

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

CARRINGTON MORTGAGE SERVICES  
"ADDITIONAL PARTIES ATTACHMENT FORM IS ATTACHED"

**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ALBERT C. HENDERSON JR

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

DEC 30 2010

J. Karnes

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

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 pueda 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.sucorte.ca.gov](http://www.sucorte.ca.gov)), 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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): RIVERSIDE COURT-CIVIL

4100 MAIN STREET  
RIVERSIDE, CALIFORNIA 92501

CASE NUMBER:  
(Número del Caso):

RIC-10024960

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):

ALBERT C. HENDERSON JR 2035 SILVER DROP LANE HEMET CA 92545

12-30-10 JC

DATE: 12-28-2010  
(Fecha)Clerk, by  
(Secretario), Deputy  
(Adjunto)

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

**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: | <input type="checkbox"/> CCP 416.10 (corporation)                | <input type="checkbox"/> CCP 416.60 (minor)             |
|        | <input type="checkbox"/> CCP 416.20 (defunct corporation)        | <input type="checkbox"/> CCP 416.70 (conservatee)       |
|        | <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
|        | <input type="checkbox"/> other (specify):                        |   |

4.  by personal delivery on (date):

|  |              |
|--|--------------|
| SHORT TITLE:<br>CARRINGTON MORTGAGE SERVICES | CASE NUMBER: |
|--|--------------|

**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

**List additional parties** (Check only one box. Use a separate page for each type of party.):

Plaintiff     Defendant     Cross-Complainant     Cross-Defendant

"Continued"

VERICREST FINANCIAL;

REGIONAL TRUSTEE SERVICES;

DEUTSCHE BANK NATIONAL TRUST ON BEHALF OF LSF-MRA PASS THRU TRUST;  
FORECLOSURE MANAGEMENT COMPANY C/O REGIONAL SERVICE CORPORATION;  
GMAC MODEL HOME FINANCE;

ANNEMARIE TUKES, an individual;

MARINA PREGEL-GAMBIL, an individual;

CHERYL C. TRAN, an individual;

HAL BARTOW, an individual;

ANNA EGDORF, an individual;  
and DOES 1-XXX, Inclusive  
Defendants.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name)

ALBERT C. HENDERSON JR  
2035 SILVER DROP LANE  
HEMET CALIFORNIA 92545

(State Bar number, and address):

FOR COURT USE ONLY

TELEPHONE NO.: 951-766-0515

FAX NO.:

ATTORNEY FOR (Name): PRO SE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

STREET ADDRESS: 4100 MAIN STREET

MAILING ADDRESS:

CITY AND ZIP CODE: RIVERSIDE, CALIFORNIA 92501

BRANCH NAME: RIVERSIDE COURT- CIVIL

CASE NAME:

**CIVIL CASE COVER SHEET**

Unlimited       Limited  
 (Amount demanded exceeds \$25,000)      (Amount demanded is \$25,000 or less)

**Complex Case Designation**

Counter       Joinder

Filed with first appearance by defendant  
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:

JUDGE:

DEPT:

*Items 1–6 below must be completed (see instructions on page 2).*

1. Check one box below for the case type that best describes this case:

**Auto Tort**

- Auto (22)  
 Uninsured motorist (46)

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

- Asbestos (04)  
 Product liability (24)  
 Medical malpractice (45)  
 Other PI/PD/WD (23)

**Non-PI/PD/WD (Other) Tort**

- Business tort/unfair business practice (07)  
 Civil rights (08)  
 Defamation (13)  
 Fraud (16)  
 Intellectual property (19)  
 Professional negligence (25)  
 Other non-PI/PD/WD tort (35)

**Employment**

- Wrongful termination (36)  
 Other employment (15)

**Contract**

- Breach of contract/warranty (06)  
 Rule 3.740 collections (09)  
 Other collections (09)  
 Insurance coverage (18)  
 Other contract (37)

**Real Property**

- Eminent domain/Inverse condemnation (14)  
 Wrongful eviction (33)  
 Other real property (26)

**Unlawful Detainer**

- Commercial (31)  
 Residential (32)  
 Drugs (38)

**Judicial Review**

- Asset forfeiture (05)  
 Petition re: arbitration award (11)  
 Writ of mandate (02)  
 Other judicial review (39)

**Provisionally Complex Civil Litigation**  
(Cal. Rules of Court, rules 3.400–3.403)

- Antitrust/Trade regulation (03)  
 Construction defect (10)  
 Mass tort (40)  
 Securities litigation (28)  
 Environmental/Toxic tort (30)  
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

**Enforcement of Judgment**

- Enforcement of judgment (20)

**Miscellaneous Civil Complaint**

- RICO (27)  
 Other complaint (not specified above) (42)

**Miscellaneous Civil Petition**

- Partnership and corporate governance (21)  
 Other petition (not specified above) (43)

2. This case  is  not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a.  Large number of separately represented parties      d.  Large number of witnesses  
 b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve      e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
 c.  Substantial amount of documentary evidence      f.  Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary      b.  nonmonetary; declaratory or injunctive relief      c.  punitive.

4. Number of causes of action (specify): SEVEN

5. This case  is  not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 12-28-2010

ALBERT C. HENDERSON JR

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

1  
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4 Albert C. Henderson Jr.  
5 2035 Silver Drop Lane  
6 Hemet, California 92545

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

DEC 30 2010

J. Karnes

7  
8 Plaintiff in Pro Per  
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10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF RIVERSIDE  
13 ALBERT C. HENDERSON, JR.

14 Plaintiff,  
15  
16 vs.  
17 CARRINGTON MORTGAGE SERVICES;  
18 VERICREST FINANCIAL;  
19 REGIONAL TRUSTEE SERVICES;  
20 DEUTSCHE BANK NATIONAL TRUST  
21 ON BEHALF OF LSF-MRA PASS THRU  
22 TRUST;  
23 FORECLOSURE MANAGEMENT  
24 COMPANY C/O REGIONAL SERVICE  
25 CORPORATION;  
26 GMAC MODEL HOME FINANCE;  
27 ANNEMARIE TUKES, an individual;  
28 MARINA PREGEL-GAMBIL, an  
individual;  
CHERYL C. TRAN, an individual;  
HAL BARTOW, an individual;  
ANNA EGDORF, an individual;  
and DOES 1-XXX, Inclusive  
Defendants.

Case No.: RIC-10024960

VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF  
FOR ENFORCEMENT OF RESCISSION AND  
CANCELLATION OF FORECLOSURE;  
TRESPASS ON CONTRACT; DECEPTIVE  
BUSINESS PRACTICES; WRONGFUL  
CONVERSION; SLANDER OF TITLE;  
VIOLATION OF CALIFORNIA CIVIL CODE  
2923.5; FILING FALSE DOCUMENTS ;  
INTENTIONAL MISREPRESENTATION

JURY DEMAND

[Request for Judicial Notice filed concurrently  
herewith]

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7 COMES NOW, Plaintiff ALBERT C. HENDERSON JR, and for causes of action  
8 against the above-named Defendants, brings this matter before the Bench, for several fatal errors  
9 and deceptive actions have occurred throughout the foreclosure process causing a cloud on  
10 Plaintiff's title resulting from ineffective non-judicial foreclosure proceedings, misconduct and a  
11 plethora of fraudulent documents and activity. Plaintiff hereby complains and states his claim as  
12 follows:

13 **PRELIMINARY STATEMENT**

- 14 1. Defendants have mistakenly foreclosed on Plaintiff's home.  
15 2. Plaintiff has no formal evidence that his mortgage was sold or transferred to  
16 VERICREST FINANCIAL, CARRINGTON MORTGAGE SERVICES or FORECLOSURE  
17 MANAGEMENT COMPANY C/O REGIONAL SERVICES CORPORATION, and their now  
18 previously defunct predecessor, MERS, could not have legally sold the loan due to their toxicity  
19 and impossibility of ever being a note holder.  
20 3. Further, Defendants have failed to meet the proper provisions of the Deed of Trust and  
21 statutory requirements under the California Civil Code to foreclose, as they did not comport with  
22 the deed of trust agreement and recordings pursuant thereof.  
23 4. MERS was never intended to be the beneficiary/lender and is now an interloper.  
24 FORECLOSURE MANAGEMENT COMPANY C/O REGIONAL SERVICES  
25 CORPORATION et al declared the default on this loan even though they were NOT the  
26 beneficiary with the power to do so. Defendants FORECLOSURE MANAGEMENT  
27 COMPANY C/O REGIONAL SERVICES CORPORATION and REGIONAL TRUSTEE

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3 SERVICES CORPORATION have conspired to foreclose when they do not have a lawful right  
4 to foreclose and have, at most, an unsecured debt.  
5

#### PARTIES

6 5. At all relevant times, Plaintiff, ALBERT C. HENDERSON JR, has been a resident of the  
7 County of Riverside, State of California.

8 6. By Law and precedent and in accordance with the Supreme Court of the United States,  
9 pro se Pleadings MAY NOT be held to the same standard as a lawyer's and/or attorney's; and  
10 whose motions, pleadings and all papers may ONLY be judged by their function and never their  
11 form. See: Haines v. Kerner; Platsky v. CIA; Anastasoff v. United States; Litigants are to be  
12 held to less stringent pleading standards;

13 See: Haines v. Kerner, 404 U.S. 519-421; In re Haines: pro se litigants are held to less  
14 stringent pleading standards than admitted or licensed bar attorneys. Regardless of the  
15 deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence  
in support of their claims.

16 See also: Platsky v. C.I.A., 953 f.2d. 25; In re Platsky: court errs if court dismisses the  
17 pro se litigant without instruction of how pleadings are deficient and how to repair pleadings.

18 See also: Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000); In re Anastasoff:  
19 litigants' constitutional (guaranteed) rights are violated when courts depart from precedent where  
20 parties are similarly situated.

21 7. Defendant REGIONAL TRUSTEE SERVICES CORPORATION (hereinafter  
22 "REGIONAL"), is and was at all times herein mentioned conducting business in California and  
23 claims to be duly appointed trustee, under the deed of trust executed by Plaintiff ALBERT C.  
24 HENDERSON JR, and is conducting intrastate business in the State of California.

25 8. Defendant, DEUTSCHE BANK NATIONAL TRUST and at all times relevant is and  
26 was acting as fiduciary for an unknown mortgage-backed securities trust, and is conducting  
intrastate business in the State of California.

9. Defendant ANNA EGDORF, is an individual allegedly employed by REGIONAL TRUSTEE SERVICES CORPORATION, doing business in the State of California.

10. Defendant MARINA PREGEL-GAMBILL, is an individual allegedly employed by DEUTSCHE BANK NATIONAL TRUST ON BEHALF OF LSF-MRA PASS THRU TRUST, doing business in the State of California.

11. Defendant REGIONAL SERVICES CORPORATION is a Washington corporation conducting intrastate business in the State of California.

12. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as DOES I through XXX inclusive, and therefore sues these defendants by such fictitious names.

13. Plaintiffs will amend this complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believe and thereon allege that, at all times herein mentioned each of the defendants sued herein was the agent and employee of each of the remaining defendants and at all times was acting within the purpose and scope of such agency and employment.

## **GENERAL ALLEGATIONS**

14. Plaintiffs executed a note (hereinafter the "Note") and separately a deed of trust in July of 2007 naming ACCREDITED HOME LENDERS, INC. as the lender, and that note was separated from the deed of trust after the execution by Plaintiffs of those documents, with the note being transferred to investors whose money had funded the loan taken out by the Plaintiffs /Trustors. FORECLOSURE MANAGEMENT COMPANY furnished none of the funding for the loan but has trespassed on Plaintiff's property with illegal foreclosure action. Simultaneously with or immediately after the loan was taken out by the Plaintiff, the obligation reflected by the note was satisfied by monies provided by the investors who then would have obtained ownership of and right to payment under the terms of the note.

15. ACCREDITED HOME LENDERS is named as Lender on Plaintiff's Deed of Trust dated June 22, 2007.

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4     16. The note executed with the deed of trust by the Plaintiff was separated from the deed of  
trust in that the note became part of a pool of mortgages and lost its individual identity as a note  
between a lender and borrower, but instead merged with the other notes as a total obligation due  
to the investors.

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7     17. Mortgage Electronic Registration Systems, Inc. was created in relation to the MERS  
system with the specific intent that MERS would be named the beneficiary and/or as the  
nominee of the lender on the deed of trust which Plaintiffs were induced into signing. However,  
8     MERS was not a nominee for the lender, because the lender was an investor who had provided  
the funds for the loan. This fact was known to MERS and the purported lender and the  
9     subsequent assignee of any and all rights purported to have been assigned by MERS at the time  
the note and deed of trust was signed by the Plaintiffs and at the time of each and every such  
10    later purported assignment by MERS of any interest in the note and deed of trust.

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13     18. The foreclosure complained of herein was initiated against Plaintiff by parties who have  
and had no standing to commence or maintain any foreclosure proceeding, both by the express  
language of the deed of trust which required that the beneficiary/party owed the obligation  
14    declare the default and direct the sale, and by the laws governing the commencement and  
advancement of foreclosure proceedings which require the trust beneficiary to declare such  
15    default and direct such sale. REGIONAL is a complete stranger to the purported loan  
transaction and DEUTSCHE BANK NATIONAL TRUST did not fund the loan with any of its  
16    own assets and are not owed any of the funds to be repaid by Plaintiff, and do not stand to suffer  
any loss should they be enjoined from having to reverse the invalid foreclosure on Plaintiff's  
17    home.

18  
19     19. The foreclosure on Plaintiff's home complained of herein was initiated by Defendants  
who had and have no lawful right to initiate, advance or maintain any foreclosure action against  
them. All Defendants knew or should have known that prior to the time that the loan was taken  
20    out by Plaintiff which is at issue herein, was that the loan which named MERS on the deed of  
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3 trust was securitized or intended to be securitized prior to the preparation of the note and deed of  
4 trust reflecting the loan. Defendants also knew or should have known that the scheme employed  
5 by their predecessors involved in the origination, aggregation and securitization of mortgage-  
6 backed loans originated from 2003 through 2008 and secured by real property in the United  
7 States originated from 2003 through 2008 included financial incentives which were designed to  
8 result in loans being written on terms which were likely or certain to result in foreclosure, and  
9 that the scheme described herein included financial incentives designed to motivate appraisers,  
10 mortgage brokers, lenders, aggregator banks and securitizing banks to steer borrowers into loans  
11 they could not afford and could not repay so that the loans would go into default and the  
12 Defendants involved in servicing, aggregating and securitizing those loans could make yet more  
13 profits from default, foreclosure and selling the properties after foreclosure.

14 20. The Plaintiff has been declared in default by a party not entitled to declare the default.  
15 DEUTSCHE BANK NATIONAL TRUST was not beneficiary as of the recording of the Notice  
16 of Default and REGIONAL was not the trustee.

17 21. MERS does not have standing to assign merely because it is the alleged beneficiary under  
18 the Deed of Trust. It is not a beneficiary and, in any event, the mere fact that an entity is a  
19 named beneficiary of a Deed of Trust is insufficient to enforce the obligation. Since the Deed of  
20 Trust attempts to name MERS as both a beneficiary and a nominee, MERS is not a true  
21 beneficiary with the rights to foreclose. The Deed of Trust states as follows:

22 22. "MERS is a separate corporation that is acting solely as a nominee for Lender and  
23 Lender's successors and assigns. MERS is the beneficiary under this Security Instrument". And  
24 later it says "The beneficiary of this Security Instrument is MERS (solely as nominee for Lender  
25 and Lenders successors and assigns) and the successors and assigns of MERS". However, the  
26 terms and conditions given to the members of MERS contradicted the beneficiary status, MERS  
27 Terms and conditions: "MERS shall serve as mortgagee of record with respect to all such  
28 mortgage loans solely as a nominee, in an administrative capacity, for the beneficial owner or

owners thereof from time to time. MERS shall have no rights whatsoever to any payments made on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans. MERS agrees not to assert any rights (other than rights specified in the Governing Documents) with respect to such mortgage loans or mortgaged properties. References herein to "mortgage(s)" and "mortgagee of record" shall include deed(s) of trust and beneficiary under a Deed of Trust and any other form of security instrument under applicable State law."

