TIMOTHY L. MCCANDLESS, ESQ. SBN 147715
15647 Village Drive
Victorville, California 92394
(760) 912-3837

Attorney for Defendant (s)
Adlai F. Evans

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT
APR 16 2009
MARGIE GARREN, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CHASE HOME FINANCE, LLC. Plaintiff, vs. Adlai F. Evans; and DOES 1 to 10, inclusive Defendant.	Case No.:UDVS 900343 **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT BY DEFENDANT** [Filed concurrently with Statement of Facts and Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment, Defendant's Separate Statement of Undisputed Facts and Supporting Evidence on Motion for Summary Judgment, [Proposed] Order/Judgment] Date of Hearing: 4-22-09 Time of Hearing: 8:30 am Department: V15

TO THE HONORABLE JUDGE/COMMISSIONER OF THE SUPERIOR COURT AND ALL PARTIES IN INTEREST:

YOU AND EACH OF YOU PLEASE TAKE NOTICE THAT on 4-22, 2009, at 8:30 a.m., or as soon thereafter as the matter can be heard, in Department V15, of the above-entitled Court. ("Defendant').

DEFENDANT ADLAI F. EVANS, will appear pursuant to **California Code of Civil Procedure** 1170.7 to move the Court for an order granting Defendant's motion for summary judgment on the grounds stated herein and as prayed for in its Answer on file. This motion will be made on the grounds that the Complaint filed by Plaintiff herein, Deutsche Bank, Presents no triable issues as to any material facts and that Defendant is entitled to judgment as a matter of law.

This motion will be based on this Notice of Motion and Motion for Summary Judgment, the supporting Statement of Facts and Memorandum of Points and Authorities, Defendant's Separate Statement of Undisputed Facts and Supporting Evidence, the court records in this case, and such other and further evidence that shall be presented at the time of the hearing.

Defendants Adlai F.l Evans hereby request that in support of its Motion for Summary Judgment to the Complaint of Plaintiff Chase that this court take judicial notice, pursuant to California Evidence Code Section 451(f) and 452(d) and (h) of the following documents: Exhibit "A" being a Request for Judicial Notice and documents attached thereto proffered by the plaintiffs of this action in Federal Court, Case No: EDCV09-400 SGL (MANx) and Exhibit "B" being a Summons and Verified Complaint filed in Superior Court of San Bernardino, Case No.: CIVVS 900205.

NOTICE- IF YOU FAIL TO FILE A WRITTEN RESPONSE OR OPPOSITION TO THIS MOTION WITH THIS COURT BEFORE THE TIME SET FOR THE HEARING, IT IS LIKELY THAT THE COURT WILL GRANT ALL THAT THE DEFENDANT HAS REQUESTED HEREIN.

Dated_____

TIMOTHY L. MCCANDLESS
Attorney for Defendant Adlai F. Evans

TIMOTHY L. MCCANDLESS, ESQ. SBN 147715
LAW OFFICES OF TIMOTHY L. MCCANDLESS
15647 Village Drive
Victorville, California 92394
(760) 912-3837 Telephone
(909) 494-4214 Facsimile

Attorneys for Defendant (s)
Adlai F. Evans

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT
APR 16 2009
MARGIE GARREN, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO

CHASE HOME FINANCE, LLC.,
Plaintiff,

vs.

Adlai F. Evans,

Defendant (s).

Case No.: UDVS 900343

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGEMNT BY DEFENDANT
[Filed concurrently with Notice of Motion and Motion for Summary Judgment, Defendant's Separate Statement of Facts and Supporting Evidence on Motion for Summary Judgment, [Proposed] Order/Judgment]

Date: 4-22-09
Time: 8:30 a.m.
Dept. V15

DEFENDANT AND MOVANT HEREIN Adlai F. Evans, ("Defendant"), submits the following Memorandum of Points and Authorities in Support for her Motion for Summary

judgment against PLAINTIFF Chase Home Finance, LLC its assignees and Successors ("Plaintiff").

POINTS AND AUTHORITIES

I.

FACUTAL BACKGROUND OF THIS LITIGATION

On or about June 15, 2006, Defendant executed a Deed of Trust promising to pay JP Morgan Chase Bank N.A. (hereinafter the "Trustee") the sum of $501,024.00 by monthly payment for real property located at 14691 Mulberry, Hesperia, CA 92345. A true and correct copy of the Deed of Trust as executed by Defendant are attached to her Declaration and incorporated herein as Exhibit "A#2".

On March 18, 2008, after the Defendant defaulted on her mortgage payment, the Trustee recorded a Notice of Default and Election to Sell Under Deed of Trust. See [Exhibit "A #3"].

On May 9, 2008, a Substitution of Trustee was filed in the County of San Bernardino, stating defendant as the trustee and JP Morgan Chase Bank as the original trustees and defendant the original beneficiary.

This Substitution of Trustee stated that plaintiff substituted **NDex West LLC** as the new trustee/attorney in fact. The Substitution of Trustee filed on May 9, 2008 is attached hereto as Exhibit "A #5"

On June 23, 2008, NDEx West LLC filed a Notice of Trustee's Sale and is attached hereto and incorporated herein as Exhibit #6.

On August 29, 2008 NDEx West LLC filed an Assignment Deed of Trust granting and transferring the Deed of Trust dated June 15, 2006 to plaintiff, Chase Home Finance LLC. See Exhibit "A #4."

The property was sold on November 12, 2008 to the Plaintiff.

On November 19, 2008, Chase Home Finance LLC acquired the property and filed the Trustee's Deed Upon Sale attached hereto as Exhibit A #7.

CHASE HOME FINANCE, LLC DOES NOT HAVE STANDING TO BRING THE INSTANT ACTION.

Chase Home Finance LLC, by NDEx West LLC filed the Substitution of Trustee on May 9, 2008. Plaintiff lacks standing to bring the instant action for possession of the subject property. (1) Chase Home Finance LLC is not a proper party to this action, and as such the court is without jurisdiction to grant possession of the subject property to plaintiff.

Chase Home Finance LLC's jurisdiction is in ***Delaware***. Their agent of service according to the California Secretary of State's Business Portal shows that their agent is located in ***Iselin, New Jersey***. JP Morgan Chase Bank was the trustee in the Deed of Trust of defendant. Defendant believes that JP Morgan Chase Bank has an agent for service in process in California and does business in California through its subsidiaries Chase Home Finance LLC [Plaintiff], Chase Manhattan Corporation etc. Defendant believes that Plaintiff [Chase Home Finance LLC] is not authorized to conduct business.

Moreover, NDEx comes into this scenario by way of Substitution of Attorney [see Exhibit 3]. NDEx West LLC's jurisdiction is also in ***Delaware***. Their address is in Addition, ***Texas*** per California Secretary of State. According to their business profile NDEx West states they are foreclosure Trustees in Addison, Texas. Therefore, it is *impossible* to determine the legal relationship which exist between CHASE HOME FINANCE, LLC. and NDex West LLC [the ones who filed the Substitution of Trustee wherein they claim to be Plaintiff's attorney in fact.] Defendant cannot determine from the fact alleged whether they entered into an assignment

to allow CHASE HOME FINANCE, LLC. to standing in its place, or whether there is an agency agreement. The facts alleged in the complaint are vague, ambiguous and unintelligible.

PLAINTIF OR PLAINTIFF'S PREDECESSOR CANNOT AFFIRMATIVELY PROVE THAT IT HAS COMPLIED WITH EACH OF THE STATUTORY REQUIREMENTS FOR FORECLOSURE AND DID NOT COMPLY WITH DUE DILIGENCE REQUIREMENTS MANDATED BY CALIFORNIA CIVIL CODES §§ 2934a, 2923.5 and 2924.

Plaintiff failed to perform a condition precedent mandated by *California Civil Code Sections* 2923.5 and 2924 which forbid the filing of a Notice of Default until at least thirty days after contact is made with the borrower in question, or until after thirty days of satisfying the enumerated Due Diligence requirements. Plaintiff also failed to comply with *California Civil Code* §§2934 because the Substitution of Trustee was not recorded on or before the date of Notice of Default. Plaintiff did not file a Notice of Intent – an ethical consideration for amendment to §§2934(A).

There is also a letter written by the Century Law Group on behalf of defendant, confirming the above and that their client did not receive any Notice of Trustee's Sale or when the sale's time, date and location would occur. They went on to state that Century Law Group only became aware that Chase intended to foreclose on the property.

A lawful assignment of the Deed of Trust should be recorded prior to the any party laying claim to the asset and borrower receivable.

The Deed of Trust was dated June 15, 2006.

The Notice of Default was filed on March 8, 2008.

The Assignment of Deed of Trust [Plaintiff is now Trustee / NDEx as attorney in fact] was filed on April 29, 2008.

The Substitution of Trustee was filed on May 9, 2008.

The Notice of Trustee's Sale was filed on June 23, 2008.

The Substitution of Trustee should have been recorded on March 3, 2008, or before the date of the Notice of Default. Moreover, Plaintiff failed to file a Notice of Intent.

A missing Notice of Intent and absent 30 days due diligent effort for ensuring assistance **preclude the Notice of Default**. No method of assistance, offers of a resolution, remedies were provided. Also, defendant has not seen the Notice of Sale (Actual) conformation and Trustees Sale confirmation showing either 1) a conveyance back to the lender or 2) a bon-a-fide sale to an arms third party or 3) a statement that explains the servicer/lenders intent using a controlled sale to a less than arms third party.

The Subsitution of Trustee is <u>not</u> <u>effective</u> because there was no separate statement signed under penalty of perjury reflecting requirements of *California Civil Code* §§2934a (2) A. This separate document is supposed to be attached to the substitution of trustee and recorded at the San Bernardino County Recorder's office.

The substitution that was supposed to be filed by Plaintiff is supposed to constitute conclusive evidence of the requirements of this code. Instead, Plaintiff chose to file an affidavit with the substation of trustee under Section 2924b. *Plaintiff still did not comply with this section. Plaintiff did not produce conclusive evidence of the authority of the substituted trustee or his or her agents to act pursuant to §2934a.*

//

THE FORECLOSURE SALE IS INVALID

Plaintiff cannot prove that the nonjudicial foreclosure which occurred, strictly complied with the tenets of California Civil Code sections 2923.5 and 2924 in order to maintain an action for possession pursuant to California Code of Civil Procedure section 1161. As of September 6, 2008 *California Civil Code Section* 2923.5 applies to loans made from January 1, 2003, to December 31, 2007, and loans secured by residential real property that are for owner-occupied residences. For purposes of *Section* 2923.5, "owner-occupied" means that the residence is the principal residence of the borrower.

1. Here, Plaintiff failed to perform a condition precedent as required by *California Civil Code Section* 2924 prior to bringing this action, which mandates that a Notice of Default may not be filed until thirty days after contact is made with a borrower as required by paragraph (2), or until thirty days after satisfying the Due Diligence requirements as described in subdivision (g);

2. The Notice of Trustee's Sale does not have the required Declaration of Due Diligence as required by Section 2923.5 stating that the Defendant borrower was affirmatively contacted in person or by telephone to assess the Defendant's financial situation and explore options for the Defendant to avoid foreclosure;

3. Since the enumerated law was effective as of September 06, 2008 the sale of the property at issue is invalid pursuant to *California Civil Code Sections* 2923.5 and 2924, and thus the Plaintiff's claim of title and allegation thereto is erroneous;

4. The Trustee that conducted the nonjudicial foreclosure sale was not a holder in due course of the original note, because the note was rendered non-negotiable by the manner in which the assignment was attempted, invalidating the note, and resulting Trustee's Deed Upon Sale, which denies Plaintiff standing to seek possession under *California Code of Civil*

Procedure Section 1161a.

