY
("Property Address"):

which currently has the address of
[Street]
[City], Florida 32905 [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

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

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

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

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

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

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

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

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment

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can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

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

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

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest

Initials: DR LR

shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

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

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

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

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

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

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

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the

purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of 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, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. 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 foreclose this Security Instrument by judicial proceeding. 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.

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

24. Attorneys' Fees. As used in this Security Instrument and the Note, attorneys' fees shall include those awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

25. Jury Trial Waiver. The Borrower hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Note.

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.
Signed, sealed and delivered in the presence of:

Witness

TARA JOHNSON

(Seal)

-Borrower

STEVEN D RIGEL
751 NE BECKER AVENUE
PALM BAY, FL 32905

(Address)

Witness

Sandra Akley

(Seal)

-Borrower

LOURDES L RIGEL
751 NE BECKER AVENUE
PALM BAY, FL 32905

(Address)

(Seal)

-Borrower

(Seal)

-Borrower

(Address)

(Address)

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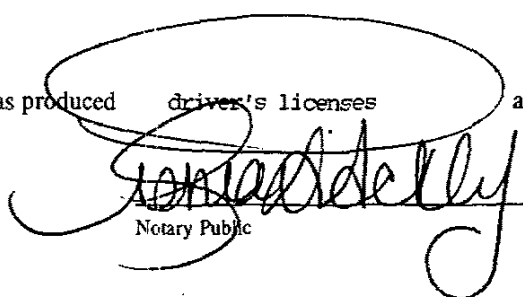
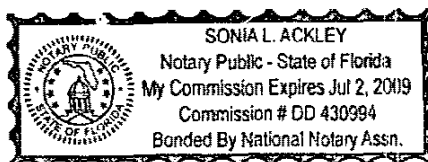
STATE OF FLORIDA,

Brevard

County ss:

The foregoing instrument was acknowledged before me this October 9, 2007 by
STEVEN D RIGEL AND LOURDES L RIGEL, HUSBAND AND WIFE

who is personally known to me or who has produced driver's licenses as identification.


Notary Public

Schedule "A"

Lot 4, Block 130, PORT MALABAR UNIT FIVE, according to the plat thereof, as recorded in Plat Book 14, Pages 109 through 115, of the Public Records of Brevard County, Florida.

File Number: STP-13172

Legal Description with Non Homestead
Closer's Choice

Exhibit M

Loan No.: [REDACTED] DIWH

NOTE

May 17, 2006

PARKLAND, FLORIDA

Date	City
7070 NW 65TH TERRACE,	PARKLAND, FLORIDA
Property Address	City State ZIP Code

1. DEFINITIONS

The headings at the beginning of each section are for convenience only and are not to be used in interpreting the text of the section. "X" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorser, and sureties) who agrees to pay this note (together referred to as "us"). The Lender is TRUST ONE MORTGAGE CORPORATION, a CALIFORNIA Corporation. "You" or "your" means the Lender and its successors and assigns.

2. BORROWER'S PROMISE TO PAY

For value received, I promise to pay to you, or your order, the PRINCIPAL sum of Sixty Thousand And 00/100 Dollars \$ 60,000.00, plus interest. No additional advances are contemplated under this Note.

3. INTEREST

I agree to pay interest on the outstanding principal balance at the rate of 11.000% per year until the full amount of principal has been paid. Interest accrues on the principal remaining unpaid from time to time, until paid in full. The interest rate and other charges on this loan will never exceed the highest rate or charge allowed by law for this loan.

ACCRUAL METHOD: Interest will be calculated on a 30/360 basis. For interest calculation, the accrual method will determine the number of days in a year. If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, at the rate of 18% or the maximum interest rate allowable by Applicable Law whichever is less.

For purposes of this paragraph, maturity occurs:

- (1) On the date of the last scheduled payment of principal; or
- (2) On the date you accelerate the due date of this loan (demand immediate payment).

4. PAYMENTS

I agree to pay this note in monthly payments. I will make my monthly payment on the SIXTEENTH day of each month beginning on June 16, 2006. The monthly payment will be \$ 588.07. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this note or until my balloon payment is due, if a balloon payment is indicated below. Unless otherwise required by law, each payment I make on this loan will be applied first to any charges I owe other than principal and interest, then to interest that is due, and finally to principal. The final payment of the entire unpaid balance of principal and interest will be due May 16, 2031, which is called the "Maturity Date."

The actual amount of my final payment will depend on my payment record. If any payment due under this loan does not equal or exceed the amount of interest due, you may, at your option, increase the amount of the payment due and all future payments to an amount that will pay off this loan in equal payments over the remaining term of this loan, subject to any balloon payment indicated below.

I will make my monthly payments 108 PACIFICA, SUITE 300, IRVINE, CALIFORNIA 92618 or at a different place if required by you.

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell you in writing that I am doing so. I may make a full prepayment or partial prepayments without paying any prepayment penalty. You will use all of my prepayments to reduce the amount of principal that I owe under this note. I must still make each later payment in the original amount as it becomes due until this note is paid in full.

[] **BALLOON PAYMENT:** This loan is payable in full at maturity. I must repay the entire principal balance of the loan and unpaid interest then due. The Lender is under no obligation to refinance the loan at that time. I will, therefore, be required to make payment out of other assets that I may own, or I will have to find a Lender, which may be the Lender I have this loan with, willing to lend me the money. If I refinance this loan at maturity, I may have to pay some or all of the closing costs normally associated with a new loan even if I obtain refinancing from the same Lender.

LATE CHARGE: I agree to pay a late charge on the portion of any payment made more than fifteen (15) calendar days after it is due equal to 5% of the unpaid amount. I will pay this late charge only once on each late payment. No late charge will be assessed on any payment when the only delinquency is due to late fees assessed on earlier payments and the payment is otherwise a full payment.

5. SECURITY

My obligations under this note are separately secured by a Mortgage dated the same date as this note.

Any present or future agreement securing any other debt I owe you also will secure the payment of this loan. Property securing another debt will not secure this loan if such property is my principal dwelling and you fail to provide any required notice of right of rescission. Also, property securing another debt will not secure this loan to the extent such property is in household goods.

6. APPLICABLE LAW: This note and any agreement securing this note will be governed by the laws of the state of FLORIDA. The fact that any part of this note cannot be enforced will not affect the rest of this note. Any change to this note or any agreement securing this note must be in writing and signed by you and me.

7. PAYMENTS BY LENDER: If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

8. REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by this agreement.

9. ASSUMPTION: This note and any document securing it cannot be assumed by someone buying the secured property from me. This will be true unless you agree in writing to the contrary. Without such an agreement, if I try to transfer any interest in the property securing this note, I will be in default on this loan. You may proceed against me under any due on sale clause in the security agreement, which is incorporated by reference.

10. DEFAULT: Subject to any limitations in the "REAL ESTATE OR RESIDENCE SECURITY" paragraph above, I will be in default on this note if any of the following occur:

(page 1 of 2)

- (1) I engage in fraud or material misrepresentation, by my actions or failure to act, in connection with any phase of this note;
- (2) I fail to make a payment on time or in the amount due;
- (3) I take any action or inaction which adversely affects the collateral or your rights in the collateral, including but not limited to: (a) failure to maintain property insurance and flood insurance, if required, on the dwelling; (b) transfer of the property; (c) failure to maintain the property; (d) use of the property in a destructive manner; (e) failure to pay taxes on the property; (f) death; (g) the property is taken through eminent domain; (h) a judgment is filed against me and subjects the property to action that adversely affects your interest; or (i) a prior lien holder forecloses on the property and as a result, your interest is adversely affected.
11. **REMEDIES:** Subject to the limitations of any applicable right to cure and any limitations in the "REAL ESTATE OR RESIDENCE SECURITY" paragraph above, if I am in default on this loan or any agreement securing this loan, you may:
- (1) Make unpaid principal, earned interest and all other agreed charges I owe you under this loan immediately due;
- (2) Demand more security or new parties obligated to pay this loan (or both) in return for not using any other remedy;
- (3) Make a claim for any and all insurance benefits or refunds that may be available on my default;
- (4) Attach or garnish my salary or earnings to the extent allowed under applicable law;
- (5) Use any remedy you have under state or federal law; and
- (6) Use any remedy given to you in any agreement securing this loan.
- By choosing any one or more of these remedies you do not give up your right to use another remedy later. By deciding not to use any remedy should I be in default, you do not give up your right to consider the event a default if it happens again.
12. **COLLECTION COSTS AND ATTORNEY'S FEES:** I agree to pay you all reasonable costs you incur to collect this debt or realize on any security. This includes your reasonable attorney's fees of (10%) of the principal sum due on this note or such larger amount as may be reasonable and just. This provision also shall apply if I file a petition or any other claim for relief under any bankruptcy rule or law of the United States, or if such petition or other claim for relief is filed against me by another.
13. **WAIVER:** I waive (to the extent permitted by law) demand, presentment, protest, notice of dishonor and notice of protest.
14. **OBLIGATIONS INDEPENDENT:** I understand that my obligation to pay all of the amounts owed under this loan is independent of the obligation of any other person who has also agreed to pay it. You may, without notice, release me or any of us, give up any right you may have against any of us, extend new credit to any of us, or renew or change this note one or more times and for any term, and I will still be obligated to pay this loan. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.
15. **CREDIT INFORMATION:** I agree that from time to time you may receive credit information about me from others, including other lenders and credit reporting agencies. I agree that you may furnish on a regular basis credit and experience information regarding my loan to others seeking such information. To the extent permitted by law, I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others. I will give you any financial statements or information that you feel is necessary. All financial statements and information I give you will be correct and complete.
16. **PURCHASE MONEY LOAN:** If this is a purchase money loan, you may include the name of the seller on the check or draft for this loan.

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE. I have received a copy of this note.

Date HEROLD GAY 17 -Borrower Date 5/17/06 -Borrower

Date _____ -Borrower Date _____ -Borrower

(Sign Original Only)

PAY TO THE ORDER OF WITHOUT RECOURSE

[Signature]

TRUST ONE MORTGAGE CORPORATION
A CALIFORNIA CORPORATION
SUSAN JOCE
VICE PRESIDENT

TRUST ONE MORTGAGE CORPORATION

ALLONGE TO NOTE

This Allonge to Note is to that certain Note dated **05/17/2006** and executed by:

HEROLD GAY A SINGLE MAN

In favor of **Trust One Mortgage Corporation**, A California Corporation as payee.

Without Recourse, Pay to the order of:

**Trust One Mortgage Corporation,
A California Corporation**

By: 

By: _____
Susan Wood

Its: Vice President

Loan Number: [REDACTED] 01WH
Loan Amount: \$ 60,000.00
Property Address: 7070 NW 65TH TERRACE
PARKLAND, FL 33067

Date: June 1, 2006

Exhibit N

8809

Return to:

RECORDING DEPARTMENT
LENDER SERVICES DIRECT INC
26461 CROWN VALLEY PKWY STE 200
MISSION VIEJO, CA 92691

Attn.: Shipping Dept/Document Control

Loan No.: 01WH

This instrument was prepared by:

KIM DANG

TRUST ONE MORTGAGE CORPORATION

108 PACIFICA, SUITE 300

IRVINE, CALIFORNIA 92618

Order No.: 116160

INSTR # 106155167
OR BK 42195 Pages 1502 - 1508
RECORDED 06/12/06 14:52:11
BROWARD COUNTY COMMISSION
DOC STMP.M: \$210.00
INT TAX: \$1 \$120.00
DEPUTY CLERK 2185
#1, 7 Pages

MORTGAGE

THIS MORTGAGE is made this 17th day of May, 2006, between the Mortgagor, **HEROLD GAY A SINGLE MAN**, whose address is **7070 NW 65TH TERRACE, PARKLAND, FLORIDA 33067** (herein "Borrower"), and the Mortgagee, **TRUST ONE MORTGAGE CORPORATION**, a **CALIFORNIA Corporation**, a corporation organized and existing under the laws of the State of **CALIFORNIA**, whose address is **108 PACIFICA, SUITE 300, IRVINE, CALIFORNIA 92618** (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. **\$60,000.00** which indebtedness is evidenced by Borrower's note dated **May 17, 2006** and extensions and renewals thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on **May 16, 2031**;

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the following described property located in the County of **BROWARD**, State of Florida:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

which has the address of **7070 NW 65TH TERRACE,**

[Street]

PARKLAND,

[City]

FLORIDA

33067 (herein "Property Address");

[ZIP Code]

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

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

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

FLORIDA - SECOND MORTGAGE - 1/80 - FNMA/FHLMC UNIFORM INSTRUMENT

Form 3810
Amended 5/93

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Mortgage, and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, and then to the principal of the Note.

4. Prior Mortgages and Deeds of Trust; Charges; Liens. Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

5. Hazard 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 such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

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.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

6. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

7. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

10. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note, (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to Lender under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note, without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

12. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to

Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. Governing Law; Severability. The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

15. Rehabilitation Loan Agreement. Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

16. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Mortgage.

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 delivered or mailed within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

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

17. Acceleration; Remedies. Except as provided in paragraph 16 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding, and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the nonexistence of a default or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorneys' fees, court costs, and costs of documentary evidence, abstracts and title reports.

18. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Mortgage due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would be then due under this Mortgage and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorneys' fees and court costs; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

19. Assignment of Rents; Appointment of Receiver. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

20. Release. Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

21. Attorneys' Fees. As used in this Mortgage and in the Note, "attorneys' fees" shall include attorneys' fees, if any, which may be awarded by an appellate court.

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

<input type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> Other(s) [specify]

**REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST**

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

NOTICE TO BORROWER

Do not sign this Mortgage if it contains blank spaces. All spaces should be completed before you sign.

Signed, sealed and delivered in the presence of:

Geng Duino

HEROLD GAY (Seal)
-Borrower

7070 NW 65TH TERRACE
PARKLAND, FLORIDA 33067 (Address)

(Seal)
-Borrower

(Address)

(Seal)
-Borrower

(Address)

(Seal)
-Borrower

(Address)

(Sign Original Only)

STATE OF FLORIDA,

County ss: *Broward*The foregoing instrument was acknowledged before me this
HEROLD GAY,*5-17-06*

by

who is personally known to me or who has produced

Drivers license

as identification.

George Drivas

Notary Public

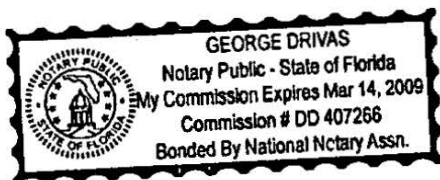


Exhibit 2

**U.S. District Court
California Northern District (San Jose)
CIVIL DOCKET FOR CASE #: 5:11-cv-05018-PSG**

Boyd v. GMAC Mortgage LLC et al
Assigned to: Magistrate Judge Paul Singh Grewal
Case in other court: US Court of Appeals for the Ninth Circuit,
12-17434
Cause: 15:1601 Truth in Lending

Date Filed: 10/12/2011
Date Terminated: 10/01/2012
Jury Demand: Plaintiff
Nature of Suit: 371 Truth in Lending
Jurisdiction: Federal Question

Plaintiff**Michael E Boyd**

represented by **Maria Schindler**
One Embarcadero Center
Suite 2600
San Francisco, CA 94111
415-398-3344
Fax: 415-956-0439
Email: ms@severson.com
ATTORNEY TO BE NOTICED

V.

Defendant**GMAC Mortgage LLC**

represented by **Elizabeth Holt Andrews**
Severson & Werson
A Professional Corporation
One Embarcadero Center, Suite 2600
San Francisco, CA 94111
415-398-3344
Fax: 415-956-0439
Email: eha@severson.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Maria Schindler
(See above for address)
ATTORNEY TO BE NOTICED

Defendant**Mortgage Electronic Registration
Services, Inc.**

represented by **Elizabeth Holt Andrews**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Maria Schindler
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/11/2011	<u>1</u>	COMPLAINT of Unconscionability Contract Adhesion and Quiet Title ot Real Property (Summons Issued);jury demand; against GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. (Filing fee \$ 350, receipt number 54611010547). Filed by Michael E Boyd. (Attachments: # <u>1</u> Civil Cover Sheet) (bw, COURT STAFF) (Filed on 10/11/2011) (Entered: 10/12/2011)
10/11/2011	<u>2</u>	Lis Pendens and (Proposed) Order by Michael E Boyd. (bw, COURT STAFF) (Filed on 10/11/2011) (Entered: 10/12/2011)

10/11/2011	<u>3</u>	Summons Issued as to GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. (bw, COURT STAFF) (Filed on 10/11/2011) (Entered: 10/12/2011)
10/11/2011	<u>4</u>	ADR SCHEDULING ORDER: Case Management Statement due by 11/22/2011. Case Management Conference set for 11/29/2011 02:00 PM in Courtroom 5, 4th Floor, San Jose. (bw, COURT STAFF) (Filed on 10/11/2011) (Entered: 10/12/2011)
10/11/2011		CASE DESIGNATED for Electronic Filing. (bw, COURT STAFF) (Filed on 10/11/2011) (Entered: 10/12/2011)
10/21/2011	<u>5</u>	SUMMONS Returned Executed by Michael E Boyd. GMAC Mortgage LLC served on 10/19/2011, answer due 11/9/2011. (gm, COURT STAFF) (Filed on 10/21/2011) (Entered: 10/24/2011)
10/27/2011	<u>6</u>	SUMMONS Returned Executed by Michael E Boyd. Mortgage Electronic Registration Services, Inc. served on 10/20/2011, answer due 11/10/2011. (gm, COURT STAFF) (Filed on 10/27/2011) (Entered: 10/28/2011)
11/08/2011	<u>11</u>	NOTICE of need for ADR Phone Conference (ADR L.R. 3-5 d) (bw, COURT STAFF) (Filed on 11/8/2011) (Entered: 11/09/2011)
11/08/2011	<u>12</u>	ADR Certification by Parties and Counsel (ADR L.R. 3-5 b) of discussion of ADR options (bw, COURT STAFF) (Filed on 11/8/2011) (Entered: 11/09/2011)
11/08/2011	<u>13</u>	Application for an Order to Show Cause Why a Preliminary Injunction Should not be Issued filed by Michael E Boyd. Responses due by 11/22/2011. Replies due by 11/29/2011. (bw, COURT STAFF) (Filed on 11/8/2011) (Entered: 11/09/2011)
11/08/2011	<u>14</u>	Alternative Application for an Order Shortening the Time for a Hearing on Order to Show Cause Why a Preliminary Injunction Should not be Issued or for a Temporary Restraining Order by Michael E Boyd (bw, COURT STAFF) (Filed on 11/8/2011) (Entered: 11/09/2011)
11/08/2011	<u>15</u>	MEMORANDUM to Plaintiff's Applications filed by Michael E Boyd. (bw, COURT STAFF) (Filed on 11/8/2011) (Entered: 11/09/2011)
11/08/2011	<u>16</u>	(Proposed) Order Shortening the Time for a Hearing on Order that Defendant's Show Cause Why a Preliminary Injunction Should not be Issued by Michael E Boyd. (bw, COURT STAFF) (Filed on 11/8/2011) (Entered: 11/09/2011)
11/08/2011	<u>17</u>	(Proposed) Order that Defendants Show Cause Why a Preliminary Injunction Should not be Issued by Michael E Boyd.(bw, COURT STAFF) (Filed on 11/8/2011) (Entered: 11/09/2011)
11/08/2011	<u>18</u>	(Proposed) Order Granting Motion for a Temporary Restraining Order by Michael E Boyd. (bw, COURT STAFF) (Filed on 11/8/2011) (Entered: 11/09/2011)
11/09/2011	<u>7</u>	Disclosure Statements Pursuant to Federal Rule of Civil Procedure 7.1 and Certificate of Interested Entities or Persons Pursuant to Civil Local Rule 3-16 by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. identifying Corporate Parent MERSCORP, Inc. for Mortgage Electronic Registration Services, Inc.; Corporate Parent Ally Financial Inc. f/k/a GMAC Inc. for GMAC Mortgage LLC. (Attachments: # <u>1</u> Certificate/Proof of Service)(Holt, M. Elizabeth) (Filed on 11/9/2011) Modified on 11/10/2011 (bw, COURT STAFF). (Entered: 11/09/2011)
11/09/2011	<u>8</u>	CONSENT to Proceed Before a US Magistrate Judge by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. (Attachments: # <u>1</u> Certificate/Proof of Service)(Holt, M. Elizabeth) (Filed on 11/9/2011) Modified on 11/10/2011 (bw, COURT STAFF). (Entered: 11/09/2011)
11/09/2011	<u>9</u>	Notice of Motion and Motion to Dismiss Pursuant to Rule 12(B)(6) or in the Alternative for a More Definite Statement; Memorandum of Points and Authorities filed by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc.. Motion Hearing set for 1/3/2012 10:00 AM in Courtroom 5, 4th Floor, San Jose before Magistrate Judge Paul Singh Grewal. Responses due by 11/23/2011. Replies due by 11/30/2011. (Attachments: # <u>1</u> (Proposed) Order, # <u>2</u> Certificate/Proof of Service) (Holt, M. Elizabeth) (Filed on 11/9/2011) Modified on 11/10/2011 (bw, COURT STAFF). (Entered: 11/09/2011)

11/09/2011	<u>10</u>	Request for Judicial Notice in Support of Motion to Dismiss Pursuant to Rule 12(B)(6) or in the Alternative for a More Definite Statement Pursuant to rule 12(E) re <u>9</u> filed by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. (Attachments: # <u>1</u> Exhs. A to G, # <u>2</u> Exhs. H to N, # <u>3</u> Certificate/Proof of Service) (Holt, M. Elizabeth) (Filed on 11/9/2011) Modified on 11/9/2011 (feriab, COURT STAFF). (Entered: 11/09/2011)
11/09/2011	<u>19</u>	Opposition to Plaintiff's Motions for Temporary Restraining Order, Preliminary Injunction, and Order Shortening Tim re <u>13</u> filed by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. (Attachments: # <u>1</u> Certificate/Proof of Service)(Holt, M. Elizabeth) (Filed on 11/9/2011) Modified on 11/14/2011 (bw, COURT STAFF). (Entered: 11/09/2011)
11/09/2011	<u>20</u>	NOTICE of need for ADR Phone Conference (ADR L.R. 3-5 d) re <u>11</u> Notice of need of ADR Phone Conference (ADR L.R. 3-5 d) of defendants GMAC Mortgage LLC and Mortgage Electronic Registration Systems, Inc. (Attachments: # <u>1</u> Certificate/Proof of Service) re document <u>11</u>) (Holt, M. Elizabeth) (Filed on 11/9/2011) Modified on 11/14/2011 (bw, COURT STAFF). (Entered: 11/09/2011)
11/10/2011	<u>21</u>	ORDER re <u>13</u> , <u>14</u> Notice (Other) filed by Michael E Boyd. Signed by Judge Paul S. Grewal on 11/10/2011. (psglc2, COURT STAFF) (Filed on 11/10/2011) (Additional attachment(s) added on 11/10/2011: # <u>1</u> CERTIFICATE OF SERVICE) (ofr, COURT STAFF). (Entered: 11/10/2011)
11/14/2011	<u>22</u>	CONSENT to Proceed Before a US Magistrate Judge by Michael E Boyd. (bw, COURT STAFF) (Filed on 11/14/2011) (Entered: 11/15/2011)
11/15/2011	<u>23</u>	Declaration of Service as to Defendant GMAC MORTGAGE, LLC Served on 11/11/2011 by Michael E Boyd (bw, COURT STAFF) (Filed on 11/15/2011) (bw, COURT STAFF). (Entered: 11/15/2011)
11/15/2011		ADR Clerks Notice Setting ADR Phone Conference on 11/28/11 at 9:00 a.m. Pacific time. The court will provide instructions for connecting to the call in a separate notice to the parties. (sgd, COURT STAFF) (Filed on 11/15/2011) (Entered: 11/15/2011)
11/16/2011	<u>24</u>	Reply to Defendant's Response re <u>19</u> by Michael E Boyd. (bw, COURT STAFF) (Filed on 11/16/2011) (bw, COURT STAFF). (Entered: 11/16/2011)
11/22/2011	<u>25</u>	Case Management Statement filed by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. (Holt, M. Elizabeth) (Filed on 11/22/2011) Modified on 11/23/2011 (bw, COURT STAFF). (Entered: 11/22/2011)
11/22/2011	<u>26</u>	CERTIFICATE OF SERVICE by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. re <u>25</u> Case Management Statement <i>Certificate of Service</i> (Holt, M. Elizabeth) (Filed on 11/22/2011) (Entered: 11/22/2011)
11/22/2011	<u>27</u>	Certificate of Service re <u>22</u> Consent to Proceed Before a US Magistrate Judge; and <u>24</u> Reply to Defendant's Response by Michael E Boyd (bw, COURT STAFF) (Filed on 11/22/2011) (bw, COURT STAFF). Modified on 11/23/2011 (bw, COURT STAFF). (Entered: 11/22/2011)
11/28/2011		ADR Remark: ADR Phone Conference held by RWS on 11/28/11. (sgd, COURT STAFF) (Filed on 11/28/2011) (Entered: 11/28/2011)
11/28/2011	<u>28</u>	CASE MANAGEMENT STATEMENT filed by Michael E Boyd. (bw, COURT STAFF) (Filed on 11/28/2011) (Entered: 11/29/2011)
11/29/2011	<u>29</u>	CERTIFICATE OF SERVICE re <u>28</u> Case Management Statement by Michael E Boyd (bw, COURT STAFF) (Filed on 11/29/2011) (Entered: 11/29/2011)
11/29/2011	<u>30</u>	Minute Entry: Case Management Conference held on 11/29/2011 before Magistrate Judge Paul S. Grewal (Date Filed: 11/29/2011). Further Case Management Conference set for 1/3/2012 at 10:00 AM in Courtroom 5, 4th Floor, San Jose. (Court Reporter FTR: (2:00 to 2:05.) (ofr, COURT STAFF) (Date Filed: 11/29/2011) (Entered: 11/29/2011)
11/30/2011	<u>31</u>	Reply in Support of Motion to Dismiss re <u>9</u> filed by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. (Attachments: # <u>1</u> Proof of Service) (Holt, M. Elizabeth) (Filed on 11/30/2011) Modified on 11/30/2011 (bw, COURT STAFF).