23. ACCREDITED HOME LENDERS's use of MERS created the method to defraud the Trustors because MERS was not the holder of the Note and MERS was not a transferee in possession who was entitled to the rights of a holder or had authority under State law to act for the holder.

24. The entities that have given notice of foreclosure on the home of the Plaintiff is not MERS and are not the Trustee named on the Deed of Trust and are not the parties that funded the loan of the Plaintiff.

25. Per the Riverside County Recorder of Deeds there was an assignment executed by HAL BARTOW as AVP of Mortgage Electronic Registration Systems, Inc. recorded on April 14, 2010, assigning its beneficial rights to DEUTSCHE BANK NATIONAL TRUST et al, but MERS was not a true beneficiary.

26. MARINA PREGEL-GAMBILL is an employee of DEUTSCHE BANK NATIONAL TRUST ON BEHALF OF LSF-MRA PASS THRU TRUST and NOT an employee of MERS. This is fraud. The Assignment of Deed of Trust is not only void because MERS cannot assign, but it is fraud and criminal charges are in process. Fraud vitiates the contract, and the instrument is void. The filing of false documents in the county recorder's office by an individual claiming to be employed by MERS is fraud, void and a conflict of interest. DEUTSCHE BANK is not entitled to benefit by this felonious act and stealing property carries a heavier sentence than the

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4 filing of false documents. DEUTSCHE BANK undoubtedly shall lose standing to enforce a  
5 payment and foreclose. This transaction is drenched in fraud and malfeasance.  
6

7 27. MERS had no standing and no authority to assign interest in the Deed of Trust. Per the  
8 deposition taken by Mr. Hultman of MERS, MERS has no employees, which means the  
9 assignment of the deed of trust signed by HAL BARTOW in favor of DEUTSCHE BANK, is a  
10 fraud and a forgery and HAL BARTOW has violated California Penal Code 115.5. His  
11 executing documents on behalf of MERS is a complete nullity, waste of time and foolish.  
12

13 28. Due to the fraudulent assignment to DEUTSCHE BANK NATIONAL TRUST, there was  
14 NO authority to continue foreclosure, let alone appoint a trustee, which voids the Substitution of  
15 Trustee as well. The deed of trust expressly reserves the right to the Beneficiary to cause the  
16 Trustee to execute written notice of the occurrence of an event of default and of Lenders'  
17 election to cause the Property to be sold. The deed of trust further provides that the Trustee shall  
18 give public notice of sale to the persons and in the manner prescribed by applicable law. These  
19 express provisions of the deed of trust are impossible to comply with amidst the fraud.  
20

21 29. DEUTSCHE BANK NATIONAL TRUST ON BEHALF OF LSF-MRA PASS THRU  
22 TRUST had no standing and no authority to make a substitution in the Deed of Trust, which  
23 means the substitution of trustee signed by MARINA PREGEL-GAMBILL in favor of  
24 REGIONAL SERVICE CORPORATION, is a fraud and a forgery and MARINA PREGEL-  
25 GAMBILL has violated California Penal Code 115.5. Her executing documents on behalf of  
DEUTSCHE BANK NATIONAL TRUST ON BEHALF OF LSF-MRA PASS THRU TRUST  
is a complete nullity, waste of time and foolish.

26 30. On or about June 22, 2007, Plaintiffs executed a Deed of Trust ("DOT"), a true and correct  
27 copy of which is attached hereto as Exhibit "1", which was recorded on July 02, 2007 as  
28 Instrument No. 2007-0433307 of the Official Records in the office of the Recorder of Riverside  
County, California, naming ACCREDITED HOME LENDERS as the Lender, STEWART

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3       TITLE GUARANTY as the original Trustee and MORTGAGE ELECTRONIC  
4       REGISTRATION SYSTEMS, INC. ("MERS"), AS NOMINEE and beneficiary.

5       31. The Deed of Trust was secured by the real property located at 2035 Silver Drop Lane,  
6       Hemet, CA 92545 APN 454-352-023 (the "Property").

7       32. On February 16, 2010, FORECLOSURE MANAGEMENT COMPANY C/O  
8       REGIONAL SERVICE CORPORATION recorded a Notice of Default, Exhibit "2" claiming  
9       that Plaintiff was in default for his monthly obligation under the promissory note and deed of  
10      trust that provided security for the loan alleged above.

11      33. What Plaintiff finds to be very suspicious is that the Notice of Default was recorded  
12      February 16, 2010, by FORECLOSURE MANAGEMENT COMPANY and REGIONAL but  
13      they had no power or authority to do so. That immediately invalidates and voids the Notice of  
14      Default. It is equivalent to Plaintiffs recording a Notice of Default on their next door neighbor.  
15      The document is recorded, but it has no effect or validity. It becomes a cloud on title. There is  
16      no clause in the deed of trust that gives power of sale and rights to invoke foreclosure TO ANY  
17      PARTY THAT IS NOT THE BENEFICIARY or TRUSTEE. The Deed of Trust does NOT give  
18      authority or power of sale to someone who might acquire it in the future. This is an undisputable  
19      fact, a claim that has been sufficiently pled and cannot be disputed, demurred or disproven.

20      34. The Substitution of Trustee was not recorded until May 20, 2010 with the County  
21      Recorder, a true and correct copy is attached hereto as Exhibit "3", naming REGIONAL  
22      SERVICE CORPORATION as the new trustee under the Deed of Trust, but MARINA  
23      PREGEL-GAMBILL perpetrating as authorized signatory could not appoint a trustee as declared  
24      on the instrument, because DEUTSCHE BANK NATIONAL TRUST ON BEHALF OF LSF-  
25      MRA PASS THRU TRUST WAS NOT THE TRUE BENEFICIARY UNDER SAID DEED OF  
26      TRUST as defined in California Civil Code 2932.5 and DEUTSCHE BANK NATIONAL  
27      TRUST ON BEHALF OF LSF-MRA PASS THRU TRUST cannot execute any instrument in  
28      the chain of title.

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4 35. Defendants also violated Fannie Mae Release 98-06 which dictates that the Notice of  
Default, unless recorded by the trustee on the original deed of trust, should be recorded AFTER  
the RECORDED substitution of trustee. (Fannie Mae Release attached as Exhibit #4)

5  
6 36. HAL BARTOW executed the Assignment of Deed of Trust perpetrating as a MERS  
7 employee, which is void to the chain of title, and could NOT transfer beneficial interest to  
8 DEUTSCHE BANK even if it weren't a forgery due to the fact that MERS CANNOT ASSIGN.  
9 (Exhibit 4).

10 37. To summarize the chain of fraudulent and void instruments: First, FORECLOSURE  
11 MANAGEMENT COMPANY recorded a Notice of Default. They were not the beneficiary  
12 (VOID) and REGIONAL was not the trustee (VOID). Then, an Assignment of Deed Trust was  
13 executed by a HAL BARTOW perpetrating as a MERS employee (VOID) who assigned interest  
it did not have to DEUTSCHE BANK (VOID). Defendants cannot find any provisions in the  
14 deed of trust that allows these shenanigans to invoke foreclosure. Defendants cannot rely on any  
statute or case law, because no one can trespass against Plaintiff's contract, which is the Deed of  
15 Trust. Defendants cannot simply rely on the misconception of the Court and state that they have  
16 complied with Civil Code 2924.

17 38. Plaintiffs further allege on information and belief that having set aside the false document  
18 filings, DEUTSCHE BANK cannot prove that they are in fact the party authorized to enforce  
19 payment or conduct a foreclosure and/or sale and any desire to do so would have to be under the  
20 mandate of a judicial foreclosure.

21 39. That the Trustee who is acting as the agent of the beneficiary did not have the power to act as  
22 agent for a beneficiary that did NOT have beneficial interest in the subject Note, Deed of Trust  
23 or Property.

24 40. Plaintiff further alleges that *Cal. Civ. Code section 2924. 2923.5* and its subparts are  
25 being applied to Plaintiff in a manner that is unlawful.

41. Alleged foreclosing beneficiary has no beneficial interest in the deed of trust and cannot legally conduct a foreclosure, a serious trespass on deed of trust paragraph 22 and *California Civil Code Sections 2932, 2932.5;*

42. Plaintiff has proven that neither FORECLOSURE MANAGEMENT COMPANY nor REGIONAL had power of sale to execute or record the Notice of Default. The initiated foreclosure of Plaintiff's subject property has not conformed with the strict mandates of the deed of trust nor *Civil Code section 2924* and DEUTSCHE BANK and REGIONAL have trespassed on Plaintiff's property and on the deed of trust per paragraph sections 22 and 24.

43. Note, there can be no valid assignment from the original Beneficiary on the deed of trust, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to DEUTSCHE BANK NATIONAL TRUST ON BEHALF OF LSF-MRA PASS THRU TRUST who is purporting to be the current beneficiary forthwith, which is fraud, extortion and trespass.

44. The assignment of record is void, due to fraud and the toxicity of MERS as nominee. MERS as nominee cannot execute a valid assignment.

45. California Civil Code does not apply to the strict provisions of the private contract between the Plaintiff and the true Lender and unknown successor beneficiary. The alleged beneficiary has filed false documents to purport standing and perpetration of the successor beneficiary, but cannot by virtue of invalid documents. That by virtue of the method and manner of Defendants carrying out the trespass and violations of the Deed of Trust, they cannot prove that such provisions have been complied with and the foreclosure is void on its face, causing a cloud on Plaintiff's title.

## **BACKGROUND OF THE MORTGAGE LOAN TRUST**

46. Most likely Plaintiff's loan was securitized at its inception and placed into a trust. It is very unlikely that FORECLOSURE MANAGEMENT COMPANY actually acquired Plaintiff's loan effective with the Assignment recorded May 14, 2010. The loan is most likely owned by an investor, unknown to Plaintiff, and FORECLOSURE MANAGEMENT COMPANY has

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4 fabricated documents in the chain of title to facilitate a non-judicial foreclosure. The "Trusts"  
5 that may have purchased Plaintiff's loan are actually Mortgage Backed Securities ("MBS"). The  
6 Servicers, like REGIONAL SERVICES CORPORATION, are merely administrative entities  
7 which collect the mortgage payments and escrow funds. The MBSes have signed themselves up  
8 under oath with the Securities and Exchange Commission ("SEC"), and the Internal Revenue  
9 Service ("IRS"), as mortgage asset "pass through" entities wherein they can never own the  
10 mortgage loan assets in the MBS. This allows them to qualify as a Real Estate Mortgage  
11 Investment Conduit ("REMIC") rather than an ordinary Real Estate Investment Trust ("REIT").  
12 As long as the MBS is a qualified REMIC, no income tax will be charged to the MBS. For  
purposes of this action, "Trust" and MBS are interchangeable.

13 47. REMICs were newly invented in 1987 as a tax avoidance measure by Investment Banks.  
14 To file as a REMIC, and in order to avoid one hundred percent (100%) taxation by the IRS, an  
15 MBS REMIC could not engage in any prohibited action. The "Trustee" cannot own the assets of  
the REMIC. A REMIC Trustee could never claim it owned a mortgage loan. Hence, it can  
16 never be the owner of a mortgage loan. Plaintiffs will require the GAAP and FAS accounting in  
17 discovery to document this non-compliance and to justify this malfeasance.

18 48. Additionally, and important to the issues presented with this particular action, is the fact  
19 that in order to keep its tax status and to fund the "Trust" and legally collect money from  
investors who bought into the REMIC, the "Trustee" or the more properly named, Custodian of  
21 the REMIC, had to have possession of ALL the original blue ink Promissory Notes and original  
22 allonges and assignments of the Notes, showing a complete paper chain of title.

23 49. **Most importantly for this action, the "Trustee"/Custodian MUST have the**  
**mortgages recorded in the investors' names as the beneficiaries of the MBS in the year the**  
**MBS "closed."** Every mortgage in the MBS should have been publicly recorded in the  
25 County where the property was located with a mortgage in the name similar to a Trustee

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**on behalf of the alleged beneficiaries of a REMIC Trust. The mortgages in this trust would**  
4  
**all have had to have been publicly recorded in the year 2007.**

5 50. As previously pointed out, the "Trusts" were never set up or registered as Trusts. The  
6 Promissory Notes were never obtained and the proper assignments on the mortgages never  
7 obtained or recorded.

8 51. The "Trust" engaged in a plethora of "prohibited activities" and sold the investors  
9 certificates and Bonds with phantom mortgage backed assets. There are now nationwide,  
10 numerous Class actions filed by the beneficiaries (the owners/investors) of the "Trusts" against  
11 the entities who sold the investments as REMICs based on a bogus prospectus.

12 52. In the above scenario, even if the attorney for the servicer ("pretender lender") who is  
13 foreclosing on behalf of the Trustee (who in turn acting for the securitized trust) produces a copy  
14 of a note, or even an alleged original, the mortgage loan was not conveyed in the trust under the  
15 requirements of the prospectus for the trust or the REMIC requirements of the IRS.

16 53. As applied to the Plaintiffs, the end result would be that the required MBS asset, or any  
17 part thereof (mortgage note or security interest), would not have been legally transferred to the  
18 trust to allow the trust to ever even be considered a "holder" of a mortgage loan. Neither the  
19 "Trust" or the Servicer would ever be entitled to bring a foreclosure, let alone enforce payment.  
20 The Trust will never have authority to enforce payment. It cannot pick a side after the fact. It  
21 has purported to comply with REMIC and IRS requirements to evade taxes, and now attempts  
22 foreclosure, totally avoiding the IRS requirements and California law and trespassing upon the  
23 provisions of the deed of trust, and it cannot even foreclose non-judicially. Plaintiff is perplexed  
24 as to where and when the fraud may exactly end.

25 54. In nearly all cases there were no documents of transfer as required by the securitization  
26 documents and as required by the IRS-\*\+ for REMICs. So the assignment, endorsement etc are  
27 all fabricated, forged, or backdated, notarized by a notary who neither knows nor ever saw the  
28 signor.

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4 55. In nearly all cases the signor of any proffered document by the would-be foreclosing  
entity is not authorized and there are no documents that can be authenticated proving up a chain  
of authority or ownership.

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6 56. Thus in nearly all cases, the only party of record is the loan originator who did not loan  
any money. They acted as a broker and the loan was physically funded by a third party into the  
escrow account of the closing agent.

7  
8 57. Thus in nearly all cases, the only party of record with any colorable encumbrance is not  
owed any money — either because they were PAID IN FULL or they never advanced the  
money.

9  
10 58. Thus in nearly all cases, the encumbrance (mortgage or deed of trust) is void ab initio  
because it secures an obligation that was not owed to the mortgagee or beneficiary. Even the note  
is void because it describes a party to whom the obligation is owed who never contributed one  
penny to the funding. The obligation, as the chain of fraudulent documents prove, tell the Court,  
is to someone else, not the originating lender.

11  
12 59. Attempts to show transfers now “fixing the problem” have two fatal defects: (1) both the  
13 IRS REMIC law 860(D)(a)(4) and the securitization documents whose wording is identical to the  
statute, require that all assets be transferred in within 90 days of the establishment of the “trust.”  
14 This never happened with any securitized loan. (2) in nearly all cases the attempted transfer is of  
15 a loan which has already been declared in default. This violates the terms of the securitization  
16 documents and any such transfer would be a fraud on the investors giving them non-performing  
17 loans when the documents clearly state that the loans must be performing and meet industry  
18 standard underwriting guidelines. Hence the parties causing those new transfer documents to be  
19 created and signed are prohibited from using them, inasmuch as they are on their face  
20 unacceptable as assets of the pool.