Thus, this foreclosure sale is invalid because it was not processed in compliance with the states regarding foreclosure.

LEGAL ANALYSIS

In this matter before the Bench, it is clear that several fatal errors occurred from the recording of the note, to the sale of the note, and the unlawful nonjudicial foreclosure sale, which when weighed together have the effect of denying plaintiff the necessary standing to seek possession.

1. Notice of Trustee's Sale does not have the required Declaration of Due Diligence as required by California Civil Code section 2923.5.

The Plaintiff is charged with the duty to contact the Defendant, assess the defendant's financial situation and provide reasonable alternatives for repayment prior to filing Notice of Default. Or in the alternative, the Plaintiff is required to act with all Due Diligence in attempting to contact the Defendant prior to filing a Notice of Default Section 2923.5 of the California Civil Code provides in pertinent part:

> (1) ***A trustee may not file a notice of default pursuant to Section 2924 until 30 days after contact is made*** as required by paragraph (2) or 30 days after satisfying the due diligence requirements as described in subdivision (g).
> (2) ***An authorized agent shall contact the borrower*** in person or by telephone ***in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure***. During the initial contact, the mortgagee, beneficiary, or authorized agent shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgagee, beneficiary, or authorized agent shall schedule the meeting to occur within 14 days.
>
> (b) ***A notice of default filed pursuant to Section 2924 shall include a declaration from the mortgagee, beneficiary, or authorized agent that it has contacted the***

borrower, tried with due diligence to contact the borrower as required by this section, or the borrower has surrendered the property to the mortgagee, trustee, beneficiary, or authorized agent.

(c) If a ***trustee*** had ***already filed the notice of default prior to the enactment of this section*** and did not subsequently file a notice of rescission, ***then trustee shall***, as part of the notice of sale filed pursuant to Section 2924f, ***include a declaration*** that either:

(1) States that the borrower was contacted to assess the borrower's financial situation and to explore options for the borrower to avoid foreclosure.

(2) Lists the efforts made, if any, to contact the borrower in the event no contact was made. (Emphasis added.)

There has been *no Declaration filed by the Plaintiff that affirms or alleges that California Civil Code 2923.5 has been wholly or partially complied with.* The Plaintiff failed to act with all Due Diligence once Notice of Trustee's Sale was recorded and no attempt to contact the Defendant was made. Moreover, the Plaintiff has completely and unlawfully ignored the requisite thirty-day period enumerated in Section 2923.5; thus robbing the Defendant her Due Process rights as a matter of law.

By virtue of the fact that an unlawful detainer involves a forfeiture of the tenant's right to possession, the courts strictly construe the statutory proceedings that regulate it. ***Kwok v. Bergren,*** (1982) 130 Cal.App.3d 596, 600,181 Cal.Rptr. 795. The failure of a plaintiff to perform a condition precedent, to wit, failure to give defendant notice and a reasonable period to cure a breach of the terms and conditions, cancels the performance of defendant, until the condition precedent is performed according to the terms of the Deed of Trust.

In the absence of proof that plaintiff timely performed the condition precedent giving defendant a chance to cure his breach of the terms and conditions of the Deed of Trust, Plaintiff cannot proceed with the present action. The plaintiff is a stranger who is not in privity with the

tenant/owner, and he must prove that he is authorized by the statute to prosecute an unlawful detainer proceeding pursuant to a properly conducted foreclosure sale. Therefore, the tenant can raise the limited defense that the foreclosure sale is invalid because it was not processed, in compliance with the statutes regarding foreclosures, and the plaintiff has the burden of proof that the foreclosure statutes were satisfied by performance of all of the notices and procedures required.

Because the Plaintiff failed to provide a Declaration as required by section 2923.5, the court must grant the Defendant's motion to dismiss the action.

2. Plaintiff failed to contact the Defendant homeowner to provide alterative repayment solutions and/or provide options for the Defendant to avoid foreclosure as required by California Civil Code 2923.5(a)(2).

The law clearly requires that a moving party contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. In the case at hand, the Plaintiff is not on record as to ever having contacted the Defendant in any manner that could suggest and/or imply that the Plaintiff comported with Section 2923.5.

And while there is no precedent that may be relied on in the case at bar, the court is reminded that it is the duty of the Plaintiff to sustain its burden by fulfilling each and every element of a specific cause of action. And whereby one or more required elements have not been successfully met by the petitioning party, the court is required to grant a motion by the Defense to dismiss the entire action based on the merits of the case.

Because the Plaintiff failed to contact the Defendant, assess the Defendant's financial situation, and offer an opportunity to provide alternative means of repayment the court must dismiss the case at hand.

3. Plaintiff's Substitution of Trustee is invalid as they did not comply with California Civil Code §2934a.

California Civil Code §2934a provides in pertinent part:

> "(1) The trustee under a trust deed upon real property or an estate for years therein given to secure an obligation to pay money and conferring no other duties upon the trustee than those which are incidental to the exercise of the power of sale therein conferred, may be substituted by the recording in the county in which the property is located of a substitution executed and acknowledged by: ... (2) A substitution executed pursuant to subparagraph (B) of paragraph (1) is not ***effective unless all the parties signing the substitution sign, under penalty of perjury, a separate written document*** *stating the following:* [emphasis added]
> (A) The substitution has been signed pursuant to subparagraph (B) of paragraph (1).
> (B) None of the undersigned is a licensed real estate broker or an affiliate of the broker that is the issuer or servicer of the obligation secured by the deed of trust...
> ...(D) Notice of the substitution was sent by certified mail, postage prepaid, with return receipt requested to each holder of an interest in the obligation secured by the deed of trust who has not joined in the execution of the substitution or the separate document.
>
> ***The separate document shall be attached to the substitution and be recorded in the office of the county recorder of each county in which the real property described in the deed of trust is located.*** [Emphasis added] Once the document required by this paragraph is recorded, it shall constitute conclusive evidence of compliance with the requirements of this paragraph in favor of substituted trustees acting pursuant to this section, subsequent assignees of the obligation secured by the deed of trust and subsequent bona fide purchasers or encumbrancers for value of the real property described therein....
>
> (c) If the substitution is effected after a notice of default has been recorded but prior to the recording of the notice of sale, the

> beneficiary or beneficiaries or their authorized agents shall cause a copy of the substitution to be mailed, prior to, or concurrently with, the recording thereof, in the manner provided in Section 2924b...
>
> (d) A trustee named in a recorded substitution of trustee shall be deemed to be authorized to act as the trustee under the mortgage or deed of trust for all purposes from the date the substitution is executed by the mortgagee, beneficiaries, or by their authorized agents. Nothing herein requires that a trustee under a recorded substitution accept the substitution. ***Once recorded, the substitution shall constitute conclusive evidence of the authority of the substituted trustee or his or her agents to act pursuant to this section.*** [Emphasis added]
>
> (e) Notwithstanding any provision of this section or any provision in any deed of trust, unless a new notice of sale containing the name, street address, and telephone number of the substituted trustee is given pursuant to Section 2924f after execution of the substitution, any sale conducted by the substituted trustee shall be void.
>
> (f) This section shall become operative on January 1, 1998.

Plaintiff did not file a separate statement as required by this code. As such, there is no conclusive evidence of compliance. Even if Plaintiff argues that they did comply with this code pursuant to Section 2924, this is grossly incorrect as there **is no conclusive evidence of the authority of the substituted trustee because they did not have authority to act as dictated by Section 2934a.**

4. Plaintiffs' Notice of Trustee's Sale Declaration is invalid as there is no declaration under penalty of perjury. *Blum v. Superior Court (Copley Press, Inc.)* (2006)141 Cal.App.4th 418 , 45 Cal.Rptr.3d 902.

In this case, there were several arguments regarding Declarations signed under penalty of perjury. In Blum,

> "the court reasoned: "[Code of Civil Procedure] section 2015.5 permits submission of unsworn declarations provided they are certified by the declarant to be true

under penalty of perjury, subscribed by him or her. 'Subscribe' means 'to sign with one's own hand.' [Citations.] The whole point of permitting a declaration under penalty of perjury, in lieu of a sworn statement, is to help ensure that declarations contain a truthful factual representation and are made in good faith. [Citation.] 'The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true.'" (Emphasis deleted.) (*In re Marriage of Reese & Guy*, *supra*, 73 Cal.App.4th at pp. 1222-1223.)"

[4] Plaintiff implies *Reese* is not applicable as it is a dissolution action. We conclude *Reese* supports plaintiff's position. A critical distinction between the case at bar and *Reese* is that in *Reese* the husband's attorney signed husband's name to the declarations whereas as plaintiff's attorney signed his own name (Lee Franck) to the DFEH complaints. Thus, Franck would be subject to perjury penalties had he knowingly declared facts to be true when he knew the facts were not true. Moreover, an attorney is bound by ethical and legal standards. (See e.g., Code Civ. Proc., § 128.7.) Thus, an attorney's signature attests to the good faith of the allegations and the client's concurrence in them. **[141 Cal.App.4th 428]** *Blum v. Superior Court (Copley Press, Inc.) (2006)141 Cal.App.4th 418 , 45 Cal.Rptr.3d 902*

Because there is no signed Declaration under penalty of perjury in this matter, we do not know whether or not what was stated on the Notice of Trustee's Sale Declaration is true. And more importantly the California legislature was imposing greater burdens on lenders to work things out with borrowers with the inactment of 2923.5 . The burden is to access the

borrowers financial condition and to offer alternatives to foreclosure. Additionally, in Blum, the courts went on further to state:

"'The object of a verification is to assure good faith in the averments or statements of a party. [Citations.] The absence of any complaint by real parties concerning verifying counsel's good faith renders this contention meritless.'" (*California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 822, fn. 4.)"

LEGAL STANDARD

The standard for granting summary judgment

Summary judgment shall be granted if all the papers submitted show there is no triable issue of material fact and that the moving party is entitled to a judgment as a matter of law. Code Civ. Proc. §437c(c). A defendant is entitled to summary judgment if the record establishes that none of the plaintiff's asserted causes of actions can prevail as a matter of law. ***Molko v. Holy Spirit Ass'n*** (1988) 46 CAl.3d 1092, 1107. A defendant moving for summary judgment must conclusively negate a necessary element of the plaintiff's case and show there is no material issue of fact that requires a trial. ***Ibid.*** The moving defendant has the burden of introducing evidence that the plaintiff's action is without merit on any legal theory. ***Hulett v. Farmers Insurance Exchange*** (1992) 10 Cal.App.4th 1051, 1064. Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of material fact exists. Code Civ. Proc. §437c(o)(1). But if the defendant fails to meet that burden, the adverse party has no burden to demonstrate the claim's validity, and the court must deny the motion. ***Hulett***, *supra*, 10 Cal.App.4th at 1064.