		(Entered: 11/30/2011)
12/05/2011	<u>32</u>	ORDER by Judge Paul S. Grewal granting <u>2</u> Motion to Dismiss; denying <u>13</u> Motion for Order to Show Cause (psglc2, COURT STAFF) (Filed on 12/5/2011) (Additional attachment(s) added on 12/6/2011: # <u>1</u> CERTIFICATE OF SERVICE) (ofr, COURT STAFF). (Entered: 12/05/2011)
12/05/2011	<u>33</u>	NOTICE of Pendency of Other Actions or Proceedings by Michael E Boyd (bw, COURT STAFF) (Filed on 12/5/2011) (bw, COURT STAFF). (Entered: 12/06/2011)
12/05/2011	<u>34</u>	CERTIFICATE OF SERVICE re <u>33</u> Notice of Pendency of Other Actions or Proceedings by Michael E Boyd (bw, COURT STAFF) (Filed on 12/5/2011) (bw, COURT STAFF). (Entered: 12/06/2011)
12/06/2011	<u>35</u>	NOTICE of Entry of Order (1) Granting Defendants' Motion to Dismiss; (2) Denying Plaintiff's Application for Preliminary Injunction or Temporary Restraining Order re <u>32</u> by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. (Attachments: # <u>1</u> Certificate/Proof of Service) (Holt, M. Elizabeth) (Filed on 12/6/2011) Modified on 12/7/2011 (bw, COURT STAFF). (Entered: 12/06/2011)
12/19/2011	<u>36</u>	Notice of Removal of Case to United States Bankruptcy Court for the Northern District of California Case #11-61311 by Michael E Boyd (bw, COURT STAFF) (Filed on 12/19/2011) (bw, COURT STAFF). (Entered: 12/20/2011)
12/23/2011	<u>37</u>	Request to Appear Telephonically for Case Management Conference Pursuant to Rule of Court 16-10(A) filed by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. (Holt, M. Elizabeth) (Filed on 12/23/2011) Modified on 12/27/2011 (bw, COURT STAFF). (Entered: 12/23/2011)
12/23/2011	<u>38</u>	CERTIFICATE OF SERVICE re <u>37</u> Request to Appear Telephonically for Case Management Conference Pursuant to Rule of Court 16-10(A) by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. (Holt, M. Elizabeth) (Filed on 12/23/2011) Modified on 12/27/2011 (bw, COURT STAFF). (Entered: 12/23/2011)
12/29/2011	<u>39</u>	ORDER by Judge Paul S. Grewal, granting <u>37</u> Motion to Appear by Telephone (ofr, COURT STAFF) (Filed on 12/29/2011) (Additional attachment(s) added on 12/29/2011: # <u>1</u> CERTIFICATE OF SERVICE) (ofr, COURT STAFF). (Entered: 12/29/2011)
12/29/2011	<u>40</u>	CLERKS NOTICE RESETTING TIME ON JANUARY 3, 2012 CASE MANAGEMENT CONFERENCE: 1/3/2012 10:00 a.m. Case Management Conference reset to 2:00 p.m. in Courtroom 5, 4th Floor, San Jose. (ofr, COURT STAFF) (Filed on 12/29/2011) (Additional attachment(s) added on 12/29/2011: # <u>1</u> CERTIFICATE OF SERVICE) (ofr, COURT STAFF). (Entered: 12/29/2011)
01/03/2012	<u>41</u>	Minute Entry: Case Management Conference held on 1/3/2012 before Magistrate Judge Paul S. Grewal. (Date Filed: 1/3/2012). Bankruptcy matter hearing set for 1/24/2012 at 02:00 PM in Courtroom 5, 4th Floor, San Jose. (Court Reporter FTR: (2:02 to 2:11.) (ofr, COURT STAFF) (Date Filed: 1/3/2012) (Entered: 01/03/2012)
01/10/2012	<u>42</u>	Opposition to Plaintiff's Petition to Transfer Case to Bankruptcy Court re <u>41</u> by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. (Attachments: # <u>1</u> Certificate/Proof of Service) (Holt, M. Elizabeth) (Filed on 1/10/2012) Modified on 1/11/2012 (bw, COURT STAFF). (Entered: 01/10/2012)
01/17/2012	<u>43</u>	First Joint Stipulation to Continue Hearing on Plaintiff's Notice of Removal Pursuant to Civil Local Rule 6-2 and (Proposed) Order filed by Michael E Boyd. (bw, COURT STAFF) (Filed on 1/17/2012) (Entered: 01/18/2012)
01/17/2012	<u>44</u>	Proof of Service re <u>43</u> First Joint Stipulation to Continue Hearing on Plaintiff's Notice of Removal Pursuant to Civil Local Rule 6-2 and (Proposed) Order by Michael E Boyd (bw, COURT STAFF) (Filed on 1/17/2012) (Entered: 01/18/2012)
01/17/2012	<u>45</u>	Answer to Defendants' Opposition to Plaintiff's Petition to Transfer Case to Bankruptcy Court re <u>42</u> by Michael E Boyd. (bw, COURT STAFF) (Filed on 1/17/2012) (Entered: 01/18/2012)

Pg 6 of 8		
01/17/2012	<u>46</u>	Proof of Service re <u>45</u> Answer to Defendants' Opposition to Plaintiff's Petition to Transfer Case to Bankruptcy Court by Michael E Boyd (bw, COURT STAFF) (Filed on 1/17/2012) Modified on 1/18/2012 (bw, COURT STAFF). (Entered: 01/18/2012)
01/20/2012	<u>47</u>	ORDER by Judge Paul S. Grewal granting <u>43</u> Stipulation (ofr, COURT STAFF) (Filed on 1/20/2012) (Additional attachment(s) added on 1/23/2012: # <u>1</u> CERTIFICATE OF SERVICE) (ofr, COURT STAFF). (Entered: 01/23/2012)
01/20/2012		Set/Reset Hearings: 1/24/2012 Bankruptcy matter hearing continued to 1/31/2012 02:00 PM in Courtroom 5, 4th Floor, San Jose. (ofr, COURT STAFF) (Filed on 1/20/2012) (Entered: 01/23/2012)
01/31/2012	<u>48</u>	Minute Entry: Hearing on Plaintiffs Petition to Transfer to Bankruptcy Court held. The Court takes matter under submission; written order after hearing to be issued.(Date Filed: 1/31/2012). (Court Reporter FTR: (2:05 to 2:18.) (ofr, COURT STAFF) (Date Filed: 1/31/2012) (Entered: 01/31/2012)
03/21/2012	<u>49</u>	Statement of Recent Decision Re: Plaintiff's Petition to Transfer Case re <u>36</u> by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. (Attachments: # <u>1</u> Exhibit Decision, # <u>2</u> Certificate/Proof of Service)(Schindler, Maria) (Filed on 3/21/2012) Text modified on 3/21/2012 (bw, COURT STAFF). (Entered: 03/21/2012)
04/24/2012	<u>50</u>	ORDER DENYING PLAINTIFF'S PETITION TO TRANSFER TO BANKRUPTCY COURT. Signed by Judge Paul S. Grewal on April 24, 2012. (psglc1, COURT STAFF) (Filed on 4/24/2012) (Additional attachment(s) added on 4/25/2012: # <u>1</u> CERTIFICATE OF SERVICE) (ofr, COURT STAFF). (Entered: 04/24/2012)
04/26/2012	<u>51</u>	CLERK'S NOTICE SETTING CASE MANAGEMENT CONFERENCE: Case Management Conference set for 5/29/2012 at 02:00 PM in Courtroom 5, 4th Floor, San Jose. Case Management Statement due by 5/22/2012. (ofr, COURT STAFF) (Filed on 4/26/2012) (Additional attachment(s) added on 4/26/2012: # <u>1</u> CERTIFICATE OF SERVICE) (ofr, COURT STAFF). (Entered: 04/26/2012)
05/22/2012	<u>52</u>	First Amended COMPLAINT of Unconscionability Contract Adhesion and Quiet Title ot Real Property against All Defendants. Filed by Michael E Boyd. (bw, COURT STAFF) (Filed on 5/22/2012) (bw, COURT STAFF). (Additional attachment(s) added on 5/23/2012: # <u>1</u> Exhibit-A) (bw, COURT STAFF). (Entered: 05/22/2012)
05/22/2012	<u>53</u>	CERTIFICATE OF SERVICE re <u>52</u> Amended Complaint by Michael E Boyd (bw, COURT STAFF) (Filed on 5/22/2012) (bw, COURT STAFF). (Entered: 05/22/2012)
05/23/2012	<u>54</u>	Joint Case Management Statement filed by Michael E Boyd, GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. (Schindler, Maria) (Filed on 5/23/2012) Modified on 5/23/2012 (bw, COURT STAFF). (Entered: 05/23/2012)
05/29/2012	<u>55</u>	Minute Entry: Further Case Management Conference held on 5/29/2012 before Magistrate Judge Paul S. Grewal (Date Filed: 5/29/2012). (Court Reporter FTR: (2:05 to 2:07.) (ofr, COURT STAFF) (Date Filed: 5/29/2012) (Entered: 05/30/2012)
06/08/2012	<u>56</u>	First Joint Stipulation to Continue Response Date to First amended Complaint Pursuant to Civil Local Rule 6-2 re <u>52</u> filed by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. (Attachments: # <u>1</u> Signature Page (Declarations/Stipulations), # <u>2</u> Certificate/Proof of Service)(Schindler, Maria) (Filed on 6/8/2012) Text modified on 6/8/2012 conforming to posted document caption (bwS, COURT STAFF). (Entered: 06/08/2012)
06/14/2012	<u>57</u>	FIRST JOINT STIPULATION TO CONTINUE RESPONSE DATE TO FIRST AMENDED COMPLAINT PURSUANT TO CIVIL LOCAL RULE 6-2 AND ORDER by Judge Paul S. Grewal, granting <u>56</u> Stipulation (ofr, COURT STAFF) (Filed on 6/14/2012) (Entered: 06/14/2012)
06/25/2012	<u>58</u>	Notice of Motion and Motion to Dismiss First Amended Complaint re <u>52</u> ; Memorandum of Points and Authorities in Support filed by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc.. Motion Hearing set for 8/7/2012 10:00 AM in Courtroom 5, 4th Floor, San Jose before Magistrate Judge Paul Singh Grewal. Responses due by 7/9/2012. Replies due by 7/16/2012. (Attachments: # <u>1</u> (Proposed) Order)(Schindler, Maria) (Filed on 6/25/2012) Text modified, linkage added on 6/25/2012 (bwS, COURT STAFF). (Entered: 06/25/2012)

07/11/2012	<u>59</u>	NOTICE of Non-Receipt of Opposition to Motion to Dismiss re <u>58</u> by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc. (Schindler, Maria) (Filed on 7/11/2012) Modified on 7/12/2012 (bwS, COURT STAFF). (Entered: 07/11/2012)
07/12/2012	<u>60</u>	MOTION for Procedural Relief Regarding July 9, 2012 Opposition Deadline filed by Michael E Boyd. Motion Hearing set for 8/7/2012 10:00 AM in Courtroom 5, 4th Floor, San Jose before Magistrate Judge Paul Singh Grewal. Responses due by 7/26/2012. Replies due by 8/2/2012. (bwS, COURT STAFF) (Filed on 7/12/2012) (Entered: 07/12/2012)
07/12/2012	<u>61</u>	CERTIFICATE OF SERVICE re <u>60</u> MOTION for Procedural Relief Regarding July 9, 2012 Opposition Deadline by Michael E Boyd (bwS, COURT STAFF) (Filed on 7/12/2012) (Entered: 07/12/2012)
07/19/2012	<u>62</u>	RESPONSE (re <u>60</u> MOTION for Procedural Relief Regarding July 9, 2012 Opposition Deadline re <u>57</u> Order on Stipulation) filed by GMAC Mortgage LLC, Mortgage Electronic Registration Services, Inc.. (Attachments: # <u>1</u> Exhibit)(Schindler, Maria) (Filed on 7/19/2012) (Entered: 07/19/2012)
07/26/2012	<u>63</u>	REPLY to Opposition (re <u>60</u> MOTION for Procedural Relief Regarding July 9, 2012 Opposition Deadline re <u>57</u> Order on Stipulation) filed by Michael E Boyd. (gm, COURT STAFF) (Filed on 7/26/2012) (Entered: 07/31/2012)
07/26/2012	<u>64</u>	CERTIFICATE OF SERVICE by Michael E Boyd re <u>63</u> Reply to Opposition/Response (gm, COURT STAFF) (Filed on 7/26/2012) (Entered: 07/31/2012)
08/07/2012	<u>65</u>	Minute Entry: Motion Hearing held on 8/7/2012 before Magistrate Judge Paul S. Grewal (Date Filed: 8/7/2012) re <u>58</u> MOTION to Dismiss <i>First Amended Complaint filed by Mortgage Electronic Registration Services, Inc., GMAC Mortgage LLC</i> and <u>60</u> MOTION for Procedural Relief Regarding July 9, 2012 Opposition Deadline filed by Michael E Boyd. The Court takes matters under submission, written order after hearing to be issued. (Court Reporter: Summer Fisher.) (ofr, COURT STAFF) (Date Filed: 8/7/2012) (Entered: 08/07/2012)
08/22/2012	<u>66</u>	ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT by Judge Paul S. Grewal, granting <u>58</u> Motion to Dismiss; denying <u>60</u> Motion for Procedural Relief (ofr, COURT STAFF) (Filed on 8/22/2012) (Entered: 08/23/2012)
10/01/2012	<u>67</u>	JUDGMENT. Signed by Judge Paul S. Grewal on 10/1/2012. (ofr, COURT STAFF) (Filed on 10/1/2012) (Entered: 10/03/2012)
10/29/2012	<u>68</u>	NOTICE OF APPEAL to the 9th CCA Michael E Boyd. Appeal of Judgment <u>67</u> (Appeal fee of \$455 paid receipt #54611012726.) (tsh, COURT STAFF) (Filed on 10/29/2012) (tsh, COURT STAFF). (Entered: 10/30/2012)
10/30/2012	<u>69</u>	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals by Michael E Boyd re <u>68</u> Notice of Appeal (Attachments: # <u>1</u> Notice of Appeal, # <u>2</u> Judgment, # <u>3</u> Docket Sheet)(tsh, COURT STAFF) (Filed on 10/30/2012) (Entered: 10/30/2012)
10/31/2012	<u>70</u>	USCA Case Number 12-17434 US Court of Appeals for the Ninth Circuit for <u>68</u> Notice of Appeal filed by Michael E Boyd, <u>69</u> Transmission of Notice of Appeal and Docket Sheet to USCA filed by Michael E Boyd. (tsh, COURT STAFF) (Filed on 10/31/2012) (tsh, COURT STAFF). (Entered: 11/01/2012)
10/31/2012	<u>71</u>	USCA Time Scheduling Order. (tsh, COURT STAFF) (Filed on 10/31/2012) (tsh, COURT STAFF). (Entered: 11/01/2012)
11/27/2012	<u>72</u>	Transcript Designation and Ordering Form for proceedings held on 1/31/2012 and 8/7/2012 before Judge Paul S. Grewal, (gm, COURT STAFF) (Filed on 11/27/2012) (Entered: 11/29/2012)
12/12/2012	<u>73</u>	Transcript of Proceedings held on 08/07/2012, before Judge Paul S. Grewal. Court Reporter/Transcriber Summer Fisher, Telephone number 408-288-6150. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court

		Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 3/12/2013. (Fisher, Summer) (Filed on 12/12/2012) (Entered: 12/12/2012)
01/17/2013	<u>74</u>	Certificate of Record forwarded to USCA re appeal <u>68</u> Notice of Appeal : (gmS,) (Filed on 1/17/2013) (Additional attachment(s) added on 2/5/2013: # <u>1</u> Transcript Designation and Ordering Form) (gmS,). (Entered: 01/17/2013)
08/22/2014	<u>75</u>	USCA MEMORANDUM AFFIRMED. FILED AND ENTERED JUDGMENT. as to <u>68</u> Notice of Appeal filed by Michael E Boyd (cv, COURT STAFF) (Filed on 8/22/2014) (Entered: 08/26/2014)

Exhibit 3

RECEIVED

MAY 22 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

1 Michael E. Boyd
2 5439 Soquel Drive
3 Soquel, CA 95073
4 Phone: (408) 891-9677
5 E-mail: michaelboyd@sbcglobal.net
6 In Pro Per

7 UNITED STATES DISTRICT COURT
8
9 NORTHER DISTRICT OF CALIFORNIA
10
11 SAN JOSE DIVISION
12

13 MICHAEL E. BOYD,

14 Plaintiff,

15 vs.

16 GMAC MORTGAGE LLC; MORTGAGE
17 ELECTRONIC REGISTRATION SYSTEMS,
18 INC.; and DOES 1 to 100,

19 Defendants.

Case No.: 5:11-CV-05018 PSG

FIRST AMENDED COMPLAINT OF
UNCONSCIONABILITY CONTRACT
ADHESION TO REAL PROPERTY

JURY TRIAL DEMANDED

CASE MANAGEMENT CONFERENCE

Date: May 29, 2012

Time: 2:00 p.m.

Courtroom: 5-Hon. Paul Singh Grewal

20 INTRODUCTION

21 In January 2001 Plaintiff and his spouse formed a "Joint Living Trust" which states,
22 [Exhibit A page 1] "The purpose of this Agreement is to establish a Trust to receive and manage
23 assets for the benefit of the Grantors during the Grantors' lifetimes, and to further manage and
24 distribute the assets of the Trust upon the death of the surviving Grantor." Plaintiff Michael E.
Boyd ("Plaintiff") hereby complains of unconscionability contract adhesion by Defendants'
GMAC Mortgage LLC ("GMAC LLC" or "GMACM") and Mortgage Electronic Registration
Systems ("MERS") to breach said "Joint Living Trust" through the use of standard form loans
and promissory notes [referred herein as "Deeds of Trust" or "DOTs"] signed by Plaintiff in and
about January 2007 which both at the bottom of page 1 lists "CALIFORNIA-Single Family-
Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS Form 3005 1/01 V-6A(CA)"
which is a standard form contract which required the use of MERS as "a separate corporation that

1 is acting solely as a nominee for Lender and Lender's successors and assigns[and that] MERS is
2 the beneficiary under this Security Instrument.” Because Defendants breached his 2001 “Joint
3 Living Trust” Plaintiff also claims a violation of due process rights [both federal and state] by
4 GMAC LLC and MERS. Plaintiff respectfully demands a trial before a jury.

5 6 **JURISDICTION**

7 This court has jurisdiction over this complaint because it arises under the laws of the
8 United States and while Plaintiff’s properties are located within the District, both Defendants,
9 GMAC Mortgage, LLC and MERS, are incorporated in the state of Delaware.

10 **BACKGROUND TO COMPLAINT**

11 Mortgage Backed Securities (“MBS”) by nature, disclose consumer financial information,
12 to multiple entities not privy to the original transaction between borrower and lender. In fact,
13 investors have an information advantage far superior to the borrower. Many borrowers, myself
14 being among them, cannot even ascertain who the true owner of my mortgages. Lenders refuse to
15 disclose this information, MERS does not record the information consistently, and it is not
16 recorded in the Registry of Deeds. MERS website lists GMAC LLC as both DOT’s “Servicer”,
17 but not the “underwriter” who is listed as “Investor: Undisclosed Investor” for both properties.
18 Based on information provided by Defendant GMACM’s Loss Mitigation Department; Plaintiff is
19 informed and believes and thereupon alleges that the financial “underwriter” and the “Investor” to
20 said DOTs was Wells Fargo Bank N.A; the same bank where Plaintiff is a depositor.

21 Any entity who gains membership to MERS can view more information than the
22 consumer is made aware of. The investor purchases of an "alleged" interest in personal real
23 property, yet it is never recorded or disclosed until a future event occurs. This is in effect, bucket
24 shopping. The Futures Trading Practices Act of 1992 exempted such transactions from state
bucketing laws "to provide legal certainty...". The statutory purpose, I would surmise, was not to

1 create and allow transactions involving property rights protected by the 14th amendment. Further,
2 as witnessed by the current mortgage mess, this exemption has created a far greater "legal
3 uncertainty" with respect to the property rights that are securitized, than any issue that the
4 exemption was meant to eliminate.

5 An MBS is also by nature, a fiduciary conflict of interest. A bank cannot exert their
6 fiduciary responsibilities for two classes of consumers, lenders and investors. Their interests in
7 respect to MBSs, are adversarial. Banks disclose one consumers (borrowers) private financial
8 information to another consumer (investors) freely, while withholding the information in a
9 reciprocal manner. This is all done without the borrower having any knowledge of the
10 securitization and subsequent transactions.

11 Borrowers expect privacy of their financial information when entering into any contract
12 with a lender. Securitizations on private property rights should not be legal without signed
13 consent of a real party in interest (borrower), on any instrument involving the lender and any
14 subsequent party in interest. It also must be voluntary and not adhesive, such as the MERS
15 contracts. This would allow ALL consumers to have privacy control, bargaining power, and
16 disclosure in Mortgage Backed Securities. In this case the Plaintiff seeks to unwind and disclose
17 the chain of subsequent parties of interest to the two subject DOTs; the considerations provided
18 and received by each, and to disclose the actual purchase value of associated MBS and the
19 identity of each underwriter to these DOTs.

20 It turns out, the foreclosure crisis, which started and keeps fueling our economic crisis,
21 began over 20 years ago with Banks getting federal law changed to enable them to increase their
22 private gains. Now they have defrauding almost everyone possible. Banks began this cycle of
23 fraud by lying to Investors (i.e.: our Pension Funds) about the Mortgage Backed Securities they
24 sold. All loans in these securitized pools were created to explode/fail, unbeknownst to investors

1 and insurers. Borrowers were forced to refinance prior to loan "explosion/fail dates," which was
2 exactly why banks created loans like that. Banks then kept all loan ownership records in MERS,
3 a Members Only private database, hiding these records from everyone else. Banks used these
4 loans/notes as collateral for short-term lines of credit instead of transferring the notes to the
5 Mortgage Backed Securities they sold, creating great wealth for themselves, but defrauding both
6 the Investors and the IRS. As this scheme began to come apart, banks set up investment
7 departments to "short" the Mortgage Backed Securities they sold, generating additional huge
8 profits for themselves while everyone else lost money. Then Banks fraudulently and illegally
9 faked Loan Ownership paperwork which they recorded to enable them to foreclose on homes
10 whose loans they did not own (dismissively termed "robo-signing"). Our county records are now
11 filled with fraudulent paperwork, jeopardizing ownership for all properties and owners caught in
12 this fraud - which turns out to be as many as seventy two million properties.

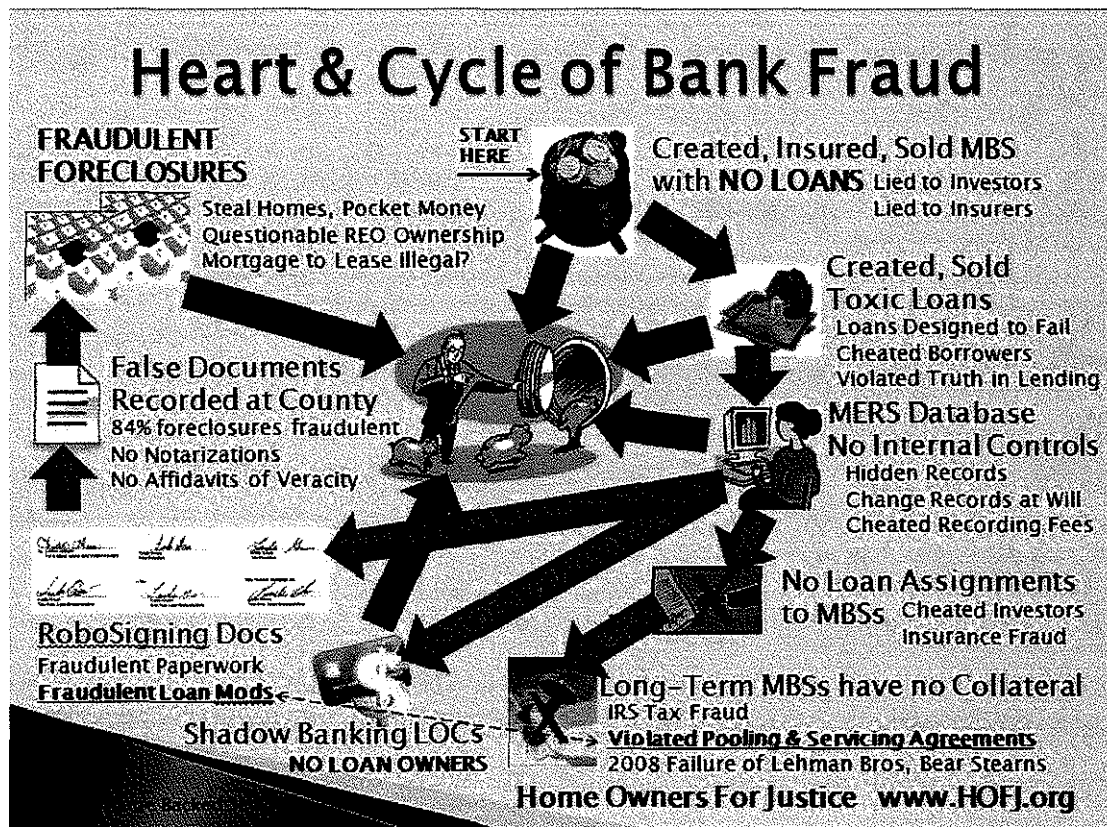


Figure 1

1 Below are the 12 Steps of Bank Fraud [also see Figure 1] to clarify what has actually
2 taken place and why we're in such a mess today.