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22 60. All documents prepared or proffered by the pretender lenders are self-serving artifice  
23 designed to deceive the court and presumably to deceive an uneducated homeowner. None of  
24

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3 them ever advanced any money which we know because the money all came from investors  
4 buying bogus mortgage bonds, which are now in litigation because they were bogus. The point  
5 though is that the money came from unknown investors that only accounting can provide an  
6 answer to.

7 61. No securitization participant in the chain has the power to satisfy a mortgage, foreclose  
8 on a mortgage, or to submit a credit bid at the time of foreclosure auction because they are not  
9 creditors and there is no money owed to them.

10 62. IRS Code 860(D)(a)(4) specifically prohibits the transfer of an asset to the trust past the  
11 closing date of the trust. The trust cannot legally hold Plaintiff's Note and Deed of Trust.

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13 **MERS IS TOXIC TO THE CHAIN OF TITLE**

14 63. The chain of title, as stated above, reveals a Deed of Trust (DOT) in favor of MERS as  
15 nominee. No issues are readily apparent as to the execution of the Deed of Trust. However, the  
16 content of the DOT raises factual issues that require further examination and the production of  
17 additional documents and information. Since MERS is an IT platform operated for the purposes  
18 of its private owners, it is not authorized by California Statutes to serve as the equivalent of a  
19 recording record for instruments in the public records. It is a data entry and retrieval system that  
20 is private, not public. Since MERS was named as nominee and the MERS documentation  
21 available on the internet clearly state that under no circumstances will MERS ever claim an  
22 interest in the real property, the DOT, the note, nor will ever be the actual lender, beneficiary or  
23 mortgagee in any transaction, the effect of naming MERS raises factual issues since there are  
24 questions regarding title raised by the conflict between naming MERS and MERS disclaiming  
25 any such interest. There is no record of MERS accepting the position as nominee and if so under  
what circumstances. Those terms exist in agreements executed between members of MERS and  
one of the MERS corporations and are unavailable to the Trustors.

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27 **MERS CANNOT ASSIGN THE DEED OF TRUST**

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4 64. HAL BARTOW's fraudulent attempt to assign the deed of trust was all in vain due to the  
fact that MERS simply canNOT assign.  
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6 65. MERS, by its own self definition, does not own or hold notes or mortgages, and is not a  
7 vehicle for transferring interest (which means it does not assign, sell, convey, deed, bargain or  
assign interests), so MERS which does not own mortgages, cannot foreclose, yet (little realized)  
8 neither can it assign.

9 66. The big banks constantly present purported mortgage assignments by MERS many of  
10 them back-dated (though other business executives go to jail for back-dating financial  
11 documents), for the big banks are depending on us to believe so generally in "assignment" that  
12 we will ignore the reality that MERS cannot own – and it cannot assign – what it does not own.  
13 MERS only, records what is going on with others, while serving as "non-owning" mortgagee.

14 67. Thus, MERS, as the mortgagee in the MERS mortgage, is a crippled, invalid, impotent  
mortgagee, since as a non-owner, non-holder, it cannot foreclose, and as "not a vehicle for  
15 transferring interests", it cannot assign.

16 68. Mortgages and notes can be assigned, if someone owns them, but MERS does not own  
notes or mortgages, neither is it a vehicle for transferring interests, so MERS cannot assign what  
17 it does not own.  
18

19 69. The mortgage contract makes MERS, which cannot own notes or mortgages, the  
mortgagee, but it is a mortgagee which cannot own notes or mortgages.  
20

21 70. MERS is thus an invalid and impotent, quite powerless mortgagee – yes, a mortgagee, a  
mortgagee which cannot do anything except record data in its own records. MERS cannot  
22 foreclose, nor assign. Only mortgages are assigned by those who "own" them, but MERS does  
23 not own, so it cannot assign.  
24

**MERS DEPOSITION: "WE HAVE NO EMPLOYEES"**

71. Recently, the treasurer/secretary of MERS, William Hultman, was deposed by a law firm for Superior court of New Jersey Docket No. F-10209-08. His answers are nothing short of stunning. He admitted to the fact that anyone could claim to be an "assistant secretaries" of MERS in documents initiating foreclosures, even if MERS had never actually ever heard of the person. It appears ALL of these people amount to the thousands and there are in reality only four true corporate officers for MERS. None of them are the signer on the Assignment of the Deed of Trust for Plaintiff's loan. HAL BARTOW.

**CALIFORNIA U.S. BANKRUPTCY COURT ISSUES RULING  
MERS HAS NO EVIDENCE OF STANDING TO ASSIGN NOTE  
TO ANOTHER BENEFICIARY**

72. MERS does not have the capacity as only a nominee to execute the process of foreclosure or to assign security instruments from one beneficiary to the other. In Debtor Luis E. Gallardo, 10-04710-MM7, vs Movant US Bank National Association, as Trustee for CSMC Mortgage-Backed Pass-Through Certificates, Series 2006-7, a recent San Diego Bankruptcy decision handed down by the Honorable Judge Margaret M. Mann, Judge Mann ruled "Movant has not supplied evidence that establishes that Movant has standing to seek stay relief. Movant has attached an "Assignment of Deed of Trust" from MERS to Movant, which assigns the trust deed and the related note. But, there is no evidence that MERS ever received an assignment of the note or had the ability to assign the note to Movant. The note attached to the motion does not indicate that the note has been endorsed to Movant or endorsed in blank such that it became bearer paper. Without evidence either that MERS could properly assign the note, or that the note was endorsed to Movant or in blank, Movant has not established standing to seek stay relief."

## CALIFORNIA U.S. BANKRUPTCY COURT ISSUES RULING

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3                   **MERS COULD NOT ASSIGN NOTE TO CITIBANK**

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5      73.     The United States Bankruptcy Court for the Eastern District of California has issued a  
6      ruling dated May 20, 2010 in the matter of *In Re: Walker*, Case No. 10-21656-E-11 which found  
7      that MERS could not, as a matter of law, have transferred the note to Citibank from the original  
8      lender, Bayrock Mortgage Corp. The Court's opinion is headlined stating that MERS and  
9      Citibank are not the real parties in interest.

10     74.     The court found that MERS acted "only as a nominee" for Bayrock under the Deed of  
11      Trust and there was no evidence that the note was transferred. The opinion also provides that  
12      "several courts have acknowledged that MERS is not the owner of the underlying note and  
13      therefore could not transfer the note, the beneficial interest in the deed of trust, or foreclose on  
14      the property secured by the deed", citing the well-known cases of *In Re Vargas* (California  
15      Bankruptcy Court), *Landmark v. Kesler* (Kansas decision as to lack of authority of MERS),  
16      *LaSalle Bank v. Lamy* (New York), and *In Re Foreclosure Cases* (the "Boyko" decision from  
17      Ohio Federal Court).

18     75.     The opinion states: **"Since no evidence of MERS' ownership of the underlying note  
19      has been offered, and other courts have concluded that MERS does not own the underlying  
20      notes, this court is convinced that MERS had no interest it could transfer to Citibank.  
21      Since MERS did not own the underlying note, it could not transfer the beneficial interest of  
22      the Deed of Trust to another. Any attempt to transfer the beneficial interest of a trust deed  
23      without ownership of the underlying note is void under California law."**

24     76.     Read that again: **"Any attempt to transfer the beneficial interest of a trust deed without  
25      ownership of the underlying note IS VOID UNDER CALIFORNIA LAW."**

26     77.     This conclusion was based upon California law cited in the opinion that the note and the  
27      mortgage are inseparable, with the former being essential while the latter is "an incident", and

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4 that an assignment of the note carries the mortgage with it, “while an assignment of the latter [the  
mortgage] alone is a nullity.”

5 78. As MERS must own the note in order to assign the incident deed of trust, **MERS is**  
6 **legally precluded from assigning the deed of trust for want of ownership of the note, and**  
7 **cannot assign the note in any event as it never owned it.**

8 79. MERS’ lack of ownership interest in promissory note is a matter of decided case law  
9 based on a record stipulation of MERS’ own lawyers in the MERS v. Nebraska Dept. of Finance  
10 decision.

11 **This opinion thus serves as a legal basis to challenge any foreclosure in California based on**  
12 **a MERS assignment; to seek to void any MERS assignment of the Deed of Trust or the note**  
13 **to a third party for purposes of foreclosure; and should be sufficient for a borrower to not**  
14 **only obtain a TRO against a Trustee’s Sale, but also a Preliminary Injunction barring any**  
15 **sale pending any litigation filed by the borrower challenging a foreclosure based on a**  
16 **MERS assignment.**

17 80. The Court concluded by stating: “Since the claimant, Citibank, has not established that it  
is the owner of the promissory note secured by the trust deed, Citibank is unable to assert a claim  
18 for payment in this case.” Thus, any foreclosing party which is not the original lender which  
19 purports to claim payment due under the note and the right to foreclose in California on the basis  
20 of a MERS assignment does not have the right to do so under the principles of this opinion.

21 81. This ruling is more than significant not only for California borrowers, but for borrowers  
nationwide, as this California court made it a point to cite non-bankruptcy cases as to the lack of  
22 authority of MERS in its opinion.

23 82. Further, this opinion is consistent with the prior rulings of the Idaho and Nevada Bankruptcy  
courts on the same issue, that being the lack of authority for MERS to transfer the note as it  
24 never owned it (and cannot, per MERS’ own contract which provides that MERS agrees not to  
25 assert any rights to mortgage loans or properties mortgaged thereby).

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4 83. Plaintiff is perplexed as to why HAL BARTOW and DEUTSCHE BANK NATIONAL  
5 TRUST ON BEHALF OF LSF-MRA PASS THRU TRUST would go to such great lengths to  
commit fraud when the act of assigning on MERS's behalf was distinctly moot from its onset.

6                   **VOID INSTRUMENTS CANNOT EFFECT TITLE –**  
7                   **NOR CAN CLEAR TITLE DERIVE FROM FRAUD**

8 84. Plaintiff alleges and believes that the Notice of Default is void because it did not comport  
9 with the strict provisions of the contract (Deed of Trust).

10 85. Because no one can impair Plaintiff's right to contract, the contract must be followed in  
11 its entirety and the alleged trustee was not the duly appointed trustee as of the recording date of  
12 the NOD which was February 16, 2010.

13 86. Due to the fact that the Notice of Default was void, any instrument subsequent to it is  
void as well.

14 87. The Notice of Default was filed fraudulently to facilitate foreclosure, when in fact it is a  
void and invalid instrument.

15 88. In the case of a fraudulent transaction California law is settled. The Court in Trout v.  
16 Trout, (1934), 220 Cal. 652 at 656 made as much plain:

17 "Numerous authorities have established the rule than an instrument wholly void, such as an  
18 undelivered deed, a forged instrument, or a deed in blank, cannot be made the foundation of a  
19 good title, even under the equitable doctrine of bona fide purchase. Consequently, the fact that  
20 defendant Archer acted in good faith in dealing with persons who apparently held legal title, is  
21 not in itself sufficient basis for relief." (Emphasis added, internal citations omitted).

22 89. Hence, if wrong parties and forged signatures are used to obtain the foreclosure, it  
23 CERTAINLY makes a difference in California and other non-judicial foreclosure states.

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26                   **FIRST CLAIM FOR RELIEF**  
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3                   **ENFORCEMENT FOR RESCISSION AND RESTORATION OF TITLE**  
4                   **(As Against DEUTSCHE BANK and REGIONAL and DOES 1-XXX)**  
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6         90. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint as if they  
7         were fully set forth herein.

8         91. An actual controversy exists in which the parties must ascertain their rights, duties and  
9         right to title in the Subject Property.

10         92. A judicial determination is necessary that the parties may ascertain their rights, duties and  
11         right to title in the Subject Property.

12         93. The parties desire that the court make a judicial determination as to their rights, duties  
13         and right to title in the Subject Property.

14         94. An actual controversy has arisen and now exists between Plaintiff and Defendants, and  
15         each of them, concerning their respective rights, obligations and duties as it relates to the Subject  
16         Property. In particular, on one hand, Plaintiff contends: (a) that Defendants DEUTSCHE BANK  
17         and REGIONAL have conducted an unlawful foreclosure against Plaintiff and his property; (b)  
18         that failing to comply with the deed of trust, California Civil Code and California Commercial  
19         Code as more particularly alleged in the complaint, defendants are not entitled to proceed with  
20         the foreclosure until such compliance occurs; and (c) on information and belief, that defendants  
21         are not otherwise entitled to continue with said foreclosure because of the lack of proper  
22         statutory execution of the deed of trust as more fully alleged in paragraphs 22 and 24 of the deed  
23         of trust.

24         95. Plaintiff desires a judicial determination of Defendants' rights, obligations and duties, and  
25         to enforce defendants to cancel and rescind the illegal foreclosure on Plaintiff's Subject Property.

26         96. Plaintiff alleges that Defendants, and each of them, are engaged in an illegal scheme, the  
27         purpose of which was to execute an illegal foreclosure secured by real property in order to hold  
28         an illegal trustee's sale and take title to Plaintiff's property by wrongful conveyance. Plaintiff

alleges that Defendants, and each of them, have represented to plaintiff and to third parties that they were the owner of the Trust Deed and Note as either the Trustee or the Beneficiary regarding Plaintiff's real property. Based on this representation they caused a Notice of Default to be issued and recorded without disclosing their true role, and thereafter to record an illegal Notice of Trustee's Sale which would lead to a public sale which and result in a wrongful conveyance to the fraudulent beneficiary. Defendants have no lawful security interest in the subject property to effectuate any of these proceedings.

97. Plaintiff alleges that based upon the foregoing representations that California Civil Code section 2924 et seq. and its subparts are being applied to Plaintiffs in a manner that is unlawful. The party acting as the Trustee has proceeded with the foreclosure of Plaintiff's Subject Property notwithstanding the fact that the Trustee knew or reasonably should have known it did not have the power to initiate foreclosure on February 16, 2010 and FORECLOSURE MANAGEMENT COMPANY knew or reasonably should have known it did not comply with California Civil Code 2923.5, 2932, 2932.5, 2924 et seq. because it had no assignment or beneficial interest to conduct such foreclosure. FORECLOSURE MANAGEMENT COMPANY knew or reasonably should have known it did not convey the power of sale to the alleged Trustee REGIONAL because it violated the terms of California Civil Code section 2932.5 and MARINA PREGEL-GAMBILL's fraudulent assignment vested no beneficial interest to Plaintiff's Deed of Trust.

98. Defendants have no standing to enforce a non-judicial foreclosure.

99. Defendants are strangers to this transaction, and had no authority to go forward with the foreclosure.

100. In California, California Civil Code § 2932.5 governs the Power of sale under an assigned mortgage, and provides that the power of sale can only vest in a person entitled to money payments: "Where a power to sell real property is given to a mortgagee, or other encumbrancer, in an instrument intended to secure the payment of money, the power is part of

the security and vests in any person who by assignment becomes entitled to payment of the money secured by the instrument. The power of sale may be exercised by the assignee if the assignment is duly acknowledged and recorded.”

101. Defendants cannot prove their right to foreclose unless more evidence is fabricated.

102. The power of sale may not be exercised by any of the Defendants since there was never a  
VALID assignment pursuant to California Civil Code §2932.5.

103. Since the Defendants did not comply with California Civil Code §2932.5, the Notice of Default provisions of California Civil Code § 2924 and Notice of Sale provisions of California Civil Code §2924(f) were likewise never complied with.

104. FORECLOSURE MANAGEMENT COMPANY and REGIONAL never complied with the Notice of Default provisions of California Civil Code §2924 and Notice of Sale provisions of California Civil Code §2924(f) because they had no capacity to perform.