//

Instead of introducing evidence that would negate the plaintiff's action, a moving defendant may introduce the plaintiff's own factually devoid discovery responses to demonstrate that it has no case. ***Union Bank v. Superior Court*** (1995) 31 Cal.App.4th 573, 589-593. The burden of proof would then be on the plaintiff to introduce evidence that would show a triable issue of material fact. ***Id.***, at 593. But the defendant does not meet its burden merely by asserting that the plaintiff has no evidence. ***Hagen v. Hickenbottom*** (1995) 41 Cal.App.4th 168, 186. Instead, the defendant must submit discovery responses that would conclusively foreclose any cause of action. ***Id.*** at 186-187.

When no or insufficient affidavits or other evidence is submitted to demonstrate the absence of an issue of material fact, the court may treat the motion as in legal effect one for judgment on the pleadings. ***White v. County of Orange*** (1985) 166 Cal.App.3d 566, 569. In that case, the motion performs the same function as a general demurrer. *Ibid.* A general demurrer will not test whether a complaint is ambiguous or uncertain or states essential facts only inferentially or conclusory. ***Johnson v. Mead*** (1987) 191 Cal.App.3d 156, 160. The defendants' failure to challenge those defects by way of special demurrer waives them. ***Hooper v. Deukmejian*** (1981) 122 Cal.App.3d 987, 994.

CONCLUSION

Defendant respectfully submits his Motion to Summary Judgment and requests that the court grant the motion as framed herein.

Respectfully submitted,

BY _____
TIMOTHY L.MCCANDLESS
Attorney for Defendant Adlai F. Evans

TIMOTHY L. MCCANDLESS, ESQ. SBN 147715
15647 Village Drive
Victorville, California 92394
Tel: (760) 912-3837
Tel: (909) 494-4214

Attorney for Defendant (s)
Adlai F. Evans

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CHASE HOME FINANCE, LLC. Plaintiff, vs. Adlai F. Evans; and DOES 1 to 10, inclusive Defendant.	Case No.:UDVS 900343 **DEFENDANT'S SEPARATE STATEMENT OF UNDISPUTED FACTS AND SUPPORTING EVIDENCE ON MOTION FOR SUMMARY JUDGMENT** [Filed concurrently with Notice of Motion and Motion for Summary Judgment, Defendant's Points and Authorities in Support of Motion for Summary Judgment; [Proposed] Order] Date of Hearing: 4/22/09 Time of Hearing: 8:30am Department: U15

Defendant, ADLAI F. EVANS("Defendant'), submits this separate statement of undisputed material facts, together with reference to supporting evidence, in support of Defendant's Motion for Summary Judgment against Plaintiff " CHASE HOME FINANCE, LLC

///

///

///

UNDISPUTED FACTS	SUPPORTING EVIDENCE
On or about June 26, 2006 ADLAI F. EVANS,, executed an "Adjustable Rate Note" promising to pay J P Morgan Chase Bank, N.A. a certain sum of money. This loan was evidenced by a promissory note ("Note") and secured by a deed of trust ("Deed of Trust") encumbering the property at 114691 MULBURY STREET , HESPERIA, CA 92345 ("the Property"). The Deed of Trust was recorded in the Official Records, County of San Bernardino,	EXIBIT A REQUEST FOR JUDICIAL NOTICE EXHIBIT 2
The notice of default was recorded 3/18/2008	EXIBIT A REQUEST FOR JUDICIAL NOTICE EXHIBIT 3
ADLAI F. EVANS were never informed of any sale or endorsement of the Note from J P MORGAN TO CHASE HOME FINANCE, LLC	EXIBIT B VERIFIED COMPLAINT PARAGRAPH 21
The assignment was not recorded till after the recording of the notice of default on 4/28/2008	EXIBIT A REQUEST FOR JUDICIAL NOTICE EXHIBIT 4
The substitution of Trustee was not recorded till 5/9/2008 the sale is not in compliance with 2924 and the affidavit is not under penalty of perjury and thereby ineffective	EXIBIT A REQUEST FOR JUDICIAL NOTICE EXHIBIT 5
The notice of Trustee sale does have a declaration that complies with 2923.5 of the civil code the sale is not incompliance with 2924	EXIBIT A REQUEST FOR JUDICIAL NOTICE EXHIBIT 6

DATED:_____

TIMOTHY L. MCCANDLESS
Attorney for Defendant Adlai F. Evans

EXHIBIT "A"

JOHN M. SORICH (CA Bar No. 125223)
jsorich@adorno.com
S. CHRISTOPHER YOO (CA Bar No. 169442)
cyoo@adorno.com
VALERIE K. BRENNAN (CA Bar No. 248148)
vbrennan@adorno.com
ADORNO YOSS ALVARADO & SMITH
A Professional Corporation
1 MacArthur Place, Suite 200
Santa Ana, California 92707
Tel: (714) 852-6800
Fax: (714) 852-6899

Attorneys for Defendant
JP MORGAN CHASE BANK, N.A.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ADLAI F. EVANS,

Plaintiffs,

v.

JP MORGAN CHASE BANK, N.A.; NDEx West, LLC; and DOES 1-50, Inclusive,

Defendant.

CASE NO. EDCV09-400 SGL (MANx)

JUDGE: STEPHEN G. LARSON

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS THE COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

DATE: April 27, 2009
TIME: 10:00 a.m.
CTRM: 1

Action Filed: January 23, 2009

TO THE COURT, PLAINTIFFS AND ALL INTERESTED PARTIES HEREIN:

Defendant JPMorgan Chase Bank, N.A. ("Defendant" or "JPMorgan"), requests that, in connection with its Motion to Dismiss the complaint of plaintiff Adlai F. Evans ("Plaintiff"), that this court take judicial notice, pursuant to Federal Rules of Evidence §§ 201(b), 201(c), and 201(d), of the following documents:

ADORNO YOSS ALVARADO & SMITH ATTORNEYS AT LAW SANTA ANA

1. A true and correct copy of the Grant Deed recorded on or about June 27, 2006 with the San Bernardino County Official Records as instrument number 2006-0435189, attached as Exhibit 1.

2. A true and correct copy of the deed of trust recorded on or about June 27, 2006 with the San Bernardino County Official Records as instrument number 2005213110, attached as Exhibit 2.

3. A true and correct copy of the Notice of Default and Election to Sell Under Deed of Trust recorded on or about March 18, 2008 with the San Bernardino County Official Records as instrument number 2008-0118576, attached as Exhibit 3.

4. A true and correct copy of the Assignment of Deed of Trust recorded on or about April 29, 2008 with the San Bernardino County Official Records as instrument number 2008-0191619, attached as Exhibit 4.

5. A true and correct copy of the Substitution of Trustee recorded on or about May 9, 2008 with the San Bernardino County Official Records as instrument number 2008-0211419, attached as Exhibit 5.

6. A true and correct copy of the Notice of Trustee's Sale recorded on or about June 23, 2008 with the San Bernardino County Official Records as instrument number 2008-0285209, attached as Exhibit 6.

7. A true and correct copy of the Trustee's Deed Upon Sale recorded on or about November 19, 2008 with the San Bernardino County Official Records as instrument number 2008-0503326, attached as Exhibit 7.

DATED: March 4, 2009

ADORNO YOSS ALVARADO & SMITH
A Professional Corporation

By: /s/ S. Christopher Yoo
JOHN M. SORICH
S. CHRISTOPHER YOO
VALERIE K. BRENNAN
Attorneys for Defendant
JP MORGAN CHASE BANK. N.A.

ADORNO YOSS ALVARADO & SMITH
ATTORNEYS AT LAW
SANTA ANA

Exhibit "1"

LAWYERS TITLE CO.

RECORDING REQUESTED BY:

Lawyers Title Company

MAIL TAX STATEMENTS AND WHEN RECORDED MAIL TO:

Adlai F. Evans
14691 Mulberry Street
Hesperia, CA 92345

Order No.: 7125056-30
Escrow No.: 402-11117 KAW
APN: 405-961-06

Recorded In Official Records, County of San Bernardino

LARRY WALKER
Auditor/Controller – Recorder

695 Lawyers Title Company

6/27/2006
8:00 AM
BGJ

Doc#: 2006-0435189

Titles: 1 Pages: 2

Fees	9.00
Taxes	689.15
Other	0.00
PAID	$698.15

SPACE ABOVE THIS LINE FOR RECORDER'S USE

THE UNDERSIGNED GRANTOR(S) DECLARE(S):

DOCUMENTARY TRANSFER TAX IS $ 689.15

✓ Computed on full value of property conveyed, or

____ Computed on full value less liens and encumbrances remaining at time of sale.

____ Unincorporated area X City of Hesperia

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged, Blue Horizon Homes, LLC, a California limited liability company

hereby GRANT(S) to Adlai F. Evans, a married man as his sole and separate property

the real property situated in the County of San Bernardino, State of California, more particularly described as follows: See Exhibit A attached hereto and made a part hereof

Lot 17 Tract 14234

Dated: April 14, 2006

Blue Horizon Homes, a California limited liability company

By: Wayne Carey, Authorized Signer

STATE OF CALIFORNIA)
) SS.
COUNTY OF ~~SanBernardino~~)

On 4-19-06 before me, Angie Chambers Notary Public, personally appeared Wayne Carey

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

WITNESS my hand and official seal.

Signature Angie Chambers

ANGIE CHAMBERS
Commission # 1491762
Notary Public - California
San Bernardino County
My Comm. Expires May 25, 2008

FOR NOTARY

MAIL TAX STATEMENTS AS DIRECTED ABOVE

All that certain real property situated in the County of San Bernardino, State of California, described as follows:

Lot 17 of Tract No. 14234, in the City of Hesperia, County of San Bernardino, State of California, as per map recorded in Book 241, page(s) 55 through 58, inclusive, of Maps, in the office of the County Recorder of said County.

Exhibit "2"

LAWYERS TITLE CO.

Recording Requested By:
HERITAGE ESCROW COMPANY
10535 FOOTHILL BLVD. #282
RANCHO CUCAMONGA, CA. 91730

Return To:
CHASE HOME FINANCE, LLC.
1500 N 19TH STREET
MONROE LA 71201

Attention:
CHASE HOME FINANCE

Prepared By: FRANCISCO CANALES

Recorded In Official Records, County of San Bernardino

LARRY WALKER
Auditor/Controller – Recorder

695 Lawyers Title Company

6/27/2006
8:00 AM
BGJ

Doc#: 2006-0435190

Titles: 1	Pages: 16
Fees	101.00
Taxes	0.00
Other	0.00
PAID	$101.00

7125056-30

[Space Above This Line For Recording Data]

DEED OF TRUST

25005972
1250059726

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 June 15, 2006, together with all Riders to this document.
(B) "Borrower" is ADLAI F EVANS, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY

Borrower is the trustor under this Security Instrument.
(C) "Lender" is JPMORGAN CHASE BANK, N.A.

Lender is a BANK
organized and existing under the laws of the U.S.A.

Lender's address is 1111 POLARIS PARKWAY
COLUMBUS OH 43240
Lender is the beneficiary under this Security Instrument.
(D) "Trustee" is JPMORGAN CHASE BANK, N.A.