3 STEP 1: CHEAT County Recorders' Offices nationwide: establish MERS (late 1990s).
4 Using MERS eliminates recording Loan ownership changes at the county recorders' offices.
5 Using MERS hides these ownership changes from the Public. Using MERS has cheated and still
6 cheats our Counties out of billions of dollars of recording fees

7 STEP 2: CIRCUMVENT the SEC: use foreign corporations as Securities Vehicles. No
8 SEC regulators; no prying eyes; no inhibitions; no rules; this significantly "Gamed the System"
9 that was put in place to protect Investors from fraud

10 STEP 3: BUY OFF Ratings Agencies: Get AAA-Ratings on Securities PRIOR to
11 funding the Loans that should have been in the Securities at time of sale. Normally loans are
12 made first, then pooled, then rated as a Security, then sold to Investors. These Securities were
13 created first, rated without Loans, sold to Investors, and then filled with bad Loans designed to
14 fail.

15 STEP 4: Commit Insurance FRAUD: over-insure the Securities' Values by 30x,
16 then specifically design the loans to fail. Insurance was paid to Servicers managing the Securities,
17 not Investors, when the values declined. Example: AIG credit-default-swaps were used as
18 Insurance for these Securities. These Securities were then filled with Loans "designed to fail" to
19 ensure values would decline. Example: when a \$300,000 loan defaulted, payout is \$9,000,000 to
20 the Servicers

21 STEP 5: CHEAT Investors' out of Collateral: do not assign Loans to the Securities
22 after the Loans are made. Loans funded with Investor money were not assigned to the Securities
23 the Investors purchased. Using MERS allows Bank Servicers to change Loan ownership as they
24 choose

1 STEP 6: CHEAT the IRS with a tax dodge: set up Securities as Closed-end Long-Term
2 qualifying Investments. Use Securities as Open-end Short-term Collateral for large cash deposits
3 (REPOs). Using MERS to shift Loan ownership at will, allows Bank Servicers to keep up this
4 game.

5 STEP 7: CHEAT Truth-in-Lending Laws (TIL) 1: At Loan funding, Banks lied, [in
6 Plaintiff's case Plaza Home Mortgage] calling themselves Lenders, but they weren't (Banks are
7 Pretender Lenders) Money for the Loans came from pre-selling the Securities to Investors. No
8 Bank money has ever funded any of these securitized loans. Banks only service these loans and
9 manipulate Loan ownership using MERS

10 STEP 8: Criminally Disregard TIL 2: pushed Borrowers into Loans Banks knew
11 borrowers could not afford when the Loan reset [i.e., contracts of adhesion]. This is criminal
12 disregard of the Fiduciary Responsibility required of loan officers. Banks pushed loan officers
13 with every ruse and bonus possible to snag unsuspecting Borrowers regardless of future harm to
14 the Borrower.

15 STEP 9: CHEAT the Borrowers: create Loans designed to fail on schedule. Example:
16 "NINJA" Loan requirements: no documentation, no income, no job (huh??). Loan \$300,000, 6%
17 teaser interest rate for 2 years; 16% interest rate on month 25 (failure month); 6% teaser rate for
18 24 months = \$1,500/month; Interest Only payments for 2 years (affordable); Month 25: Loan
19 payment "explodes" to \$4,000/month (16%/12 x \$300,000) and Borrower defaults.

20 STEP 10: STEAL the Investors' Money: example below (both = \$48,000/yr); \$300,000
21 Loan at 16% interest = 6% interest on \$800,000 Investment; \$300,000 of \$800,000 Investment is
22 used to fund the \$300,000 Loan in Step 9. \$500,000 balance of Investment is used for Reserves,
23 Bonuses, and Kick-backs; Reserves: \$60,000 for 24 months difference between \$4,000/month
24

1 due minus \$1,500/month Borrower payments; Bonuses, Kick-backs: \$440,000 to loan brokers
2 and bank servicers, other insiders.

3 STEP 11: Fraudulently Foreclose Loan defaults: falsify Loan ownership;
4 falsify Foreclosure documents "Pretender Lenders" (Banks) foreclose as if they own the Loans;
5 they do NOT own the Loans. Loan Servicers (Banks) illegally assign Loans to Securities years
6 after the Funds Closed (robosigning fraud not slipups).

7 STEP 12: CHEAT the US Taxpayer: Use TARP to pay off lawsuits; get money to do
8 Loan Mods Bank Servicers can't legally make; Pretender Lenders (Banks) are Servicers with NO
9 authority to modify these loans. Only Loan Owners can modify the Loans. Since Loans were not
10 assigned to specific Securities, Investors don't own the Loans either. Confuse and obfuscate to the
11 max to achieve affordable "settlements" with Fed and States.

12 VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL")

13 CAL. BUS. & PROF. CODE § 17200

14 California's unfair competition statute prohibits "any unlawful, unfair or fraudulent
15 business act or practice." Cal. Bus. & Prof. Code § 17200 (2009).¹ Because Section 17200 is
16 written in the disjunctive, it prohibits three separate types of unfair competition: (1) unlawful acts
17 or practices, (2) unfair acts or practices, and (3) fraudulent acts or practices. Cel-Tech Commc'ns,
18 Inc. v. Los Angeles Cellular Tel. Co., 83 Cal. Rptr. 2d 548, 561 (Cal. 1999). By proscribing
19 "unlawful" acts or practices, "Section 17200 'borrows' violations of other laws and treats them as
20 unlawful practices independently actionable." *Id.* at 539-40. When an action is brought by a
21 consumer against the creditor, as is the case here, a broader definition of the word "unfair"
22 applies than when an action is between direct competitors. In this context, an "unfair" business
23 practice occurs "when it offends an established public policy or when the practice is immoral,

24 ¹ Plaintiff is a California resident, Defendants are incorporated in Delaware, and the amount in controversy exceeds \$75,000. Thus, it appears that this case is properly before the court based on diversity jurisdiction. 28 U.S.C. § 1332.

1 unethical, **oppressive**, unscrupulous or substantially injurious to consumers.” See People v. Casa
2 Blanca Convalescent Homes, Inc., 159 Cal. App. 4th 509, 530 (1984), abrogated on other grounds
3 in Cel-Tech, 83 Cal. Rptr. 2d at 565 & n.12; accord McDonald v. Coldwell Banker, 543
4 F.3d 498, 506 (9th Cir. 2008).

5 The term “fraudulent” as used in Section 17200 “does not refer to the common law tort of
6 fraud” but only requires a showing members of the public “are likely to be deceived.” Puentes v.
7 Wells Fargo Home Mortg., Inc., 72 Cal. Rptr. 3d 903, 909 (Ct. App. 2008) (quoting Saunders v.
8 Superior Court, 33 Cal. Rptr. 2d 438, 441 (Ct. App. 1994). “Unless the challenged conduct
9 ‘targets a particular disadvantaged or vulnerable group, it is judged by the effect it would have on
10 a reasonable consumer.’” Puentes, 72 Cal. Rptr. 3d at 909 (quoting Aron v. U-Haul Co. of Cal.,
11 49 Cal. Rptr. 3d 555, 562 (Ct. App. 2006)).

12 Claims grounded in fraud, including those alleged under Section 17200, must be pled with
13 particularity under Rule 9(b). See Kearns v. Ford Motor Co., 567 F.3d 1120, 1125 (9th Cir. 2009)
14 (“We have specifically ruled that Rule 9(b)’s heightened pleading standards apply to claims for
15 violations of the . . . UCL”). “In cases of corporate fraud, however, the pleading standard is
16 relaxed since the circumstances may make it difficult to attribute particular fraudulent conduct to
17 each defendant as an individual. Rule 9(b) serves to give defendants notice of the specific
18 fraudulent conduct against which they must defend.” 625 3rd St. Assoc., L.P. v. Alliant Credit
19 Union, 633 F.Supp.2d 1040, 1049-50 (N.D. Cal. 2009) (citing Bly-Magee v. California, 236 F.3d
20 1014, 1018 (9th Cir.2001)).

21 Defendants actions [as evinced by Exhibit A herein] breaching his 2001 “Joint Living
22 Trust” in a “take it or leave it manner” thus affording Plaintiffs no opportunity to negotiate. As
23 alleged by Plaintiff already in his original Complaint “[u]nconscionability has both a procedural
24 and substantive element. See Ting v. AT&T, 319 F.3d 1126, 1148-49 (9th Cir. 2003); see also

1 Flores v. Transamerica HomeFirst, Inc., 113 Cal. Rptr. 2d 376 (Ct. App. 2001). The procedural
2 element focuses on "**oppression**" or "surprise." See Flores, 113 Cal. Rptr. 2d at 381." [Complaint
3 page 4 lines 5 to 8] Plaintiff alleges the surprise here being the breaching of his living trust
4 without consent under Plaintiff's powers as a living trustee. "**Oppression** arises from an
5 inequality of bargaining power that results in no real negotiation and an absence of meaningful
6 choice. See *id.* Surprise involves the extent to which the supposedly agreed-upon terms are
7 hidden in a pre-printed form drafted by the party seeking to enforce them. See *id.* A contract is
8 procedurally unconscionable if it is a contract of adhesion, i.e., a standardized contract, drafted
9 by the party of superior bargaining strength that relegates to the subscribing party only the
10 opportunity to adhere to the contract or reject it. Ting, 319 F.3d at 1149.

11 Plaintiff alleges Defendants breached his "Joint Living Trust" through the use of standard
12 form loans and promissory notes [referred herein as "Deeds of Trust" or "DOTs"] outside
13 Plaintiff's individual authority that limited such authority to enter in to contracts to the living
14 trustee. Since the DOT was not signed by Plaintiff in his capacity as a living trustee; accordingly,
15 a finding of a **contract of adhesion** is essentially a finding of procedural unconscionability as is
16 the case with the DOTs provided by Defendants in a "take it or leave it manner".

17 Taking all these allegations as true, the conduct by Defendants appears to be "immoral,
18 unethical, oppressive, unscrupulous or substantially injurious to consumers," and thus satisfies the
19 UCL's "unfair" prong. See Casa Blanca, 159 Cal. App. 4th at 530; McDonald, 543 F.3d at 506.
20 Moreover, a reasonable consumer is likely to rely on representations by a bank's agent; thus, such
21 conduct also violates the UCL's "fraudulent" practices prong. See Puentes, 72 Cal. Rptr. 3d at
22 909.

23 Plaintiff has stated that he possesses documents which support his contention that the
24 alleged two unsecured Deeds of Trusts ("DOTs") signed by Plaintiff where unconscionability

contracts of adhesion, where a finding of a contract of adhesion is essentially a finding of procedural unconscionability, as is the case with the two identical contracts provided by Defendants in a standard form "CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS Form 3005 1/01 V-6A(CA)" provided by Defendants in a "take it or leave it manner" in December 2006 and again in January 2007 where both executed by Plaintiff outside Plaintiff's individual authority that limited such authority to enter in to contracts to the living trustee.

STATEMENT OF FACTS

On January 9, 2001 Plaintiff and his spouse Patricia Paramoure executed a "Joint Living Trust"² [Exhibit A] which lists at page 1 of "Schedule A; Michael Boyd and Patricia Paramoure LIVING TRUST; Initial Trust Property A-1.2 5439 Soquel Dr, Soquel, California, APN 037-094-29, legally described as follows..." and "A-1.3 1092 Lakebird Dr, Sunnyvale, California, APN 110-23-025, legally described as follows..." Under the terms of the living trust section "XVI. TRUSTEE POWERS" [Joint Living Trust page 5] it includes the power to enter in to mortgages in subsections "G. Manage Property. To manage real estate and personal property, borrow money, exercise options, buy insurance, and register securities as may appear to be proper." And to allocate income and expenses [Joint Living Trust page 6] "H. Allocate Between Principal and Income. To make allocations of charges and credits as between principal and income as in the sole discretion of the Trustee may appear to be proper." This instrument reserved those powers over those assets held in the living trust for the Trustees; Plaintiff and his spouse Patricia Paramoure.

² A copy of the signed Joint Living Trust is on file with the preparer of the trust; Attorney Julian Roberts, 553 South Murphy Ave., Sunnyvale, CA 94086-6117, Phone: (408) 730-4711, Fax: (408) 730-8215, E-mail: julian@julianslaw.com.

Just three days before the Christmas Holiday in 2006 after spending more then 60 days in pursuit of a loan before Defendants; Plaintiff was offered a loan on his home; but only if he would sign a loan on his duplex at Lakebird Drive in Sunnyvale first. Defendant MERS presented mortgage documents to Plaintiff using the same standard forms for said Santa Cruz and Santa Clara County properties with the knowledge of Plaintiff's "inferior financial condition and credit history," in a "take it or leave it manner," thus affording Plaintiffs no opportunity to negotiate their mortgage interest or payment terms with MERS, nor did MERS disclose their relationship with Defendants GMACM nor the undisclosed loan underwriting investor(s). This also violated Plaintiff's right to due process by breaching his living trust without consent under Plaintiff's powers as a living trustee. After Plaintiff signed the standard form DOT on December 22, 2006 he notified the signer by phone that the property was held in a "living trust" and he would have to re-sign or amend the agreement. Again on January 16, 2007, Defendants presented; and using the same standard forms for said Santa Cruz and Santa Clara County properties; with the knowledge of Plaintiff's "inferior financial condition and credit history," in a "take it or leave it manner," thus affording Plaintiffs no opportunity to negotiate their mortgage interest or payment terms with MERS, nor did MERS disclose their relationship with Defendants GMACM nor the undisclosed loan underwriting investor(s). This also violated Plaintiff's right to due process by breaching his living trust without consent under Plaintiff's powers as a living trustee.

The relief Plaintiff seeks in his action is for the Court to issue a Declaratory Order finding that the loan and Deed of Trust for said Santa Cruz and Santa Clara County California properties constituted contracts of adhesion by breaching his living trust without consent under Plaintiff's powers as a living trustee. Although the agreements were allegedly presented to Plaintiffs in a "take it or leave it manner" "the mere fact that a contract term is not read or understood by the non-drafting party or that the drafting party occupies a superior bargaining position will not

1 authorize a court to refuse to enforce the contract." A&M Produce Co. v. FMC Corp., 186 Cal.
2 Rptr. 114, 122 (Ct. App. 1982). "[A]n argument can be made that contract terms not actively
3 negotiated between the parties fall outside the 'circle of assent,' which constitutes the actual
4 agreement." *Id.* "[C]ommercial practicalities, however, dictate that unbargained-for terms only be
5 denied enforcement where they are also substantively unreasonable." *Id.* The substantive element
6 of unconscionability has to do with the effects of the contractual terms— whether the contract is
7 drafted in a one-sided manner, or whether it provides a "modicum of bilaterality." *Id.* Here, an
8 arbitration clause is not at issue, rather Plaintiff take issue with (1) the type of loan Defendants
9 offered to Plaintiff, (2) the material terms of that loan including, but not limited to, the interest
10 rate(s) and repayment schedule, and (3) the power of sale and (4) the right to foreclose in the
11 event of Plaintiff's default.

12 In November of 2010; after explaining to Defendant GMAC Mortgage LLC [or
13 GMACM] Loss Mitigation Department, that Plaintiff had not signed any Loans with GMACM
14 and that the notes they where demanding payment on were unsecured; Plaintiff would therefore
15 no longer make his monthly payment unless GMACM could prove they had valid title to
16 Plaintiff's Properties including notes naming them as having a beneficial interest in the
17 properties.

18 **PLAINTIFF COMPLAINS AND FOR CAUSES OF ACTION ALLEGES**

19 On December 22, 2006 Plaza Home Mortgage, 5090 Shoreham Place #206, San Diego,
20 CA 92122 filed a Deed of Trust ["DOT"] for the property located at 1090-1092 Lakebird Drive in
21 Sunnyvale California; APN 110-23-025, with the Santa Clara County Recorder's Office naming
22 "'MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that
23 is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the
24 beneficiary under this Security Instrument." At the bottom of page 1 it lists this as a standard

form "CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS Form 3005 1/01 V-6A(CA)". But this DOT was invalid because Plaintiff lacked authority to enter in to the DOT outside of his powers as a trustee to his "Joint Living Trust".

On January 24, 2007 Plaza Home Mortgage filed a DOT with the Santa Cruz County Recorder's Office for the property located at 5439 Soquel Drive, Soquel, California; APN 037-094-29, naming "'MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument." At the bottom of page 1 the DOT lists this as a standard form "CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS Form 3005 1/01 V-6A(CA)". But this DOT was invalid because Plaintiff lacked authority to enter in to the DOT outside of his powers as a trustee to his "Joint Living Trust".

Based on documents within Plaintiff's possession beginning at or about April 1, 2007 Plaintiff began making mortgage payments to Defendant GMAC LLC of a principal and interest payment of ~ \$1,824 monthly until April 1, 2011 [or 48 months] for a total payments of \$87,552. Plaintiff alleges Defendant defrauded Plaintiff of said funds. Plaintiff is claiming that by failing to make the recording of a substitution of trustee [in 2007] with consent under Plaintiff's powers as a living trustee to his "Joint Living Trust" that specifically names the Defendant GMAC as a Beneficiary to the full reconveyance recorded on January 16, 2007.

Based on documents within Plaintiff's possession beginning at or about May 1, 2007 Plaintiff began making mortgage payments to Defendant GMAC LLC of a principal and interest payment of ~ \$2,291 monthly until November 1, 2010 [or 43 months] for a total payments of \$98,513. Plaintiff alleges Defendant defrauded Plaintiff of said funds. Plaintiff is claiming that by failing to make the recording of a substitution of trustee [in 2007] with consent under Plaintiff's

1 powers as a living trustee to his "Joint Living Trust" that specifically names the Defendant
2 GMAC on February 1, 2007 Defendant GMAC fails to have any defense because the full
3 reconveyance recorded February 1, 2007 does nothing to secure the DOT recorded January 24,
4 2007 to the Property. Plaintiff believes that California Civil Code section 2941(b) (1) only
5 allowed Defendants 21 days to do so [back in 2007]. Defendants never had possession of the
6 property itself which had been fully conveyed to Plaintiff. Additionally the Defendant MERS
7 could have recorded a substitution of trustee pursuant to California Civil Code section 2934a with
8 consent under Plaintiff's powers as a living trustee but failed to do so which Defendants
9 apparently recognized it should have done so when on March 1, 2011, a Substitution of Trustee
10 was [then] recorded in the Santa Cruz County Recorder's Office and again on September 9, 2011
11 in the Santa Clara County Recorder's Office. Since the underlying DOT was invalid [contract not
12 made with living trustee], the recording was therefore fraudulent.

13 Plaintiff alleges that neither GMAC LLC nor MERS had received authorization through
14 recorded or unrecorded documents. It may not be enough for plaintiff to rely on the public record
15 as a basis for his claim, since, the publicly recorded documents are not conclusive in
16 demonstrating lack of authority. Plaintiff alleges that [the subject Deeds of Trust or "DOTs"] are
17 invalid because Plaintiff lacked authority to enter in to the DOT outside of his powers as a trustee
18 to his "Joint Living Trust" and they are knowingly fraudulent too because Plaintiff notified
19 Defendants of Plaintiff's "Joint Living Trust" in time to change the DOT accordingly [by
20 changing assignments for example], but Defendants failed to do so.

21 Even if a DOT signed are found to be valid irrespective of the fact that Plaintiff lacked
22 authority to enter in to the DOT outside of his powers as a trustee to his "Joint Living Trust",
23 Plaintiff never signed any loan documents or DOTs with GMAC LLC. Plaintiff alleges that
24 because MERS failed to make a substitution of trustee to GMAC LLC in 2007 with consent under

Plaintiff's powers as a living trustee therefore and when such substitutions occurred in 2011, in addition to GMAC LLC defrauding Plaintiff of approximately \$186,000 in fraudulent payments extracted by Defendants. The Defendants continue to defraud³ Plaintiff to the tune of \$2,399.14/month under this contract of adhesion amount for his Sunnyvale property, and an additional \$2,148.57/month for his Soquel property under his Chapter 13 Bankruptcy Plan.⁴ This also violated Plaintiff's right to due process, forcing the bankruptcy of Plaintiff and his spouse. Plaintiff further alleges lack of authority in GMAC LLC and MERS subsequent actions to initiate foreclosure because Plaintiff alleges that both the subject properties' Deeds of Trust were re-conveyed to Plaintiff [by WaMu] with consent under Plaintiff's powers as a living trustee [since Plaintiff was listed as the [living] trustee] and therefore Defendants' DOTs cannot be enforced lawfully based on the existing recorded record since they fail to include any lawful written consent under Plaintiff's powers as a living trustee. Therefore GMAC LLC and MERS subsequent actions to initiate foreclosure where also a in violation of due process rights.

FIRST CAUSE OF ACTION
(AGAINST GMAC MORTGAGE LLC)

³ Plaintiff is in the understanding and belief that under the terms of the MBS once Plaintiff defaulted on the DOTs Defendants where paid the loans' value by their insurance; irrespective of subsequent payments by Plaintiff. Therefore Defendants either are defrauding Plaintiff, or the insurance company, or both, and possibly the state and federal governments through legal settlements based on their fraudulent claims. Additionally Plaintiff's claims against GMAC Mortgage are pre-petition to its restructuring under Chapter 11 of the Bankruptcy Code, Case No. 12-12020, United States Bankruptcy Court for the Southern District of New York; so GMAC's bankruptcy action additional fraud may be effectuated based on the same fraudulent claims made in defense to Plaintiff's case here before the court.

⁴ In order to prevent the imminent foreclosure of Plaintiff's two properties he was forced to file Chapter 13 bankruptcy on December 9, 2011. On March 24, 2012 the Court Denied Plaintiff's petition to transfer the above captioned matters to the bankruptcy court, granting Plaintiff until May 22, 2012 to amend his complaint herein.

Defendants GMAC Mortgage LLC, at all times herein mentioned, was a Limited Liability Company existing under the laws of the State of California with principle offices located at 1100 Virginia Dr, in the Fort Washington Pennsylvania.

Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 50 inclusive and therefore sue these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

Plaintiff is informed and believes and thereon alleges that, at all times herein mentioned, each of the defendants sued herein was the agent and employee of each of the remaining defendants and was at all times acting within the purpose and scope of such agency and employment.

Plaintiff's "Joint Living Trust" is and at all times herein mentioned the owner and/or entitled to possession of the properties located in the counties of Santa Cruz and Santa Clara, California. Plaintiff is informed and believes and thereupon alleges that GMAC Mortgage LLC, and each of them, claiming an interest in the property adverse to plaintiff as living trustee herein. However, the claim of said Defendant is without any right whatsoever, and said Defendant has no legal or equitable right, claim, or interest in said properties.

Plaintiff in his capacity as trustee to his "Joint Living Trust" never signed any loan documents or DOTs with GMAC LLC and because of the full reconveyance(s) Washington Mutual Bank FA [WaMu] requested recordings of with the Santa Cruz County and Santa Clara County Recorder's Offices of a full reconveyance of the DOTs for Plaintiff's properties assigning the Deeds of Trust from Washington Mutual Bank FA to Plaintiff **in his capacity as trustee** to his "Joint Living Trust", with consent under Plaintiff's powers as a living trustee therefore, GMAC Mortgage LLC can not demonstrate that it possesses any tangible interest in the mortgages nor the Deeds of Trust in any case.

Plaintiff therefore seeks a declaration that the title to the subject property is vested in Plaintiff's "Joint Living Trust" alone and that the defendant herein, and each of them, be declared to have no estate, right, title or interest in the subject property and that said defendant, and each of them, be forever enjoined from asserting any estate, right, title or interest in the subject property adverse to plaintiff herein.

WHEREFORE, plaintiff prays for judgment against defendant GMAC Mortgage LLC and each of them, as follows:

1. For an order compelling said Defendant GMAC Mortgage LLC, and each of them, to transfer legal title and possession of the subject property to Plaintiff herein;
2. For a declaration and determination that Plaintiff is the rightful holder of title to the property and that Defendant GMAC Mortgage LLC herein, and each of them, be declared to have no estate, right, title or interest in said property;
3. For a judgment forever enjoining said defendants, and each of them, from claiming any estate, right, title or interest in the subject property;
4. For compensatory damages in an amount to be determined at trial, according to proof;
5. Punitive / double / treble damages in an amount to be determined at trial, according to proof;
6. Reasonable attorneys' fees and costs of suit pursuant to law;
7. For injunctive, declaratory and other such relief, according to proof;
8. For such other and further relief as the court may deem necessary and proper.

SECOND CAUSE OF ACTION

(AGAINST MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.)