105. That by virtue of the method and manner of Defendants carrying out Civil Code section  
2924 et seq., the foreclosure of the Subject Property is void ab initio as a matter of law and must  
rescind the Notice of Default and subsequent Trustee's Deed Upon Sale from Plaintiff's  
property.

106. Plaintiff alleges that Defendants, and each of them, are engaged in and continue to engage in violations of California law including but, not limited to: Civil Code section 2924 et seq. and 2932.5 et seq., and unless restrained will continue to engage in such misconduct, and that a public benefit necessitates that Defendants be restrained from such conduct in the future.

**FIRST CAUSE OF ACTION – TRESPASS ON THE CONTRACT**  
**(As Against FORECLOSURE MANAGEMENT COMPANY, REGIONAL and MARINA  
PREGEL-GAMBILL  
and Does 1 through XXX Inclusive)**

107. Plaintiff realleges and incorporates the preceding paragraphs of this Complaint as if they were fully set forth herein.

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4 108. The Deed of Trust is the contract which allows a non-judicial foreclosure to proceed and  
5 gives Power of Sale to the duly appointed Trustee. Per the Deed of Trust, only the Lender can  
6 invoke the foreclosure (paragraph #22).

7 109. Per Deed of Trust paragraph #24, the Lender may appoint a trustee. The Substitution of  
8 Trustee is void, due to fraud, and was not executed in compliance with California Civil Code  
9 2934(a). The Substitution of Trustee was invalid also because it was not executed by the Lender,  
10 per requirement of the Deed of Trust. The Substitution of Trustee in the instant matter was  
11 executed by a trespasser with no authority.

12 110. The actual duly appointed Trustee named under the Deed of Trust as of the recording of  
13 the Notice of Default on February 16, 2010 was STEWART TITLE GUARANTY and  
14 REGIONAL was not attempted to be substituted in as trustee until May 20, 2010, but it was still  
15 ineffective because the alleged beneficiary executing the Substitution of Trustee had NO  
16 POWER OR AUTHORITY OR CAPACITY TO EXECUTE OR RECORD THE  
17 SUBSTITUTION OF TRUSTEE.

18 111. In the Case of a Mortgage with a power of sale, an assignee can only enforce the power  
19 of sale if the assignment is recorded, since the assignee's authority to conduct the sale must  
20 appear in the public records, New York Life Insurance Co. V. Doane (1936) 13 CA 2d. 233, 235-  
21 237, 56 P2d. 984, 56 ALR 22.

22 112. The fraudulent assignment was recorded AFTER the Notice of Default, which proves the  
23 Notice of Default was void at its inception and recording on February 16, 2010.

24 113. A non-judicial foreclosure sale under the power-of-sale in a deed of trust or mortgage  
25 must be conducted in strict compliance with its provisions and applicable statutory law.

26 114. **A trustee's powers and rights are limited to those set forth in the deed of trust and**  
27 laws applicable thereto. (See, e.g., Fleisher v. Continental Auxiliary Co., (1963) 215 Cal.App.2d  
28 136, 139, 30 Cal.Rptr. 137; Woodworth v. Redwood Empire Sav. & Loan Assn., (1971) 22  
Cal.App.3d 347, 366, 99 Cal.Rptr. 373.)

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4 115. The trustee is charged with the duty to perform and condition precedent prior to bringing  
the instant action and failed to do so. Paragraph (20) of the Deed of Trust provides in pertinent  
5 part:

6 Neither borrow or lender may commence, join, or be joined to any judicial action (as either an  
7 individual litigant, or the member of a class, that arises from the other party's actions pursuant to  
8 this security instrument or alleges that the other party has breached any provision of, or any duty  
9 by reason of, this Security Instrument, until such borrower or lender has notified the other party  
10 (with such notice given in compliance with the requirements of section 15) of such alleged  
11 breach and afforded the other party hereto a reasonable period after giving of such notice to take  
12 corrective action. If applicable law provides a time period which must elapse before certain  
13 action can be taken, that time period will be deemed to be reasonable for the purposes of this  
14 paragraph. The notice of acceleration and notice to cure given to borrower pursuant to Section 22  
15 and the notice of acceleration given to borrower pursuant to Section 18 shall be deemed to  
16 satisfy the notice and opportunity to take corrective action provisions of this Section 20.

17 (Emphasis added.)

18 116. When there is an agreement between the Beneficiary and Trustor, such as the Condition  
Precedent expressed in Paragraphs 20, 22 and 24 of the Deed of Trust, a Foreclosure cannot take  
place before the condition is satisfied.

19 117. If the Beneficiary fails to carry out its obligation a subsequent foreclosure is invalid.

20 Haywood Lumber & Investment Co. V. Corbett (1934) 138 CA 644, 650, 33 P2d 41.

21 118. DEUTSCHE BANK , REGIONAL and MARINA PREGEL-GAMBILL have not  
22 complied with any expressed provisions of the Deed of Trust, have speciously trespassed upon  
23 the Deed of Trust and Plaintiff's property, and the foreclosure must be rendered void and  
24 rescinded and the trustee's deed upon sale cancelled immediately.

119. *California Civil Code 3513.* Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

120. *California Civil Code 3514.* One must so use his own rights as not to infringe upon the rights of another.

121. Trustors are systematically deprived of their rights to due process with no way to substantially enforce the law with regards to §2924 of the Civil Code which, as enforced in California, is akin to a freight train at full speed; the fuel for which is found in subsection (c) of that code that states: " A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of sale or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice."

122. Alone this provision irrationally denies equal rights to sue and gives evidence to mortgagees, whose properties were the victims of fraudulent foreclosures (foreclosures instituted or prosecuted by any party, principal, witness, or attorney willing, either knowingly or negligently, to present false recitations regarding compliance with statutory provisions regarding service and delivery of notices).

123. DEUTSCHE BANK, REGIONAL and MARINA PREGEL-GAMBILL have violated Title 42 USC 1983, by depriving Plaintiffs of the following clearly established and well-settled constitutional rights protected by the Fourth and Fourteenth Amendments to the U.S. Constitution and the invoked due process rights of Article(s) IV, and VI in Amendment to the federal constitution, contrary to Article I §10 (clause 1) of the federal constitution to wit:

The right not to have their contracts impaired, Article I, §10, clause 1;

The right of one not to be deprived of constitutionally protected interests in one's property; California Constitution § 1 Art. 1.

124. "Where administrative action may result in loss of both property and life, or of all that makes life worth living, any doubt as to the extent of power delegated to administrative officials is to be resolved in citizen's favor, and court must be especially sensitive to the citizen's rights where proceeding is non-judicial." United States v. Minker, 350 U.S.179(1956).

125. The Defendants have trespassed on Plaintiff's property and the deed of trust in concert as a scheme to divest Plaintiff of his property.

**SECOND CAUSE OF ACTION: DECEPTIVE BUSINESS PRACTICES**  
**(As Against DEUTSCHE BANK and REGIONAL and Does 1 through XXX, Inclusive)**

126. Plaintiff realleges and incorporates the preceding paragraphs of this Complaint as if they were fully set forth herein.

127 The entire foreclosure process has been conducted utilizing a string of fraudulent documents. If the invalid assignment purporting to the alleged beneficial interest is fraudulent, then there is no basis in which to foreclose. Void Assignment of the Deed of Trust, and a void Substitution of Trustee, which wasn't even valid at its onset, has resulted in an entirely void foreclosure on its face. The signatories had no authority on which to act and involved an employee with conflicting interests to legally execute documents.

128. Cal. False Claims Act, Cal. Gov't. Code 12650 et. seq. : Cause for using false and misleading claims through filing recordable documents *presumed to be true by virtue of statutory compliance with filing requirements, yet carry no validity due to parties' lack of standing to issue and by notarized documents bearing false information.*

"Fraud destroys the validity of everything into which it enters," *Nudd v. Burrows*, 91 U.S. 426. "Fraud vitiates everything," *Bovce v. Grundy*, 3 Pet. 210. "Fraud vitiates the most solemn

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3 contracts, documents and even judgments," *U.S. v. Throckmorton*, 98 U.S. 61. Therefore  
4 (whatever action) .....should be dismissed for fraud.

5 129. Plaintiff alleges that Defendants, and each of them, knew at the time they made these  
6 representations to Plaintiff that they were untrue, and defendants knew at the time that they were  
7 attempting to foreclose on Plaintiff's Trust Deed and note that they had no right to do so.

8 130. Plaintiff alleges that Defendants cannot affirmatively prove that they have complied with  
9 each of the statutory requirements for foreclosure.

10 131. Each of them, intentionally and fraudulently have attempted to convert Plaintiff's right,  
11 title and interest to his property, and any equity therein.

12 132. Additionally, Plaintiff has been made to suffer deep and severe emotional distress  
13 mortification, anxiety and humiliation all to his damage and injury in an amount the totality of  
14 which has not yet been fully ascertained, but in no event less than the jurisdiction limitations of  
15 this court.

16 133. Defendants' conduct as set forth above was intentional, oppressive fraudulent and  
17 malicious so as to justify an award of punitive damages in an amount sufficient that such conduct  
18 will not be repeated.

19 134. Defendants do not have standing or enforceable right to enforce the note and any  
20 incidental right to collateral so as to have foreclosed on Plaintiff's Home, including without  
21 limitation, conducting the invalid foreclosure sale on the property.

22 135. Defendants threaten to, and unless restrained, will evict Plaintiff if a trustee's sale is held.

23 136. Any such action will cause irreparable harm to Plaintiff, and will cause pecuniary  
24 compensation which will not afford adequate relief because Plaintiff's Home is unique.

25 137. Injunctive relief is necessary to enjoin Defendants from proceeding with and  
26 consummating the illegal foreclosure sale with a wrongful eviction since they lacked standing  
27 and any enforceable rights under the Promissory Note and deed of trust.

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3                   **THIRD CAUSE OF ACTION: WRONGFUL CONVERSION**

4                   **(As Against DEUTSCHE BANK and REGIONAL and Does 1 through XXX, Inclusive)**

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6       138. Plaintiff realleges and incorporates the preceding paragraphs of this Complaint as if they  
7       were fully set forth herein.

8       139. Defendants DEUTSCHE BANK and REGIONAL's invalid foreclosure proceeding is a  
9       result of wrongful conversion of Plaintiff's property.

10      140. The Defendants wrongfully converted the trespass on Plaintiff's contract to an  
11       alleged interest in their property and have clouded Plaintiff's property with void documents.

12      141. Plaintiff respectfully requests the Court to order Defendants to rescind the Notice of  
13       Default and restore clean title to Plaintiff accordingly.

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16                   **FOURTH CAUSE OF ACTION FOR SLANDER OF TITLE**

17                   **(As Against DEUTSCHE BANK, REGIONAL, and MARINA PREGEL-GAMBILL  
and Does 1 through XXX Inclusive )**

18       142. Plaintiff realleges and incorporates the preceding paragraphs of this Complaint as if they  
19       were fully set forth herein.

20       143. Plaintiff contends that his property has been slandered with invalid and fraudulent  
21       foreclosure documents recorded in the Riverside County Recorder's Office.

22       144. The recordation of an instrument facially valid but without underlying merit will, of  
23       course, give rise to an action for slander of title (Forte v. Nolfi (1972) 25 Cal.App.3d.656, 685-  
24       686 [102 Cal.Rptr. 455]).

25       145. Given weight to the invalidity of the foreclosure proceeding, trespass on the deed of trust  
26       and inability to prove holder in due course status, Defendants acted without privilege to

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4 disparage Plaintiff's title and said actions constitute a Slander of Title by Disparagement under  
5 Cal. Civil Code 40.81.

6 146. Defendants are intimidating Plaintiff with wrongful foreclosure threats. A definition of  
7 the tort for slander, perhaps more pertinent to the facts of this case, is to be found in Fearon v.  
8 Fodera (1915) 169 Cal. 370, at pages 379 and 380 [148 P. 200], as follows: "Slander of title," as  
9 recognized by the law, may be defined to be defamation of title to property, real or personal, by  
10 one who falsely and maliciously disparages the title thereto, and thereby causes the owner  
11 thereof some special pecuniary loss or damage. "Admittedly under this definition slander of title  
12 may be committed by maliciously clouding the title to real property and causing damage to the  
13 owner thereof by the execution, willful acceptance, and malicious recordation of a deed, which  
14 falsely declares the title of the property involved to be in a person other than the true owner."

15 147. Plaintiff is aware that title has not been fraudulently conveyed to Defendant  
16 FORECLOSURE MANAGEMENT COMPANY yet, but the Trustee's Sale once scheduled  
17 would undoubtedly cause irreparable harm to Plaintiff and lead to an invalid Trustee's Deed  
18 Upon Sale to be recorded.

19 148. California has adopted the definition of the tort of slander of title set forth in section 624  
20 of the Restatement of Torts, which provides: "One who, without a privilege to do so, publishes  
21 matter which is untrue and disparaging to another's property in land .... under such circumstances  
22 as would lead a reasonable man to foresee that the conduct of a third person as purchaser or  
23 lessee thereof might be determined thereby is liable for pecuniary loss resulting to the other from  
24 the impairment of vendibility thus caused." (Howard v. Schaniel (1980) 113 Cal.App. 3d 256,  
25 263-264 [169 Cal.Rptr. 678]; see Gudger v. Manton (1943) 21 Cal.2d 537, 541 [134 P.2d 2170].

26 149. Under 392 of the Code of Civil Procedure, said, in Coley v. Hecker, 206 Cal. 22, 272 P.  
27 1045, 1047, ...'the owner of the slandered title is given the right to bring and maintain the action  
28 in the county where the real property is situated, upon the theory that the action is one in which

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3 the determination of the owner's right or interest therein is properly adjudicated, and for the  
4 additional reason that slander of title is an injury to real property.'

5 150. The Court then went on to say 'The phrase 'slander of title' is a figure of speech in which  
6 the title is personified. In the instant case, the phrase seems to be an anomaly as applied to a  
7 situation which, strictly speaking, is a libel upon the title, inasmuch as the damage was  
8 accomplished by the recordation of a written document, and no spoken words were uttered.  
9 However, the term 'slander of title' includes both spoken and written means by which the right of  
10 property may be invaded and a right of action exists, irrespective of the means by which the title  
11 is traduced. This is so because a property right has been invaded-- an injury to real property has  
12 been sustained.'

13 151. This language of the highest court of the state is entitled to great weight, and this view of  
14 'slander of title' as an injury to property is repeated in Smith v. Stuteman, 79 Cal.App.2d 708,  
15 181 P.2d 123, 124. In the Smith case the question was whether an action for slander of title  
16 survived the death of the defendant, 574, Probate Code. The question there was whether a  
17 trespass on real property which survives the death of a defendant includes an action for slander  
18 of title. In holding that it did, the Court pointed out that trespass has a broadened meaning today  
19 and now includes consequential injuries to realty such as an action for slander of title, as well as  
direct physical injuries.

20 152. We quote from Smith v. Stuteman, 79 Cal.App.2d 708, 181 P.2d 123, 124:  
21 'Slander of title is a tort action for redress of an invasion of a particular property right, that of  
immediate salability of the property involved. Coley v. Hecker, 206 Cal. 22, 27, 272 P. 1045;  
22 Restatement, Torts, sec. 624. As a cause of action arising out of a violation of a property right it  
survives the death of its owner. Civil Code, sec. 954; Wikstrom v. Yolo Fliers Club, 206 Cal.  
23 461, 464, 274 P. 959. It has been held that it necessarily follows that such a cause of action also  
survives the death of the defendant. Vragnizan v. Savings Union, etc., Co., 31 Cal.App. 709, 713,  
24 161 P. 507.