(E) "**Note**" means the promissory note signed by Borrower and dated June 15, 2006
The Note states that Borrower owes Lender
Five Hundred One Thousand, Twenty-Four and 00/100 Dollars
(U.S. $ 501,024.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2036
(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]:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ 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 irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY of SAN BERNARDINO :

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

See Attached Legal Description

Parcel ID Number: 0405-961-06-0-000

14691 MULBERRY STREET [Street]

HESPERIA [City], California 92345 [Zip Code]

("Property Address"):

which currently has the address of

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

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

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

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

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S.

currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or 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 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 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
the requirements of Section 15) of such alleged breach and afforded the
period after the giving of such notice to take corrective action. If
period which must elapse before certain action can be taken, that time
asonable for purposes of this paragraph. The notice of acceleration and
orrower pursuant to Section 22 and the notice of acceleration given to
shall be deemed to satisfy the notice and opportunity to take corrective
20.

s. As used in this Section 21: (a) "Hazardous Substances" are those
zardous substances, pollutants, or wastes by Environmental Law and the
erosene, other flammable or toxic petroleum products, toxic pesticides
materials containing asbestos or formaldehyde, and radioactive materials;
federal laws and laws of the jurisdiction where the Property is located that
nmental protection; (c) "Environmental Cleanup" includes any response
al action, as defined in Environmental Law; and (d) an "Environmental
hat can cause, contribute to, or otherwise trigger an Environmental

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:

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ (Seal)
ADLAI F EVANS -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

State of California
County of Los Angeles } **ss.**

On ~~June 15, 2006~~ June 22, 2006 JL before me, Janet Logan, Notary Public

personally appeared

ADLAI F EVANS,

, 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.

Janet Logan

(Seal)

JANET LOGAN
Commission # 1544348
Notary Public - California
Los Angeles County
My Comm. Expires Jan 14, 2009

File No: 07125056

EXHIBIT "A"

All that certain real property situated in the County of San Bernardino, State of California, described as follows:

Lot 17 of Tract No. 14234, in the City of Hesperia, County of San Bernardino, State of California, as per map recorded in Book 241, page(s) 55 through 58, inclusive, of Maps, in the office of the County Recorder of said County.

Exhibit "3"

Recording requested by:
LandAmerica United Title Company- CA

When Recorded Mail To:
NDEx West, L.L.C.
15000 Surveyor Boulevard, Suite 500
Addison, Texas 75001-9013

DFF20080073400820

Recorded in Official Records, County of San Bernardino

LARRY WALKER
Auditor/Controller – Recorder

3/18/2008
8:00 AM
AS

693 United Title

Doc#: 2008 – 0118576

Titles: 1 **Pages: 2**

Fees	14.00
Taxes	0.00
Other	0.00
PAID	$14.00

Space above this line for Recorder's use only

Trustee Sale No. : **20080073400820** Title Order No.: **20853403**

IMPORTANT NOTICE

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

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 **$13,447.94** as of **3/14/2008** 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.

IMPORTANT NOTICE
NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

Trustee Sale No. : **20080073400820** Title Order No.: **20853403**

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:

CHASE HOME FINANCE, LLC
c/o NDEx West, LLC
15000 Surveyor Boulevard, Suite 500
Addison, Texas 75001-9013
(866) 795-1852

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: **NDEx West, LLC** is the original Trustee, duly appointed Substituted Trustee, or acting as Agent for the Trustee or Beneficiary under a Deed of Trust dated **06/15/2006**, executed by **ADLAI F EVANS**, as Trustor, to secure obligations in favor of **JPMORGAN CHASE BANK, N.A.**, as Beneficiary **Recorded on 06/27/2006 as Instrument No. 2006-0435190** of official records in the Office of the Recorder of **SAN BERNARDINO** County, **California**, as more fully described on said Deed of Trust. Including a Note(s)/ Unconditional Guaranty which had a principal amount of **$501,024.00** that the beneficial interest under said Deed of Trust and the obligations secured thereby are presently held by the Beneficiary; that a breach of, and default in, the obligations for which said Deed of Trust is security has occurred in that the payment has not been made of:

THE INSTALLMENT OF PRINCIPAL AND INTEREST WHICH BECAME DUE ON 12/1/2007 AND ALL SUBSEQUENT INSTALLMENTS, TOGETHER WITH LATE CHARGES AS SET FORTH IN SAID NOTE AND DEED OF TRUST, ADVANCES, ASSESSMENTS, FEES, AND/OR TRUSTEE FEES, IF ANY.

NOTHING IN THIS NOTICE SHALL BE CONSTRUED AS A WAIVER OF ANY FEES OWING TO THE BENEFICIARY UNDER THE DEED OF TRUST, PURSUANT TO THE TERMS OF THE LOAN DOCUMENTS.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said agent, a written Declaration of Default and Demand for same, and has deposited with said agent 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.

DATED: **3/14/2008**

NDEx West, LLC as Agent for Beneficiary
By: LandAmerica United Title Company- CA, authorized agent

Randall Wong
By: **RANDALL WONG**

Exhibit "4"

Electronically Recorded in Offic , County of San Bernardino
4/29/2008
01:22 PM
AC

LARRY WALKER
Auditor/Controller - Recorder

880 United Title Co. TSG

Doc #: 2008-0191619

Titles: 1 Pages: 1

Fees	11.00
Taxes	.00
Other	.00
PAID	11.00

Recording requested by:
LandAmerica United Title Company- CA

When Recorded Mail To:
NDEx West, L.L.C.
15000 Surveyor Boulevard, Suite 500
Addison, Texas 75001-9013

ASSG20080073400820

Space above this line for Recorder's use only

Trustee Sale No. : **20080073400820** Title Order No.: **20853403**

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to CHASE HOME FINANCE, LLC all beneficial interest under that certain Deed of Trust dated **06/15/2006,** executed by **ADLAI F EVANS,** as Trustor to JPMORGAN CHASE BANK, N.A., Trustee, and **Recorded on 06/27/2006 as Instrument No. 2006-0435190** of Official Records in the County Recorder's office of **SAN BERNARDINO** County, California. Describing land therein: **AS DESCRIBED IN DEED OF TRUST MENTIONED ABOVE.**

Together with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated 4/24/08

JPMORGAN CHASE BANK, N.A .by NDEx West, LLC, it's Attorney in Fact

NDEx West, LLC: Chris Pummill, President

State of Texas}
County of Dallas}

On 4/24/08 before me, Kellie C. Boswell, Notary Public, personally appeared Chris Pummill, President of NDEx West, LLC, as Attorney in Fact for JPMORGAN CHASE BANK, N.A. who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

(If signed and notarized in California):

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kellie C. Boswell (Seal)

My commission expires: 9/19/2010

KELLIE C. BOSWELL
My Commission Expires
September 19, 2010

Exhibit "5"

Electronically Recorded in Official County of San Bernardino 5/09/2008 03:22 PM LJ

LARRY WALKER
Auditor/Controller - Recorder

880 United Title Co. TSG

Doc #: 2008-0211419

Titles: 1 Pages: 2

Fees	14.00
Taxes	.00
Other	.00
PAID	14.00

Recording requested by:
LandAmerica United Title Company- CA

When Recorded Mail To:
NDEx West, L.L.C.
15000 Surveyor Boulevard, Suite 500
Addison, Texas 75001-9013

SUB20080073400820

Space above this line for Recorder's use only

Trustee Sale No. : **20080073400820** Title Order No.: **20853403**

SUBSTITUTION OF TRUSTEE

WHEREAS, **ADLAI F EVANS** was the original Trustor, **JPMORGAN CHASE BANK, N.A.** was the original Trustee, and **JPMORGAN CHASE BANK, N.A.** was the original Beneficiary **Recorded on 06/27/2006 as Instrument No. 2006-0435190** of official records in the Office of the Recorder of **SAN BERNARDINO** County, **California,** as more fully described on said Deed of Trust.; and WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said prior Trustee.

NOW, THEREFORE, the undersigned hereby substitutes, **NDEx West, L.L.C., WHOSE ADDRESS IS: 15000 Surveyor Boulevard, Suite 500, Addison, Texas 75001-9013,** as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

DATED: April 16, 2008

CHASE HOME FINANCE, LLC BY NDEx West, LLC AS ATTORNEY IN FACT

Chris Pummill- President, NDEx West, LLC

*see attached affidavit

State of TEXAS }
County of DALLAS }

On April 16, 2008 before me, Patrick De Jesus, Notary Public, personally appeared Chris Pummill who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

(If signed and notarized in California):

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ **(Seal)**

Patrick De Jesus
Notary Public
State of Texas
My Comm Exp. 07-02-2011

My commission expires: 7/02/2011

NDEx West, L.L.C
15000 Surveyor Boulevard, Suite 500
Addison, Texas 75001-9013
Telephone: (866) 795-1852
Telecopier: (972) 661-7800

AFFIDAVIT

TRUSTEE'S SALE NUMBER: 20080073400820

I, Sandra Pitka, **the undersigned, a United States Citizen declare that:**

I am an employee, over the age of eighteen years, of

NDEx West, L.L.C., and/or NDEX,

whose business address is:

15000 Surveyor Boulevard, Suite 500, Addison, Texas 75001-9013

In compliance with Section 2934a(b) of the Civil Code of the State of California, Notice has been given to the prior trustee then of record, that NDEx West, L.L.C. has been substituted as trustee under the Deed of Trust described in the attached copy of Substitution of Trustee and a copy of said Substitution of Trustee has been mailed prior to the recording thereof, in the manner provided in Section 2924(b) of the Civil Code of the State of California to all persons to whom a copy of the Notice of Default would be required to be mailed by the provisions of said section.

NDEx West, L.L.C., and/or NDEX

Sandra Pitka
(Declarant)

April 30, 2008
DATED

State of TEXAS }
County of DALLAS }

On April 30, 2008 before me, Nina Escamilla Notary Public, personally appeared Sandra Pitka 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 within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: _____ **(Seal)**

My commission expires: _____

NINA ESCAMILLA
Notary Public
State of Texas
My Comm. Exp. 10-31-2010

SBC20080073400820

Exhibit "6"

Recording requested by:
LandAmerica United Title Company- CA

When Recorded Mail To:
NDEx West, L.L.C.
15000 Surveyor Boulevard, Suite 500
Addison, Texas 75001-9013
(866) 795-1852

Recorded in Official Records, County of San Bernardino

LARRY WALKER
Auditor/Controller – Recorder

6/23/2008
1:00 PM
EM

693 Commonwealth Land Title Co.

Doc#: 2008 – 0285209

Titles: 1 Pages: 1

Fees	11.00
Taxes	0.00
Other	0.00
PAID	$11.00

NOTS20080073400820

Space above this line for Recorder's use only

Trustee Sale No. : 20080073400820 Title Order No.: 20853403 FHA/VA/PMI No.: NONE

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 06/15/2006. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NDEx West, LLC, as duly appointed Trustee under and pursuant to Deed of Trust **Recorded on 06/27/2006 as Instrument No. 2006-0435190** of official records in the office of the County Recorder of SAN BERNARDINO County, State of CALIFORNIA.

EXECUTED BY: ADLAI F EVANS,
WILL SELL AT PUBLIC AUCTION TO HIGHEST BIDDER FOR CASH, CASHIER'S CHECK/CASH EQUIVALENT or other form of payment authorized by 2924h(b), (payable at time of sale in lawful money of the United States).
DATE OF SALE: 07/09/2008 **TIME OF SALE:** 1:00 PM
PLACE OF SALE: AT THE MAIN (SOUTH) ENTRANCE TO THE CITY OF CHINO CIVIC CENTER, 13220 CENTRAL AVE., CHINO, CA.
- **STREET ADDRESS** and other common designation, if any, of the real property described above is purported to be:
14691 MULBERRY STREET, HESPERIA, CALIFORNIA 92345
APN#: 0405-961-06-0-000

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by said Deed of Trust, with interest thereon, as provided in said note(s), advances, under the terms of said Deed of Trust, fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is **$515,229.10**. The beneficiary under said Deed of Trust heretofore executed and delivered to the undersigned a written Declaration of Default and Demand for Sale, and a written Notice of Default and Election to Sell. The undersigned caused said Notice of Default and Election to Sell to be recorded in the county where the real property is located.