Defendants Mortgage Electronic Registration Systems, Inc. (MERS) at all times herein mentioned, was a corporation existing under the laws of the State of California with principle offices located at 1818 Library St Ste 300 Reston VA 20190, with Agent for Service of Process; GENPACT Registered Agent, Inc., 15420 Laguna Canyon Rd Ste 100, Irvine CA 92618.

Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 51 through 100 inclusive and therefore sue these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

Plaintiff is informed and believes and thereon alleges that, at all times herein mentioned, each of the defendants sued herein was the agent and employee of each of the remaining defendants and was at all times acting within the purpose and scope of such agency and employment.

Plaintiff's "Joint Living Trust" is and at all times herein mentioned the owner and/or entitled to possession of the properties located in the counties of Santa Cruz and Santa Clara, California. Plaintiff is informed and believes and thereupon alleges that MERS, and each of them, claiming an interest in the property adverse to plaintiff as living trustee herein. However, the claim of said Defendant is without any right whatsoever, and said Defendant has no legal or equitable right, claim, or interest in said property.

Because of Plaintiff's exclusive powers as a living trustee to enter contracts "to bind the Trust by contracts or agreements without assuming individual liability for such contracts" Plaintiff had no rights to enter in to any contract with Defendant MERS outside of the terms of his living trust. Therefore MERS can not demonstrate that it possesses any tangible interest in the mortgages nor the Deeds of Trust. While MERS is not the beneficiary, even though it is so designated in the deeds of trust "MERS is not a mortgagee . . . because it has no enforceable right

in the debt obligation securing the mortgage”⁵ since “MERS never held the promissory note, thus its assignment of the deed of trust [] separate from the note had no force”⁶ and even if it did the note can not be said to be valid because the standard form loan and Deed of Trust for said Santa Cruz and Santa Clara properties constituted contracts of adhesion.

WHEREFORE, plaintiff prays for judgment against defendant MERS and each of them, as follows:

1. For an order compelling said Defendant MERS, and each of them, to transfer legal title and possession of the subject property to Plaintiff herein;
2. For a declaration and determination that Plaintiff is the rightful holder of title to the property and that Defendant MERS herein, and each of them, be declared to have no estate, right, title or interest in said property;
3. For a judgment forever enjoining said defendants, and each of them, from claiming any estate, right, title or interest in the subject property;
4. For compensatory damages in an amount to be determined at trial, according to proof;
5. Punitive / double / treble damages in an amount to be determined at trial, according to proof;
6. Reasonable attorneys' fees and costs of suit pursuant to law;
7. For injunctive, declaratory and other such relief, according to proof;
8. For such other and further relief as the court may deem necessary and proper.

⁵ No. Cum-09-640, 2010 ME 79 (Me. Aug. 12, 2010) (Westlaw) para 15.

⁶ 284 S.W.3d 619 (Mo. Ct. App., 2009) p. 624.

1
2 By: Michael E. Boyd
Michael E. Boyd

3 Plaintiff, in *Pro Per*
4 Michael E. Boyd
5 5439 Soquel Drive
6 Soquel, CA 95073
7 Phone: (408) 891-9677
8 E-mail: michaelboyd@sbcglobal.net

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10 DATED: May 21, 2012
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MICHAEL BOYD and PATRICIA PARAMOURE LIVING TRUST

This Joint Living Trust Agreement (this "Agreement") is made this 9th day of January, 2001, between **MICHAEL E. BOYD** and **PATRICIA L. PARAMOURE** (the "Grantors or Beneficiaries") of **SUNNYVALE**, California and **MICHAEL E. BOYD** and **PATRICIA L. PARAMOURE**, of **SUNNYVALE**, California (collectively, the "Trustee").

In consideration of the mutual covenants and promises set forth in this Agreement, the Grantor and the Trustee agree as follows:

I. PURPOSE. The purpose of this Agreement is to establish a Trust to receive and manage assets for the benefit of the Grantors during the Grantors' lifetimes, and to further manage and distribute the assets of the Trust upon the death of the surviving Grantor.

II. FUNDING OF TRUST. This Trust shall be funded with assets transferred to this Trust by either or both of the Grantors at the time of creating this Trust, or at any later time. Any community property transferred into or out of this Trust shall remain community property until the death of either Grantor and such property, including undistributed income that it generates, shall not be commingled. . Any separate property transferred into or out of this Trust shall remain the separate property of the Grantor effecting the transfer. Any property designated the separate property of a Grantor shall retain the property's designation even after the death of the Grantor for the purposes of distributions from Appendix A (if such Appendix exists) of this Trust. This Trust may also receive property from any person or entity who is acting under the authority granted to that person or entity by the Grantors. It is also expected that this Trust may receive assets pursuant to the terms of either Grantor's Last Will and Testament.

III. MANAGEMENT OF TRUST ASSETS. The Trustee shall manage and distribute the trust assets for the benefit of the Grantors and their successor(s) in interest in accordance with the terms of this Agreement.

IV. PAYMENTS DURING THE LIFETIMES OF THE GRANTORS. During the joint or survivor lifetimes of the Grantors, the Trustee shall pay all of the net income of this Trust, and also such sums from principal as either Grantor may request at any time in writing, to or for the benefit of the Grantors, or as either Grantor may designate. Such payments shall be made at least annually. The Grantors may change the amount of the payments at any time by providing written notice to the Trustee. Any excess income shall be added to the principal at the discretion of the Trustee.

A. Payments During a "Disability" of a Grantor. During any period that a Grantor has a "disability", the Trustee may pay to or for the benefit of such Grantor such amounts of income and principal as the Trustee believes in the Trustee's sole discretion to be required for (i) such Grantor's support, comfort and welfare, (ii) such Grantor's accustomed manner of living, or (iii) any purpose that the Trustee believes to be in the best interest of such Grantor.

B. Disability Defined. For the purposes of this Trust, "disability" shall mean a legal disability or the inability to provide prompt and intelligent consideration to financial

matters by reason of illness or mental or physical disability. The determination of whether a Grantor has a disability shall be made by such Grantor's most recent attending physician. The Trustee shall be entitled to rely on written notice of that determination.

C. Terminal Disability. If, in the opinion of two attending physicians, a Grantor has an illness that must inevitably lead to death within a brief period of time, the Trustee may pay from this Trust only such amounts as are needed to maintain the Grantor in reasonable comfort and freedom from pain. The Trustee shall be entitled to rely on written notice of that determination.

V. DEATH OF A GRANTOR. The first of the Grantors to die shall be called the "Deceased Grantor." The survivor shall be called the "Surviving Grantor". Upon the death of the Deceased Grantor, this Trust shall be divided into two trusts as follows:

A. The Survivor's Trust. The Survivor's Trust shall consist of the following:

1.) The Surviving Grantor's separate property that is part of The Trust Estate;

The Surviving Grantor's interest in the Grantors' community estate included in or added to the Trust Estate in any manner;

2.) The Surviving Grantor's interest in the proceeds of any life insurance policies owned as the community property of the Grantors, insuring the life of the Deceased Grantor;

3.) A life estate in the Deceased Grantor's interest in any real property used by the Grantors together as their personal residence, together with all improvements thereon and all furnishings and contents therein.

That percentage interest in the balance of the assets constituting the Trust Estate which shall, when taken together with all other interests and property that qualify for the marital deduction, obtain for the Deceased Grantor's estate a marital deduction that results in the lowest federal estate taxes to the Deceased Grantor's estate.

B. Exemption Trust. The Exemption Trust shall consist of the balance of the Trust Estate.

C. Delay in Division. The Trustee may, for good cause, delay division of this Trust for a period of six months after the death of the Deceased Grantor.

VI. UNCLAIMED ADMINISTRATION EXPENSES. All state taxes and unclaimed administration expenses attributable to the Survivor's Trust shall be paid from the Exemption Trust.

VII. DEBTS AND EXPENSES. After the Deceased Grantor's death, the Trustee may, in the Trustee's sole discretion, pay out of the Trust Estate the Deceased Grantor's just

debts outstanding at the time of the Deceased Grantor's death, the state and federal taxes due, the last illness and funeral expenses of the Deceased Grantor, attorney fees, and other costs incurred in administering the Deceased Grantor's probate estate.

VIII. SURVIVAL REQUIREMENTS.

A. Thirty Day Survival Requirement. For the purposes of determining the appropriate distributions under this Trust, no person or organization shall be deemed to have survived the Grantor making the distribution (or be in existence), unless such person or organization is also living (or in existence), on the thirtieth day after the date of that Grantor's death.

B. Common Disaster. If the Grantors die under circumstances such that there is no clear or convincing evidence as to the order of their deaths, or if it is difficult or impractical to determine which person survived the death of the other person, it shall, for the purpose of distribution of any life insurance, property passing under any will or other contracts, if any, and property passing under this Trust, be conclusively presumed that **MICHAEL E. BOYD** predeceased **PATRICIA L. PARAMOURE**.

IX. PAYMENTS FROM THE SURVIVOR'S TRUST. From the time of the Deceased Grantor's death, the Trustee shall pay to or apply for the benefit of the Surviving Grantor, the net income of the Survivor's Trust in annual or more frequent installments. If the Trustee considers such income insufficient, the Trustee shall also pay to or apply for the benefit of the Surviving Grantor any sums from the principal of the Survivor's Trust that the Trustee, in the Trustee's sole discretion, considers necessary for the Surviving Grantor's proper health, support, comfort, enjoyment, and welfare. In addition, the Trustee shall pay the Surviving Grantor as much of the principal of the Survivor's Trust as the Surviving Grantor shall request in writing.

X. PAYMENTS FROM THE EXEMPTION TRUST. From the time of the Deceased Grantor's death, the Trustee shall pay to or apply for the benefit of the Surviving Grantor, the net income of the Exemption Trust in annual or more frequent installments. If the Trustee considers such income insufficient, the Trustee shall also pay to or apply for the benefit of the Surviving Grantor any sums from the principal of the Exemption Trust that the Trustee, in the Trustee's sole discretion, considers necessary for the Surviving Grantor's proper health, support, comfort, enjoyment, and welfare. In exercising this discretion, the Trustee shall consider the Surviving Grantor's other resources available for those purposes and held free of trust, excluding the personal residence and tangible personal property held for the Surviving Grantor's personal use. Payments from principal to the Surviving Grantor shall be made first from the Survivor's Trust until it is exhausted and thereafter from the Exemption Trust.

XI. DISTRIBUTION OF TRUST ASSETS UPON THE SURVIVING GRANTOR'S DEATH. Upon the death of the second of the Grantors to die (the "Surviving Grantor"), the assets of this Trust shall be distributed to or retained by the following beneficiaries:

A. Residuary Beneficiaries: To **THE CHILDREN OF THE GRANTORS**, the residue of this Trust in equal shares. If a residuary beneficiary of the Grantors does not survive them, such deceased residuary beneficiary's share shall be distributed in equal shares to the children of such deceased residuary beneficiary who survives, by right of representation. If a residuary beneficiary does not survive them and has no children who survive, such deceased residuary beneficiary's share shall be distributed in equal shares to their other residuary beneficiaries, if any, or to their respective children by right of representation. If no residuary beneficiary of the Grantors survives them, and if none of their deceased residuary beneficiaries are survived by children, this share shall be distributed in equal shares to the Grantors' heirs-at-law.

B. Distribution Prior to Age 25. If any beneficiary under this trust shall have attained the age of eighteen years but be less than twenty-five years of age, distributions to such beneficiary shall be in the sole discretion of the Trustee, taking into consideration the maturity, educational needs, and marital status of the beneficiary as well as other factors the Trustee may wish to evaluate in determining whether and how much to distribute.

C. Minor Children. Distributions to minor children are in the sole discretion of the Trustee.

XII. GRANTOR'S JOINT POWER TO REVOKE. During the Grantor's joint lifetimes, this Trust may be revoked in whole or in part with respect to community property, by a written instrument signed by either Grantor and delivered to the Trustee and the other Grantor; and with respect to separate property, by a written instrument signed by the Grantor who contributed that property to the Trust and delivered to the Trustee. On revocation, the Trustee shall promptly deliver to the Grantors all of the designated portion of the community property Trust assets. All community property delivered to the Grantors on revocation shall continue to be the community property of the Grantors and shall be held and administered as community property. On revocation, the Trustee shall promptly deliver to the contributing Grantor all or the designated portion of any separate property.

XIII. AMENDMENT BY GRANTORS DURING THEIR LIFETIMES. The Grantors may at any time during their joint lifetimes amend any terms of this Trust by a written instrument signed by both Grantors and delivered to the Trustee. No amendment shall substantially increase the Trustee's duties or change the Trustee's compensation without the Trustee's consent, nor shall the Trustee be obligated to act under such an amendment unless the Trustee accept it. If a Trustee is removed as a result of refusal to accept an amendment, the Grantors shall pay to the Trustee any sums due and shall indemnify the Trustee against any liability the Trustee has lawfully incurred in administering the Trust. Only the Grantor who contributed separate property may amend these Trusts regarding any property owned by such Grantor as the Grantor's separate property.

XIV. AMENDMENT BY SURVIVING GRANTOR. On the Deceased Grantor's death, the Surviving Grantor may amend, revoke, or terminate the Survivor's Trust; but the Exemption Trust may not be amended, revoked, or terminated. On revocation or termination of the Survivor's Trust, all of its assets shall be delivered to the Surviving Grantor except as required under paragraph XV below.

XV. REVOCATION OF SURVIVOR'S TRUST. If the Survivor's Trust is revoked with respect to all or a major portion of its assets the Trustee shall be entitled to retain sufficient assets reasonably to secure payment of liabilities the Trustee has lawfully incurred in administering the Trust, including Trustee's fees that have been earned, unless the Surviving Grantor indemnifies the Trustee against loss or expense.

XVI. TRUSTEE POWERS. The Trustee, in addition to other powers and authority granted by law or necessary or appropriate for proper administration of the Trust, shall have the following rights, powers, and authority without order of court and without notice to anyone:

A. Receive Assets. To receive, hold, maintain, administer, collect, invest and reinvest the Trust assets, and collect and apply the income, profits, and principal of the Trust in accordance with the terms of this instrument.

B. Receive Additional Assets. To receive additional assets from other sources, including assets received under the Will of a Grantor or any other person.

C. Standard of Care. To acquire, invest, reinvest, exchange, retain, sell, and manage estate and Trust assets, exercising the judgment and care, under the circumstances then prevailing, that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of that standard, the Trustee is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, that persons of prudence, discretion, and intelligence acquire or retain for their own account, even though not otherwise a legal investment for Trust funds under the laws and statutes of the United States or the state under which this instrument is administered.

D. Retain Assets. To retain any asset, including uninvested cash or original investments, regardless of whether it is of the kind authorized by this instrument for investment and whether it leaves a disproportionately large part of the estate or Trust invested in one type of property, for as long as the Trustee deems advisable.

E. Dispose of or Encumber Assets. To sell, option, mortgage, pledge, lease, or convey real or personal property, publicly or privately, upon such terms and conditions as may appear to be proper, and to execute all instruments necessary to effect such authority.

F. Settle Claims. To compromise, settle, or abandon claims in favor of or against the Trust.

G. Manage Property. To manage real estate and personal property, borrow money, exercise options, buy insurance, and register securities as may appear to be proper.

H. Allocate Between Principal and Income. To make allocations of charges and credits as between principal and income as in the sole discretion of the Trustee may appear to be proper.

I. Employ Professional Assistance. To employ and compensate counsel and other persons deemed necessary for proper administration and to delegate authority when such delegation is advantageous to the Trust.

J. Distribute Property. To make division or distribution in money or kind, or partly in either, including disproportionate in-kind distributions, at values to be determined by the Trustee, and the Trustee's judgment shall be binding upon all interested parties.

K. Enter Contracts. To bind the Trust by contracts or agreements without assuming individual liability for such contracts.

L. Exercise Stock Ownership Rights. To vote, execute proxies to vote, join in or oppose any plans for reorganization, and exercise any other rights incident to the ownership of any stocks, bonds, or other properties of the Trust.

M. Duration of Powers. To continue to exercise the powers provided in this Agreement after the termination of the Trust until all the assets of the Trust have been distributed.

N. Hold Trust Assets as a Single Fund. To hold the assets of the Trust, shares, or portions of the Trust created by this instrument as a single fund for joint investment and management, without the need for physical segregation, dividing the income proportionately among them. Segregation of the various Trust shares need only be made on the books of the Trustee for accounting purposes.

O. Compensation. To receive reasonable compensation for the Trustee's services under this Agreement and be exonerated from and to pay all reasonable expenses and charges of the Trust.

P. Loans to Beneficiaries. To make loans to any Trust beneficiary for the purpose of providing the beneficiary with the funds necessary to take advantage of exceptional business opportunities; to make loans to Trust beneficiaries to provide for the needs of the beneficiaries and their families.

Q. Methods of Distribution. To make payments to or for the benefit of any beneficiary (specifically including any beneficiary under any legal disability) in any of the following ways: (a) directly to the beneficiary; (b) directly for the maintenance, welfare and education of the beneficiary; (c) to the legal or natural guardian of the beneficiary; or (d) to anyone who at the time shall have custody and care of the person of the beneficiary. The Trustee shall not be obliged to see to the application of the funds so paid, but the receipt of the person to whom the funds were paid shall be full acquittance of the Trustee.

R. *Continue Operation of Business.* To carry on any business owned by the Trust or in which the Trust may have an interest for such period of time as the Trustee deems advisable, or to sell or liquidate such business interest.

XVII. ADDITIONAL TRUSTEE PROVISIONS. These additional provisions shall apply regarding the Trustee.

A. *Grantor(s) as Trustee.* If at any time the Grantors or either of them shall be acting as Trustee, such Grantor(s)/Trustee may appoint a successor Trustee, to become effective immediately or upon any stated contingency, by making such designation in writing. Such designee shall become the successor Trustee upon acceptance of the terms and conditions of this Agreement.

B. *Death or Disability of a Grantor as Trustee.* If at any time no Grantor is able to serve as Trustee because of a disability (as previously defined) or death **Kevin Boyd, of San Jose, California**, is designated as the successor Trustee. Such designee shall become the successor Trustee upon acceptance of the terms and conditions of this Agreement.

C. *Resignation of Trustee.* Any Trustee may resign by giving written notice to the beneficiaries to whom income could then be distributed. Such resignation shall take effect on such date specified in the notice, but not earlier than thirty (30) days after the date of delivery of such written resignation unless an earlier effective date shall be agreed to by the income beneficiaries.

D. *Successor Trustee.* If the Trustee designated in sub-paragraph XVII.B above is unwilling or unable to serve, or resigns, or for any reason ceases to serve as Trustee, **Margaret S. Wood, of Sandia Park, New Mexico**, shall serve as Trustee. If the Trustee resigns or for any reason ceases to serve as Trustee, and if the Successor Trustee(s) designated by the Grantor, if any, fail or cease to serve as Trustee, then the adult beneficiaries to whom income could then be distributed, together with the adult beneficiaries to whom principal would be distributed if the Trust were then to terminate, may by majority action in writing appoint a Successor Trustee. If agreement of a majority of the beneficiaries cannot be obtained within sixty (60) days, a Successor Trustee shall be appointed by the court having general jurisdiction of the Trust. Any successor Trustee appointed shall have all the rights conferred upon the original Trustee and shall be bound by the provisions of this Trust.

E. *Accounting.* The Trustee shall provide an accounting to the Beneficiary (or beneficiaries) on at least an annual basis. If a beneficiary has a "disability", the Trustee shall provide the accounting to a guardian or conservator, if any.

F. *Bond.* No bond shall be required of a Grantor (if serving as Trustee) or any qualified corporate Trustee.

XVIII. RIGHT TO DIRECT INVESTMENTS. At any time that the Trust has investments, and provided that a Grantor does not have a "disability", such Grantor may direct any Trustee to purchase, sell, or retain any Trust investment.

XIX. REVOCATION OR AMENDMENT. Either Grantor may revoke at any time and/or the Grantors may jointly amend, this Agreement by delivering to the Trustee an appropriate written revocation or amendment, signed by that Grantor. If the Trustee consents, the powers of revocation, but not the power of amendment, may be exercised by a duly appointed and acting attorney-in-fact for the Grantors, or either of them, for the purpose of withdrawing assets from the Trust.

XX. GOVERNING LAW. This Agreement shall be construed in accordance with the laws of the State of California.

XXI. PERPETUITIES SAVINGS CLAUSE. Despite any other provision of this Agreement to the contrary, the Trust created by this Agreement shall terminate no later than 21 years after the death of the last surviving beneficiary of this Agreement who is living at the time of the death of the Surviving Grantor.

XXII. SEVERABILITY. If any portion of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

XXIII. MISCELLANEOUS PROVISIONS.

A. Paragraph Titles and Gender. The titles given to the paragraphs of this Trust are inserted for reference its provisions. All words used in this Trust in any gender shall extend to and include all genders, and any singular words shall include the plural expression, and vice versa, specifically including "child" and "children", when the context or facts so require, and any pronouns shall be taken to refer to the person or persons intended regardless of gender or number.

B. Liability of Fiduciary. No fiduciary who is a natural person shall, in the absence of fraudulent conduct or bad faith, be liable individually to any beneficiary of my estate or any Trust estate, and my estate or the Trust estate shall indemnify such natural person from any and all claims or expenses in connection with or arising out of that fiduciary's good faith actions or nonactions as the fiduciary, except for such actions or nonactions which constitute fraudulent conduct or bad faith.

C. Children. The names of the Grantors' children are:

CASSANDRA L. BOYD and ANDREW M. BOYD

All references in this Trust to "the Grantors' child" or "the Grantors' children" include the above child (or children) and any other children born to or adopted by the Grantors after the signing of this Trust.

XXIV. CONTESTABILITY. If any Beneficiary under this Trust in any manner, directly or indirectly, contests or attacks this Trust or any of its provisions, any share of interest in

the assets of this Trust given to that contesting beneficiary under this Trust is revoked and shall be disposed of in the same manner provided herein as if that contesting beneficiary had predeceased me.

Executed on this 9th of January, 2001, at Sunnyvale, Santa Clara County, California.

MICHAEL E. BOYD, Grantor

MICHAEL E. BOYD, Co-Trustee

PATRICIA L. PARAMOURE, Grantor

PATRICIA L. PARAMOURE, Co-Trustee

NOTARY PUBLIC ACKNOWLEDGMENT

State of California)
County of Santa Clara)

On 9th day of January, 2001, before me, JANITA G. BANKS, Notary Public,
personally appeared **MICHAEL E. BOYD** and **PATRICIA L. PARAMOURE**
personally known to me to be the persons whose names are subscribed to the within
instrument and acknowledged to me that they executed the same in their authorized
capacities, and that by their signatures on the instrument the persons, or the entity
upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

JANITA G. BANKS, Notary Public

Schedule A
Michael Boyd and Patricia Paramoure LIVING TRUST

Initial Trust Property

The initial property of the **Michael Boyd and Patricia Paramoure LIVING TRUST** includes the following:

A-1: Real Property

A-1.1 215 Raymond Street, Santa Cruz, California, APN: 005-641-08,
legally described as follows:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE
CITY OF SANTA CRUZ, COUNTY OF SANTA CRUZ, STATE
OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING ON THE WEST SIDE OF RAYMOND STREET
AT A POINT 110.53 FEET NORTHWESTERLY FROM THE
NORTHWEST CORNER OF SAID RAYMOND STREET AND
LEIBRANDT AVENUE; SAID POINT OF BEGINNING
BEING ALSO THE NORTHEAST CORNER OF LOT 22, IN
BLOCK C AS SAID LOT AND BLOCK ARE NUMBERED
AND DESIGNATED UPON MAP NUMBER 3 OF THE "KAYE
AND UHLEN TRACT", WHICH MAP WAS FILED IN THE
OFFICE OF THE COUNTY RECORDER OF THE SAID
COUNTY OF SANTA CRUZ, ON FEBRUARY 19, 1891 IN MAP
BOOK 5, AT PAGE 80; THENCE RUNNING
SOUTHWESTERLY AT A RIGHT ANGLE WITH SAID
RAYMOND STREET AND ALONG THE NORTHERLY LINE
OF SAID LOT 22, 80 FEET TO AN ALLEY; THENCE
NORTHWESTERLY ALONG THE EAST SIDE OF SAID
ALLEY 34 FEET; THENCE AT A RIGHT ANGLE
NORTHEASTERLY AND PARALLEL WITH THE SID NORTH
LINE OF SAID LOT 22, 80 FEET TO THE WESTERLY SIDE
OF SAID RAYMOND STREET, AT A POINT 6 FEET
SOUTHEASTERLY FROM THE SOUTHEASTERLY CORNER
OF LOT 19 IN SAID BLOCK C, AS THE SAME IS NUMBERED
AND DESIGNATED UPON SAID MAP; AND THENCE
SOUTHEASTERLY ALONG THE WESTERLY SIDE OF SAID
RAYMOND STREET 34 FEET TO THE PLACE OF
BEGINNING.

BEING THE SOUTHERLY 34 FEET OF LOT 21 IN SAID
BLOCK C AS SHOWN UPON SAID MAP.

A-1.2 5439 Soquel Dr, Soquel, California, APN 037-094-29, legally
described as follows:

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CRUZ, UNINCORPORATED AREA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL "D", AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON JANUARY 25, 1985 IN BOOK 45, PAGE 2 OF PARCEL MAPS, SANTA CRUZ COUNTY RECORDS.