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4 153. Plaintiff prays the Court order Defendants to cancel the foreclosure by rescinding the  
Notice of Default and restore clear title to Plaintiff. This is relief that can be granted.  
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6 **FIFTH CAUSE OF ACTION: VIOLATION OF CALIFORNIA CIVIL CODE 2923.5**  
7 **(As Against REGIONAL SERVICES CORPORATION and Does 1 through XXX**  
8 **Inclusive)**

9 154. Plaintiff repeats and realleges the preceding paragraphs as though fully set forth herein.  
10 Defendants cannot prove that the nonjudicial foreclosure which has commenced, strictly  
11 complied with the tenets of California Civil Code 2923.5 and 2924 in order to justify their illegal  
12 foreclosure.

13 155. The California Legislature passed Senate Bill 1137, impacting residential mortgage  
lenders, foreclosure procedures and eviction procedures. This law is effective immediately and  
14 extends on to January 1, 2013. The Statute amends provisions of the non-judicial foreclosure  
15 procedures found in California Civil Code 2924, by adding requirements for meetings, due  
16 diligence, and notification of counseling. The primary purpose for the Statute is foreclosure  
17 procedures imposes an unprecedented duty upon lenders relating to contact with borrowers.  
18 As of the recording date of the Notice of Default, February 16, 2010, California Civil Code  
19 2923.5 applied to Plaintiff's loan. Prior to filing a Notice of Default, California Civil Code  
20 2923.5 provides in pertinent part:

- 21 (a)(1) A trustee may not file a notice of default pursuant to Section 2924 until 30 days  
22 after contact is made as required by paragraph (2) or 30 days after satisfying the due  
diligence requirements as described in subdivision (g). In either case, the borrower shall  
23 be provided the toll-free telephone number made available by the United States  
Department of Housing and Urban Development (HUD) to find a HUD-certified housing  
24 counseling agency. Any meeting may occur telephonically.  
25 (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  
26 foreclosure. During the initial contact, the mortgagee, beneficiary, or authorized agent

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3 shall advise the borrower that he or she has the right to request a subsequent meeting and,  
4 if requested, the mortgagee, beneficiary , or authorized agent shall schedule the meeting  
5 to occur within 14 days.

6 156. The Lender in this case did not provide any of these pre-requisites. Plaintiff was never  
7 contacted to assess their financial situation and were not given any options in order to avoid  
8 foreclosure. Plaintiff would have requested a meeting at his home within 14 days if he had been  
9 advised of that option.  
10

11 (b) A notice of default filed pursuant to Section 2924 shall include a declaration from the  
12 mortgagee, beneficiary, or authorized agent that it has contacted the borrower, tried with  
13 due diligence to contact the borrower as required by this section, or the borrower has  
14 surrendered the property to the mortgagee, trustee, beneficiary, or authorized agent.

15 157. The required declaration is improper. A certified copy of Defendants' Notice of Default  
16 is attached as Exhibit 2 and is evidence that CC 2923.5 was not complied with because the  
17 declaration made on by Cheryl L. Tran on behalf of REGIONAL SERVICES CORPORATION  
18 is void. This is undisputable and Defendants cannot replace or reverse a document that's already  
19 been recorded in the public records of Riverside County Recorder's Office. They simply cannot  
20 say they have complied with California Civil Code 2924 or 2923.5 because it simply is not true.  
21 The mortgagee, beneficiary, or authorized agent never complied with the provisions of 2923.5 of  
22 California Civil Code in its entirety as prescribed.  
23

24 158. Plaintiff is informed and believes and thereupon alleges that the Notice of Default was  
25 invalid and unenforceable due to the intentional and willful violations including, but not limited  
26 to failing to comply with CC 2923.5.  
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28 159. Plaintiff respectfully requests the Court to order Defendants to rescind the Notice of  
Default.  
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**SIXTH CAUSE OF ACTION: FILING OF A FALSE DOCUMENT**

(Against Defendants FORECLOSURE MANAGEMENT COMPANY, MARINA  
PREGEL-GAMBILL, ANNA EGDORF, REGIONAL, HAL BARTOW and Does 1-  
XXX Inclusive)

160. Plaintiff repeats, re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs of all allegations and re-plead the same as set out in full with the same force and effect.

161. Defendant ANNA EGDORF executed the Notice of Default and made entirely false statements, causing a void and invalid instrument to be recorded against Plaintiff's property.

162. The Notice of Default states, "That by reason thereof, the present Beneficiary under such  
Deed of Trust, has executed and delivered to said duly appointed Trustee, a written Declaration  
of Default and Demand for Sale, and has deposited with said agent such Deed of Trust and all  
documents evidencing obligations secured thereby". However, Plaintiff has already proven that  
**FORECLOSURE MANAGEMENT COMPANY** was NOT the beneficiary on February 16,  
2010. CHERYL L. TRAN made false statements, which included that California Civil Code  
2923.5 had been complied with.

163. Also, it would have been physically and financially impossible to have any documents evidencing possession of the obligations secured thereby.

164. The Notice of Default, recorded February 16, 2010 states that, "REGIONAL SERVICES CORPORATION is acting as an agent for the Beneficiary under a Deed of Trust...". However, the alleged Beneficiary (DEUTSCHE BANK) did not become beneficiary as required by California Civil Code 2934 and recorded in the Riverside County Recorder's Office until April 14, 2010.

165. HAL BARTOW executed the Assignment of Deed of Trust perpetrating as a MERS employee, which he lacked authority and capacity in doing.

166. HAL BARTOW filed a document that was false, when he alleged being beneficiary of the deed of trust and alleged that the note was transferred with the Assignment of Deed of Trust.

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3 167. MERS has no authority to assign, and MERS never had any interest in the note.  
4 It is physically impossible to assign something that one has NO interest in.

5 168. Defendants FORECLOSURE MANAGEMENT COMPANY and REGIONAL knew or  
6 reasonably should have known, that neither entity was authorized to cause the Notice of Default  
7 to be recorded, which was a false document.

8 169. REGIONAL knew or reasonably should have known that they COULD NOT file the  
9 instrument "Notice of Default" without first being acknowledged as the substituted trustee,  
10 which is a provision mandated by the Deed of Trust agreement.

11 170. Defendants, by causing the filing of false documents to occur, without proper authority or  
12 capacity are in violation of California Penal Code 115.

13 14. According to *California Penal Code* §115 states:

14 (a) Every person who knowingly procures or offers any false or forged instrument to be  
15 filed, registered, or recorded in any public office within this state, which instrument, if  
16 genuine, might be filed, registered, or recorded under any law of this state or of the  
United States, is guilty of a felony.

16 (b) Each instrument which is procured or offered to be filed, registered, or recorded in  
17 violation of subdivision (a) shall constitute a separate violation of this section.

18 171. Here, REGIONAL did not become duly appointed trustee until May 20, 2010,  
19 DEUTSCHE BANK did not become alleged beneficiary until April 14, 2010, California Civil  
20 Code 2923.5 was never complied with, MARINA PREGEL-GAMBILL had no authority or  
21 capacity to assign any interest in the deed of trust and/or note, for which she had no interest in,  
22 and ANNA EGDORF made false declarations in the Notice of Default which she knew or  
reasonable should have known to be false. Plaintiffs can cut fraud here with a butter knife.

23 172. ANNA EGDORF and MARINA PREGEL-GAMBILL's knowingly signing and filing a  
24 document they knew or reasonably should have known, as false on behalf of FORECLOSURE  
25 MANAGEMENT COMPANY completely voids all subsequent actions taken by all parties  
26 involved to illegally foreclose on Plaintiffs without STANDING.

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4 173. The Defendants ANNA EGDORF, MARINA PREGEL-GAMBILL, FORECLOSURE  
5 MANAGEMENT COMPANY and REGIONAL did not exercise "due care" which is a violation  
6 of the California Evidence Code §669 .

7       *California Evidence Code §669 states in pertinent part:*

- 8       (a) The failure of a person to exercise due care is presumed if: (1) He violated a statute,  
9 ordinance, or regulation of a public entity; has violated a statute, the failure of them to  
10 exercise due care will be presumed.

11 174. Because of the filing of the false documents (the Notice of Default and Substitution of  
12 Trustee and Assignment of Deed of Trust) and the subsequent actions taken by Defendants  
13 FORECLOSURE MANAGEMENT COMPANY, REGIONAL, ANNA EGDORF, HAL  
14 BARTOW and MARINA PREGEL-GAMBILL, the Plaintiff has been seriously harmed  
15 suffering the damage against the title to his property and clouding his title accordingly.

16 175. The Plaintiff prays for relief from this court and asks that the court order the Defendants  
17 FORECLOSURE MANAGEMENT COMPANY and REGIONAL to rescind the Notice of  
18 Default recorded February 16, 2010.

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20                   **SEVENTH CAUSE OF ACTION: INTENTIONAL MISREPRESENTATION**  
21                   **(Against REGIONAL SERVICES CORPORATION, DEUTSCHE BANK NA,**  
22                   **REGIONAL, ANNA EGDORF and MARINA PREGEL-GAMBILL and Does 1 through**  
23                   **XXX Inclusive)**

24 176. Plaintiff repeats, re-alleges and incorporates herein by reference each and every  
25 allegation set forth in the preceding paragraphs of all allegations and re-pleads the same as set  
26 out in full with the same force and effect.

27 177. Plaintiff is informed and believes that the representation as stated on the Notice of  
28 Default and each of them were a false representation in the following particulars:

- a. Documents were not provided to the trustee evidencing the obligation of the debt.

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3 b. Documents were not provided to the trustee that showed the Beneficiary was entitled to  
4 payment.

5 c. At the time Defendants made the representations, they knew they were false and were  
6 made for the sole purpose of inducing reliance and confusing Plaintiff.

7 178. The Notice of Default was recorded February 16, 2010 purporting to FORECLOSURE  
8 MANAGEMENT COMPANY as the Beneficiary, which is a misrepresentation.  
9 FORECLOSURE MANAGEMENT COMPANY was NOT the beneficiary on February 16,  
10 2010 and the Assignment of Deed of Trust recorded February 16, 2010 is void.

11 179. The Deed of Trust indicates a MIN#. This identifier indicates that it was part of the  
12 MERS system or database. The search on the MERS website clearly indicates +  
13 CARRINGTON MORTGAGE SERVICES LLC is the loan servicer but Plaintiffs question the  
14 database's record for the Investor as being CARRINGTON MORTGAGE SERVICES LLC.  
15 The MERS Printout is attached as Exhibit 6. This is a misrepresentation, as Plaintiff is not in  
16 receipt of any evidence that CARRINGTON MORTGAGE SERVICES LLC is the investor,  
17 creditor or beneficiary of Plaintiff's loan.

18 180. Plaintiff has made multiple attempts and requests for CARRINGTON MORTGAGE SERVICES  
19 LLC to provide evidence of the correct beneficiary of Plaintiff's loan and to no avail, have not  
received a clear and distinct answer.

20 181. Defendant REGIONAL and DEUTSCHE BANK have intentionally misrepresented the  
21 alleged holder in due course of Plaintiff's loan and to date, Plaintiff has no definite proof as to  
22 the true holder as Defendants have essentially played hot potato with Plaintiff's loan with the  
23 filing of false documents.

24 182. Defendant ANNA EGDORF intentionally misrepresented that she could execute the  
25 Notice of Default against Plaintiffs when the Notice of Default named parties that had no  
standing, authority or capacity to foreclose.

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4 183. Defendant HAL BARTOW intentionally misrepresented that he could have assigned the  
Note and Deed of Trust to alleged beneficiary DEUTSCHE BANK when he had no standing,  
authority or capacity to utilize MERS to do so.

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6 184. Defendant REGIONAL intentionally misrepresented that they were the duly appointed  
trustee of Plaintiff's Deed of Trust, when in reality, they had no standing, authority or capacity as  
a trustee with true power of sale.  
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9

### **CONCLUSION**

10 WHEREFORE, having set forth numerous legally sufficient causes of actions against the  
11 Defendants, Plaintiff prays for the entry of Final Judgment against all Defendants jointly and  
12 severally, and that the Court finds their oppressive and wanton behavior justifies the illegal  
13 foreclosure deemed void; that the foreclosure which was instituted be deemed and declared  
14 illegal and void and that further proceedings in connection with the foreclosure be enjoined; and  
15 for any other and further relief which is just and proper.  
16

### **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby requests a trial by jury of no less than twelve (12) persons on all issues so triable  
18 pursuant to California Civil Procedure 192 and 220.  
19  
20

### **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:  
22

- 23 1. For award of damages against Defendants and each of them on Plaintiff's claims  
as applicable as alleged above in an amount to be shown at trial if title is not restored;  
24  
25 2. For restoration of title;  
26  
27 3. For an order of rescission on behalf of named Plaintiff;  
28

4. For a temporary restraining order and preliminary and permanent injunction on behalf of Plaintiff against DEUTSCHE BANK in addition to each and every one of their respective officers, agents, employees, servants, and attorneys, and those persons in active concert or participation with any of them or each of them, as specifically alleged above from transferring any interest in the subject property, from proceeding with any eviction action as to the Plaintiffs and their residence and/or proceeding with any collection action against the Plaintiff;

5. For a judgment for the Plaintiff for all money damages available in a sum to be determined if Defendants do not restore title to Plaintiff;

6. For an award of attorney fees to the Plaintiff for his reasonable attorney's fees, court costs and necessary disbursements incurred in connection with this lawsuit; and,

7. For such other and further relief as the Court deems just and equitable.

Dated this 29 day of December, 2010.

ALBERT C. HENDERSON JR., PRO PER

## VERIFICATION

I, ALBERT C. HENDERSON JR, am the Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, we believe it to be true. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this \_\_\_\_\_ day of December, 2010, in Hemet, California.

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3 ALBERT C. HENDERSON JR  
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5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **THE NOTE AND MORTGAGE (DEED OF TRUST) ARE INSEPARABLE**

7 Kirby v. Williams 230 F2d 330 (US Court of Appeals, 5<sup>th</sup> cir.) Feb 10, 1956, Rehearing denied  
8 Apr. 24, 1956 states: “**the note and mortgage are inseparable, the former as essential, the**  
9 **latter as an incident. An assignment carries the mortgage with it, while an assignment of**  
10 **the latter is a nullity.**”

11 Instant matter: presenting a copy of a note with the excuse of “customary procedure” is  
12 inadmissible. **See:** In United States of America v. Hibernia Nat'l. Bank, 841 F2d 592 96 A.L.R.  
13 Fed. 895, 5 UCC Rep. Serv. 2d 1392, U.S. Court of Appeals, 5<sup>th</sup> cir. Apr. 5, 1988. Rehearing and  
14 Rehearing En Banc Denied May 9, 1988, the Court stated: “**Hibernia's reliance on commercial**  
15 **custom is misplaced, commercial custom does not apply where the UCC provides otherwise.**”  
16 Plaintiff has no evidence that DEUTSCHE BANK NATIONAL TRUST ON BEHALF OF LSF-  
17 MRA PASS THRU TRUST is a true holder in due course and that they have anything other than  
18 just a “copy” of the alleged note in question and the fraudulent assignment, the groundwork of a  
19 fraudulent foreclosure. This is inexcusable and shows the intent of DEUTSCHE BANK  
20 NATIONAL TRUST ON BEHALF OF LSF-MRA PASS THRU TRUST to deceive and  
21 misrepresent their true status.

22 **Perry v. Fairbanks, 888 So. 2d 725, 727:** The note must be returned to the issuer/maker to  
23 remove it from the stream of commerce so as not to create the probability of recurring debt  
24 (**double jeopardy**) by another “holder”. If DEUTSCHE BANK NATIONAL TRUST ON  
25 BEHALF OF LSF-MRA PASS THRU TRUST brings the claim of right, title and interest, which  
26 is not possible in this matter, they would be required to bring the original Note and allonge for

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3 surrenderring purposes so as not to further damage Plaintiff, ALBERT C. HENDERSON.  
4 Undoubtedly, the Note is stamped "Pay to Order of \_\_\_\_\_ Without Recourse," thus  
5 making it a Bearer Instrument and susceptible to third party claims.  
6

7 **Carpenter v. Longan, 83 US 271, 274 21 L.Ed. 313 (1872):** The Note and Deed are  
8 inseparable. In this case, the Note and Deed have been separated from the beginning. This act  
9 alone determines that the acts of DEUTSCHE BANK NATIONAL TRUST ON BEHALF OF  
10 LSF-MRA PASS THRU TRUST have been without authority. See; Restatement Property, 3<sup>rd</sup>.