FOR TRUSTEE SALE INFORMATION PLEASE CALL:
PRIORITY POSTING & PUBLICATION
17501 IRVINE BLVD., SUITE ONE
TUSTIN, CA 92780
714-573-1965
www.prioritypostingcom

NDEx West, L.L.C. MAY BE ACTING AS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

NDEx West, L.L.C. as Authorized Agent

BY: Ric Juarez Dated: **06/19/2008**

Exhibit "7"

Recording requested by:
NDEx West, L.L.C.
15000 Surveyor Boulevard, Suite 500
Addison, Texas 75001-9013

When Recorded Mail to and Mail Tax Statement to:
CHASE HOME FINANCE, LLC
c/o CHASE HOME FINANCE, LLC
3415 VISION DRIVE
COLUMBUS, OH 43219

TDUS20080073400820

Recorded In Official Records, County of San Bernardino

LARRY WALKER
Auditor/Controller – Recorder

11/19/2008
8:00 AM
SG

867 SPL Title Services

Doc#: 2008 – 0503326

Titles: 1 **Pages: 2**

Fees	18.00
Taxes	0.00
Other	0.00
PAID	$18.00

Space above this line for Recorder's use only

Trustee Sale No. : **20080073400820** Title Order No.: **20853403**

TRUSTEE'S DEED UPON SALE

The undersigned grantor declares:
1) The Grantee herein WAS the foreclosing beneficiary
2) The amount of the unpaid debt together with cost was **$527,798.17**
3) The amount paid by the grantee at the trustee sale was **$284,898.00**
4) The documentary transfer tax is N/A
5) Said property is in the city of **HESPERIA**
6) APN# **0405-961-06-0-000**

NDEX West, L.L.C. , as the duly appointed Trustee under the Deed of Trust hereinafter described, does hereby grant and convey, but without covenant or warranty, express or implied, to:

CHASE HOME FINANCE, LLC

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of SAN BERNARDINO, State of California, described as follows:

LOT 17 OF TRACT NO. 14234, IN THE CITY OF HESPERIA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 241, PAGE(S) 55 THROUGH 58, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 0405-961-06-0-000

MAIL TAX STATEMENTS AS DIRECTED ABOVE

Trustee Sale No. : **20080073400820** Title Order No.: **20853403**

RECITALS:

This conveyance is made pursuant to the powers conferred upon Trustee by that certain Deed of Trust dated **06/15/2006** and executed by **ADLAI F EVANS** Trustor(s), and **Recorded on 06/27/2006 as Instrument No. 2006-0435190** of official records of **SAN BERNARDINO** County, California, and after fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance.

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the Office of the Recorder of said County, and such default still existed at the time of sale.

All requirements of law regarding the mailing of copies of notices or the publication of a copy of the Notice of Default or the personal delivery of the copy of the Notice of Default and the posting and publication of copies of the Notice of a Sale have been complied with.

Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its powers under said Deed of Trust, sold the herein described property at public auction on **11/12/2008**. Grantee, being the highest bidder at said sale, became the purchaser of said property for the amount bid being **284,898.00** in lawful money of the United States, or by credit bid if the Grantee was the beneficiary of said Deed of Trust at the Time of said Trustee's Sale.

DATED: 11/17/2008

NDEx West, L.L.C., as Trustee

_____ Authorized Agent 11/17/2008 DATED

Randy Middleton

State of TEXAS }
County of DALLAS }

On 11/17/2008 before me, Kauser Rahim Notary Public, personally appeared Randy Middleton personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: _____ (Seal)

My commission expires: _____

NOTARY PUBLIC STATE OF TEXAS
KAUSER B. RAHIM
Notary Public
State of Texas
My Comm. Exp. 05-14-2012

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is **ADORNO YOSS ALVARADO & SMITH, 1 MacArthur Place, Santa Ana, CA 92707.**

On March 4, 2009, I served the foregoing document described as **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS THE COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED** on the interested parties in this action.

☒ by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

☒ **BY REGULAR MAIL:** I deposited such envelope in the mail at 1 MacArthur Place, Santa Ana, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

BY THE ACT OF FILING OR SERVICE, THAT THE DOCUMENT WAS PRODUCED ON PAPER PURCHASED AS RECYCLED.

☐ **BY FACSIMILE MACHINE:** I Tele-Faxed a copy of the original document to the above facsimile numbers.

☐ **BY OVERNIGHT MAIL:** I deposited such documents at the Overnite Express or Federal Express Drop Box located at 1 MacArthur Place, Santa Ana, California 92707. The envelope was deposited with delivery fees thereon fully prepaid.

☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

☐ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on March 4, 2009, at Santa Ana, California.

Rhonda K. White

ADORNO YOSS ALVARADO & SMITH
ATTORNEYS AT LAW
SANTA ANA

SERVICE LIST

Timothy McCandless, Esq. 15647 Village Drive Victorville, CA 92394	(760) 912-3837-telephone (909) 494-4214-facsimile Attorney for Plaintiff, Adlai F. Evans
Edward A. Treder, Esq. Barrett Daffin Frappier Treder & Weiss, LLP 917 S. Village Oaks Drive, Suite 200 Covina, CA 91724	(626) 915-5714-telephone (626) 915-0289-facsimile Attorneys for Defendant, NDEx West, LLC

ADORNO YOSS ALVARADO & SMITH
ATTORNEYS AT LAW
SANTA ANA

EXHIBIT "B"

SUM-100

SUMMONS
(CITACION JUDICIAL)

1-26-09
144

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
JPMORGAN CHASE BANK N.A., NDEx West, LLC.; and DOES 1-50, Inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
ADLAI F. EVANS

COPY
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT
JAN 20 2009
DIANA VAN RIEL, DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of San Bernardino
14455 Civic Dr, Victorville
Victorville, California 92392

CASE NUMBER: *(Número del Caso):* CIVVS900205

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
ADLAI F. EVANS
14691 Mulberry, Hesperia, California, 92345

DATE: *(Fecha)* 1-20-09 Clerk, by *(Secretario)* DIANA VAN RIEL, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

(SEAL)

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*
under: ☑ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify):*
4. ☑ by personal delivery on *(date):* 1-26-09

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. January 1, 2004]

SUMMONS

Page 1 of 1
Code of Civil Procedure §§ 412.20, 465
American LegalNet, Inc. | www.USCourtForms.com

Adlai F. Evans
14691 Mulberry
Hesperia, California 92345
Attorney for: In Pro Per

COPY
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT
JAN 20 2009
BY DIANA VAN RIEL DEPUTY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR COUNTY OF SAN BERNARDINO

Adlai F. Evans,

Plaintiff,

V.

JPMORGAN CHASE BANK N.A., NDEx West, LLC.

and DOES 1 through 50 inclusive

Defendants.

CASE NO: CIVVS900205

COMPLAINT FOR:

(1) DECLARATORY RELIEF
(2) CANCELLATION OF DEED
(3) DAMAGES ARISING FROM:
(4) BREACH OF FIDUCIARY DUTY
(5) BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
(6) INJUNCTIVE RELIEF
(7) FRAUD
(8) DAMAGES ARISING FROM:

VIOLATION OF [15 U.S.C. § 1611 et seq.]; VIOLATION OF [26 U.S.C. § 2605 et sq.]; VIOLATION OF [15 U.S.C. § 1602 et seq.]; VIOLATION OF [15 U.S.C. § 1692];

COMES NOW, Plaintiff Adlai F. Evans, hereby complains and alleges as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. Plaintiff Adlai F. Evans is a resident of the County of SAN BERNARDINO and the owner of certain real property (hereinafter referred to as "the Property") located at 14691 Mulberry, Hesperia, California, 92345 and more particularly described as:

LOT 17 OF TRACT NO. 14234, IN THE CITY OF HESPERIA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 241, PAGE(S) 55 THROUGH 58, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 0405-961-0-000

2. Defendant JPMORGAN CHASE BANK N.A. (hereinafter referred to as "JPMORGAN") based on information and belief is doing business in the State of California and is authorized to conduct business In the State of California..

3. Defendant NDEx West, LLC. (Hereinafter referred to as "NDEx") based on information and belief is doing business in the State of California and is authorized to conduct business In the State of California.

4. The true names of Defendants named herein as DOES 1 through 50, whether individual, corporate, associate or otherwise, are presently unknown to Plaintiff who therefore, sues said Defendants by such fictitious names; Plaintiff is informed and believes and thereon alleges that each of the Defendants so designated herein proximately caused and contributed to the damages herein alleged, and Plaintiff will ask leave of Court to amend this Complaint to insert the true names and capacity of DOES 1 through 50 when the same have been ascertained and to join such Defendants in this action.

5. Plaintiff is informed and believes and thereon alleges that, at all times herein mentioned each of the defendants sued herein in relation to the property they claim an interest in was the agent and employee of each of the remaining defendants thereof and at all times was acting within the purpose and scope of such agency and employment.

6. On or about June 15, 2006, Plaintiff executed an "Fixed Rate Note" promising to pay "JPMORGAN CHASE BANK N.A." the sum of Five Hundred One Thousand Twenty Four Dollars ($501,024.00), by monthly payment commencing .

7. The Fixed Rate Note was based upon a thirty year note.

8. Plaintiff alleges that Defendants and each of them neither explained the workings of the rate, how it is computed nor its inherent volatility.

9. Further, on information and belief, Plaintiff alleges that the Defendants charged and obtained improper fees for the placement of his loan as "Alt-A" when he qualified for a prime rate mortgage which would have generated less in fees and interest.

10. On information and belief, Plaintiff alleges that the service of the purported note was, without his knowledge, by some means transferred from or by Defendant "JPMORGAN CHASE BANK N.A.", either completely or by association or other means to DOE 1 who unknown to Plaintiff provided services in various forms to be determined to others which were of such a nature to render them a "Servicer" within the definition found within 26 U.S.C. § 2605.

11. In the course of this consumer transaction, Defendants violated *15 U.S.C. § 1635(a)* and *Regulation Z, § 226,* by failing to deliver to Plaintiffs two copies of a notice to rescind that: Attached her as Exhibit "A"

12. Also on June 15, 2006, Plaintiff executed a "Deed of Trust" which cited the lender as "JPMORGAN CHASE BANK N.A." Attached her as Exhibit "B"

13. On or about June 18, 2006, the Deed of Trust was recorded with the SAN BERNARDINO County Recorder and "JPMORGAN CHASE BANK N.A." was named as Trustee of the Deed of Trust.

14. On or about August 01, 2006, Plaintiff received a "Mortgage Loan Statement" from "JPMORGAN CHASE BANK N.A." for the property address: 14691 Mulberry, Hesperia, California 92345 for loan number 25005972.

15. The Mortgage Loan Statement included a coupon for payment with a mailing address for "P.O. Box 79064, Phoenix, AZ 85062-9046".