PARCEL TWO:

BEING A PORTION OF FAIRWAY DRIVE AS SHOWN ON THAT CERTAIN MAP ENTITLED "SUBDIVISION NO. 1 OF MONTEREY BAY HEIGHTS", RECORDED AUGUST 13, 1929 IN VOLUME 25, OF MAPS, PAGE 7, SANTA CRUZ COUNTY RECORDS, SAID PORTION BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A 1/2" IRON PIPE, TAGGED LS 3293 AT THE SOUTHWESTERN CORNER OF PARCEL D, AS SAID PARCEL D IS SHOWN ON THAT CERTAIN PARCEL MAP SHOWING A DIVISION OF LANDS OF STANLEY H. EKSTRAND AND BETTY J. EKSTRAND, RECORDED JANUARY 15, 1985 IN VOLUME 45, OF PARCEL MAPS, PAGE 2, SANTA CRUZ COUNTY RECORDS; THENCE EASTERLY ALONG THE SOUTHERN BOUNDARY OF SAID PARCEL D ALONG A CUVE CONCAVE TO THE SOUTHWEST FROM A RADIAL BEARING OF NORTH 3° 07' 48" EAST HAVING A RADIUS OF 61.92 FEET THROUGH A CENTRAL ANGLE OF 1° 09' 35" AN ARC DISTANCE OF 1.25 FEET TO THE TRUE POINT OF BEGINNING; THENCE FROM SAID TRUE POINT OF BEGINNING CONTINUING EASTERLY ALONG THE SOUTHERN BOUNDARY OF SAID PARCEL D

- 1) ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 61.92 FEET THROUGH A CENTRAL ANGLE OF 73° 27' 05" AN ARC DISTANCE OF 79.38 FEET TO A POINT FROM WHICH A 1/2" IRON PIPE TAGGED LS 3293 ON THE SOUTHERN BOUNDARY OF SAID PARCEL D BEARS A CHORD BEARING AND DISTANCE OF SOUTH 17° 28' 02" EAST 2.27 FEET; THENCE LEAVING THE SOUTHERN BOUNDARY OF SAID PARCEL D
- 2) SOUTH 88° 22' 56" WEST 37.52 FEET; THENCE WESTERLY

- 3) ALONG A TANGENT CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 21.25 FEET THROUGH A CENTRAL ANGLE OF 79° 17' 19" AN ARC DISTANCE OF 29.41 FEET; THENCE NORTHERLY
- 4) ALONG A TANGENT CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 95.00 FEET THROUGH A CENTRAL ANGLE OF 16° 07' 24" AN ARC DISTANCE OF 26.73 FEET TO THE TRUE POINT OF BEGINNING.

A-1.3 821 Lakenoll Dr, Sunnyvale, California, APN 110-17-036, legally described as follows:

LOT 622, as delineated upon that certain Map entitled, "TRACT NO. 1780 LAKEWOOD VILLAGE NO. 3", filed for record in the office of the Recorder of the County of SANTA CLARA, State of California, on October 03, 1956 in Book 73 of Maps, at page(s) 10 and 11.

A-1.3 1092 Lakebird Dr, Sunnyvale, California, APN 110-23-025, legally described as follows:

All that certain Real Property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

All of Lot 1101, as shown upon that certain Map entitled, "Tract No. 2010 Lakewood Village No. 5," which Map was filed for Record in the Office of the Recorder of the County of Santa Clara, State of California, on December 18, 1957 in Book 89 of Maps, Pages 16, 17 and 18.

A-2: Personal Property

No personal property is conveyed at this time.

Acceptance:

I/We accept the above properties as the initial property of the **Michael Boyd and Patricia Paramoure LIVING TRUST.**

Dated: January 9, 2001

Michael E. Boyd, Trustee

Dated: January 9, 2001

Patricia L. Paramoure, Trustee

**LAST WILL AND TESTAMENT
OF
Michael E. Boyd**

I, **Michael E. Boyd**, of Sunnyvale, California, revoke my former Wills and Codicils and declare this to be my Last Will and Testament.

**ARTICLE I
PAYMENT OF DEBTS AND EXPENSES**

I direct that my just debts, funeral expenses, and expenses of last illness be paid as provided under the **Michael Boyd and Patricia Paramoure LIVING TRUST**.

**ARTICLE II
DISPOSITION OF PROPERTY**

All of the property that I own at my death, or which shall become payable to my estate or my personal representatives, and any property that I have the power to dispose of under my Will shall be distributed to the Trustee of the **Michael Boyd and Patricia Paramoure LIVING TRUST** to be administered and distributed as provided under that Trust.

**ARTICLE III
NOMINATION OF EXECUTOR**

I nominate **Patricia L. Paramoure**, of **SUNNYVALE, CALIFORNIA**, as the Executor, without bond or security. If such person or entity does not serve for any reason, I nominate **Kevin Boyd**, of **San Jose, California**, to be the Executor, without bond or security.

**ARTICLE IV
EXECUTOR POWERS**

My Executor, in addition to other powers and authority granted by law or necessary or appropriate for proper administration, shall have the right and power to lease, sell, mortgage, or otherwise encumber any real or personal property that may be included in my estate, without order of court and without notice to anyone.

IN WITNESS WHEREOF, I have subscribed my name below, this 9th day of January, 2001, at Sunnyvale, Santa Clara County, California.

Michael E. Boyd

We, the undersigned, hereby certify that the above instrument, which consists of 33 pages, including the pages which contain the witness signatures, was signed in our sight and presence by Michael E. Boyd (the "Testator"), who declared this instrument to be the Testator's Last Will and Testament and we, at the Testator's request and in the Testator's sight and presence, and in the sight and presence of each other, do hereby subscribe our names and addresses as witnesses on the date shown above.

JANITA G. BANKS
514 South Murphy Avenue - Office
Sunnyvale CA 94086-6116

JULIAN C. ROBERTS
514 South Murphy Avenue - Office
Sunnyvale CA 94086-6116

PROOF OF WILL

On the date written below, **Michael E. Boyd** declared to us, the undersigned, that this instrument, consisting of three pages, including the page signed by us as witnesses, was the Testator's Will and requested us to act as witnesses to it. The Testator thereupon signed this Will in our presence, all of us being present at the same time. We now, at the Testator's request, and in the Testator's presence and in the presence of each other, subscribe our names as witnesses.

We are acquainted with **Michael E. Boyd**. At this time the Testator is over the age of 18 years, and to the best of our knowledge, the Testator is of sound mind and is not acting under duress, menace, fraud, misrepresentation, or undue influence.

Each of us is now more than 18 years of age and a competent witness and resides at the address set forth after this name.

We declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on this 9th day of January, 2001, at Sunnyvale, Santa Clara County, California.

JANITA G. BANKS
514 South Murphy Avenue - Office
Sunnyvale CA 94086-6116

JULIAN C. ROBERTS
514 South Murphy Avenue - Office
Sunnyvale CA 94086-6116

**LAST WILL AND TESTAMENT
OF
Patricia L. Paramoure**

I, **Patricia L. Paramoure**, of Sunnyvale, California, revoke my former Wills and Codicils and declare this to be my Last Will and Testament.

**ARTICLE I
PAYMENT OF DEBTS AND EXPENSES**

I direct that my just debts, funeral expenses, and expenses of last illness be paid as provided under the **Michael Boyd and Patricia Paramoure LIVING TRUST**.

**ARTICLE II
DISPOSITION OF PROPERTY**

All of the property that I own at my death, or which shall become payable to my estate or my personal representatives, and any property that I have the power to dispose of under my Will shall be distributed to the Trustee of the **Michael Boyd and Patricia Paramoure LIVING TRUST** to be administered and distributed as provided under that Trust.

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I nominate **Michael E. Boyd**, of **SUNNYVALE, CALIFORNIA**, as the Executor, without bond or security. If such person or entity does not serve for any reason, I nominate **Kevin Boyd**, of **San Jose, California**, to be the Executor, without bond or security.

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My Executor, in addition to other powers and authority granted by law or necessary or appropriate for proper administration, shall have the right and power to lease, sell, mortgage, or otherwise encumber any real or personal property that may be included in my estate, without order of court and without notice to anyone.

IN WITNESS WHEREOF, I have subscribed my name below, this 9th day of January, 2001, at Sunnyvale, Santa Clara County, California.

Patricia L. Paramoure

We, the undersigned, hereby certify that the above instrument, which consists of 33 pages, including the pages which contain the witness signatures, was signed in our sight and presence by Patricia L. Paramoure (the "Testator"), who declared this instrument to be the Testator's Last Will and Testament and we, at the Testator's request and in the Testator's sight and presence, and in the sight and presence of each other, do hereby subscribe our names and addresses as witnesses on the date shown above.

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We are acquainted with **Patricia L. Paramoure**. At this time the Testator is over the age of 18 years, and to the best of our knowledge, the Testator is of sound mind and is not acting under duress, menace, fraud, misrepresentation, or undue influence.

Each of us is now more than 18 years of age and a competent witness and resides at the address set forth after this name.

We declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on this 9th day of January, 2001, at Sunnyvale, Santa Clara County, California.

JANITA G. BANKS
514 South Murphy Avenue - Office
Sunnyvale CA 94086-6116

JULIAN C. ROBERTS
514 South Murphy Avenue - Office
Sunnyvale CA 94086-6116

DURABLE POWER OF ATTORNEY

FOR HEALTH CARE

1. DESIGNATION OF HEALTH CARE AGENT. I, **Michael E. Boyd**, of **821 Lakenoll Drive, Sunnyvale, California**, do hereby designate and appoint **Patricia L. Paramoure**, of **821 Lakenoll Drive, Sunnyvale, California**, Tel: **(408)747-1579**, as my Agent to make health care decisions for me as authorized in this document.

For the purposes of this document, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this document I intend to create a Durable Power of Attorney for Health Care under Sections 4600 to 4752, inclusive, of the California Probate Code. This power of attorney is authorized by the Keene Health Care Agent Act and shall be construed in accordance with the provisions of Sections 4700 to 4779, inclusive, of the California Probate Code. This power of attorney shall not be affected by my subsequent incapacity.

3. GENERAL STATEMENT OF AUTHORITY GRANTED. Subject to any limitations in this document, I hereby grant to my Agent full power and authority to make health care decisions for me to the same extent that I could make those decisions for myself if I had the capacity to do so. In exercising this authority, my Agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my Agent, including, but not limited to, my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services, and procedures.

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. In exercising the authority under this Durable Power of Attorney for Health Care, my Agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated below:

(a) *Statement of desires concerning life-prolonging care, treatment, services and procedures:* It is my desire that life-prolonging care, treatment, services and procedures not be applied except as needed to maintain me in reasonable comfort and freedom from pain, except that, in the sole discretion of my health care agent, adequate life support may be provided for up to **three** days if appropriate to permit travel by my children.

(b) *Additional statement of desires, special provisions, and limitations:* No additional Provisions.

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH. Subject to any limitations in this document, my Agent has the power and authority to do all of the following:

- (a) Request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records.
- (b) Execute on my behalf any releases or other documents that may be required in order to obtain this information.
- (c) Consent to the disclosure of this information.

6. SIGNING DOCUMENTS, WAIVERS, AND RELEASES. Where necessary to implement the health care decisions that my Agent is authorized by this document to make, my Agent has the power and authority to execute on my behalf all of the following:

- (a) Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice".
- (b) Any necessary waiver or release from liability required by a hospital or physician.

7. AUTOPSY, ANATOMICAL GIFTS, DISPOSITION OF REMAINS. Subject to any limitations in this document, my Agent has the power and authority to do all of the following:

- (a) Authorize an autopsy under Section 7113 of the Health and Safety Code.
- (b) Make a disposition of a part or parts of my body under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).
- (c) Direct the disposition of my remains under Section 7100 of the Health and Safety Code.

8. DURATION. This power of attorney will exist for an indefinite period of time.

9. DESIGNATION OF ALTERNATE AGENTS. If the person designated as my Agent in paragraph 1 is not available or becomes ineligible to act as my Agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my Agent to make health care decisions for me, then I designate and appoint the following person(s) to serve as my Agent to make health care decisions for me as authorized in this document, such person(s) to serve in the order listed below:

FIRST ALTERNATE AGENT: Kevin Boyd

- 1.) **2156 Willester Drive**
- 2.) **San Jose, CA 95124**
- 3.) **(408)559-3615**

10. NOMINATION OF CONSERVATOR OF PERSON. If a Conservator of the person is to be appointed for me, I nominate the following individual to serve as Conservator of the person: **Patricia L. Paramoure, of 821 Lakenoll Drive, Sunnyvale, California.**

11. PRIOR DESIGNATIONS REVOKED. I revoke any prior Durable Power of Attorney for Health Care.

Executed on this 9th day of January, 2001, at Sunnyvale, Santa Clara County, California.

Michael E. Boyd

STATEMENT OF WITNESSES

I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me OR proved to me on the basis of convincing evidence to be the Principal, that the Principal signed or acknowledged this Durable Power of Attorney in my presence, that the Principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as Agent by this document, and that I am not a health care provider, an employee of a health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.

Dated: January 9, 2001

JANITA G. BANKS
514 South Murphy Avenue - Office
Sunnyvale CA 94086-6116

Dated: January 9, 2001

JULIAN C. ROBERTS
514 South Murphy Avenue - Office
Sunnyvale CA 94086-6116

I further declare under penalty of perjury under the laws of California that I am not related to the Principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the Principal upon the death of the Principal under a will now existing or by operation of law.

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WARNING TO PERSON EXECUTING THIS DOCUMENT

(California Probate Code Section 4771)

THIS IS AN IMPORTANT LEGAL DOCUMENT WHICH IS AUTHORIZED BY THE KEENE HEALTH CARE AGENT ACT. BEFORE EXECUTING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

THIS DOCUMENT GIVES THE PERSON YOU DESIGNATE AS YOUR AGENT (THE ATTORNEY-IN-FACT) THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU. YOUR AGENT MUST ACT CONSISTENTLY WITH YOUR DESIRES AS STATED IN THIS DOCUMENT OR OTHERWISE MADE KNOWN.

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NOTWITHSTANDING THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOURSELF SO LONG AS YOU CAN GIVE INFORMED CONSENT WITH RESPECT TO THE PARTICULAR DECISION. IN ADDITION, NO TREATMENT MAY BE GIVEN TO YOU OVER YOUR OBJECTION AT THE TIME, AND HEALTH CARE NECESSARY TO KEEP YOU ALIVE MAY NOT BE STOPPED OR WITHHELD IF YOU OBJECT AT THE TIME.

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INITIALS

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DO NOT USE THIS FORM IF YOU ARE A CONSERVATEE UNDER THE LANTERMAN-PETRIS-SHORT ACT AND YOU WANT TO APPOINT YOUR CONSERVATOR AS YOUR AGENT. YOU CAN DO THAT ONLY IF THE APPOINTMENT DOCUMENT INCLUDES A CERTIFICATE OF YOUR ATTORNEY.

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DURABLE POWER OF ATTORNEY

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(c) *Statement of desires concerning life-prolonging care, treatment, services and procedures:* It is my desire that life-prolonging care, treatment, services and procedures not be applied except as needed to maintain me in reasonable comfort and freedom from pain, except that, in the sole discretion of my health care agent, adequate life support may be provided for up to **three** days if appropriate to permit travel by my children.

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Patricia L. Paramoure

STATEMENT OF WITNESSES

I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me OR proved to me on the basis of convincing evidence to be the Principal, that the Principal signed or acknowledged this Durable Power of Attorney in my presence, that the Principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as Agent by this document, and that I am not a health care provider, an employee of a health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.

Dated: January 9, 2001

JANITA G. BANKS
514 South Murphy Avenue - Office
Sunnyvale CA 94086-6116

Dated: January 9, 2001

JULIAN C. ROBERTS
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I further declare under penalty of perjury under the laws of California that I am not related to the Principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the Principal upon the death of the Principal under a will now existing or by operation of law.

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INITIALS

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INITIALS

Statement Concerning Guardianship of Minor Children

We, **Michael E. Boyd** and **Patricia L. Paramoure**, have created a Trust entitled "**MICHAEL BOYD and PATRICIA PARAMOURE LIVING TRUST**" to provide for our benefit during life, and for the benefit of our children after the death of both of us.

Realizing that death could overtake us before our children are of sufficiently mature age, we make this statement of our preferences regarding their physical and legal custody.

First. We confirm to each other our wish that the survivor, should one of us die before the other, continue to exercise full legal and physical responsibility and custody for the children. This is as the law would have it be, and we hereby express our agreement with that legal principle.

Second. We appoint **Kevin T. Boyd** of **San Jose, California** as the permanent guardian of our children with all rights and duties of a guardian of minor children until such time as they are of legal age. We also grant **Kevin T. Boyd** authority to remove the children from the children's state of residence before a court appointment in order that he may make use of the courts of his own state to seek such appointment.

We make these appointments with due and careful consideration of the needs of our children, and of the kindness and generosity of those we are appointing. We desire that the court confirm our appointments with utmost speed.

Dated: January 9, 2001

Michael E. Boyd, Father

Dated: January 9, 2001

Patricia L. Paramoure, Mother

Exhibit 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHAEL E. BOYD,

Plaintiff,

v.

GMAC MORTGAGE LLC; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC.; and DOES 1 TO 100,

Defendants.

Case No.: 11-05018-PSG

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT**

(Re: Docket Nos. 58, 60)

Plaintiff Michael E. Boyd ("Boyd"), appearing *pro se*, asserts causes of action against Defendants GMAC Mortgage, LLC ("GMAC"), Mortgage Electronic Registration Systems, Inc. ("MERS"), and Does 1-100 (collectively "Defendants"). Defendants move to dismiss Boyd's First Amended Complaint ("FAC") for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Having considered the arguments and evidence presented, the court GRANTS the Defendants' motion to dismiss Boyd's FAC. Because it is clear that amendment cannot save Boyd's claims, the dismissal is with prejudice. Boyd's motion for procedural relief also is DENIED as moot.

I. BACKGROUND

On October 11, 2011, Boyd filed the instant complaint against Defendants. On November 9, 2011, Defendants moved to dismiss the complaint, and on December 5, 2011, this court granted Defendants' motion with leave to amend. On May 22, 2012, Boyd filed his FAC, and on June 25, 2012, Defendants moved to dismiss Boyd's FAC. Boyd failed to timely respond, and on July 12, 2012, Boyd filed a motion for procedural relief from the July 9, 2012 filing deadline for an opposition to Defendants' motion to dismiss.

As was the case with Boyd's original complaint, the court extracts these allegations with some difficulty because Boyd's complaint does not set forth particular allegations as individual causes of action. The court reads Boyd's FAC as essentially alleging the same set of facts as in his original complaint, but including the new allegation that Defendants' actions were in breach of Boyd and his wife's Joint Living Trust.¹ Because the court's previous order granting Defendants' motion to dismiss Boyd's original complaint included an exhaustive background and discussion of Boyd's original claims for alleged incomplete reconveyance, unconscionability, and Defendants' authority to foreclose,² the court will not address these claims again, and adopts the reasoning of its previous order.³ At issue here is whether the additional Joint Living Trust claim in Boyd's FAC can save Boyd's complaint from dismissal. As is discussed in greater detail below, it does not.

II. LEGAL STANDARDS

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief."⁴ If a plaintiff fails to proffer "enough facts to state a claim to relief that is plausible on its face," the complaint may be dismissed for failure to state a claim upon which relief may be granted.⁵ A claim is facially plausible "when the pleaded factual content allows the court to

¹ See generally Docket No. 52 (Pl.'s FAC).

² See generally Docket No. 32 (Order Granting Defs.' Mot. to Dismiss).

³ Boyd's FAC omits much of this language, and is replaced by allegations that Defendants breached Boyd's Joint Living Trust.

⁴ Fed. R. Civ. P. 8(a)(2).

⁵ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

draw the reasonable inference that the defendant is liable for the misconduct alleged.”⁶
Accordingly, under Fed. R. Civ. P. 12(b)(6), which tests the legal sufficiency of the claims alleged
in the complaint, “[d]ismissal can based on the lack of a cognizable legal theory or the absence of
sufficient facts alleged under a cognizable legal theory.”⁷

On a motion to dismiss, the court must accept all material allegations in the complaint as
true and construe them in the light most favorable to the non-moving party.⁸ The court’s review is
limited to the face of the complaint, materials incorporated into the complaint by reference, and
matters of which the court may take judicial notice.⁹ However, the Court need not accept as true
allegations that are conclusory, unwarranted deductions of fact, or unreasonable inferences.¹⁰
“Dismissal with prejudice and without leave to amend is not appropriate unless it is clear that the
complaint could not be saved by amendment.”¹¹

III. DISCUSSION

Boyd alleges that GMAC and MERS violated the UCL because Boyd’s property was part
of a Joint Living Trust, and due to this alleged fact Boyd makes the conclusory allegation that he
did not have the authority to execute loan agreements and that the agreements therefore are void.¹²
Boyd’s FAC alleges that Defendants, specifically GMAC and MERS, “breach[ed] said ‘Joint
Living Trust’ through the use of standard form loans and promissory notes . . . signed by Plaintiff
in and about January 2007.” This allegation is made throughout Boyd’s FAC,¹³ but this is clearly

⁶ *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009).

⁷ *Balistreri v. Pacifica Police Dep’t.*, 901 F.2d 696, 699 (9th Cir. 1990).

⁸ *See Metzler Inv. GMBH v. Corinthian Colls, Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008).

⁹ *See id.* at 1061.

¹⁰ *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *see also Twombly*,
550 U.S. at 561 (“a wholly conclusory statement of [a] claim” will not survive a motion to
dismiss).

¹¹ *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F. 3d 1048, 1052 (9th Cir. 2003).

¹² *See generally* Docket No. 52 (Pl.’s FAC).

¹³ *Compare* Docket No. 52 (Pl.’s FAC) *with* Docket No. 1 (Pl.’s Compl.). Boyd’s FAC for the first
time also includes a chart and summary titled “12 Steps of Bank Fraud.” *See id.* at 3-7.

1 not the law.¹⁴ GMAC and MERS were not parties to the trust. If that were not enough, Boyd
2 acknowledges that he was the Joint Living Trust's trustee at the time he executed the loan
3 agreements.¹⁵ The net result is that Boyd's FAC fails to state a claim for relief and cannot survive
4 Rule 12(b)(6).

5 **IV. CONCLUSION**

6 The court GRANTS Defendants' motion to dismiss Boyd's FAC. Because it is clear that
7 amendment cannot not save Boyd's FAC, the court's grant of dismissal is with prejudice. Because
8 Boyd's motion for procedural relief is now moot, this motion too is DENIED.

9 **IT IS SO ORDERED.**

10 Dated: August 22, 2012

11 
12 PAUL S. GREWAL
13 United States Magistrate Judge
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26 ¹⁴ See, e.g., *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002) ("It goes without saying that
27 a contract cannot bind a nonparty.").

28 ¹⁵ See Docket No. 52 (Pl.'s FAC) at 10.

Exhibit 5

FILED

NOT FOR PUBLICATION

AUG 22 2014

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL E. BOYD,

Plaintiff - Appellant,

v.

GMAC MORTGAGE LLC;
MORTGAGE ELECTRONIC
REGISTRATION SERVICES, INC.,

Defendants - Appellees.

No. 12-17434

D.C. No. 5:11-cv-05018-PSG

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Paul S. Grewal, Magistrate Judge, Presiding**

Submitted August 13, 2014***

Before: SCHROEDER, THOMAS, and HURWITZ, Circuit Judges.

Michael E. Boyd appeals pro se from the district court's judgment

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

dismissing his action alleging various claims concerning two mortgage loan agreements. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1040 (9th Cir. 2011). We may affirm on any ground supported by the record, *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008), and we affirm.

The district court properly dismissed Boyd's quiet title claim because Boyd stopped making payments on his loans, was not released of his obligations under the loans, and Boyd's deeds of trust authorized defendant to initiate foreclosures. *See* Cal. Civ. Code § 2924(a)(1); *see also* *Gomes v. Countrywide Home Loans, Inc.*, 121 Cal. Rptr. 3d 819, 823-24 (Ct. App. 2011) (California law does not "provide for a judicial action to determine whether the person initiating the foreclosure process is indeed authorized").

The district court properly dismissed Boyd's claims related to two contracts as time-barred because the claims accrued in December 2006 and January 2007 when the contracts were formed, and Boyd did not file his original complaint until October 2011. *See* Cal. Civ. Proc. Code § 337 (setting forth four year limitations period).

The district court properly dismissed Boyd's claim for violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200,

because Boyd failed to allege sufficient facts to state a plausible UCL claim on the basis of a living trust agreement between Boyd and his spouse. *See E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002) (“It goes without saying that a contract cannot bind a nonparty.”).

Dismissal of Boyd’s due process claims was proper because nonjudicial foreclosure proceedings do not violate due process. *See Apao v. Bank of N.Y.*, 324 F.3d 1091, 1094-95 (9th Cir. 2003) (nonjudicial foreclosure was not state action and therefore did not implicate due process); *Garfinkle v. Superior Court*, 578 P.2d 925, 934 (Cal. 1978) (“[N]onjudicial foreclosure of a deed of trust constitutes private action authorized by contract and does not come within the scope of the California due process clause.”).

Because Boyd did not file a motion pursuant to Fed. R. Civ. P. 7(b) with the *lis pendens* filed with his complaint, the district court did not err in taking no action on Boyd’s *lis pendens*, and even assuming a proper motion had been filed, there was no pending cause of action which would affect title to specific real property. *See* Fed. R. Civ. P. 7(b) (“A request for a court order must be made by motion.”); *see also* Cal. Civ. Proc. Code § 405.4 (defining “real property claim”); Cal. Civ. Proc. Code § 405.21 (a pro se litigant must seek court approval in order to record a *lis pendens*); *Kirkeby v. Superior Court*, 93 P.3d 395, 398-99 (Cal.