11  
12 **In Re Leisure Time Sports, Inc. 194 B.R. 859, 861 (9<sup>th</sup> cir. 1996)** stating that: "*[a] security*  
13 *interest cannot exist, much less be transferred, independent from the obligation which it*  
14 *secures and that, if the debt is not transferred, neither is the security interest.*" DEUTSCHE  
15 BANK NATIONAL TRUST ON BEHALF OF LSF-MRA PASS THRU TRUST has not, and  
16 cannot ever, evidence to this court that the Note and Deed were kept together or that any valid  
17 assignments were ever given in this matter. Since the original beneficial holder made no  
18 assignment to DEUTSCHE BANK NATIONAL TRUST ON BEHALF OF LSF-MRA PASS  
19 THRU TRUST, DEUTSCHE BANK NATIONAL TRUST ON BEHALF OF LSF-MRA PASS  
20 THRU TRUST takes the assignment as it was given to them, with no power of sale. Further, *the*  
21 *assignment evidenced by* DEUTSCHE BANK NATIONAL TRUST ON BEHALF OF LSF-  
22 MRA PASS THRU TRUST *as their proof of claim is void for illegal and improper filing with*  
*the County Recorders' Office.*

23  
24 **Kelly v. Upshaw, 39 Cal. 2d 179, 192, 246 P2d 23 (1952):** "*assigning only the deed without a*  
25 *transfer of the note is completely ineffective;* see also: Restatement of Property (3d)  
26 (*Mortgages*) § 5.4 stating: "*A mortgage may be enforced only by, or in behalf of, a person*  
*who is entitled to enforce the OBLIGATION that the mortgage secures.*" (emphasis mine).

Again, DEUTSCHE BANK NATIONAL TRUST ON BEHALF OF LSF-MRA PASS THRU TRUST fails to evidence their substantive right to invoke this courts' jurisdiction, making them subject to a lack of standing to even plead before this court.

## **INJUNCTIVE RELIEF IS PROPER AND JUST**

A private party may seek declaratory and injunctive relief against state actions on the basis of Federal preemption where a federal right exists [*Bernhardt v. Los Angeles County (9<sup>th</sup> cir. 2003) 339 F3d 920, 929*]. Plaintiff IS entitled to due process and has been denied that right by virtue of FORECLOSURE MANAGEMENT COMPANY and DEUTSCHE BANK NATIONAL TRUST ON BEHALF OF LSF-MRA PASS THRU TRUST availing themselves of the Courts' jurisdiction through the statutory scheme of non-judicial foreclosure.

**Injunctive Relief:** likelihood of irreparable injury: party must demonstrate irreparable injury is likely in the absence of injunction [Winter v. Natural Resources Defense Council, Inc. (2008) See: Freedom Holdings, Inc. v. Spitzer (2<sup>nd</sup> cir. 2005) 408 F3d 112, 114-irreparable injury is the “single most important prerequisite for the issuance of a preliminary injunction.” In this instant matter, Plaintiff would be irreparably harmed by the illegal unlawful detainer proceeding as a direct result of the illegal foreclosure sale proceeding without proper authority in that they would lose possession of their property through the Defendants’ abuse of the California statutory scheme of non-judicial foreclosure.

**“Sufficient serious questions make them a fair ground for litigation plus the balance of hardships tipped sharply in plaintiffs favor.”** [ Dept. of Parks and Rec. for state of Calif. V. Bazaar Del Mundo, Inc. (9<sup>th</sup> cir. 2006) 448 F3d 1118,1123; Cliffs Notes, Inc. v. Bantam Doubleday Dell Pub. Group, Inc. (2<sup>nd</sup> cir. 1989) 886 F2d 490, 497; See also: J. Ginsburg Dissent Opn. In Winter v. Natural Resources Defense Council, Inc., *supra* US at , 129 S.ct. at 392- *court may evaluate claims for equitable relief on a “sliding scale”, awarding relief based upon a lower likelihood of harm when the likelihood of success is very high..*

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4     **Evidentiary considerations:** A preliminary injunction is customarily granted on the basis of  
5     procedures less formal and evidence less complete than at trial. Therefore, plaintiff need not  
6     prove his case at a preliminary injunction hearing...Plaintiff's evidence *need not meet summary*  
7     *judgment standards. (FRCP)*

8  
9     *"Because the note in question was not payable 'to order or to the bearer', the plaintiff payee*  
10     *did not 'hold in due course'.* [Pascal v. Tardera (1986) 123 A.D. 2d 752, 507 N.Y.S. 2d 225];  
11     *"where an instrument is neither payable to order or to bearer, no one can qualify as a holder*  
12     *in due course,"* [Key Bank of S.E New York v. Strober Bros., Inc. (1988) 136 A.D. 2d 604,  
13     523 N.Y.S. 2d 855]. Defendant FORECLOSURE MANAGEMENT COMPANY has exhibited  
14     no evidence of having the holder in due course status needed to pursue this matter and cannot  
15     ever bring said evidence before this court, nor can they ever evidence being or representing the  
16     true creditor. This necessary element precludes FORECLOSURE MANAGEMENT COMPANY  
17     from exercising any power or authority over the subject property.

18     "Where administrative action may result in loss of both property and life, or of all that makes life  
19     worth living, any doubt as to the extent of power delegated to administrative  
20     officials is to be resolved in citizen's favor, and court must be especially sensitive to the citizen's  
21     rights where proceeding is non-judicial." United States v. Minker, 350 U.S.179(1956).

22  
23                 **ANY MERS ASSIGNMENT TO ANY ENTITY IS A NULLITY AND IS VOID**  
24                 **FOR LACK OF AUTHORITY TO ASSIGN ANY INTEREST AS THERE IS NONE!**  
25     MERS, Inc. could never have given any rights to DEUTSCHE BANK NATIONAL TRUST ON  
26     BEHALF OF LSF-MRA PASS THRU TRUST (even if it wasn't a forgery) because it did not  
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3 possess the note at the time of the recorded assignment, which is still void for violations of state  
4 and federal laws. MERS, Inc. argued in the above case that: “*it is not authorized to engage in*  
5 *the practices that would make it a party to enforcement or transfer of mortgages.*” Non-  
6 judicial foreclosure is an obvious enforcement action and attempt to collect a debt by  
7 extortionate means within the state of California and, therefore, MERS, Inc. or any of its fatally  
8 assigned “beneficiaries” lacks the authority to invoke the statutes or laws within this state.  
9

10 **Mtg. Electronic Reg. Sys., Inc. v. Nebraska Dep’t. of Banking and Finance, 704 N.W. 2d**  
11 **784, 786-787 (Neb. 2005) :** MERS, Inc. represented that it “*only holds legal title to members’*  
12 *mortgages in a nominee capacity and is contractually prohibited from exercising any rights*  
13 *with respect to the mortgages (i.e., foreclosures) without the authorization of its members.”*

14 **MERS, Inc Assignment does not confer standing or authority:** See: **In re Sheridan, 2009**  
15 **WL 631355, \*4(Bankr. D. Idaho 2009); in re Mitchell, 2009 WL 1044368, \*3-4(Bankr. D.**  
16 **Nev. 2009); in re Jacobson, 402 B.R. 359, 367 (Bankr. W.D. Wash. 2009).** As noted in the  
17 **Sheridan Court,** MERS, Inc. “collects no money from the debtors under the note(s), nor will  
18 it realize the value of the property through the foreclosure of the deed of trust in the event  
19 the note is not paid.” 2009 W.L. 631355 at \*4. MERS, Inc. and FORECLOSURE  
20 MANAGEMENT COMPANY have never had any pecuniary or financial interest in the subject  
21 property and lack standing to invoke the non-judicial foreclosure statutory scheme within the  
22 state of California.

23 **Saxon Mortgage Services, Inc. v. Ruthie B. Hillery No. C-08-4357 EMC (Docket no. 7) US**  
24 **Dist. Court For Northern Dist. Of Calif.: “Because MERS has no financial interest in the**  
25 *note, it will suffer no injury if the note is not paid and will realize no benefit if the D.O.T. is*  
26 *foreclosed. Accordingly, MERS, Inc. cannot satisfy the requirements of constitutional*  
27 *standing. GMAC, as MERS’ assignee of the D.O.T., “stands in the shoes” of the assignor,*

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3        *taking only those rights and remedies the assignor would have had.* [Hunnicut Constr. Inc. v.  
4        Stewart Title & Trust of Tucson, Trust No. 3496, 187 Az. 301, 304 (Ct. App. 1996) *citing*  
5        Van Waters & Rogers v. Interchange Res., Inc., 114 Az. App. 414, 417 (1971); In re  
6        Boyajian, 367 B.R. 138, 145 (9<sup>th</sup> cir. BAP 2007)]. It is well settled law and is therefore a  
7        functional impossibility for MERS, Inc. to have assigned any rights to power of sale, substitution  
8        of trustee, non-judicial foreclosure.

9        **Bellistri v. Ocwen, 284 SW 3d, 619 (Missouri Appeal, cert. denied); In re Vargas (Cal.  
10      B.K.) 396, Bankr. 517; Supreme Court State of Kansas, Landmark Nat'l Bank v. Kesler,  
11      Mortgage Electronic Registration Systems, Inc. (MERS) No. 98, 48:** In these and all cases  
12      listed above, the courts demonstrated that MERS, Inc.'s capacity is limited and that MERS, Inc.  
13      never had the authority to execute the assignments. The courts all held the assignments to be  
14      invalid. Even in the light most favorable to DEUTSCHE BANK NATIONAL TRUST ON  
15      BEHALF OF LSF-MRA PASS THRU TRUST in this case, the assignment allegedly made and  
16      filed by them is void and invalid on its face for false information in the instrument as filed by  
17      FORECLOSURE MANAGEMENT COMPANY.

18        **DEFENDANTS CANNOT BENEFIT FROM RECORDING FALSE DOCUMENTS**

19        **Generes v. Justice Court, 106 Cal. App. 3d 678, 165 Cal. Rptr. 222 (3<sup>rd</sup> Dist. 1980); People  
20      v. Baender, 68 Cal. App. 49, 228 P. 536 (1<sup>st</sup> Dist. 1924): "knowingly recording spurious  
21      documents for the record with intent to defraud."** Every person who files a false or forged  
22      document with the County Recorder that affects title to, or places an encumbrance on, or places  
23      an interest secured by a mortgage or deed of trust on, real property....with knowledge that the  
24      document is false or forged is punishable by statute (Cal. Penal Code § 115.5 (a)(b)(c)(d)). The  
25      word "knowingly" in the statute does not import intent, but merely refers to knowledge of the  
26      essential facts. In the case of a deed, the crime is complete when the deed has been prepared so  
27      that upon its' face it will have the effect of defrauding one who acts upon it as genuine.  
28      Defendants have knowingly filed documents within Riverside County Recorder's Office that are

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3 unquestionably false and patently misleading to those relying on them as being true and correct,  
4 thus damaging Plaintiff by the invalid trustee's deed upon sale that was most likely directed by  
5 FORECLOSURE MANAGEMENT COMPANY and clouding Plaintiff's title. The entire  
6 foreclosure proceeding is a baseless, invalid monstrosity and is the foundation for Plaintiff's  
7 case.

8                   *California Civil Code §3517 No one can take advantage of his own wrong.*

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## Exhibit 1

# Deed of Trust

# NORTH AMERICAN TITLE CO.

Recording Requested By:

Accredited Home Lenders, Inc.

A California Corporation

Return To:

Accredited Home Lenders, Inc.  
Attn: Post Closing Dept.  
16550 West Bernardo Dr. Bldg 1  
San Diego, CA 92127-1870

DOC # 2007-0433307

07/02/2007 08:00A Fee:66.00

Page 1 of 20

Recorded in Official Records

County of Riverside

Larry W. Hard

Assessor, County Clerk & Recorder



Prepared By:

Accredited Home Lenders, Inc.  
A California Corporation  
10900 Stonelake Blvd. Suite 350  
Austin, TX 78759

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## DEED OF TRUST

MIN 100176107052576872

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### 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 22, 2007 together with all Riders to this document.

(B) "Borrower" is ALBERT C. HENDERSON JR., AN UNMARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY

Borrower's address is 11 CELESTE RANCHO SANTA MARGARITA, CA 92688 . Borrower is the trustor under this Security Instrument.

(C) "Lender" is Accredited Home Lenders, Inc.  
A California Corporation

Lender is a Corporation  
organized and existing under the laws of the State of California

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CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

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VMP .6A(CA) (0207)

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Initials: AF

VMP MORTGAGE FORMS - (800)521-7291

Lender's address is **10900 Stonelake Blvd. Suite 350**  
**Austin, TX 78759**

(D) "Trustee" is **STEWART TITLE GUARANTY**

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

(F) "Note" means the promissory note signed by Borrower and dated **June 22, 2007**

The Note states that Borrower owes Lender **three hundred forty thousand and 00/100**

Dollars

(U.S. \$ 340,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **July 1, 2037**

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

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

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

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

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

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

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

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

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

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

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

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

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

**TRANSFER OF RIGHTS IN THE PROPERTY**

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

County of RIVERSIDE

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

See Legal Description Addendum Page Attached

Parcel ID Number: 454-352-023  
2035 SILVER DROP LANE  
HEMET  
("Property Address"):

which currently has the address of  
[Street]  
[City], California 92545 [Zip Code]

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

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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

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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

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Initials: 

Form 3005 1/01

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.

**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:

Albert C. Henderson, Jr. (Seal)  
ALBERT C HENDERSON, JR. -Borrower

\_\_\_\_\_(Seal)  
-Borrower

0705257687

State of California  
County of *Riverside*

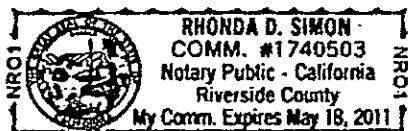
} ss.

On *26 June 2007*  
ALBERT C HENDERSON Jr.

before me, *Rhonda D. Simon, Notary Public*  
personally appeared

(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.



*Rhonda D. Simon* (Seal)  
EXP. May 18, 2011

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

THIS INTEREST ONLY ADJUSTABLE RATE RIDER is made this 22nd day of June , 2007 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Interest Only Adjustable Rate Note (the "Note") to **Accredited Home Lenders, Inc., A California Corporation** ("Lender") of the same date and covering the property described in the Security Instrument and located at:

2035 SILVER DROP LANE  
HEMET, CA 92545  
[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

**A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

The Note provides for an initial interest rate of 6.500 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the 1st day of July, 2012, and the adjustable interest rate I will pay may change on the first day of every sixth month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

**(B) The Index**

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

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

### **(C) Calculation of Changes**

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

For each Change Date prior to the Change Date immediately preceding the First Principal and Interest Payment Due Date, the Note Holder will determine the amount of my monthly payment by calculating one twelfth (1/12) of the amount of yearly interest due at my new interest rate. The result of this calculation will be the new amount of my monthly payment.

For the Change Date immediately preceding the First Principal and Interest Payment Due Date and for each subsequent Change Date, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at such Change Date in full on the maturity date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

### **(D) Limits on Interest Rate Changes**

The interest rate I am required to pay at the first Change Date will not be greater than 12.500 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than Two percentage points from the rate of interest I have been paying for the preceding six(6) months. My interest rate will never be greater than 12.500 % or less than 2.250%.