16. On or about March 18, 2008 an unknown employee of JPMORGAN CHASE BANK N.A. executed on May 09, 2008 behalf of the alleged Beneficiary a "Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust" (hereinafter referred to as "Notice of Breach") stating that the payments were due to NDEx West, LLC. as Beneficiary. Attached here as Exhibit "C".

17. Subsequently and on or about May 09, 2008, a Substitution of Trustee was filed with the SAN BERNARDINO County Recorder naming. Attached here as Exhibit "D"

18. On the Notice of Breach, it stated, in part, that Plaintiff as Trustor, to secure certain obligations in favor of NDEx West, LLC., as beneficiary.

19. It further states that:

> That by reason thereof of 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 Sale 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 declared 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 served thereby.

20. The Notice of Breach also states:

> You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed of Trust above described. Section ... permits certain defaults to be cured upon the Payment of the amounts required by that statutory section without requiring

payment of that portion of principal and interest which would not be due had no default occurred. Where reinstatement is possible, if the default is not cured within 35 days following the recording and mailing of this Notice to Trustor or Trustor's successor in interest, the right of reinstatement will terminate and the property may thereafter be sold. .

21. Plaintiffs are informed and believe and thereupon allege that the NOTE was invalid and unenforceable due to the intentional and willful violations including but, not limited to: provisions contained in the Truth In Lending Act 15 U.S.C. ' ' 1601, 1640 etc. et seq.; Regulation Z ' 226 etc. et seq. by failing and/or refusing to provide plaintiff with two copies of the "Notice to Cancel" ; California Civil Code ' 2924b etc. et seq., California Civil Code §§§ 2924b(a), 2924b(d), 2924b(e) by failing and/or refusing to mail the Notice of Default within ten business days to Plaintiffs, by failing and/or refusing to post and mail the Notice of Default; by failing and/or refusing to mail Plaintiffs the Notice of Default within one month pursuant to California Civil Code § 2924b (e)(1), (2); by failing and/or refusing to properly set the sale date pursuant to California Civil Code § 2924f(b); by failing and/or refusing to publish the Notice of Sale twenty days prior to the date set for sale pursuant to California Civil Code § 2924f(b); by failing and/or refusing to record the Notice of Sale pursuant to California Civil Code § 2924g(d).

FIRST CAUSE OF ACTION
(Violation of 15 U.S.C. § 1611 et seq.)
Against all Defendants

22. Plaintiff repeats and realleges Paragraphs 1 through 22 as though fully set forth herein.

23. On information and belief, Plaintiff alleges that Defendants and each of them are directly or indirectly agents or employees or persons actively involved in the extension of credit as the term is defined under the Truth in Lending Statute (TILA).

24. On information and belief, Plaintiff alleges that Defendants and each of them are

subject to the requirements of the Truth in Lending Statute (TILA) and have violated the requirements of the act in that among other things:

A. They have refused and continued to refuse to validate or otherwise make a full accounting and the required disclosures as to the true finance charges and fees;

B. They have improperly retained funds belonging to Plaintiff in amounts to be determined;

C. To disclose the status of the ownership of the loans.

25. Plaintiff further alleges that these violations are such as to require rescission or cancellation of the loan herein and return of all funds received by Defendants from Plaintiff.

26. Plaintiff further alleges that he is entitled to compensatory damages in an amount to be determined at trial.

27. Plaintiff further alleges that he is entitled to attorneys fees according to statute in the event that he retains counsel.

28. On information and belief, Plaintiff alleges that Defendants have acted in violation of the TILA act, willfully, maliciously, oppressively and fraudulently and in conscious disregard for the rights of Plaintiff and as such, Plaintiff is entitled to punitive damages.

SECOND CAUSE OF ACTION
(Violation of 26 U.S.C. § 2605 et seq.)
Against all Defendants

29. Plaintiff repeats and realleges Paragraphs 1 through 29 as though fully set forth herein.

30. Based upon information and belief, and on that basis Plaintiff alleges that Defendants and each of them are such that they fall within the requirements of the Real Estate Settlement Procedures Act (RESPA).

31. Based upon information and belief, and on that basis Plaintiff alleges that Defendants and each of them, placed loans for the purpose of unlawfully increasing or otherwise obtaining yield spread fees and sums in excess of what would have been lawfully earned.

32. Based upon information and belief, and on that basis Plaintiff alleges that Defendants "JPMORGAN", and "NDEx", and DOE 1either individually or jointly as "Servicers" as that term is used with the RESPA act and either individually or jointly violated the requirements of 26 U.S.C. § 2605(B) in that the servicing contract or duties thereunder were transferred or hypothecated without the required notice.

33. Plaintiff alleges that these violations require rescission or cancellation of the loan and a return of all funds received by Defendants from Plaintiff.

34. Plaintiff further alleges that he is entitled to compensatory damages in an amount to be determined at trial.

35. Plaintiff further alleges that he is entitled to attorneys fees according to statute in the event that they retain counsel.

THIRD CAUSE OF ACTION
(Violation of 15 U.S.C. § 1602 et seq.)
Against all Defendants.

36. Plaintiff repeats and realleges Paragraphs 1 through 36 as though fully set forth herein.

37. Based upon information and belief, and on that basis Plaintiff alleges that the mortgage obtained by her through Defendant "JPMORGAN CHASE BANK N.A." by means unknown obtained and enforced by other Defendants herein falls within the purview of 15 U.S.C. § 1602 et seq., commonly known as the "Home Ownership and Equity Protection Act of 1994 (HOEPA).

38. Based upon information and belief, and on that basis Plaintiff alleges that the loan was placed in violation of the HOEPA act as it was placed and administered and otherwise utilized without regard to Plaintiff's income or cash flow and with the intention of inducing a default.

39. Plaintiff became aware of this upon the discovery of Defendants' intent to wrongfully foreclose and sell his property.

40. As a direct and a legal consequence of the above actions, Plaintiff has been damaged in a sum to be proven at trial.

FOURTH CAUSE OF ACTION
(Violation of 15 U.S.C. § 1692)
Against all Defendants

41. Plaintiff repeats and realleges Paragraphs 1 through 41 as though fully set forth herein.

42. Based upon information and belief, and on that basis Plaintiff alleges that Defendants and each of them are "debt collectors" either directly or through agents as that term is used in the United States Code.

43. Plaintiff alleges that he duly and properly on more than one occasion requested validation of the "debt" under 15 U.S.C. § 1692, the Fair Debt Collection Practices Act (FDCPA).

44. Plaintiff further alleges that Defendants did not respond to his demands in such a ways as to meet the requirements of the act.

45. Plaintiff is entitled to statutory damages under the FDCPA.

FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty)
Against all Defendants

46. Plaintiff repeats and realleges Paragraphs 1 through 46 as though fully set forth herein.

47. At all times relevant, Defendants created, accepted and acted in a fiduciary relationship of great trust and acted for and were the processors of property for the benefit of Plaintiff.

48. Defendants further placed themselves in a position of trust by virtue of the expertise represented by and through his employees.

49. Defendants breached his fiduciary duties owed to Plaintiff as they have acted and continue to act for his own benefit and to the detriment of Plaintiff.

50. Among other things, they have placed and negotiated loans without due care to the best interests of Plaintiff or for the protection of his rights.

51. As a direct and proximate result of the breach of the fiduciary duties, Plaintiff has suffered economic damages and loss of funds and payment of fees improperly incurred in an amount to be proved at trial.

52. On information and belief, Plaintiff alleges that Defendants have acted willfully, maliciously, oppressively and fraudulently and in conscious disregard for the rights of Plaintiff and as such, Plaintiff is entitled to punitive damages.

SIXTH CAUSE OF ACTION
(Breach of Covenant of Good Faith and Fair Dealing)
Against all Defendants

53. Plaintiff repeats and realleges Paragraphs 1 through 25 as though fully set forth herein.

54. Plaintiff alleges that at all times there existed an implied covenant of good faith and fair dealing requiring Defendants, and each of them, to safeguard, protect, or otherwise care for the assets and rights of Plaintiff. Said covenant prohibited Defendants from activities interfering with or contrary to the rights of Plaintiff.

55. Plaintiff alleges that the commencement of foreclosure proceedings upon the property lawfully belonging to Plaintiff without the production of documents demonstrating the lawful rights for the foreclosure constitutes a breach of the covenant.

56. As a direct and proximate result, Plaintiff has been damaged in a sum to be proven at trial.

SEVENTH CAUSE OF ACTION
(Injunctive Relief)
Against all Defendants

57. Plaintiff repeats and realleges Paragraphs 1 through 57 as though fully set forth herein.

58. Plaintiff seeks a determination as to the legal status of the parties to the Fixed Rate Note and the Deed of Trust.

59. The Fixed Rate Note states that the Lender is "JPMORGAN CHASE BANK, N.A.".

60. It also states, "Lender or anyone who takes this Note by transfer and who is entitled to receive payment under this Note is called the "Note Holder."

61. "JPMORGAN CHASE BANK N.A. " sent to Plaintiff a statement dated on or around with a coupon asking for payment.

62. The Notice of Breach signed on or about states that "NDEx" is the Beneficiary.

63. "NDEx" says it is entitled to the money

64. The deed of trust "states that "JPMORGAN CHASE BANK N.A." is the beneficiary.

65. There is a controversy to be decided by this Honorable Court as on or about ,

Plaintiff received a Deed of Trust stating that the money is owed to "NDEx", but on or about March 18, 2008 Plaintiff received notice that the payments were due to "NDEx", and on March 18, 2008, the Notice of Breach states that "NDEx" is the Beneficiary.

66. Defendants should be required to provide the original note with the appropriate endorsements thereon to Plaintiff or this Honorable Court so that it may determine in accordance with the California Revised Statutes, who owns the right to receive payments on loan number 25005972 and exercises the rights relating to said ownership.

67. Only the Note Holder is authorized to collect payments and, in the event of a default, commence foreclosure proceedings, including authorizing the substitution of a Trustee.

68. Until Defendants are able to provide Plaintiff and this Honorable Court the aforementioned documents, this Honorable Court should order that Plaintiff is not required to make any further payments on the Fixed Rate Note and enjoin any further collection activity on the Note, including staying the count down towards the date a Notice of Trustee's sale may be filed and served.

EIGHTH CAUSE OF ACTION
(Injunctive Relief)
Against all Defendants

69. Plaintiff repeats and realleges Paragraphs 1 through 70 as though fully set forth herein.

70. Plaintiff is the owner in fee simple of the real property located at 14691 Mulberry, Hesperia, California, 92345 and more particularly described as:

LOT 17 OF TRACT NO. 14234, IN THE CITY OF HESPERIA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 241, PAGE(S) 55 THROUGH 58, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 0405-961-0-000

71. Plaintiff received the fee simple title by virtue of the Grant, Bargain, Sale Deed recorded in the Office of the County Recorder, SAN BERNARDINO County, California.

72. Defendants JPMORGAN, NDEx, and claim an interest or estate in the Plaintiff' property disputing or denying Plaintiff's rights to ownership and by contending that his ownership is or will be with Defendants by means of a Trustee's sale.

73. Plaintiff alleges that Defendants JPMORGAN, NDEx, and have no such right, title or interest in the estate of the Property in that the Trustee's sale proposed will be fraudulent or otherwise in violation of federal and state law and transfer no rights to Defendants.