2004) (courts must assess whether the pleading alleges a real property claim).

Boyd's appeal of the denial of his motions for injunctive relief is moot. *See Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441, 1450 (9th Cir. 1992) (when underlying claims have been decided, the reversal of a denial of preliminary relief would have no practical consequences, and the issue is therefore moot).

The district court properly denied both Boyd's motion for procedural relief and his attempt to remove this action to the bankruptcy court, and appropriately considered his allegations and applied the correct standard for dismissal under Fed. R. Civ. P. 12(b)(6).

We do not consider arguments raised for the first time on appeal, including Boyd's arguments concerning a First Amendment right to a court of one's choosing. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

AFFIRMED.

Exhibit 6

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 12-17434 Nature of Suit: 3371 Truth in Lending Michael Boyd v. GMAC Mortgage LLC, et al Appeal From: U.S. District Court for Northern California, San Jose Fee Status: Paid		Docketed: 10/31/2012 Termed: 08/22/2014										
Case Type Information: 1) civil 2) private 3) null												
Originating Court Information: District: 0971-5 : 5:11-cv-05018-PSG Court Reporter: Summer A. Fisher, Court Reporter Trial Judge: Paul S. Grewal, Magistrate Judge Date Filed: 10/12/2011 <table style="width: 100%; border: none;"> <tr> <td style="width: 25%;">Date Order/Judgment:</td> <td style="width: 25%;">Date Order/Judgment EOD:</td> <td style="width: 25%;">Date NOA Filed:</td> <td style="width: 25%;">Date Rec'd COA:</td> </tr> <tr> <td>10/01/2012</td> <td>10/01/2012</td> <td>10/29/2012</td> <td>10/30/2012</td> </tr> </table>			Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:	10/01/2012	10/01/2012	10/29/2012	10/30/2012		
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Prior Cases: 10-72083 Date Filed: 07/02/2010 Date Disposed: 09/30/2010 Disposition: Rule 42-1 Dismissal - Clerk Order												
Current Cases: <table style="width: 100%; border: none;"> <thead> <tr> <th style="text-align: left;">Related</th> <th style="text-align: left;">Lead</th> <th style="text-align: left;">Member</th> <th style="text-align: left;">Start</th> <th style="text-align: left;">End</th> </tr> </thead> <tbody> <tr> <td></td> <td>12-16589</td> <td>12-17434</td> <td>10/31/2012</td> <td></td> </tr> </tbody> </table>			Related	Lead	Member	Start	End		12-16589	12-17434	10/31/2012	
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	12-16589	12-17434	10/31/2012									

MICHAEL E. BOYD Plaintiff - Appellant, v. GMAC MORTGAGE LLC Defendant - Appellee, MORTGAGE ELECTRONIC REGISTRATION SERVICES, INC. Defendant - Appellee,	Michael E. Boyd Direct: 408-891-9677 [NTC Pro Se] CALIFORNIANS FOR RENEWABLE ENERGY, INC. (CARE) 5439 Soquel Drive Soquel, CA 95073 Elizabeth Holt Andrews, Esquire [COR NTC Retained] Severson & Werson One Embarcadero Center San Francisco, CA 94111 Elizabeth Holt Andrews, Esquire [COR NTC Retained] (see above)
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MICHAEL E. BOYD,

Plaintiff - Appellant,

v.

GMAC MORTGAGE LLC; MORTGAGE ELECTRONIC REGISTRATION SERVICES, INC.,

Defendants - Appellees.

10/31/2012	<input type="checkbox"/> 1 20 pg, 352.14 KB	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL AND PROSE APPELLANT. The schedule is set as follows: Transcript ordered by 11/28/2012. Transcript due 12/28/2012. Appellant Michael E. Boyd opening brief due 02/06/2013. Appellees GMAC Mortgage LLC and Mortgage Electronic Registration Services, Inc. answering brief due 03/08/2013. Appellant's optional reply brief is due 14 days after service of the answering brief. [8382266] (GR) [Entered: 10/31/2012 08:30 AM]
01/02/2013	<input type="checkbox"/> 2 25 pg, 878.22 KB	Filed (ECF) Appellees GMAC Mortgage LLC and Mortgage Electronic Registration Services, Inc. Correspondence: Notice of Bankruptcy and Non-Effect of Automatic Stay. Date of service: 01/02/2013 [8458871] (EHA) [Entered: 01/02/2013 05:45 PM]
02/01/2013	<input type="checkbox"/> 3	Form 13 Streamlined request by Appellant Mr. Michael E. Boyd to extend time to file the brief is not approved because filer's status in ECF is active. Filer may resubmit the request using ECF event "File a Streamlined Request to Extend Time to File a Brief." [8497209] (LW) [Entered: 02/01/2013 12:31 PM]
02/02/2013	<input type="checkbox"/> 4	Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellant Mr. Michael E. Boyd. New requested due date is 03/08/2013 at 11:59 pm. [8498070] (MEB) [Entered: 02/02/2013 09:35 PM]
02/04/2013	<input type="checkbox"/> 5	Streamlined request by Appellant Mr. Michael E. Boyd to extend time to file the brief is approved. Amended briefing schedule: Appellant Michael E. Boyd opening brief due 03/08/2013. Appellees GMAC Mortgage LLC and Mortgage Electronic Registration Services, Inc. answering brief due 04/08/2013. The optional reply brief is due 14 days from the date of service of the answering brief. [8498425] (LW) [Entered: 02/04/2013 10:18 AM]
03/08/2013	<input type="checkbox"/> 6 14 pg, 155.59 KB	Submitted (ECF) Opening Brief for review. Submitted by Appellant Mr. Michael E. Boyd. Date of service: 03/08/2013. [8542908] (MEB) [Entered: 03/08/2013 11:12 AM]
03/08/2013	<input type="checkbox"/> 7 2 pg, 86.08 KB	Filed clerk order: The opening brief [6] submitted by Mr. Michael E. Boyd is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: not applicable. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [8543328] (JB) [Entered: 03/08/2013 01:40 PM]
03/14/2013	<input type="checkbox"/> 8	Received 7 paper copies of Opening brief [6] filed by Mr. Michael E. Boyd. [8552535] (SD) [Entered: 03/15/2013 12:48 PM]
04/08/2013	<input type="checkbox"/> 9 41 pg, 111.43 KB	Submitted (ECF) Answering Brief for review. Submitted by Appellees GMAC Mortgage LLC and Mortgage Electronic Registration Services, Inc.. Date of service: 04/08/2013. [8581386] (EHA) [Entered: 04/08/2013 01:39 PM]
04/08/2013	<input type="checkbox"/> 12	Filed Appellees' paper copies of supplemental excerpts of record [10] in 3 volumes. [8584841] (JB) [Entered: 04/10/2013 01:14 PM]
04/09/2013	<input type="checkbox"/> 10 418 pg, 12.74 MB	Submitted (ECF) supplemental excerpts of record. Submitted by Appellees GMAC Mortgage LLC and Mortgage Electronic Registration Services, Inc.. Date of service: 04/08/2013. [8583257] (EHA) [Entered: 04/09/2013 02:11 PM]
04/09/2013	<input type="checkbox"/> 11 2 pg, 86.61 KB	Filed clerk order: The answering brief [9] submitted by GMAC Mortgage LLC and Mortgage Electronic Registration Services, Inc. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. The Court has reviewed the supplemental excerpts of record [10] submitted by GMAC Mortgage LLC and Mortgage Electronic Registration Services, Inc.. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [8583334] (JB) [Entered: 04/09/2013 02:28 PM]
04/11/2013	<input type="checkbox"/> 13	Received 7 paper copies of Answering brief [9] filed by GMAC Mortgage LLC and Mortgage Electronic Registration Services, Inc.. [8588259] (SD) [Entered: 04/12/2013 12:45 PM]
08/22/2014	<input type="checkbox"/> 14 9 pg, 449.91 KB	FILED MEMORANDUM (MARY M. SCHROEDER, SIDNEY R. THOMAS and ANDREW D. HURWITZ) AFFIRMED. FILED AND ENTERED JUDGMENT. [9215281] (MS) [Entered: 08/22/2014 10:31 AM]
09/04/2014	<input type="checkbox"/> 15 28 pg, 269.09 KB	Filed (ECF) Appellant Mr. Michael E. Boyd petition for panel rehearing (from 08/22/2014 memorandum). Date of service: 09/04/2014. [9229216] (MEB) [Entered: 09/04/2014 04:41 PM]
12/22/2014	<input type="checkbox"/> 16 1 pg, 31.06 KB	Filed order (SIDNEY R. THOMAS, MARY M. SCHROEDER and ANDREW D. HURWITZ) Boyd's petition for panel rehearing is denied. No further filings will be entertained in this closed case. [9358496] (ME) [Entered: 12/22/2014 01:51 PM]
01/02/2015	<input type="checkbox"/> 17 1 pg, 83.64 KB	MANDATE ISSUED. (MMS, SRT and ADH) [9367971] (CW) [Entered: 01/02/2015 07:47 AM]
01/02/2015	<input type="checkbox"/> 18	Terminated Maria Schindler for Mortgage Electronic Registration Services, Inc. and GMAC Mortgage LLC in 12-17434 for not registering with Appellate ECF. [9367976] (CW) [Entered: 01/02/2015 07:49 AM]

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Exhibit 7

No. 14-_____

In the Supreme Court of the United States

MICHAEL E. BOYD,

Petitioner,

—v—

GMAC MORTGAGE LLC, ET AL.,

Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Review on a writ of certiorari is requested because the United States court of appeals has decided an important question in a way that conflicts with relevant decisions of this Court.

1. Is Judicial Review limited to Article III judges only?

2. In the alternative, is the Article I bankruptcy court permissible for the restructuring of debtor-creditor relations as the type of "public" right which could be heard and decided by an Article I judge?

LIST OF PARTIES

All parties do not appear in the caption of this case on the cover page. A list of all parties to the proceeding in the court whose judgment is subject of this petition follows:

Petitioner and Plaintiff-Appellant

- Michael E. Boyd

Respondents and Defendant-Appellees

- GMAC Mortgage LLC
- Mortgage Electronic Registration Services, Inc.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully requests writ of certiorari to determine if judicial review is limited to Article III judges only, or in the alternative, is the Article I bankruptcy court permissible for the restructuring of debtor-creditor relations as the type of “public” right which could be heard and decided by an Article I bankruptcy judge.



OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reproduced at App.1a. The opinions of the United States District Court appear at App.15a and App.21a. The opinion of the United States Bankruptcy Court is reproduced at App.5a. All opinions below are unpublished.



JURISDICTION

Petitioner appealed the District Court’s decision to the U.S. Court of Appeals, 9th Circuit, Case No 12-17434. The Ninth Circuit affirmed, by an unpublished Memorandum, the district court’s order dismissing the case on August 22, 2014. A timely petition for rehearing was denied by the U.S. Court of Appeals on December 22, 2014. (App.38a) The

jurisdiction of this Court is invoked under 28 U.S.C.
§ 1254(1).



CONSTITUTIONAL PROVISIONS INVOLVED

1. U.S. Const. Art. I, Section 8

The Congress shall have power . . . to establish . . . uniform laws on the subject of bankruptcies throughout the United States . . .

2. U.S. Const. Art III, Sections 1 and 2

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish . . .

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority . . .

3. U.S. Const. Art VI, cl. 2

This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law

of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.



INTRODUCTION

A conflicting relevant decision of this court arose when the U.S. Supreme Court on June 9, 2014 in *Executive Benefits Insurance Agency v. Arkison*, 134 S.Ct. 2165 (2014), 573 U.S. ___, 189 L. Ed. 2d 83, limited somewhat the ramifications of its landmark opinion two years before in *Stern v. Marshall*, 131 S.Ct. 2594, 564 U.S. 2, 180 L. Ed. 2d 475 (2011).

The current structure of the federal bankruptcy courts dates back to the last complete overhaul of federal bankruptcy law in 1978. At that time, Congress created the bankruptcy courts pursuant to its authority under Article I of the Constitution to establish uniform laws on bankruptcy. But in *Northern Pipeline Construction*, the Court held that the exercise of federal judicial power could only be undertaken by judges appointed under Article III of the Constitution, noting that the exceptions to that rule were territorial courts, military tribunals, and cases involving “public” rights. As Petitioner pointed out to the bankruptcy court Respondent GMAC “the Debtors are majority-owned by the United States government, their actions are thereby executive or legislative acts, and this Court has a mandate to review such acts for Constitutional infringements”; which is relevant to the separation of powers and

therefore provides evidence to support the bankruptcy court's jurisdiction over this as a case involving "public" rights. (App.8a) Inapposite *Northern Pipeline* involved a common law breach of contract dispute commenced by a company that happened to be in bankruptcy. However, although it struck down the ability of a non-Article III bankruptcy court judge to make a final determination in an action that clearly pertained to a "private" state common law right, the Court strongly suggested that the system of Article I bankruptcy courts was itself permissible, stating that "the restructuring of debtor-creditor relations, which is at the core of federal bankruptcy power," in likelihood constituted the type of "public" rights which could be heard and decided by an Article I judge.

The question of what constitutes a "public" right has never been clear. Some earlier cases had suggested that the scope of a "public" right was fairly narrow, involving only rights between individuals and the government. Other cases suggested broader parameters. Although the Court in *Northern Pipeline* did not expressly state that "the restructuring of debtor-creditor relations" under federal bankruptcy law actually constituted a "public" right, Congress accepted the Court's evident suggestion and in 1984 granted new jurisdictional authority to the United States Bankruptcy Courts. Under Section 157(b)¹ of the Bankruptcy Act of 1984, bankruptcy court judges became authorized to render final decisions in "core" matters under the Bankruptcy Code. Section 157(c) directed bankruptcy court judges to hear and submit

¹ U.S. Code Title 28 Part I Chapter 6 § 157, 28 U.S. Code § 157.

findings of fact and conclusions of law to Article III district court judges with respect to “non-core” matters.

Even though the Court never ruled on the constitutionality of the “core” and “non-core” bankruptcy jurisdictional construct, in other cases involving Article I tribunals the Court took an expansive view of the “public” rights doctrine, one that certainly appeared to be broad enough to encompass the list of “core” matters enumerated in the Bankruptcy Act of 1984. The separation of powers issues raised by *Northern Pipeline* appeared to have been laid to rest. Therefore, the Court’s ruling in *Stern*, that a matter could be a “core” matter under Section 157(b) but also not be a “public” right and thus not subject to final adjudication by an Article I bankruptcy court judge, was completely unexpected. *Executive Benefits* raised the possibility that the Court would go further by striking down the constitutionality of the “core” and “non-core” construct, and by strictly circumscribing the power of Article I bankruptcy judges.

The dispute in *Executive Benefits* involved a fraudulent transfer lawsuit. Although such an action is listed as a “core” matter under the Bankruptcy Act of 1984, the Ninth Circuit determined (and the Court assumed for purposes of the opinion) that it does not fit within the parameters of a “public” right under *Stern* and could not be adjudicated by a non-Article III judge. However, the Ninth Circuit also held that the bankruptcy court could prepare recommendations for review by the district court even though

Section 157(b) of the Bankruptcy Act of 1984 does not explicitly authorize bankruptcy judges to submit proposed findings and conclusions in a “core” proceeding (as Section 157(c) does for “non-core” proceedings). It also held that the right to have a matter heard by an Article III judge was an individual right that could be waived, and that the defendant had implicitly consented to bankruptcy court jurisdiction.

Because the dispute in *Executive Benefits* was subsequently reviewed by an Article III district court judge, the Court ruled that there was no need to address the separate constitutional question of whether the right to have a matter heard by an Article III judge was an individual right that could be waived.

In Case 5:11-cv-05018-PSG *Michael Boyd v. GMAC Mortgage LLC, et al.* Petitioner was before Magistrate Judge Paul Singh Grewal, Cause: 15:1601, Truth in Lending. So Petitioner remains confused over who has the proper jurisdiction here in this case, the Article I Magistrate Judge Paul Singh Grewal, Case 5:11-cv-05018-PSG *Michael Boyd v. GMAC Mortgage LLC, et al.*, the Article I Judge Martin Glenn, U.S. Bankruptcy Court Southern District of New York (Manhattan), Bankruptcy Petition 12-12020-mg, for his Secured Creditor Claims against Respondents, or the Article III judges at the U.S. Court of Appeals for the 9th Circuit, Case 12-17434, *Michael Boyd v. GMAC Mortgage LLC, et al.* Even a narrow ruling for the petitioner in *Executive Benefits*—that bankruptcy courts lack statutory authority to issue findings of fact and

conclusions of law for review by an Article III district court judge with respect to “core” matters that fall beyond the scope of “public” rights that Article I judges may permissibly determine—could have wreaked havoc on the bankruptcy courts and placed huge burdens on district court judges. Such a ruling also would have raised questions about the widespread use of federal magistrates (who are also Article I judges) to hear and determine a wide array of criminal and civil matters.

Among the matters susceptible of judicial determination, but not requiring it, are claims against the United States,² the disposal of public lands and claims arising there from,³ questions concerning membership in the Indian tribes,⁴ and questions arising out of the administration of the customs and internal revenue laws.⁵ Other courts similar to territorial courts, such as consular courts

² *Gordon v. United States*, 117 U.S. 697 (1864); *McElrath v. United States*, 102 U.S. 426 (1880); *Williams v. United States*, 289 U.S. 553 (1933). On the status of the then-existing Court of Claims, see *Glidden Co. v. Zdanok*, 370 U.S. 530 (1962).

³ *United States v. Coe*, 155 U.S. 76 (1894) (Court of Private Land Claims).

⁴ *Wallace v. Adams*, 204 U.S. 415 (1907); *Stephens v. Cherokee Nation*, 174 U.S. 445 (1899) (Choctaw and Chickasaw Citizenship Court).

⁵ *Old Colony Trust Co. v. CIR*, 279 U.S. 716 (1929); *Ex Parte Bakelite Corp.*, 279 U.S. 438 (1929).

and military courts martial, may be justified on like grounds.⁶

The “public rights” distinction appears today to be a description without a significant distinction. Thus, in *Crowell v. Benson*,⁷ the Court approved an administrative scheme for determination, subject to judicial review, of maritime employee compensation claims, although it acknowledged that the case involved “one of private right, that is, of the liability of one individual to another under the law as defined.”⁸

This scheme was permissible, the Court said, because in cases arising out of congressional statutes, an administrative tribunal could make findings of fact and render an initial decision of legal and constitutional questions, as long as there is adequate review in a constitutional court.⁹ The “essential attributes” of decision must remain in an Article III court, but so long as it does, Congress may utilize administrative decision makers in those

⁶ See *In re Ross*, 140 U.S. 453 (1891) (consular courts in foreign countries). Military courts may, on the other hand, be a separate entity of the military having no connection to Article III. *Dynes v. Hoover*, 20 How. (61 U.S.) 65, 79 (1857).

⁷ 285 U.S. 22 (1932).

⁸ *Id.* 51. On the constitutional problems of assignment to an administrative agency, see *Atlas Roofing Co. v. OSHRC*, 430 U.S. 442 (1977); *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 48 (1937). 285 U.S. 22 (1932).

⁹ *Id.*, 51–65.

private rights cases that arise in the context of a comprehensive federal statutory scheme.¹⁰

That the “public rights” distinction marked a dividing line between those matters that could be assigned to legislative courts and to administrative agencies and those matters “of private right” that could not be was reasserted in *Marathon*, but there was much the Court plurality did not explain.¹¹



STATEMENT OF CASE

Petitioner’s case relates to two separate loans (the “Loans”): one loan purportedly secured by a mortgage on property located on Soquel Drive (the

¹⁰ *Id.*, 50, 51, 58–63. Thus, Article III concerns were satisfied by a review of the agency fact finding upon the administrative record. *Id.*, 63–65. The plurality opinion denied the validity of this approach in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 86 n. 39 (1982), although Justice white in dissent accepted it. *Id.*, 115. The plurality, rather, rationalized *Crowell* and subsequent cases on an analysis seeking to ascertain whether agencies or Article I tribunals were “adjuncts” of Article III courts, that is, whether Article III courts were sufficiently in charge to protect constitutional values. *Id.*, 76–87.

¹¹ *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 67–70 (1982) (plurality opinion). Thus, Justice Brennan states that at a minimum a matter of public right must arise “between the government and others” but that the presence of the United States as a proper party to the proceeding is a necessary but not sufficient means to distinguish “private rights.” *Id.*, 69 & n. 23. *Crowell v. Benson*, however, remained an embarrassing presence.

"Soquel Loan") originated by Plaza Home Mortgage Inc. ("Plaza") in January 2007, and another loan purportedly secured by a mortgage on property located on Lakebird Drive (the "Lakebird Loan") originated by Plaza. Debtor GMAC Mortgage, LLC ("GMACM") serviced the Soquel Loan from April 10, 2007 until servicing was transferred to Ocwen Loan Servicing LLC ("Ocwen") on February 16, 2013. GMACM serviced the Lakebird Loan from March 13, 2007 until servicing was transferred to Ocwen on February 16, 2013.

On December 4, 2011 the District Court issued Order (1) Granting Defendants' Motion to Dismiss; (2) Denying Plaintiff's Application for Preliminary Injunction or Temporary Restraining Order. (App.21a)

So as to not lose his home and duplex to foreclosure, Petitioner filed a chapter 13 bankruptcy petition (the "Chapter 13 Case") in the United States Bankruptcy Court for the Northern District of California (the "California Bankruptcy Court") on December 12, 2011.

On May 14, 2012, GMAC Mortgage LLC, also known as ResCap filed a chapter 11 bankruptcy petition (the "Chapter 11 Case") in the U.S. Bankruptcy Court Southern District of New York (Manhattan) Bankruptcy Petition 12-12020-mg.

On October 4, 2012 Petitioner filed his Secured Creditor Claim 960 with the bankruptcy court in New York.

On October 29, 2012 Claimant filed his appeal before the U.S. Court of Appeals for the 9th Circuit

in Case 12-17434 *Michael Boyd v. GMAC Mortgage LLC, et al.* On September 11, 2011, Claimant filed litigation in USDC, Northern District of CA, Case 5:11-CV-05018, for “unconscionability contract and adhesion to real property.” Claimant’s appeal arose out of his U.S. District Court Complaint, before Magistrate Judge Paul Singh Grewal, Cause: 15:1601, Truth in Lending. The claims in the complaint were to invalidate/contest the liens on the property that were being serviced by the Debtors. The case was dismissed with prejudice on August 22, 2012 by Order Granting Defendants’ Motion to Dismiss Plaintiffs First Amended Complaint. (App.15a)

On May 14, 2014, the California Bankruptcy Court confirmed Boyd’s chapter 13 plan (the “Chapter 13 Plan”), which provides for the payment of all arrears on the Loans and ongoing payments on the Loans.

On June 20, 2014 as a Claimant in the GMAC Mortgage LLC Chapter 11 Bankruptcy filed with the Bankruptcy Court Document 7146, Objection to Motion /Objection and Opposition To Motion filed by The Michael Boyd and Patricia Paramoure Living Trust, (“objection”).

Petitioner appealed the District Court’s decision to the USCA, 9th Circuit, Case No 12-17434. The Ninth Circuit affirmed, by an unpublished Memorandum, the district court’s order dismissing the case on August 22, 2014. (App.1a)

Petitioner’s petition for rehearing of the Ninth Circuit decision (the “Petition for Rehearing”) was on September 4, 2014.

On September 17, 2014 Respondent GMAC, aka-Debtors, filed the *ResCap Borrower Claims Trust's Seventy-Fifth Omnibus Objection to Claims (No Liability Borrower Claims)* (the "*Omnibus Objection*") which included [at Doc 7552-2 pp 45-46] again, a disallowance of the Claim 960, on the basis of *Res Judicata*, with "No Liability Summaries."

In the Court's December 11, 2014, Memorandum Opinion and Order Overruling the Rescap Borrower Claims Trust's Objection to Claim No. 960 Filed by Michael Boyd it states:

Boyd argues correctly (and the Trust concedes) that the judgment dismissing the California Action is not final, and therefore *Res Judicata* does not apply on the basis of such dismissal, because Boyd's Petition for Rehearing remains pending. (See Opp. at 4; Reply ¶ 19.)

Doc. 7859, page 3, 1st paragraph (App.7a)

In the Court's December 11, 2014, Memorandum Opinion and Order Overruling the Rescap Borrower Claims Trust's Objection to Claim No. 960 Filed by Michael Boyd it states:

The remainder of Boyd's arguments make very little sense. He invokes "his First Amendment rights to judicial review [right to petition for grievances against the government, AKA ResCap] under the *Supreme Clause*." (See Opp. at 4.) Boyd appears to argue that the Debtors are majority-owned by the United States government, their actions are thereby

executive or legislative acts, and this Court has a mandate to review such acts for Constitutional infringements. (*See id.*) Boyd also asserts that it is unclear how *Res Judicata* applies due to confirmation of his Chapter 13 Plan, noting that he filed for bankruptcy protection before the Debtors filed their chapter 11 cases. (*See id.* at 4–5.)

Doc. 7859, page 3, 2nd paragraph (App.8a)

On December 22, 2014 the 9th Circuit Denied Rehearing. (App.38a)

On January 28, 2015 the Department of the Treasury Tort Claims Office at 1500 Pennsylvania Avenue, NW Washington, D.C. 20220 received Claimant's administrative Tort "class claim" by U.S. Mail service.