### **(E) Effective Date of Changes**

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

### **(F) Notice of Changes**

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

### **(G) Date of First Principal and Interest Payment**

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the first one hundred twenty (120) payments under this Note are due.

## **B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.**

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

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

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

|                                 |      |          |      |
|---------------------------------|------|----------|------|
| <u>Albert C. Henderson, Jr.</u> | Date | Borrower | Date |
| Borrower                        | Date | Borrower | Date |
| Borrower                        | Date | Borrower | Date |
| Borrower                        | Date | Borrower | Date |
| Borrower                        | Date | Borrower | Date |

## LEGAL DESCRIPTION ADDENDUM

Borrower Name(s):  
ALBERT C HENDERSON Jr.

Lender:  
Accredited Home Lenders, Inc.  
A California Corporation  
10900 Stonelake Blvd. Suite 350  
Austin, TX 78759

Loan #: 0705257687

Property Address:  
2035 SILVER DROP LANE  
HEMET, CA 92545

Legal Description:  
**LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.**

Initials 

EXHIBIT "A"  
(LEGAL DESCRIPTION)

PARCEL 1:

LOT 123 OF TRACT NO. 30558-1, IN THE CITY OF HEMET, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 364, PAGES 22 THROUGH 28, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

EASEMENTS AND RIGHTS OF OWNERS AS SET FORTH IN THAT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COTTONWOOD, RECORDED ON FEBRUARY 4, 2005, AS INSTRUMENT NO. 2005-0177477 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, AND ANY AMENDMENT THERETO ("DECLARATION").

# Exhibit 2

## Notice of Default

RECORDING REQUESTED BY  
CALIFORNIA TITLE COMPANY

1147182-38

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

REGIONAL TRUSTEE SERVICES CORPORATION  
616 1st Avenue, Suite 500  
Seattle, WA 98104  
Trustee's Sale No: 05-FM-90747

DOC # L10-0066671

02/16/2010 08:00A Fee:27.00

Page 1 of 4

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



| S | R | U | PAGE | SIZE | DA   | MISC | LONG | RFD  | COPY |
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NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

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**IMPORTANT NOTICE**

**IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION,** and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property.

No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice). This amount is \$18,125.04 as of 2/10/2010, 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 to 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 end of 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).

Pursuant to California Civil Code Section 2923.5, the mortgagee, beneficiary, or authorized agent 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 OR the undersigned certifies that the compliance with Civil Code Section 2923.5 was made at least thirty (30) days prior to the date of this Notice of Default and Election to Sell Under Deed of Trust.

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure or if your property is in foreclosure for any other reason, contact:

FORECLOSURE MANAGEMENT COMPANY  
C/O REGIONAL SERVICE CORPORATION  
616 1st Avenue, Suite 500  
Seattle, WA 98104  
(206) 340-2550

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 REGIONAL SERVICE CORPORATION, is either the duly appointed Trustee, the substitute Trustee or acting as agent for the Beneficiary under a Deed of Trust dated 6/22/2007, executed by ALBERT C. HENDERSON JR, AN UMARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY, as Trustor, to secure obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ACCREDITED HOME LENDERS, INC., as Beneficiary, recorded 7/2/2007 , as Instrument No. 2007-0433307, of Official Records in the office of the Recorder of RIVERSIDE County, CALIFORNIA, as more fully described on said deed of trust including one note(s) for the sum of \$340,000.00. That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred as follows:

FAILURE TO PAY INSTALLMENTS OF PRINCIPAL, INTEREST, IMPOUNDS AND LATE CHARGES WHICH BECAME DUE 8/1/2009 TOGETHER WITH ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL, INTEREST, IMPOUNDS, LATE CHARGES, FORECLOSURE FEES AND EXPENSES; ANY ADVANCES WHICH MAY HEREAFTER BE MADE; ALL OBLIGATIONS AND INDEBTEDNESSES AS THEY BECOME DUE; AND ANY INSTALLMENTS ALREADY MADE, THAT AT A LATER DATE PROVE TO BE INVALID.

That by reason thereof, the present beneficiary under such Deed of Trust, has executed and delivered to said Trustee, a written Declaration and Demand for Sale, and has deposited with said Trustee, such Deed of Trust and all the 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: 2/10/2010

Regional Service Corporation, Trustee  
By , Anna Egdorf, Authorized Agent

By \_\_\_\_\_



BENEFICIARY DECLARATION OF COMPLIANCE WITH (OR EXCEPTION FROM)  
CALIFORNIA CIVIL CODE §2923.5 AND AUTHORIZATION OF AGENT (FOR NOTICE OF  
DEFAULT)

FORECLOSURELINK, INC.  
4401 HAZEL AVE, STE 225  
FAIR OAKS CA 95628

Borrower(s): ALBERT HENDERSON

Beneficiary: Vericrest Financial, Inc.  
Property: 2035 SILVER DROP LANE

HEMET                   CA 92545  
Loan No.: 9800815103  
TS No.: \_\_\_\_\_

The undersigned beneficiary<sup>1</sup> or authorized agent for the beneficiary hereby represents and declares that:

1. [ ] The beneficiary or beneficiary's authorized agent has contacted the borrower pursuant to, and has complied with, Civil Code § 2923.5(a)(2) (contact provision to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure"). State the date "contact" with the borrower(s) was accomplished pursuant to Civil Code § 2923.5(a) (2): 1-03-2007, 2007.

2. [✓] The beneficiary or beneficiary's authorized agent has exercised due diligence to contact the borrower as required by Civil Code § 2923.5(g) and, after waiting two weeks after the telephone call requirements of Civil Code § 2923.5(g)(2) were satisfied, the beneficiary or the beneficiary's authorized agent sent to the borrower(s), by certified mail, return receipt requested, the letter required by Civil Code § 2923.5(g)(3), which was mailed on: 1-03-2007.

3. [ ] Pursuant to Civil Code § 2923.5(h)(1), the borrower has surrendered the secured property as evidenced by either a letter confirming the surrender or by delivery of the keys to the secured property to the beneficiary, the beneficiary's authorized agent or to the trustee. The surrender letter was received on: \_\_\_\_\_; the keys were received on: \_\_\_\_\_.

<sup>1</sup> "Beneficiary" as used herein shall include "mortgagee".

4. [ ] Pursuant to Civil Code § 2923.5(h)(2), the beneficiary or beneficiary's authorized agent has evidence in its file, and reasonably believes, that the borrower has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and to avoid their contractual obligations to beneficiaries.

5. [ ] Pursuant to Civil Code § 2923.5(h) (3), the beneficiary or the beneficiary's authorized agent has verified information that, on or before the date of this declaration, the borrower(s) has filed for bankruptcy, and the proceedings have not been finalized. "Finalized" is not defined by Civil Code § 2923.5(h) (3). For purposes of this Civil Code section, trustee, foreclosure agent and/or their authorized agent is defining the term as either: (1) an order entered on the court's docket closing the file by the court; or, (2) an order entered on the court's docket dismissing the bankruptcy case. If the beneficiary or the beneficiary's agent interprets "finalized" in another manner, please state the basis upon which the beneficiary believes that the bankruptcy has not been "finalized".

The undersigned authorizes the trustee, foreclosure agent and/or their authorized agent to sign, on behalf of the beneficiary/authorized agent, the notice of default containing the declaration required pursuant to Civil Code § 2923.5(b).

Dated: 12/30/09

(Beneficiary's/Authorized Agent's signature)

Print Name: Cherry L. Rice

2. *Wetland* (wet meadow) (wet grassland) (wet prairie) (wet savanna)

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## Exhibit 3

# Assignment of Deed of Trust

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DOC # 2010-0171499

04/14/2010 08:00A Fee:24.00

Page 1 of 3

Recorded in Official Records

County of Riverside

Larry W. Ward

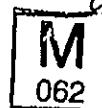
Assessor, County Clerk & Recorder



Prepared by and after Recording  
Return to:

Foreclosure Management Company  
10500 Barkley, Suite 102  
Overland Park, KS 66212  
19519CA09

| S | R | U | PAGE | SIZE | DA   | MISC | LONG | RFD  | COPY |
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### ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, the undersigned, Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for Accredited Home Lenders, Inc., whose address is 4318 Miller Rd, Flint, MI 48501-2026, "Assignor," does hereby grant, sell, assign, transfer and convey to Deutsche Bank National Trust Company on behalf of LSF MRA Pass-Through Trust whose address is 1761 East St. Andrew Place Santa Ana, CA 92705, "Assignee," all interest of the undersigned Assignor in and to the following described Deed of Trust:

Date of Deed of Trust: June 22, 2007

Executed by: Albert C. Henderson Jr., an unmarried man as his sole and separate property

To and in favor of: Mortgage Electronic Registration Systems, Inc. as nominee for Accredited Home Lenders, Inc.

Filed of Record: in Instrument/Document No.2007-433307 of the Public Records of Riverside County, California, on 07/02/2007.

Property Address: 2035 Silver Drop Lane Hemet, CA 92545

Legal Description: See Exhibit A

Given: to secure a certain Promissory Note in the amount of \$340,000.00 payable to Beneficiary.

Commonly known as: 2035 Silver Drop Lane Hemet, CA 92545

Parcel No.: 454-352-023

Together with the note(s) and obligations therein described or referred to, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Mortgage.

TO HAVE AND TO HOLD the same unto Assignee and unto its successors and assigns forever, subject only to the terms and conditions of the above-described Deed of Trust.

Assignor is the present holder of the above-described Deed of Trust.

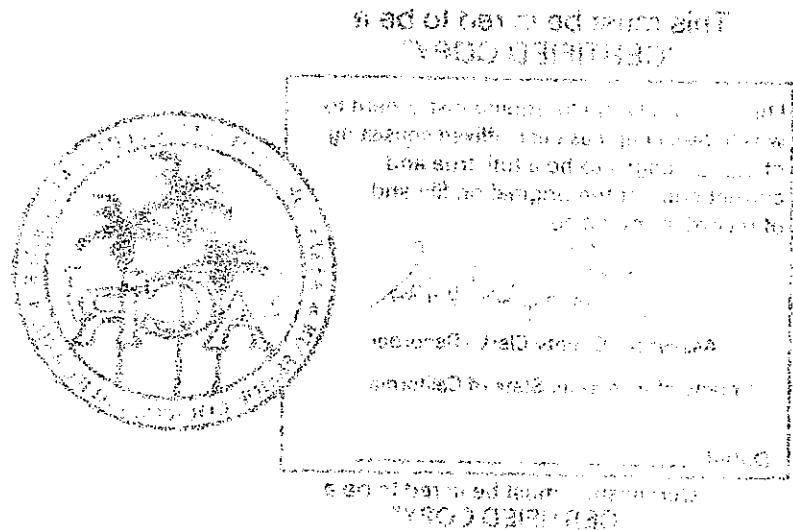
## Exhibit "A"

### PARCEL 1:

LOT 123 OF TRACT NO. 30558-1, IN THE CITY OF HEMET, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 364, PAGES 22 THROUGH 28, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

### PARCEL 2:

EASEMENTS AND RIGHTS OF OWNERS AS SET FORTH IN THAT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COTTONWOOD, RECORDED ON FEBRUARY 4, 2005, AS INSTRUMENT NO. 2005-0177477 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, AND ANY AMENDMENT THERETO ("DECLARATION").



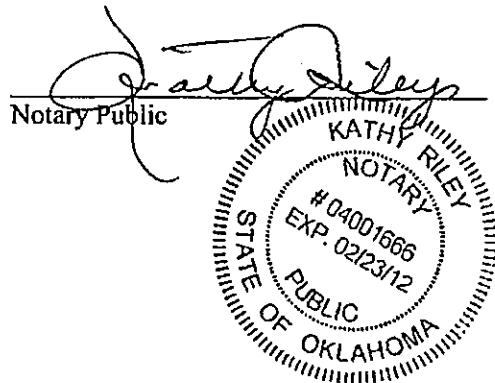
Executed this the 5 day of April, 2010.

Mortgage Electronic Registration Systems,  
Inc., as nominee for as nominee for Accredited  
Home Lenders, Inc.

By: Hal Bartow, AVP.  
Its:

STATE OF Oklahoma }  
COUNTY OF Oklahoma } SS.  
                        }

On the 5 day of April, in the year 2009, before me, the undersigned, personally  
appeared Hal Bartow, AVP., personally known to me or proved to me on the basis of  
satisfactory evidence to be the individual(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 capacity(ies), that by  
his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the  
individual(s) acted, executed the instrument, and that such individual made such appearance before the  
undersigned in the State of Oklahoma.



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10     Substitution of Trustee  
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RECORDING REQUESTED BY  
CALIFORNIA TITLE COMPANY

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1147182-38

Recording Requested By

When recorded, mail to:

REGIONAL TRUSTEE SERVICES CORPORATION  
616 1st Avenue, Suite 500  
Seattle, WA 98104

DOC # 2010-0233399

05/20/2010 08:00A Fee:21.00

Page 1 of 2

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



Trustee's Sale No: 05-FM-90747



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SUBSTITUTION OF TRUSTEE

(21)

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WHEREAS ALBERT C. HENDERSON JR, AN UNMARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY was the original Trustor, and STEWART TITLE GUARANTY was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ACCREDITED HOME LENDERS, INC. was the original Beneficiary under that certain Deed of Trust dated 6/22/2007, and recorded on 7/2/2007 under Instrument No. 2007-0433307, records of RIVERSIDE County, CALIFORNIA; and WHEREAS, Deutsche Bank National Trust Company on behalf of LSF MRA Pass-Through Trust, 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 the place and stead of said original Trustee thereunder,

NOW, THEREFORE, the undersigned hereby substitutes REGIONAL SERVICE CORPORATION, a California corporation, whose address is 616 1st Avenue, Suite 500, Seattle, WA 98104, as Successor 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: FEB 12 2010

Deutsche Bank National Trust Company on  
behalf of LSF MRA Pass-Through Trust

By MARINA PRIGEL-GAMBILL  
AUTHORIZED SIGNATORY

(Name - Title)

*\*MAPINA PRECEL-GAMBILL*

STATE OF OK )  
COUNTY OF OK ) ss.

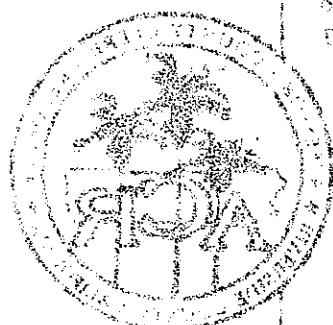
On FEB 12 2010 before me, Kathy Riley

Notary Public personally appeared \*MAPINA PRECEL-GAMBILL, 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.

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

WITNESS my hand and official seal.

*Kathy Riley*  
NOTARY PUBLIC



50-103-01-Sub-A  
MAPINA PRECEL-GAMBILL

STATE OF OKLAHOMA  
NOTARY PUBLIC  
#04001666  
EXPIRES 02/23/12  
KATHY RILEY  
NOTARY  
SUBSTITUTE SIGNATURE  
MAPINA PRECEL-GAMBILL  
FEB 12 2010  
CA Sub

## Exhibit 5

Fannie Mae Release 98-06

## Addendum 1

Fannie Mae Release 98-06 states the following:

"A trustee that is not the original trustee named in the mortgage documents must not submit the "notice of default" for recordation in connection with a non-judicial foreclosure of a California property until after a "substitution of trustee" has been recorded. When the "notice of default" is recorded first, it may carry the name of the trustee of record or the name of the new trustee. If the "notice of default" is recorded in the name of the trustee of record, that trustee will have no knowledge of the foreclosure and the powers, duties, and authority of the trustee will actually be exercised by a trustee that is not yet of record. If the "notice of default" names the new trustee, that trustee is acting without power because (under Section 2934a of the California Civil Code) it is the filing of the "substitution of trustee" that provides authority to the new trustee. When a "substitution of trustee" is required in connection with non-judicial foreclosures in California, a servicer should make sure that the trustees it uses have the "substitution of trustee" recorded before the "notice of default" is recorded. The two documents can be submitted for recordation on the same day, as long as the trustee requests that the "substitution of trustee" be recorded immediately before the "notice of default".