74. Defendants have wrongfully interfered with or threaten to interfere with Plaintiff's use and enjoyment of the Property in that they threaten to dispossess them.

75. Defendants' threats to dispossess Plaintiff of his home will continue unless and until enjoined or restrained by this Honorable Court.

76. Failure to enjoin or restrain Defendants will cause Plaintiff grave and irreparable harm as they will be deprived of the use and enjoyment of unique property.

77. Plaintiff has no adequate remedy at law for the threatened and continuing conduct of the impending Trustee's sale. The sale of Plaintiff's home will not be properly compensated by an award of money damages.

78. Plaintiff further alleges that the conduct herein described is of such a nature and character to give them title to the Property

NINTH CAUSE OF ACTION
(For Declaratory Relief)
Against all Defendants

79. Plaintiff repeats and realleges Paragraphs 1 through 80 as though fully set forth

herein.

80. A dispute has arisen between and among Plaintiff and Defendants and each of them as to the duties and obligations of the respective parties with regard to the loan or the foreclosure.

81. These disputes concern but are not limited to the ownership rights and the validity of the commencement of the foreclosure process.

82. As to these issues, Plaintiff is required to seek this relief.

83. Plaintiff further alleges that a declaration of rights and duties of the parties herein are essential to determine the actual status and validity of the loan, deed of trust, nominated beneficiaries, actual beneficiaries, loan servicers, trustees instituting foreclosure proceedings and related matters.

TENTH CAUSE OF ACTION
(Fraud)
Against all Defendants

84. Plaintiff repeats and realleges Paragraphs 1 through 85 as though fully set forth herein.

85. Plaintiff seeks a determination as to the legal status of "NDEx" as the Deed of Trust states that "NDEx" is a separate corporation that is acting as Beneficiary for Lender's successors and assigns."

86. Based upon information and belief and on that basis, Plaintiff alleges that "NDEx" did not pay any consideration for the Fixed Rate Note and in fact was paid a fee by "JPMORGAN CHASE BANK N.A." to act solely as Beneficiary as lender.

87. Based upon information and belief, and on that basis Plaintiff alleges that "NDEx" will only notate on its internal record keeping system the name of the beneficiary of the deeds of trust and will never tell the trustors the name of the true beneficiary.

88. As a result, the loan may be transferred from company to company, or bundled together with other loans, pledged to quasi-governmental agencies and then sold as securities on the stock exchange.

89. This practice allows the beneficiary to allegedly be changed without the necessity of completing an "assignment of deed of trust", obtaining the appropriate signatures, and recording the assignment with the SAN BERNARDINO County Recorder and otherwise notifying Plaintiff of a change in his beneficiary.

90. Courts across the United States have held that "NDEX", named as a nominee or Beneficiary, does not have the standing of the beneficiary to enforce the Deed of Trust through the foreclosure process.

91. Defendants "JPMORGAN CHASE BANK N.A." and "NDEX", and each of them, made a representation to Plaintiff on that "NDEX" had the rights and standing of a beneficiary under California law.

92. This statement was made on the Deed of Trust and presented to Plaintiff at the offices of the Title Company on .

93. When Defendants "JPMORGAN CHASE BANK N.A." and "NDEX", and each of them made the representation that "NDEX" was the beneficiary under the Deed of Trust, they both knew that the statement was false when made.

94. The statement was made to have Plaintiff rely on the misrepresentation by executing the Deed of Trust and Plaintiff did actually rely on the misrepresentation by his signatures affixed to the Deed of Trust on .

95. Plaintiff has been damaged as a result of said reliance as they have had the title to the Property slandered as a result of the filing of the Notice of Breach.

96. Plaintiff has been further damaged by the necessity of seeking judicial intervention to prevent the foreclosure of the Property.

97. On information and belief, Plaintiff alleges that Defendants JPMORGAN CHASE BANK N.A. and "NDEX" have acted willfully, maliciously, oppressively and fraudulently and in conscious disregard for the rights of Plaintiff and as such, Plaintiff are entitled to punitive damages.

ELEVENTH CAUSE OF ACTION
(For Fraud)
Against JPMORGAN, NDEx, , , , , , , and

98. Plaintiff repeats and realleges Paragraphs 1 through 99 as though fully set forth herein.

99. On or about , an unknown employee of executed on behalf the alleged Beneficiary, JPMORGAN, NDEx, a "Notice of Default" which stated that the payments were due to "NDEX" as Beneficiary. "Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust" (hereinafter referred to as "Notice of Breach").

100. On the Notice of Breach, it stated, in part, that Plaintiff as Trustor, to secure certain obligations in favor of "NDEX", as beneficiary.

101. It further states that:

> That by reason thereof of 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 Sale 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 declared 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 served thereby.

102. This representation was made by these defendants in order to induce

reliance by Plaintiff.

103. Plaintiff did rely on these representations and because of his reliance his property has advanced in the foreclosure stage to a sale and Plaintiff's reliance was justified.

104. Plaintiff is informed and believes that the representation as stated on the Notice of Default were a false representation in the following particular(s)

A. Documents were not provided to the trustee that showed that either "NDEX" or "JPMORGAN CHASE BANK N.A." or NDEx West, LLC, or any of the Defendants Identified as Does 1-10, were the Beneficiary and entitled to the payments.

B. At the time made the representations they knew they were false and were made for the sole purpose of inducing reliance.

105. Plaintiff has been damaged in having his home wrongfully placed in foreclosure and a slander of his title, and being required to become involved in this litigation all to his damages and injuries the amount of which are subject to proof at the time of trial.

106. That NDEx, JPMORGAN CHASE BANK N.A., and were aware of the false representations of and remained silent thereby aiding in its misrepresentation.

107. That the actions of these defendants were willful, oppressive and fraudulent so as to justify an award of Exemplary damages.

WHEREFORE, Plaintiff prays for damages as follows:

1. For compensatory damages in an amount in excess of Twenty Five Thousand Dollars ($25,000.00);

2. For punitive damages in an amount in excess of Twenty Five Thousand Dollars ($25,000.00);

3. For any statutory damages according to law;

4. For Injunctive Relief including the issuance of a restraining order and thereafter a preliminary injunction to maintain the status quo pending final adjudication;

5. For attorney's fees in the event that counsel is retained;

6. For such further and other relief as the Court deems just and proper.

DATED January 19, 2009

Adlai F. Evans
Attorney for: In Pro Per

VERIFICATION

I, Adlai F. Evans, , declare:

I am the attorney of record for the within Plaintiff, who are located out of county and are not available to execute a verification, I have read the within pleading, and on information and belief, believe that the matters therein to be true and on that ground allege that the matters stated therein are true. Executed in Victorville, California

DATED: January 19, 2009

Adlai F. Evans
Attorney for: In Pro Per

EXHIBIT -A-

EXHIBIT -B-

Recording Requested By:
HERITAGE ESCROW COMPANY
10535 FOOTHILL BLVD. #252
RANCHO CUCAMONGA, CA. 91730
Return To:
CHASE HOME FINANCE, LLC.
1500 N 19TH STREET
MONROE LA 71201
Attention:
CHASE HOME FINANCE

Prepared By: FRANCISCO CANALES

[Space Above This Line For Recording Data]

DEED OF TRUST

25005972
1250059726

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 June 15, 2006 together with all Riders to this document.
(B) "Borrower" is ADLAI F EVANS, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY

Borrower is the trustor under this Security Instrument.
(C) "Lender" is JPMORGAN CHASE BANK, N.A.

Lender is a BANK
organized and existing under the laws of the U.S.A.

Lender's address is 1111 POLARIS PARKWAY
COLUMBUS OH 43240
Lender is the beneficiary under this Security Instrument.
(D) "Trustee" is JPMORGAN CHASE BANK, N.A.

(E) "Note" means the promissory note signed by Borrower and dated June 15, 2006
The Note states that Borrower owes Lender
Five Hundred One Thousand, Twenty-Four and 00/100 Dollars
(U.S. $ 501,024.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2036
(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]:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ 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 irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY of SAN BERNARDINO :

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

See Attached Legal Description

Parcel ID Number: 0405-961-06-0-000 which currently has the address of

14691 MULBERRY STREET [Street]

HESPERIA [City], California 92345 [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 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.

EXHIBIT "A"

All that certain real property situated in the County of San Bernardino, State of California, described as follows:

Lot 17 of Tract No. 14234, in the City of Hesperia, County of San Bernardino, State of California, as per map recorded in Book 241, page(s) 55 through 58, inclusive, of Maps, in the office of the County Recorder of said County.

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 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 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:

_____ _____ (Seal) -Borrower

_____ _____ (Seal) -Borrower

_____ (Seal) ADLAI F EVANS -Borrower _____ (Seal) -Borrower

_____ (Seal) -Borrower _____ (Seal) -Borrower

_____ (Seal) -Borrower _____ (Seal) -Borrower

State of California
County of } ss.

On June 15, 2006 before me,

personally appeared
ADLAI F EVANS, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY

, 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)

JPMORGAN CHASE BANK, N.A.

THE HOUSING FINANCIAL DISCRIMINATION ACT OF 1977
CALIFORNIA FAIR LENDING NOTICE

25005972
1250059726

IT IS ILLEGAL TO DISCRIMINATE IN THE PROVISION OF OR IN THE AVAILABILITY OF FINANCIAL ASSISTANCE BECAUSE OF THE CONSIDERATION OF:

1. TRENDS, CHARACTERISTICS OR CONDITIONS IN THE NEIGHBORHOOD OR GEOGRAPHIC AREA SURROUNDING A HOUSING ACCOMMODATION, UNLESS THE FINANCIAL INSTITUTION CAN DEMONSTRATE IN THE PARTICULAR CASE THAT SUCH CONSIDERATION IS REQUIRED TO AVOID AN UNSAFE AND UNSOUND BUSINESS PRACTICE; OR

2. RACE, COLOR, RELIGION, SEX, MARITAL STATUS, DOMESTIC PARTNERSHIP, NATIONAL ORIGIN OR ANCESTRY.

IT IS ILLEGAL TO CONSIDER THE RACIAL, ETHNIC, RELIGIOUS OR NATIONAL ORIGIN COMPOSITION OF A NEIGHBORHOOD OR GEOGRAPHIC AREA SURROUNDING A HOUSING ACCOMMODATION OR WHETHER OR NOT SUCH COMPOSITION IS UNDERGOING CHANGE OR IS EXPECTED TO UNDERGO CHANGE, IN APPRAISING A HOUSING ACCOMMODATION OR IN DETERMINING WHETHER OR NOT, OR UNDER WHAT TERMS AND CONDITIONS, TO PROVIDE FINANCIAL ASSISTANCE.