On January 29, 2015 the *ResCap Borrower Claims Trust's Eighty-Second Omnibus Objection to Claims (No Liability Borrower Claims)* [Doc 8042] which is currently pending before the U.S. Bankruptcy Court.



REASONS FOR GRANTING THE PETITION

In the Bankruptcy Court's December 11, 2014, *Memorandum Opinion and Order Overruling the Rescap Borrower Claims Trust's Objection to Claim No. 960 Filed by Michael Boyd* it states "The remainder of Boyd's arguments make very little sense. He invokes "his First Amendment rights to judicial review [right to petition for grievances

against the government, AKA ResCap] under the *Supreme Clause*. (See Opp.4)” (App.8a) By this Petitioner clarifies his meaning by stating Petitioner was attempting to invoke his First Amendment rights to judicial review [right to petition for grievances against the government, AKA ResCap] under the *Supremacy Clause*.

As Petitioner pointed out at page 8 line 24 of his June 20 objections the Petitioner ResCap is “74% owned by taxpayers” which is relevant to the separation of powers, the political doctrine of constitutional law under which the three branches of government (executive, legislative, and judicial) are kept separate to prevent abuse of power. Also known as the system of checks and balances, each branch is given certain powers so as to check and balance the other branches.

Under this doctrine Judicial Review is the idea, fundamental to the U.S. system of government that the actions of the executive and legislative branches of government are subject to review and possible invalidation by the judicial branch. Judicial review allows the Supreme Court to take an active role in ensuring that the other branches of government abide by the constitution. Judicial review was established in the classic case of *Marbury v. Madison*, 5 U.S. 137 (1803).

A court’s authority [including the U.S. bankruptcy court] is to examine an executive or legislative act and to invalidate that act if it is contrary to constitutional principles. The power of courts of law to review the actions of the executive and legislative branches is fundamental to judicial

review. Though judicial review is usually associated with the U.S. Supreme Court, which has ultimate judicial authority, it is a power possessed by most federal and state courts of law in the United States. In the United States, the supremacy of national law is established by Article VI, Clause 2, of the U.S. Constitution. Called the Supremacy Clause, it states that "This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land."

It still is unclear to Claimant how Debtors objection is relevant to Debtors disallowance of the claim on the basis of *Res Judicata*. Irrespective of the fact "Claimant affirmed the liens, as the Plan provides that all arrears on the loans will be paid and Claimant will make ongoing payments on the loans" this should in no way diminish Claimant's right to this Court's review of his Claim on the basis of the facts before it now. Claimant filed bankruptcy protection before the Debtors did, so now the Debtors want to abuse the process for their advantage, which by itself should be improper, but for the government [AKA ResCap] to do so violates the Constitution.

Petitioner's bankruptcy, like the Respondent Debtors', is voluntary, the fact Petitioner's affirmed the liens, as the Plan provides, does not diminish Petitioner's rights as a Claimant before the U.S. bankruptcy court, nor the U.S. Supreme Court, nor in his administrative "class claim" before the Department of the Treasury Tort Claims Office. The fact that Respondent GMAC "the Debtors are majority-owned by the United States government", (App.8a) should diminish Debtors rights and should

also entitle these matters to a higher [not lower] standard of review pursuant to the Supremacy Clause, since in ResCap's [Aka the Government's] filing in Petitioner's bankruptcy, the Debtors misrepresented the contents of their proof of claims to this bankruptcy court, what Mr. Paatalo characterized as "Dubious endorsements", as well as misrepresented the facts regarding "all payments 'due' on the debts are being timely paid to, and received by, the certificate holders /investors in the HVMLT 2007-4 Trust during the pendency of the Boyd bankruptcy."

As the bankruptcy court reports in its, Memorandum Opinion and Order Overruling the Rescap Borrower Claims Trust's Objection to Claim No. 960, "Boyd states that he has retained the services of a purported forensic mortgage loan auditor, William J. Paatalo, for research related to the chain of title of Boyd's Loans. (See *id.* at 4-5.) According to Boyd, Paatalo's research indicates that the applicable notes for the Loans do not contain valid endorsements and the Loans are not in default. (See *id.* at 6.)" (App.8a)



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

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MARCH 20, 2015

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MEMORANDUM OPINION OF THE
NINTH CIRCUIT
(AUGUST 22, 2014)

UNITED STATES COURT OF APPEALS,
NINTH CIRCUIT.

MICHAEL E. BOYD,

Plaintiff-Appellant,

v.

GMAC MORTGAGE LLC; MORTGAGE
ELECTRONIC REGISTRATION SERVICES, INC.,

Defendants-Appellees.

No. 12-17434

Appeal from the United States District Court
for the Northern District of California.

Paul S. Grewal, Magistrate Judge, Presiding.**
D.C. No. 5:11-cv-05018-PSG.

Before: SCHROEDER, THOMAS, and
HURWITZ, Circuit Judges.

Michael E. Boyd appeals pro se from the district
court's judgment dismissing his action alleging
various claims concerning two mortgage loan

** The parties consented to proceed before a magistrate judge.
See 28 U.S.C. § 636(c).

agreements. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1040 (9th Cir.2011). We may affirm on any ground supported by the record, *Thompson v. Paul*, 547 F.3d 1055, 1058–59 (9th Cir.2008), and we affirm.

The district court properly dismissed Boyd's quiet title claim because Boyd stopped making payments on his loans, was not released of his obligations under the loans, and Boyd's deeds of trust authorized defendant to initiate foreclosures. *See* Cal. Civ.Code § 2924(a)(1); *see also* *Gomes v. Countrywide Home Loans, Inc.*, 192 Cal.App.4th 1149, 121 Cal.Rptr.3d 819, 823–24 (2011) (California law does not “provide for a judicial action to determine whether the person initiating the foreclosure process is indeed authorized”).

The district court properly dismissed Boyd's claims related to two contracts as time-barred because the claims accrued in December 2006 and January 2007 when the contracts were formed, and Boyd did not file his original complaint until October 2011. *See* Cal.Civ.Proc.Code § 337 (setting forth four year limitations period).

The district court properly dismissed Boyd's claim for violation of California's Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, because Boyd failed to allege sufficient facts to state a plausible UCL claim on the basis of a living trust agreement between Boyd and his spouse. *See E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 294, 122 S.Ct. 754, 151 L.Ed.2d 755 (2002) (“It goes

without saying that a contract cannot bind a nonparty.”).

Dismissal of Boyd’s due process claims was proper because nonjudicial foreclosure proceedings do not violate due process. *See Apao v. Bank of N.Y.*, 324 F.3d 1091, 1094–95 (9th Cir.2003) (nonjudicial foreclosure was not state action and therefore did not implicate due process); *Garfinkle v. Superior Court*, 21 Cal.3d 268, 146 Cal.Rptr. 208, 578 P.2d 925, 934 (1978) (“[N]onjudicial foreclosure of a deed of trust constitutes private action authorized by contract and does not come within the scope of the California due process clause.”).

Because Boyd did not file a motion pursuant to Fed.R.Civ.P. 7(b) with the lis pendens filed with his complaint, the district court did not err in taking no action on Boyd’s lis pendens, and even assuming a proper motion had been filed, there was no pending cause of action which would affect title to specific real property. *See* Fed.R.Civ.P. 7(b) (“A request for a court order must be made by motion.”); *see also* Cal.Civ.Proc.Code § 405.4 (defining “real property claim”); Cal.Civ.Proc.Code § 405.21 (a pro se litigant must seek court approval in order to record a lis pendens); *Kirkeby v. Superior Court*, 33 Cal.4th 642, 15 Cal.Rptr.3d 805, 93 P.3d 395, 398–99 (2004) (courts must assess whether the pleading alleges a real property claim).

Boyd’s appeal of the denial of his motions for injunctive relief is moot. *See Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441, 1450 (9th Cir.1992) (when underlying claims have been decided, the reversal of a denial of preliminary relief

would have no practical consequences, and the issue is therefore moot).

The district court properly denied both Boyd's motion for procedural relief and his attempt to remove this action to the bankruptcy court, and appropriately considered his allegations and applied the correct standard for dismissal under Fed.R.Civ.P. 12(b)(6).

We do not consider arguments raised for the first time on appeal, including Boyd's arguments concerning a First Amendment right to a court of one's choosing. *See Padgett v. Wright*, 587 F.3d 983, 985 n. 2 (9th Cir.2009) (per curiam).

AFFIRMED.

**MEMORANDUM OPINION AND ORDER
OVERRULING THE RESCAP BORROWER
CLAIMS TRUST'S OBJECTION TO CLAIM NO. 960
FILED BY MICHAEL BOYD
(DECEMBER 11, 2014)**

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:
RESIDENTIAL CAPITAL, LLC, ET AL.,

Debtors.

Case No. 12-12020 (MG)

Jointly Administered

Before: Martin GLENN
United States Bankruptcy Judge

This opinion addresses the objection filed by the ResCap Borrower Claims Trust (the "Trust") to claim number 960 (the "Claim") filed by Michael Boyd ("Boyd"). The Trust seeks to disallow and expunge Boyd's Claim based on res judicata applied to Boyd's confirmed chapter 13 plan. For the reasons explained below, the objection is overruled without prejudice.

I. Background

A. The Objection

The objection is included as part of the *ResCap Borrower Claims Trust's Seventy-Fifth Omnibus Objection to Claims (No Liability Borrower Claims)* (the "Objection" or "Obj.," ECF Doc. # 7552). It is supported by the declarations of Deanna Horst ("Horst Decl.," ECF Doc. # 7552-3) and Norman S. Rosenbaum ("Rosenbaum Decl.," ECF Doc. # 7552-4). Boyd filed an opposition to the Objection (the "Opp.," ECF Doc. # 7701), and the Trust filed a reply (the "Reply," ECF Doc. # 7825), supported by a supplemental declaration of Ms. Horst ("Horst Supp.," ECF Doc. # 7825-1).

Boyd's Claim relates to two separate loans (the "Loans"): one loan purportedly secured by a mortgage on property located on Soquel Drive (the "Soquel Loan") originated by Plaza Home Mortgage Inc. ("Plaza") in January 2007, and another loan purportedly secured by a mortgage on property located on Lakebird Drive (the "Lakebird Loan") originated by Plaza.

(See Obj. Ex. 1-A, at 45.) Debtor GMAC Mortgage, LLC ("GMACM") serviced the Soquel Loan from April 10, 2007 until servicing was transferred to Ocwen Loan Servicing LLC ("Ocwen") on February 16, 2013. (*Id.*) GMACM serviced the Lakebird Loan from March 13, 2007 until servicing was transferred to Ocwen on February 16, 2013. (*Id.*)

On September 11, 2011, Boyd filed a complaint in the United States District Court for the Northern District of California (the "California District

Court”), asserting claims against GMACM and other defendants and seeking to invalidate the liens granted in connection with the Loans (the “California Action”). (*See id.*) The California Action was dismissed with prejudice on August 22, 2012 for failure to state a claim. (*See id.*; Obj. Ex. 5-5, at 2.) Boyd appealed the dismissal to the United States Court of Appeals for the Ninth Circuit (the “Ninth Circuit”), which affirmed the California District Court’s ruling on August 22, 2014. (*See id.*; Obj. Ex. 5-5, at 7.) Boyd’s petition for rehearing of the Ninth Circuit decision (the “Petition for Rehearing”) was filed on September 4, 2014 and remains pending at this time. (Opp. at 3.)

Boyd filed a chapter 13 bankruptcy petition (the “Chapter 13 Case”) in the United States Bankruptcy Court for the Northern District of California (the “California Bankruptcy Court”) on December 12, 2011. (*See* Obj. Ex. 1-A, at 45.) On May 14, 2014, the California Bankruptcy Court confirmed Boyd’s chapter 13 plan (the “Chapter 13 Plan”), which provides for the payment of all arrears on the Loans and ongoing payments on the Loans. (*See id.*)

The Trust argues that Boyd’s Claim is barred as a result of confirmation of the Chapter 13 Plan. (*Id.* at 45–46.)

B. The Opposition

Boyd argues correctly (and the Trust concedes) that the judgment dismissing the California Action is not final, and therefore res judicata does not apply on the basis of such dismissal, because Boyd’s Petition

for Rehearing remains pending. (*See* Opp. at 4; Reply ¶ 19.)

The remainder of Boyd's arguments make very little sense. He invokes "his First Amendment rights to judicial review [right to petition for grievances against the government, AKA ResCap] under the Supreme Clause." (*See* Opp. at 4.) Boyd appears to argue that the Debtors are majority-owned by the United States government, their actions are thereby executive or legislative acts, and this Court has a mandate to review such acts for Constitutional infringements. (*See id.*) Boyd also asserts that it is unclear how res judicata applies due to confirmation of his Chapter 13 Plan, noting that he filed for bankruptcy protection before the Debtors filed their chapter 11 cases. (*See id.* at 4–5.)

Boyd states that he has retained the services of a purported forensic mortgage loan auditor, William J. Paatalo, for research related to the chain of title of Boyd's Loans. (*See id.* at 4–5.) According to Boyd, Paatalo's research indicates that the applicable notes for the Loans do not contain valid endorsements and the Loans are not in default. (*See id.* at 6.) Accordingly, Boyd requests that the Court overrule the Trust's Objection. (*Id.* at 7.)

C. The Reply

While the Trust concedes that res judicata does not apply to the Ninth Circuit's order affirming dismissal of the California Action while the Petition for Rehearing remains pending, the Trust argues that res judicata applies to the Claim because Boyd affirmed the liens on his properties in his confirmed

Chapter 13 Plan. (Reply ¶ 19.) Specifically, the Trust asserts that (1) the order confirming the Chapter 13 Plan was a final order (*id.* ¶ 21); (2) the Chapter 13 Plan and Boyd's Claim involve the same parties—Boyd and GMACM, (*id.*); (3) the Chapter 13 Plan was confirmed by a court of competent jurisdiction (*id.*); and (4) the causes of action—actions to avoid liens—are the same because at the time his Chapter 13 Plan was confirmed, Boyd “had the opportunity and motive to object to the validity of the liens and failed to do so” (*id.* ¶ 23). As explained below, while res judicata *may* arise from a confirmed Chapter 13 plan, it does not do so here because the validity of the mortgage lien was the subject of pending, unresolved litigation in the California District Court. Because the validity of the liens was not actually litigated or resolved in Boyd's Chapter 13 Case, res judicata does not arise here as a result of the confirmed Chapter 13 Plan.

II. Discussion

“The preclusive effect of a judgment is defined by claim preclusion and issue preclusion, which are collectively referred to as ‘res judicata.’” *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008). The doctrine of res judicata precludes the same parties from litigating claims in a subsequent suit based on the same cause of action if there has been a final judgment on those claims. *Id.* Res judicata precludes “later litigation if [an] earlier decision was (1) a final judgment on the merits, (2) by a court of competent jurisdiction, (3) in a case involving the same parties or their privies, and (4) involving the same cause of action.” *EDP Med. Computer Sys., Inc. v. United States*, 480 F.3d

621, 624 (2d Cir. 2007) (citing *In re Teltronics Servs., Inc.*, 762 F.2d 185, 190 (2d Cir. 1985)). “In the bankruptcy context, [courts] ask as well whether an independent judgment in a separate proceeding would impair, destroy, challenge, or invalidate the enforceability or effectiveness of the reorganization plan.” *Corbett v. MacDonald Moving Servs., Inc.*, 124 F.3d 82, 88 (2d Cir. 1997) (internal quotation marks omitted) (citing *Sure-Snap Corp. v. State St. Bank & Trust Co.*, 948 F.2d 869, 875–76 (2d Cir. 1991)).

The first of the four factors is dispositive of the issue here.¹ The Court concludes on the fact of this matter that the confirmed Chapter 13 Plan is not a final judgment on the merits with respect to the validity of the liens.

The Second Circuit has held that an order confirming a chapter 13 bankruptcy plan constitutes a final judgment on the merits for purposes of res judicata. See *Celli v. First Trust Nat’l Bank of N. New York (In re Layo)*, 460 F.3d 289, 294 (2d Cir. 2006). The *Layo* court recognized that “challenges to the validity of the lien must be brought through an adversary proceeding.” *Id.*; see also *Palmatier v. Wells Fargo Fin. Nat’l Bank*, No. 1:09-CV-220 (DNH), 2010 WL 2516577, at *3 (N.D.N.Y. June 14, 2010) (“Whether a confirmation order constitutes a final judgment on the merits depends, in part, upon the availability of an adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7001(2).”). But *Layo* further held that “[w]here, at the outset, there is no dispute as to the basis of the lien, . . . given

¹ The Court assumes that the other requirements for res judicata are satisfied.

the policy embodied in § 1327(a) that confirmation of a plan 'bind the debtor and each creditor,' it does not follow that a non-objecting creditor has a right to bring an adversary proceeding whenever he gets around to doing so. To allow that practice would fly in the face of Congress' expressed intention that confirmation give debtors and creditors finality with respect to satisfaction of outstanding debt." *Id.* At the time of the confirmation of Layo's chapter 13 plan, no issue had been raised by anyone about the validity of the mortgage lien. The chapter 13 debtor in *Layo* had scheduled the lender's debt as a secured debt, and the court stated that "it is clear from the record that both Layo and FNB [the lender] agreed that Layo owed FNB \$99,000 and that the mortgage note was secured by a first mortgage interest in Layo's homestead property." *Id.* at 291.

In this matter, however, the California Action challenging the validity of the liens was pending at the time Boyd filed his Chapter 13 Case, and it remained pending during the Chapter 13 Case, and after the Chapter 13 Plan was confirmed. The pendency of the California Action challenging the liens is dispositive of whether res judicata applies here.

In reaching its decision in *Layo*, the court discussed and distinguished the Fourth Circuit's decision in *Cen-Pen Corp. v. Hanson*, 58 F.3d 89, 93 (4th Cir. 1995), which limited the preclusive effect of a chapter 13 plan on the validity of a lien. The court in *Cen-Pen Corp.* held that the joint debtors' confirmed chapter 13 plan did not have res judicata effect with respect to the validity of a creditor's liens where the debtors "did not take a sufficient 'affirmative

step' to avoid [the creditor's] liens." *Id.* at 93. Prior to the debtors' chapter 13 filing, the debtors and the creditor disputed the validity and extent of the creditor's liens on the debtors' property. *Id.* at 91. The debtors' chapter 13 plan treated the creditor as an unsecured creditor. The plan provided that objections to the plan were required to be filed within specified time periods but the creditor never objected to the plan. *Id.* at 92. After the plan was confirmed the creditor filed an adversary proceeding to determine the validity of the liens. *Id.* The debtors argued that their confirmed plan had preclusive effect extinguishing the creditor's liens. *Id.* The Fourth Circuit disagreed, holding that "[i]f a Chapter 13 plan does not address a creditor's lien . . . that lien passes through the bankruptcy process intact, absent the initiation of an adversary proceeding . . ." *Id.* at 94.

Here, the validity of GMACM's liens on Boyd's properties was in dispute at the time his Chapter 13 Case was filed. Boyd's California Action was filed on September 11, 2011 (*see* Horst Supp. ¶ 11); his Chapter 13 Case was filed on December 12, 2011 (*see id.* ¶ 13). A review of the docket in Boyd's Chapter 13 Case shows that the California Bankruptcy Court dismissed an adversary proceeding Boyd filed against GMACM on the basis that it attempted improperly to remove the California Action to the California Bankruptcy Court. (*See Boyd v. GMAC Mortg. LLC (In re Boyd)*, Adv. Proc. No. 11-5345 (N.D. Cal. Mar. 19, 2012), ECF Doc. # 7.) Boyd disputed the validity of GMACM's liens on his properties before, during, and after his Chapter 13 Case, but the California Bankruptcy Court did not

adjudicate the issue. Through the confirmed Chapter 13 Plan, Boyd agreed to pay the mortgage debts, but he did not expressly concede the validity of the liens that were challenged in the then-pending California Action. The California District Court adjudicated Boyd's challenge to the validity of the liens, dismissing Boyd's action for failure to state a claim. But that judgment is not yet final.

In *Layo*, the Second Circuit held that the confirmation of the debtor's chapter 13 plan and the trustee's subsequent adversary proceeding challenging the validity of the mortgage lender's liens constituted identical causes of action for res judicata purposes, noting that the "critical question for res judicata purposes is whether the party could or should have asserted the claim in the earlier proceeding." *Layo*, 460 F.3d at 292 (quoting *In re Howe*, 913 F.2d 1138, 1146 n.28 (5th Cir. 1990)). The trustee argued that she lacked facts that warranted challenging the liens prior to confirmation of the plan. *Id.* at 292. However, the court found that "the Trustee had both a motive and opportunity to confirm the status of real estate liens affecting the debtor's estate at or before the time that the plan was confirmed." *Id.* at 293. Specifically, "[t]he Trustee had clear opportunities to object to the validity of the mortgage lien listed in the confirmed Chapter 13 plan—when [the creditor] filed its claim in the amount of \$99,000 and when [the debtor] consented to and included that claim in his final Chapter 13 plan." *Id.* In this matter, of course, Boyd had raised the issue of the validity of the liens.

While Boyd included provisions in the Chapter 13 Plan for payment of GMACM's claims, the

Chapter 13 Plan did not waive Boyd's lien challenges that were, in fact, already subject to dispute in the California Action.

III. Conclusion

If and when the judgment in the California Action becomes final, it will be entitled to res judicata effect in this case, supporting the disallowance and expungement of Boyd's Claim. Boyd's confirmed Chapter 13 Plan does not, however, give rise to res judicata effect on the facts here. At this stage, the Trust's objection is premature. Therefore, the Objection is **OVERRULED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

December 11, 2014
New York, New York

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT
(AUGUST 22, 2012)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHAEL E. BOYD,

Plaintiff,

v.

GMAC MORTGAGE LLC; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC.;
and DOES 1 TO 100,

Defendants.

Case No.: 11-05018-PSG

Re: Docket Nos. 58, 60)

Before: Paul S. GREWAL

United States Magistrate Judge

Plaintiff Michael E. Boyd ("Boyd"), appearing *pro se*, asserts causes of action against Defendants GMAC Mortgage, LLC ("GMAC"), Mortgage Electronic Registration Systems, Inc. ("MERS"), and Does 1-100 (collectively "Defendants"). Defendants move to dismiss Boyd's First Amended Complaint ("FAC") for

failure to state a claim under Fed. R. Civ. P. 12(b)(6). Having considered the arguments and evidence presented, the court GRANTS the Defendants' motion to dismiss Boyd's FAC. Because it is clear that amendment cannot save Boyd's claims, the dismissal is with prejudice. Boyd's motion for procedural relief also is DENIED as moot.

I. Background

On October 11, 2011, Boyd filed the instant complaint against Defendants. On November 9, 2011, Defendants moved to dismiss the complaint, and on December 5, 2011, this court granted Defendants' motion with leave to amend. On May 22, 2012, Boyd filed his FAC, and on June 25, 2012, Defendants moved to dismiss Boyd's FAC. Boyd failed to timely respond, and on July 12, 2012, Boyd filed a motion for procedural relief from the July 9, 2012 filing deadline for an opposition to Defendants' motion to dismiss.

As was the case with Boyd's original complaint, the court extracts these allegations with some difficulty because Boyd's complaint does not set forth particular allegations as individual causes of action. The court reads Boyd's FAC as essentially alleging the same set of facts as in his original complaint, but including the new allegation that Defendants' actions were in breach of Boyd and his wife's Joint Living Trust.¹ Because the court's previous order granting Defendants' motion to dismiss Boyd's original complaint included an exhaustive background and discussion of Boyd's original claims for alleged

¹ See generally Docket No. 52 (Pl.'s FAC).

incomplete reconveyance, unconscionablity, and Defendants' authority to foreclose,² the court will not address these claims again, and adopts the reasoning of its previous order.³ At issue here is whether the additional Joint Living Trust claim in Boyd's FAC can save Boyd's complaint from dismissal. As is discussed in greater detail below, it does not.

II. Legal Standards

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief."⁴ If a plaintiff fails to proffer "enough facts to state a claim to relief that is plausible on its face," the complaint may be dismissed for failure to state a claim upon which relief may be granted.⁵ A claim is facially plausible "when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."⁶ Accordingly, under Fed. R. Civ. P. 12(b)(6), which tests the legal sufficiency of the claims alleged in the complaint, "[d]ismissal can based on the lack of a cognizable

² See generally Docket No. 32 (Order Granting Defs.' Mot. to Dismiss).

³ Boyd's FAC omits much of this language, and is replaced by allegations that Defendants breached Boyd's Joint Living Trust.

⁴ Fed. R. Civ. P. 8(a)(2).

⁵ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

⁶ *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009)

legal theory or the absence of sufficient facts alleged under a cognizable legal theory.”⁷

On a motion to dismiss, the court must accept all material allegations in the complaint as true and construe them in the light most favorable to the non-moving party.⁸ The court’s review is limited to the face of the complaint, materials incorporated into the complaint by reference, and matters of which the court may take judicial notice.⁹ However, the Court need not accept as true allegations that are conclusory, unwarranted deductions of fact, or unreasonable inferences.¹⁰ “Dismissal with prejudice and without leave to amend is not appropriate unless it is clear that the complaint could not be saved by amendment.”¹¹

III. Discussion

Boyd alleges that GMAC and MERS violated the UCL because Boyd’s property was part of a Joint Living Trust, and due to this alleged fact Boyd makes the conclusory allegation that he did not have

⁷ *Balistreri v. Pacifica Police Dep’t.*, 901 F.2d 696, 699 (9th Cir. 1990).