THESE PROVISIONS GOVERN FINANCIAL ASSISTANCE FOR THE PURPOSE OF THE PURCHASE, CONSTRUCTION, REHABILITATION OR REFINANCING OF ONE-TO-FOUR-UNIT FAMILY RESIDENCES OCCUPIED BY THE OWNER AND FOR THE PURPOSE OF THE HOME IMPROVEMENT OF ANY ONE-TO-FOUR-FAMILY RESIDENCE.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, OR IF YOU WISH TO FILE A COMPLAINT, CONTACT THE MANAGEMENT OF THIS FINANCIAL INSTITUTION OR THE DEPARTMENT OF FINANCIAL INSTITUTIONS AT THE FOLLOWING LOCATION:

Office of the Comptroller of the Currency
Customer Assistance Unit
1301 McKinney Street, Suite 3450
Houston, TX 77010

Department of Financial Institutions
300 South Spring Street, Suite 15513
Los Angeles, CA 90013

ACKNOWLEDGMENT OF RECEIPT

I/WE RECEIVED A COPY OF THIS NOTICE

Applicant _____ Date _____ Applicant _____ Date _____

Applicant _____ Date _____ Applicant _____ Date _____

CALIFORNIA CIVIL RIGHTS ACT
CALIFORNIA EMPLOYMENT AND HOUSING ACT

CALIFORNIA LAW PROHIBITS A LENDER FROM DISCRIMINATING AGAINST AN APPLICANT FOR FINANCIAL ASSISTANCE BASED ON THE APPLICANT'S SEXUAL ORIENTATION, SOURCE OF INCOME, DISABILITY, FAMILIAL STATUS OR AOE.

NOTE

25005972
1250059726

June 15, 2006 RANCHO CUCAMONGA CA
[Date] [City] [State]

14691 MULBERRY STREET, HESPERIA, CA 92345
[Property Address]

1. BORROWER'S PROMISE TO PAY.
In return for a loan that I have received, I promise to pay U.S. $ 501,024.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is
JPMORGAN CHASE BANK, N.A.

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 6.625 %.
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 August 1, 2006 . 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 July 1, 2036 , 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 P.O. BOX 79046
PHOENIX, AZ 85062-9046 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. $ 3,208.11

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.

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 FIFTEEN (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 6.000 % 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 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 these 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 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.

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

_____ (Seal)
ADLAI F EVANS -Borrower
Social Security No.: 546-43-8385

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

[Sign Original Only]

EXHIBIT –C-

EXHIBIT -D-

Recorded in Official Records, County of San Bernardino

LARRY WALKER
Auditor/Controller – Recorder

8/23/2006
1:00 PM
EH

Recording requested by:
LandAmerica United Title Company-CA

When Recorded Mail To:
NDEx West, L.L.C.
15000 Surveyor Boulevard, Suite 500
Addison, Texas 75001-9013
(866) 795-1852

693 Commonwealth Land Title Co.

Doc#: 2006-0285209

Titles: 1 Pages: 1

Fees	11.00
Taxes	0.00
Other	0.00
PAID	$11.00

NOTS20060073400820

Space above this line for Recorder's use only

Trustee Sale No.: 20060073400820 Title Order No.: 20853403 FHA/VA/PMI No.: NONE

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 06/15/2006. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NDEx West, LLC, as duly appointed Trustee under and pursuant to Deed of Trust Recorded on 06/27/2006 as Instrument No. 2006-0435190 of official records in the office of the County Recorder of SAN BERNARDINO County, State of CALIFORNIA.

EXECUTED BY: ADLAI F EVANS,
WILL SELL AT PUBLIC AUCTION TO HIGHEST BIDDER FOR CASH, CASHIER'S CHECK/CASH EQUIVALENT or other form of payment authorized by 2924h(b), (payable at time of sale in lawful money of the United States).
DATE OF SALE: 09/09/2006 TIME OF SALE: 1:00 PM
PLACE OF SALE: AT THE MAIN (SOUTH) ENTRANCE TO THE CITY OF CHINO CIVIC CENTER, 13220 CENTRAL AVE., CHINO, CA.
STREET ADDRESS and other common designation, if any, of the real property described above is purported to be:
14691 MULBERRY STREET, HESPERIA, CALIFORNIA 92345
APN#: 0405-961-06-0-000

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by said Deed of Trust, with interest thereon, as provided in said note(s), advances, under the terms of said Deed of Trust, fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is $515,129.10. The beneficiary under said Deed of Trust heretofore executed and delivered to the undersigned a written Declaration of Default and Demand for Sale, and a written Notice of Default and Election to Sell. The undersigned caused said Notice of Default and Election to Sell to be recorded in the county where the real property is located.

FOR TRUSTEE SALE INFORMATION PLEASE CALL:
PRIORITY POSTING & PUBLICATION
17501 IRVINE BLVD., SUITE ONE
TUSTIN, CA 92780
714-573-1965
www.priorityposting.com

NDEx West, L.L.C. MAY BE ACTING AS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

NDEx West, L.L.C. as Authorized Agent

BY: Ric Juarez Dated: 06/19/2006

I hereby certify that this is a true copy of the record consisting of 12 pages if the seal of this office is impressed in purple ink.

Larry Walker

LARRY WALKER
Auditor-Controller/Recorder
San Bernardino County, CA

RECORDER SAN BERNARDINO COUNTY, CALIF.

NOV 21 2008

Recording requested by:
NDEx West, L.L.C.
15000 Surveyor Boulevard, Suite 500
Addison, Texas 75001-9013

When Recorded Mail to and Mail Tax Statement to:
CHASE HOME FINANCE, LLC
c/o CHASE HOME FINANCE, LLC
3415 VISION DRIVE
COLUMBUS, OH 43219

TDUS20080073400820

Recorded in Official Records, County of San Bernardino

LARRY WALKER
Auditor/Controller – Recorder

11/19/2008
8:00 AM
60

867 CPL Title Services

Doc#: 2008-0503326

Titles: 1 Pages: 2

Fees	16.00
Taxes	0.00
Other	0.00
PAID	$16.00

Space above this line for Recorder's use only

Trustee Sale No. : 20080073400820 Title Order No.: 20853403

TRUSTEE'S DEED UPON SALE

The undersigned grantor declares:

1) The Grantee herein WAS the foreclosing beneficiary
2) The amount of the unpaid debt together with cost was $527,798.17
3) The amount paid by the grantee at the trustee sale was $284,898.00
4) The documentary transfer tax is N/A
5) Said property is in the city of HESPERIA
6) APN# 0405-961-06-0-000

NDEX West, L.L.C. , as the duly appointed Trustee under the Deed of Trust hereinafter described, does hereby grant and convey, but without covenant or warranty, express or implied, to:

CHASE HOME FINANCE, LLC

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of SAN BERNARDINO, State of California, described as follows:

LOT 17 OF TRACT NO. 14234, IN THE CITY OF HESPERIA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 241, PAGE(S) 55 THROUGH 58, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 0405-961-06-0-000

MAIL TAX STATEMENTS AS DIRECTED ABOVE

4/22/2009

Trustee Sale No. : 20080073400820 Title Order No.: 20953403

RECITALS:

This conveyance is made pursuant to the powers conferred upon Trustee by that certain Deed of Trust dated 06/15/2006 and executed by ADLAI F EVANS Trustor(s), and Recorded on 06/27/2006 as Instrument No. 2006-0435190 of official records of SAN BERNARDINO County, California, and after fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance.

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the Office of the Recorder of said County, and such default still existed at the time of sale.

All requirements of law regarding the mailing of copies of notices or the publication of a copy of the Notice of Default or the personal delivery of the copy of the Notice of Default and the posting and publication of copies of the Notice of a Sale have been complied with.

Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its powers under said Deed of Trust, sold the herein described property at public auction on 11/12/2008. Grantee, being the highest bidder at said sale, became the purchaser of said property for the amount bid being 284,898.00 in lawful money of the United States, or by credit bid if the Grantee was the beneficiary of said Deed of Trust at the Time of said Trustee's Sale.

DATED: 11/17/2008

NDEx West, L.L.C., as Trustee

Randy Middleton — Authorized Agent

11/17/2008 — DATED

State of TEXAS)
County of DALLAS)

On 11/17/2008 before me, Kauser Rahim Notary Public, personally appeared Randy Middleton personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: _____ (Seal)

My commission expires: _____

KAUSER B. RAHIM
Notary Public
State of Texas
My Comm. Exp. 05-14-2012

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is **ADORNO YOSS ALVARADO & SMITH, 1 MacArthur Place, Santa Ana, CA 92707.**

On February 25, 2009, I served the foregoing document described as **NOTICE OF REMOVAL UNDER 28 USC § 1441(b)** on the interested parties in this action.

☒ by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

☒ **BY REGULAR MAIL:** I deposited such envelope in the mail at 1 MacArthur Place, Santa Ana, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

BY THE ACT OF FILING OR SERVICE, THAT THE DOCUMENT WAS PRODUCED ON PAPER PURCHASED AS RECYCLED.

☐ **BY FACSIMILE MACHINE:** I Tele-Faxed a copy of the original document to the above facsimile numbers.

☐ **BY OVERNIGHT MAIL:** I deposited such documents at the Overnite Express or Federal Express Drop Box located at 1 MacArthur Place, Santa Ana, California 92707. The envelope was deposited with delivery fees thereon fully prepaid.

☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

☐ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on February 25, 2009, at Santa Ana, California.

Rhonda K. White

ADORNO YOSS ALVARADO & SMITH
ATTORNEYS AT LAW
SANTA ANA

SERVICE LIST

Adlai F. Evans 14691 Mulberry Hesperia, California 92345	Plaintiff in Pro Per
Edward A. Treder, Esq. Barrett Daffin Frappier Treder & Weiss, LLP 917 S. Village Oaks Drive, Suite 200 Covina, CA 91724	(626) 915-5714-telephone (626) 915-0289-facsimile Attorneys for Defendant, NDEx West, LLC

ADORNO YOSS ALVARADO & SMITH
ATTORNEYS AT LAW
SANTA ANA

TIMOTHY L. MCCANDLESS, ESQ. SBN 147715
15647 Village Drive
Victorville, California 92394
Tel: (760) 912-3837
Fax: (909) 494-4214

Attorney for Defendant (s)
Adlai F. Evans

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CHASE HOME FINANCE, LLC. Plaintiff, vs. Adlai F. Evans; and DOES 1 to 10, inclusive Defendant.	Case No.:UDVS 900343 **[PROPOSED] ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND JUDGMENT THEREON** [Filed concurrently with Notice of Motion and Motion for Summary Judgment, Statement of Facts and Memorandum of Points and Authorities in Support of Motion for Summary Judgment by Defendant, Defendants Separate Statement of Undisputed Facts and Supporting Evidence on Motion for Summary Judgment in Support of Motion for Summary Judgment by Defendant Date of Hearing:_____ Time of Hearing: 8:30 Department: V 15

Defendant motion for summary judgment having come regularly on for hearing before the above-entitled court, on the date above-mentioned, and the court having reviewed the motion and supporting documents submitted in support of said motion, and any opposition thereto, and having determined that there are no material facts in dispute nor triable controversies with respect to the

Standing of Plaintiff to bring this Unlawful Detainer action against Defendant the ownership of the subject real property located at 34202 PINEHURST DRIVE, YUCAIPA, CA 92399 ("Property"), and proof satisfactory to the court having been made that title to the Property has not been duly perfected in the name of Plaintiff DEUTSCHE BANK National Trust Co. and that the Trustee's Deed Upon Sale, recorded in the Official Records for the County of Sacramento is unenforceable against Defendant and the Property was therefore NOT acquired in accordance with Section 2924 of the California Civil Code, and further proof having been made and the court having concluded that possession of the Property should not be restored to Plaintiff and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Plaintiff DEUTSCHE BANK National Trust Co., does not have standing to bring this Unlawful Detainer action and shall take nothing by way of their complaint.

Dated and done this ___ Day of ____ 2009.

_____
JUDGE OF THE SUPERIOR COURT