⁸ *See Metzler Inv. GMBH v. Corinthian Colls, Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008).

⁹ *See id.* at 1061.

¹⁰ *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *see also Twombly*, 550 U.S. at 561 (“a wholly conclusory statement of [a] claim” will not survive a motion to dismiss).

¹¹ *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F. 3d 1048, 1052 (9th Cir. 2003).

the authority to execute loan agreements and that the agreements therefore are void.¹² Boyd's FAC alleges that Defendants, specifically GMAC and MERS, "breach[ed] said 'Joint Living Trust' through the use of standard form loans and promissory notes . . . signed by Plaintiff in and about January 2007." This allegation is made throughout Boyd's FAC,¹³ but this is clearly not the law.¹⁴ GMAC and MERS were not parties to the trust. If that were not enough, Boyd acknowledges that he was the Joint Living Trust's trustee at the time he executed the loan agreements.¹⁵ The net result is that Boyd's FAC fails to state a claim for relief and cannot survive Rule 12(b)(6).

¹² See generally Docket No. 52 (Pl.'s FAC).

¹³ Compare Docket No. 52 (Pl.'s FAC) with Docket No. 1 (Pl.'s Compl.). Boyd's FAC for the first time also includes a chart and summary titled "12 Steps of Bank Fraud." See *id.* at 3-7.

¹⁴ See, e.g., *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002) ("It goes without saying that a contract cannot bind a nonparty.").

¹⁵ See Docket No. 52 (Pl.'s FAC) at 10.

IV. Conclusion

The court GRANTS Defendants' motion to dismiss Boyd's FAC. Because it is clear that amendment cannot not save Boyd's FAC, the court's grant of dismissal is with prejudice. Because Boyd's motion for procedural relief is now moot, this motion too is DENIED.

IT IS SO ORDERED.

/s/ Paul S. Grewal
PAUL S. GREWAL
United States Magistrate Judge

August 22, 2012

ORDER (1) GRANTING DEFENDANTS'
MOTION TO DISMISS; (2) DENYING PLAINTIFF'S
APPLICATION FOR PRELIMINARY INJUNCTION
OR TEMPORARY RESTRAINING ORDER
(DECEMBER 5, 2011)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHAEL E. BOYD,

Plaintiff,

v.

GMAC MORTGAGE LLC; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC.,
and DOES 1 TO 100,

Defendants.

No. 11-05018-PSG

Before: Paul S. GREWAL,
United States Magistrate Judge.

Plaintiff Michael E. Boyd ("Boyd"), appearing *pro se*, applies for a temporary restraining order and simultaneously moves for a preliminary injunction to prevent Defendants GMAC Mortgage, LLC ("GMAC"), Mortgage Electronic Registration Systems, Inc. ("MERS"), and Does 1-100 (collectively "Defendants")

from going forward with a nonjudicial foreclosure sale of his home. The sale is scheduled to take place on December 5, 2011.¹ Defendants concurrently move to dismiss Boyd's complaint for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6), or in the alternative, for a more definite statement pursuant to Fed.R.Civ.P. 12(e). Each side opposes the other's motion. The court has considered the moving and responding papers for both motions and finds this decision appropriate for determination without oral argument.² For the reasons discussed below, Defendants' motion to dismiss will be granted with leave to amend, and Boyd's motion for preliminary injunction will be denied.

I. Background

At the heart of this dispute is Boyd's desire to quiet title to two properties, his residence located at 5439 Soquel Drive, Soquel, CA 95073 ("the Soquel property") and 1090–1092 Lakebird Drive, Sunnyvale, CA ("the Sunnyvale property"). According to Defendants, both of Boyd's properties are in default. Only the Soquel property is scheduled for foreclosure.

On October 11, 2011, Boyd filed the instant complaint against GMAC and MERS. The court reads Boyd's complaint as an action to quiet title to the properties and for injunctive and declaratory

¹ On November 29, 2011, the parties appeared for case management conference. Defendants' counsel represented that Defendants would delay the foreclosure sale, scheduled for December 5, 2011, until the court issued its ruling on Boyd's motion for preliminary injunction.

² See Civ. L.R. 7–1(b).

relief based upon allegations of unconscionability for the use of contracts of adhesion and failure to secure title to the subject properties.³ On November 8, 2011, Boyd filed applications for a preliminary injunction or temporary restraining order to prevent the pending foreclosure sale. On November 9, 2011, Defendants responded to oppose Boyd's motions and filed their motion to dismiss. On November 16, 2011, Boyd filed his joint response to Defendants' motion to dismiss and reply to their opposition to the preliminary injunction motion.

According to the complaint, Boyd refinanced his loan⁴ on the Sunnyvale property in December 2006 with Plaza Home Mortgage ("Plaza"). The loan was secured by the deed of trust on the Sunnyvale property, in which Plaza named MERS as the beneficiary.⁵ On January 16, 2007, Washington

³ The court extracts these allegations with some difficulty because Boyd's complaint does not set forth particular allegations as individual causes of action. To the extent that Boyd mentions in passing violations of his due process rights under the Constitution or other allegations, the court does not find these to be set forth with sufficient clarity to warrant consideration for the purpose of the pending motions.

⁴ The court notes that Boyd's wife, Patricia L. Paramoure, although not a party to this action, is named and included in all relevant loan documents and on the deed of trust for both properties.

⁵ Docket No. 1 at 5:20–6:1 (Compl.); Docket No. 10, Ex. J (Def.'s Req. For Jud. Notice). The court takes judicial notice of Defendants' Exhibits A–N, filed in support of Defendants' Motion to Dismiss. *See* Docket Nos. 9, 10. The exhibits contain publicly-recorded and publicly-available documents that are "capable of accurate and ready determination" by verifying their accuracy with the Santa Cruz and Santa Clara County Records

Mutual FA (“WaMu”) filed a full reconveyance of the deed of trust to Boyd as trustor.⁶ Boyd alleges that this reconveyance did not name Defendants as the beneficiaries under the security instrument, and therefore left the property “unsecured.”⁷ On the Soquel property, Boyd similarly refinanced his loan with Plaza in January 2007, secured by a deed of trust on the Soquel property. On January 24, 2007, Plaza recorded the deed of trust and named MERS as the beneficiary.⁸ On February 1, 2007, WaMu recorded a full reconveyance of the deed of trust to Boyd.⁹ Although not alleged in the complaint, MERS, in its capacity as beneficiary, transferred its interest in the Sunnyvale and Soquel properties to GMAC in September 2011 and February 2011, respectively.¹⁰ GMAC subsequently recorded a substitution of trustee on both properties, substituting ETS Services, LLC (“ETS”) for the original trustee, First American Title.¹¹

Offices. *See* Fed.R.Evid. 201(b). Moreover, Boyd concedes in his opposition brief that the authenticity of the documents offered by Defendants is “not in dispute” even though Boyd states that he does not concede to the contents of the documents. *See* Docket No. 24 at 5:6–11.

⁶ Docket No. 1 at 6:3–9; Docket No. 20, Ex. K.

⁷ Docket No. 1 at 6:3–9.

⁸ *Id.* at 6:10–16; Docket No. 10, Ex. A.

⁹ Docket No. 1 at 6:16–22; Docket No. 10, Ex. B.

¹⁰ *See* Docket No. 9 at 4, 5 (Defs.’ Mot. To Dismiss); Docket No. 10, Exs. C, L.

¹¹ *See* Docket No. 10, Exs. E, M. This substitution allowed ETS to record a notice of default on March 1, 2011 on the Soquel

Beginning around April and May of 2007, Boyd began making mortgage payments for the loans on both properties to GMAC.¹² Boyd alleges that GMAC defrauded him in the amount of approximately \$186,000 by charging and taking loan payments even though GMAC did not have valid title to the property.¹³ Boyd explains that Defendants failed to record a substitution of trustee in 2007 or specifically name GMAC as a beneficiary to the full reconveyance.¹⁴ Based on Defendants' purported lack of title to the properties, as well as legal action taken by the Federal Housing Finance Agency ("FHFA") against GMAC for reckless lending and unlawful foreclosure practices, Boyd further alleges that Defendants do not have lawful authority to carry out the pending foreclosures, and in particular the nonjudicial foreclosure sale on the Soquel property.¹⁵

Boyd also alleges that during the December 2006 and January 2007 refinancing of the two properties, MERS used "the same standard forms" which afforded Boyd "no opportunity to negotiate" the terms of the loan or interest rates and did not disclose MERS' relationship with GMAC or the "loan underwriting investor(s)."¹⁶ Boyd argues that the

property, and a notice of default on September 14, 2011 on the Sunnyvale property. *See* Docket No. 9 at 4, 5.

¹² Docket No. 1 at 7:11–8:7.

¹³ *See id.* at 1:22–24, 5:13–18.

¹⁴ *See id.* at 7:11–8:12; 10:13–16.

¹⁵ *See id.* at 11:1–5, 12:7–13.

¹⁶ *See id.* at 3:22–4:3.

standard forms were contracts of adhesion that MERS, the party of superior bargaining strength, presented to Boyd in a “take it or leave it manner,” even though MERS was informed of Boyd’s “inferior financial condition and credit history.”¹⁷

In his motion for preliminary injunction or a temporary restraining order (“TRO”) to prevent the December 5th foreclosure sale of the Soquel property, Boyd also alleges unconscionability and violations of California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 *et seq.* in Defendants’ negotiations with Boyd over the court’s mandatory Alternative Dispute Resolution (“ADR”) process.¹⁸ Boyd argues that Defendants provided the ADR stipulation form with knowledge of the pending foreclosure sale so that Boyd would agree to ADR, only to have the entire process mooted by the subsequent sale.¹⁹ Based on the alleged UCL

¹⁷ *See id.*

¹⁸ *See* Docket No. 15 at 10 (Pl.’s Memo. In Support of Mot. For Prelim. Inj.). According to Boyd, beginning on November 3, 2011, Defendants’ counsel contacted him to confer regarding joint scheduling and ADR deadlines. Defendants suggested that Boyd agree to court-appointed mediation, with a deadline of 90 days after the conclusion of pleadings. The following day, Boyd discovered the notice of trustee’s sale taped to the door of his Soquel residence. Boyd then stated that he would not stipulate to Defendants’ ADR or other suggestions unless Defendants would stay the foreclosure sale. In the alternative, Boyd asked Defendants to agree to a mediation deadline of December 1st, before the scheduled sale. Defendants did not agree to stay the foreclosure sale or shift the ADR deadline until the case management conference, as noted above.

¹⁹ *See id.* at 11.

violations and unconscionability of Defendants' actions in the court process and in furnishing the refinance documents, as well as the alleged lack of authority to conduct the foreclosure sale, Boyd urges the court to enjoin the sale of the Soquel property until Boyd's claims can be litigated in full.

II. Motion to Dismiss

A. Legal Standards

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief."²⁰ If a plaintiff fails to proffer "enough facts to state a claim to relief that is plausible on its face," the complaint may be dismissed for failure to state a claim upon which relief may be granted.²¹ A claim is facially plausible "when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."²² Accordingly, under Fed.R.Civ.P. 12(b)(6), which tests the legal sufficiency of the claims alleged in the complaint, "[d]ismissal can based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory."²³

²⁰ Fed.R.Civ.P. 8(a)(2).

²¹ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

²² *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1940, 173 L.Ed.2d 868 (2009).

²³ *Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir.1990).

On a motion to dismiss, the court must accept all material allegations in the complaint as true and construe them in the light most favorable to the non-moving party.²⁴ The court's review is limited to the face of the complaint, materials incorporated into the complaint by reference, and matters of which the court may take judicial notice.²⁵ However, the Court need not accept as true allegations that are conclusory, unwarranted deductions of fact, or unreasonable inferences.²⁶ "Dismissal with prejudice and without leave to amend is not appropriate unless it is clear that the complaint could not be saved by amendment."²⁷

A motion for more definite statement pursuant to Fed.R.Civ.P. 12(e) is appropriate when a pleading "is so vague or ambiguous that the [responding] party cannot reasonably prepare a response." "Whether to grant a Rule 12(e) motion is within the discretion of the trial court."²⁸ Rule 12(e) motions are generally disfavored by the courts given the liberal pleading requirements under the federal rules. A

²⁴ See *Metzler Inv. GMBH v. Corinthian Colls, Inc.*, 540 F.3d 1049, 1061 (9th Cir.2008).

²⁵ See *id.* at 1061.

²⁶ See *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.2001); see also *Twombly*, 550 U.S. at 561 ("a wholly conclusory statement of [a] claim" will not survive a motion to dismiss).

²⁷ *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.2003).

²⁸ *Babb v. Bridgestone/Firestone*, 861 F.Supp. 50, 52 (M.D.Tenn.1993).

motion for more definite statement “should not be granted unless the defendant cannot frame a responsive pleading.”²⁹

B. Analysis

1. Allegedly Incomplete Reconveyance

Boyd has alleged that he was the recipient trustor to whom WaMu reconveyed the Sunnyvale and Soquel property deeds of trust on January 16, 2007 and February 1, 2007, respectively. The record of reconveyance for each property documents that WaMu reconveyed in full each deed of trust to Boyd at that time.³⁰ The record further demonstrates, however, that these reconveyances were as to earlier loans and did not affect the loans resulting from the 2006 and 2007 refinances of the Sunnyvale and Soquel properties.³¹ Those loans—the same loans on which Boyd has received the notice of defaults underlying the foreclosures at issue—were secured by two different deeds of trust, each filed prior to WaMu’s recorded reconveyance.³² The deeds of trust demonstrate that Plaza, as the lender, named Boyd

²⁹ See *Falamore, Inc. v. Edison Bros. Stores, Inc.*, 525 F.Supp. 940, 949 (E.D.Cal.1981) (citing *Boxall v. Sequoia Union High School District*, 464 F.Supp. 1104, 1114 (N.D.Cal.1979)).

³⁰ See Docket No. 10, Exs. B, K.

³¹ The record demonstrates that the Sunnyvale property reconveyance was based on an earlier loan from 2001 with an instrument number 15647848; the Soquel property reconveyance was based on an earlier loan from 2004 with an instrument number 2004-00069441. See *id.* Exs. K, B.

³² See *id.* Exs. J, A.

as the trustor and MERS as the beneficiary of the security instrument.³³

Although on a motion to dismiss the court takes Boyd's allegations in the complaint as true and construes them in the light most favorable to him,³⁴ the Court need not accept as true those allegations that represent unwarranted deductions of fact or constitute unreasonable inferences.³⁵ Here, the court cannot accept Boyd's allegations that he has unencumbered title to the properties because Defendants have presented the court with public records that demonstrate otherwise. The court therefore finds that Boyd fails to state a claim for quiet title on the grounds of the full reconveyance issued by WaMu.

2. Unconscionability and Defendants' Authority to Initiate Foreclosure

Boyd also alleges that Defendants have a pattern and practice of unconscionability regarding the deeds of trust on the properties signed in December 2006 and January 2007. Boyd alleges that MERS presented Boyd with standardized forms for both properties with knowledge of Boyd's "inferior financial condition and credit history" and without allowing Boyd opportunity to negotiate the terms of

³³ *See id.*

³⁴ *See Metzler Inv. GMBH v. Corinthian Colls, Inc.*, 540 F.3d 1049, 1061 (9th Cir.2008).

³⁵ *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.2001).

the loans with MERS.³⁶ Boyd challenges several aspects of the transactions at issue, including the type of loan Defendants offered to him, the terms of the loan including interest rates and repayment schedules, and the right to foreclose in the event of default.³⁷ Boyd also alleges that MERS did not disclose its relationship with GMAC, which action “should not be legal without signed consent” of the borrower so as to allow “ALL consumers to have privacy control, bargaining power, and disclosure in Mortgage Backed Securities.”³⁸ Boyd thus argues that the payments made to GMAC were improper because “Plaintiff discovered that neither GMAC nor Fannie Mae owned his Note,” which instead “was, and still is, owned by a mortgage backed security trust (MB ST) which purchased Plaintiff’s Note from neither GMAC nor Fannie Mae but from yet another purported owner of his Note.”³⁹ Because MERS and GMAC cannot or have not “shown him [Boyd] the Note(s)” in question, Boyd argues that the chain of title is unproven and Defendants have no authority to foreclose. Boyd references Cal. Civ.Code § 2941(b)(1) in support of this argument, alleging that MERS failed to record a “substitution of trustee” within the statutory time limit.⁴⁰

³⁶ See Docket No. 24 at 9 (Pl.’s Reply to Def.’s Mot. Dismiss and Def’s Opp’n to Pl.’s Mot. For Prelim. Injunc.).

³⁷ See *id.* at 10.

³⁸ See *id.*

³⁹ See *id.* at 11.

⁴⁰ See *id.* at 13.

Taking the allegations in the complaint to be true, the court finds that Boyd nevertheless fails to state a claim based on Defendants' alleged lack of ownership of the mortgage notes. California courts have rejected Boyd's line of reasoning,⁴¹ and district courts in this district have agreed.⁴² Moreover, the provisions of the Sunnyvale and Soquel property deeds of trust expressly grant MERS authority to act as beneficiary under the deed of trust and to "exercise any or all of those interests, including but not limited to, the right to foreclose and sell the

⁴¹ See *Gomes v. Countrywide Home Loans Inc.*, 192 Cal.App.4th 1149, 1157–58, 121 Cal.Rptr.3d 819 (2011) (holding that plaintiff agreed in the deed of trust that MERS is authorized to initiate a foreclosure proceeding), *cert denied*. ___ U.S. ___, 132 S.Ct. 419, ___ L.Ed.2d ___, 80 U.S.L.W. 3097, 2011 WL 3608736 (U.S. Oct. 11, 2011).

⁴² See, e. g., *Benham v. Aurora Loan Servs.*, No. C–09–2059 SC, 2009 WL 2880232, at *3 (N.D.Cal. Sept.1, 2009) (noting courts in this district have "summarily rejected" the argument that MERS loses its power of sale when the original promissory note is assigned to a trust pool, and further noting that MERS had assigned its interest under the deed of trust to the foreclosing party); *Pantoja v. Countrywide Home Loans, Inc.*, 640 F.Supp.2d 1177, 1186, 1189 (N.D.Cal.2009) (holding that there is no requirement under California law for the production of an original promissory note prior to initiation of a nonjudicial foreclosure and noting that courts have upheld MERS' authority to initiate foreclosure when granted power of sale in the deed of trust); *Kurek v. America's Wholesale Lender*, No. C 10–2155 BZ, 2011 WL 3240482, at *1 (N.D.Cal. July 28, 2011) ("Plaintiff's position that MERS has no standing to initiate foreclosures . . . is incorrect since . . . Plaintiff's Deed of Trust authorized MERS to act as a beneficiary as well as initiate any foreclosure proceedings.")

property.”⁴³ Boyd’s argument that MERS cannot initiate foreclosure because it failed to record a “substitution of trustee” pursuant to Cal. Civ.Code § 2941(b)(1) thus fails.

With respect to Boyd’s claims of unconscionability in Defendants’ provision of the standard loan forms, Boyd fails to allege any facts beyond citing to the language of the forms used and stating in a conclusory fashion that the forms were presented “in a take it or leave it” manner. Boyd does not provide even an indication of how the terms of the loans were substantively unfair and one-sided, or how provision of the loan documents was oppressive or laden with hidden surprise.⁴⁴ Boyd argues that the “surprise” came by receipt of the recent Notice of Trustee’s Sale, but does not allege any facts to support a finding that the manner in which Defendants proffered the loan documents gave Boyd no choice but to adhere to the documents or reject them. In addition, the court notes that Boyd’s allegation of unconscionability are likely time-barred with respect to the loan documents.⁴⁵

⁴³ See Docket No. 10, Exs. A at 3, J at 3.

⁴⁴ See *Ting v. AT & T*, 319 F.3d 1126, 1148–49 (9th Cir.2003) (explaining that a contract or clause is unenforceable under California law if proven to be both procedurally and substantively unconscionable).

⁴⁵ The signing dates on the Sunnyvale and Soquel property were December 22, 2006, and January 16, 2007, respectively. Under Cal. Civ.Code § 337, the statute-of-limitations on a claim arising under contract or liability founded upon an instrument in writing is four years. Boyd filed this lawsuit on October 11, 2011. Although Boyd argues that he raised his “show me the note” argument to GMAC’s Loss Mitigation Department in November 2010—still technically within the statute of

In sum, Boyd's arguments that Defendants' actions were unconscionable and/or that Defendants are not authorized to foreclose—either because the note and mortgage became “separated” by MERS failure to file a substitution of trustee, or because MERS and GMAC have not complied with Boyd's “show me the note” demands—lack any basis in the facts alleged. The court therefore finds that Boyd's remaining claims or causes of action fail to state a claim for relief under the applicable laws.⁴⁶

III. Motion for Preliminary Injunction/Temporary Restraining Order

A. Legal Standard

The issuance of a preliminary injunction is committed to the discretion of the district court.⁴⁷ A preliminary injunction is “an extraordinary remedy that may only be awarded upon a clear showing that

limitations—Boyd offers no authority to suggest that this action alone would have tolled the statute of limitations.

⁴⁶ As noted earlier, Boyd intersperses his moving and responding papers with several references to other, unstated “causes of action” that are never alleged or set forth properly in the complaint, *i. e.*, violations of California's UCL, and suggestions of constitutional due process violations. While Boyd may re-allege these claims in proper pleading form, *see* Fed.R.Civ.P. 10(b), the court will not address them here because these vague references are not properly before the court on Defendants' motion to dismiss.

⁴⁷ *See Indep. Living Ctr. of S. Cal., Inc. v. Maxwell-Jolly*, 572 F.3d 644, 651 (9th Cir.2009).

the plaintiff is entitled to such relief.”⁴⁸ “The proper legal standard for preliminary injunctive relief requires a party to demonstrate [1] ‘that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.’”⁴⁹ In some cases, the court may grant preliminary injunctive relief based upon a showing that there are “serious questions going to the merits” and “the balance of hardships tips sharply in the plaintiff’s favor,” so long as the plaintiff also satisfies the second and fourth *Winter* factors.⁵⁰ The standard for issuing a temporary restraining order is identical to the legal standard for issuing a preliminary injunction.⁵¹

B. Analysis

Insofar as Boyd’s motion for preliminary injunction or TRO raises the same issues as his complaint, Boyd has not demonstrated a likelihood of success on the merits or even serious questions going to the merits, because Boyd has failed to state a

⁴⁸ *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008).

⁴⁹ *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir.2009) (citing *Winter*, 555 U.S. at 20).

⁵⁰ See *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir.2011).

⁵¹ See *Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F.Supp.2d 1111, 1126 (E.D.Cal.2001); *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F.Supp. 1320, 1323 (N.D.Cal.1995).

claim for relief under Fed.R.Civ.P. 8. It is not enough that Boyd can demonstrate irreparable harm if the foreclosure sale is allowed to proceed.⁵² Under the high bar for preliminary injunction set by *Winter*, all four factors must weigh in Boyd's favor in order to establish clear entitlement to preliminary injunctive relief.

The additional claims that Boyd sets forth in his motion for preliminary injunction—specifically unfair business practices under California's UCL and a claim that Defendants' engagement in the court's ADR conferral process was unconscionable—are not set out in the complaint and do not establish serious questions going to the merits of Boyd's case. Defendants' offer to attend mediation by stipulation, rather than require an ADR phone conference to discuss the ADR options, is not in and of itself suspicious. Boyd's unconscionability and unfair business practice arguments hinge on the single allegation that Defendants offered the stipulation already knowing the trustee sale had been scheduled. Boyd implies that if he signed the stipulation for mediation after the scheduled sale, it would "foreclose Plaintiffs' rights to equitable relief in the Court, moot[ing] the need for the ADR process altogether."⁵³

⁵² See *Mesde v. Am. Brokers Conduit*, No. C 09-2418 JF (RS), 2009 WL 1883706, at *2 (N.D.Cal. June 30, 2009) (citing *Sundance Land Corp. v. Cmnty. First Fed. Sav. & Loan Ass'n*, 840 F.2d 653, 661 (9th Cir.1988)).

⁵³ See Docket No. 15 at 11.

Boyd ignores, however, the fact that the ADR selection would have no impact on his pending application for TRO or preliminary injunction, which was scheduled for determination by the court regardless of the type or timing of mediation selected. On this basis alone, Boyd cannot demonstrate that he is likely to suffer irreparable harm in the absence of preliminary relief. The irreparable harm may be likely regardless of the mediation schedule. On the merits, Boyd offers no support for his argument that a party's refusal to adjust the ADR schedule notwithstanding a pending foreclosure constitutes procedurally and substantively unconscionable bargaining practices, and the court knows of none.

For these reasons, Boyd is not entitled to injunctive relief.

IV. Conclusion

Defendants' motion to dismiss is GRANTED with leave to amend. Any amended complaint shall be filed no later than Tuesday, December 27, 2011. Boyd's motion for preliminary injunction and temporary restraining order is DENIED.

ORDER OF THE NINTH CIRCUIT
DENYING PETITION FOR REHEARING
(DECEMBER 22, 2014)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL E. BOYD,

Plaintiff-Appellant,

v.

GMAC MORTGAGE LLC; MORTGAGE
ELECTRONIC REGISTRATION SERVICES, INC.,

Defendants-Appellees.

No. 12-17434

D.C. No. 5:11-cv-05018-PSG
Northern District of California, San Jose

Before: THOMAS, Chief Judge, and
SCHROEDER and HURWITZ, Circuit Judges.

Boyd's petition for panel rehearing is denied.

No further filings will be entertained in this
closed case.

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