Further arguments to support that the Trustee was unlawful is that when a Notice of Default is filed, the Substitution of Trustee must be sent to "required persons" at that time. If the Trustee is changed after the Notice of Default, then it needs to be sent prior to the Notice of Trustee Sale. So, if the Substitution of Trustee was not sent with the Notice of Default, then the indication was that the Substitution Procedure was unlawful.

Former trustees and all others who are not the properly appointed and serving trustee at the time of the step taken will be unable to convey title and the sale will be "void" and not just "voidable". See *Dimock v Emerald Props.* (2000) 81 CA 3th 868, 97 CR2d 255.

In Dimock, the trustee service agent abandoned the notice of default recorded by a substituted-in trustee when it discovered an earlier notice of default recorded by the predecessor trustee, without mollifying the documents installing the new trustee, the service agent conducted a trustee sale and had the former trustee sign the trustee's deed. The Court of Appeal held that the sale "void" and not just "voidable" because the former trustee had no power to convey title at the time of sale. Moreover, the borrower was not required to tender a payoff of the loan as it would have been required to do if the borrower were seeking an equitable remedy.

## Exhibit 6

## MERS Printout



Process Loans, Not Paperwork™

**1 record matched your search:**

|   |                       |                    |
|---|-----------------------|--------------------|
| MIN: 1001761-0705257687-2                                 | Note Date: 06/22/2007 | MIN Status: Active |
| Servicer: Carrington Mortgage Services LLC<br>Fishers, IN | Phone: (800) 561-4567 |                    |
| Investor: Carrington Mortgage Services LLC<br>Fishers, IN | Phone: (800) 561-4567 |                    |

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[Return to Search](#)

For more information about MERS please go to [www.mersinc.org](http://www.mersinc.org)

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1           Albert C. Henderson Jr.  
2           2035 Silver Drop Lane  
3           Hemet, California 92545

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

DEC 30 2010

J. Karnes

Plaintiffs in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF RIVERSIDE

ALBERT C. HENDERSON JR.,

Case No.: RIC-10024960

Plaintiffs,

vs.

CARRINGTON MORTGAGE SERVICES;  
VERICREST FINANCIAL;  
REGIONAL TRUSTEE SERVICES;  
DEUTSCHE BANK NATIONAL TRUST  
ON BEHALF OF LSF-MRA PASS THRU  
TRUST;  
FORECLOSURE MANAGEMENT  
COMPANY C/O REGIONAL SERVICE  
CORPORATION;  
GMAC MODEL HOME FINANCE;  
ANNEMARIE TUKES, an individual;  
MARINA PREGEL-GAMBIL, an  
individual;  
CHERYL C. TRAN, an individual;  
HAL BARTOW, an individual;  
ANNA EGDORF, an individual;  
and DOES 1-XXX, Inclusive  
Defendants.

REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF  
FOR ENFORCEMENT OF RESCISSION AND  
CANCELLATION OF FORECLOSURE;  
TRESPASS ON CONTRACT; DECEPTIVE  
BUSINESS PRACTICES; WRONGFUL  
CONVERSION; SLANDER OF TITLE;  
VIOLATION OF CALIFORNIA CIVIL CODE  
2923.5; FILING FALSE DOCUMENTS ;  
INTENTIONAL MISREPRESENTATION

[*Verified Complaint filed concurrently herewith*]

TO THE COURT, ALL INTEREST PARTIES AND THEIR ATTORNEY OF RECORD:

Plaintiff, ALBERT C. HENDERSON JR, (hereinafter "Plaintiff"), request pursuant to Evidence

Code 450, et seq., that the Court take judicial notice of the following documents in connection  
1 with his Verified Complaint, and submits their Complaint concurrently herewith:

- 2        1. Associated Press article regarding Bank of America's disclosure that Employees or  
3 contractors have testified in court cases that they signed, and in some cases backdated documents  
4 for home seizures and has caused suspended foreclosures because of flawed documents, copy  
5 attached as Exhibit 1.
- 6        2. A Deed of Trust recorded July 2, 2007 in the County of Riverside Recorder's Office,  
7 bearing instrument number 2007-0433307, a true and correct copy of which is attached hereto as  
8 Exhibit 2.
- 9        3. A Notice of Default and Election to Sell Under Deed of Trust recorded on February 16,  
10 2010, in the County of Riverside Recorder's Office, bearing instrument number 2010-0066671, a  
true and correct copy of which is attached as Exhibit 3.
- 11        4. An Assignment of Deed of Trust to Deutsche Bank National Trust Company on behalf of  
12 LSF MRA Pass-Through Trust HAL BARTOW perpetrating as a MERS employee and recorded  
13 April 14, 2010, in the County of Riverside Recorder's Office, bearing instrument number 2010-  
14 0171499, a true and correct copy of which is attached hereto as Exhibit 4.
- 15        5. A Substitution of Trustee executed by Deutsche Bank National Trust Company on behalf  
16 of LSF MRA Pass-Through Trust representative Marina Pregel-Gambill perpetrating as a MERS  
17 employee and recorded May 20, 2010, in the County of Riverside Recorder's Office, bearing  
18 instrument number 2010-0233399, a true and correct copy of which is attached hereto as  
19 Exhibit 5.
- 20        6. A court order from MERS v. Chong, et al, USDC Nevada Case Number BK-S-07-16645-  
21 LBR, evidencing prima facie evidence of MERS lack of standing, copy attached hereto as  
Exhibit 6.
- 22        7. A court order from Luis E. Gallardo USDC California BK Case 10-04710-MM7,  
23 evidencing prima facie evidence MERS has no standing, as Exhibit 7.
- 24        8. A court order from Rickie Walker USDC California BK Case 10-21656-E-11  
25 evidencing prima facie evidence that BAC was denied proof of claim, lack of standing without  
26 evidence of owning the note, and MERS had no standing to assign, as Exhibit 8.
- 27        9. IRS Publication – proof REMIC must be in compliance with IRS Code 860(D)(a)(4),

copy attached hereto as Exhibit 9.

Dated: December 29, 2010

By: \_\_\_\_\_

Albert C. Henderson Jr

By: \_\_\_\_\_

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# Exhibit 1

# AP Article

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**From:** M Graham (monica\_graham@rocketmail.com)  
**To:** slucoresr@yahoo.com;  
**Date:** Tue, November 16, 2010 2:51:33 PM  
**Cc:**  
**Subject:** Fw: Bank of America making changes in foreclosure PRINT THIS FOR THE JUDICIAL NOTICE

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## Bank of America making changes in foreclosure

Bank of America says it's making changes in foreclosure process after review

 Associated Press

Email Print

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Marcy Gordon, AP Business Writer, On Tuesday November 16, 2010, 2:19 pm

WASHINGTON (AP) — Bank of America is telling a Senate panel it is making changes in its foreclosure process after an extensive review found areas needing improvement.

The bank is one of several big mortgage lenders that recently suspended foreclosures temporarily because of concern over flawed documents. Bank of America found in its review that its foreclosure decisions weren't based on inaccurate documents but did see ways the paperwork could be improved, a bank executive says in testimony prepared for a hearing Tuesday by the Senate Banking Committee.

Among the changes, the legal documents used in the process will each be reviewed by the signer and promptly notarized, said Barbara Desoer, president of the bank's home loans division.

Desoer said the bank is replacing and resubmitting affidavits that were filed previously in about 102,000 foreclosure cases that haven't yet gone to judgment in the 23 states where courts play a role in the process. Also, Charlotte, N.C.-based Bank of America is putting in new procedures for selecting and monitoring the law firms it retains to process foreclosures.

"We are taking the need for improvement very seriously and are implementing changes accordingly," Desoer said in her testimony.

The Senate banking panel was examining the issue amid growing concern over the disarray stemming from flawed foreclosure documents. A congressional watchdog said in a report issued Tuesday that the disarray could threaten major banks with billions of dollars in losses, deepen the disruption in the housing market and hurt the government's effort to keep people in their homes.

Revelations that several big mortgage companies sped through thousands of home foreclosures without properly checking paperwork already have raised alarm in Washington. If the irregularities are widespread, the consequences could be severe, the Congressional Oversight Panel said in the report. The full impact is still unclear, the report cautions.

Employees or contractors of several major banks have testified in court cases that they signed, and in some cases backdated, thousands of certifying documents for home seizures. Financial firms that service a total \$6.4 trillion in mortgages are involved, according to the new report. In addition to Bank of America Corp., JPMorgan Chase & Co.

<http://us.mg3.mail.yahoo.com/dc/launch?.ex=1&.rand=5an3obuo3n8bo>

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and Ally Financial Inc.'s GMAC Mortgage have suspended foreclosures for some period because of flawed documents.

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Federal and state regulators, including the Federal Reserve and attorneys general in all 50 states, are investigating whether mortgage companies cut corners on their own procedures when they moved to foreclose on people's homes.

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Iowa Attorney General Tom Miller, who is leading the states' probe, was scheduled to testify at the hearing Tuesday afternoon. Also expected to appear was the head of Chase's home loan division and the CEO of Mortgage Electronic Registration Systems Inc., or MERS, the system set up so that banks could track a mortgage and avoid paying fees each time one was transferred. Lawyers for homeowners have argued that MERS lacks the documentation to prove mortgage ownership.

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# Exhibit 2

## Deed of Trust

# NORTH AMERICAN TITLE CO.

Recording Requested By:  
 Accredited Home Lenders, Inc.  
 A California Corporation  
 Return To:  
 Accredited Home Lenders, Inc.  
 Attn: Post Closing Dept.  
 16550 West Bernardo Dr. Bldg 1  
 San Diego, CA 92127-1870

DOC # 2007-0433307

07/02/2007 08:00A Fee:66.00

Page 1 of 20

Recorded In Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



Prepared By:  
 Accredited Home Lenders, Inc.  
 A California Corporation  
 10900 Stonelake Blvd. Suite 350  
 Austin, TX 78759

| S | R | U | PAGE | SIZE | DA   | MISC | LONG | RFD  | COPY |
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## DEED OF TRUST

MIN 100176107052576872

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### 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 22, 2007 together with all Riders to this document.

(B) "Borrower" is ALBERT C. HENDERSON JR., AN UNMARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY

Borrower's address is 11 CELESTE RANCHO SANTA MARGARITA, CA 92688 . Borrower is the trustor under this Security Instrument.

(C) "Lender" is Accredited Home Lenders, Inc.  
 A California Corporation

Lender is a Corporation  
 organized and existing under the laws of the State of California

0705257687

CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3005 1/01

VMP-6A(CA) 10207

Page 1 of 15

Initials:

VMP MORTGAGE FORMS - (800)521-7291

Lender's address is **10900 Stonelake Blvd. Suite 350**  
**Austin, TX 78759**

(D) "Trustee" is **STEWART TITLE GUARANTY**

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

(F) "Note" means the promissory note signed by Borrower and dated **June 22, 2007**

The Note states that Borrower owes Lender **three hundred forty thousand and 00/100**

Dollars

(U.S. \$340,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **July 1, 2037**

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

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

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

Adjustable Rate Rider  
 Balloon Rider  
 VA Rider

Condominium Rider  
 Planned Unit Development Rider  
 Biweekly Payment Rider

Second Home Rider  
 1-4 Family Rider  
 Other(s) [specify]

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

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

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

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

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

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

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

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

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

#### TRANSFER OF RIGHTS IN THE PROPERTY

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

County of RIVERSIDE :

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

See Legal Description Addendum Page Attached

Parcel ID Number: 454-352-023  
2035 SILVER DROP LANE  
HEMET  
("Property Address"):

which currently has the address of  
[Street]  
[City], California 92545 [Zip Code]

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to 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 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:

Albert C. Henderson, Jr. (Seal)  
ALBERT C HENDERSON, JR. -Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

0705257687

State of California  
County of *Riverside*

} ss.

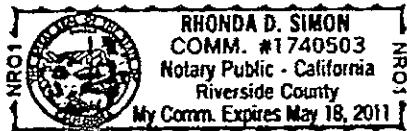
On *26 June 2007*  
**ALBERT C HENDERSON Jr.**

before me, *Rhonda D. Simon, Notary Public*  
personally appeared

(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.

*Rhonda D. Simon* (Seal)  
EXP. May 18/2011



## LEGAL DESCRIPTION ADDENDUM

Borrower Name(s):  
ALBERT C HENDERSON Jr.

Lender:  
Accredited Home Lenders, Inc.  
A California Corporation  
10900 Stonelake Blvd. Suite 350  
Austin, TX 78759

Loan #: 0705257687

Property Address:  
2035 SILVER DROP LANE  
HEMET, CA 92545

Legal Description:  
**LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.**

Initials 

EXHIBIT "A"  
(LEGAL DESCRIPTION)

PARCEL 1:

LOT 123 OF TRACT NO. 30558-1, IN THE CITY OF HEMET, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 364, PAGES 22 THROUGH 28, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

EASEMENTS AND RIGHTS OF OWNERS AS SET FORTH IN THAT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COTTONWOOD, RECORDED ON FEBRUARY 4, 2005, AS INSTRUMENT NO. 2005-0177477 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, AND ANY AMENDMENT THERETO ("DECLARATION").

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

THIS INTEREST ONLY ADJUSTABLE RATE RIDER is made this 22nd day of June , 2007 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Interest Only Adjustable Rate Note (the "Note") to **Accredited Home Lenders, Inc., A California Corporation** ("Lender") of the same date and covering the property described in the Security Instrument and located at:

2035 SILVER DROP LANE  
HEMET, CA 92545  
[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

**A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

The Note provides for an initial interest rate of 6.500 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the 1st day of July, 2012, and the adjustable interest rate I will pay may change on the first day of every sixth month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

**(B) The Index**

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

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

### **(C) Calculation of Changes**

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

For each Change Date prior to the Change Date immediately preceding the First Principal and Interest Payment Due Date, the Note Holder will determine the amount of my monthly payment by calculating one twelfth (1/12) of the amount of yearly interest due at my new interest rate. The result of this calculation will be the new amount of my monthly payment.

For the Change Date immediately preceding the First Principal and Interest Payment Due Date and for each subsequent Change Date, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at such Change Date in full on the maturity date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

### **(D) Limits on Interest Rate Changes**

The interest rate I am required to pay at the first Change Date will not be greater than 12.500 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than Two percentage points from the rate of interest I have been paying for the preceding six(6) months. My interest rate will never be greater than 12.500 % or less than 2.250%.

### **(E) Effective Date of Changes**

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

### **(F) Notice of Changes**

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

### **(G) Date of First Principal and Interest Payment**

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the first one hundred twenty (120) payments under this Note are due.

## **B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.**

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

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

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

|                                     |      |          |      |
|-------------------------------------|------|----------|------|
| <u>Albert C. Henderson, Jr.</u>     | Date | Borrower | Date |
| Borrower<br>ALBERT C HENDERSON, Jr. |      | Borrower |      |
| Borrower                            | Date | Borrower | Date |
| Borrower                            | Date | Borrower | Date |
| Borrower                            | Date | Borrower | Date |

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16      **Exhibit 3**  
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RECORDING REQUESTED BY  
CALIFORNIA TITLE COMPANY

1147182-38

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

REGIONAL TRUSTEE SERVICES CORPORATION  
616 1st Avenue, Suite 500  
Seattle, WA 98104  
Trustee's Sale No: 05-FM-90747

DOC # LJ10-0066671

02/16/2010 08:00A Fee:27.00

Page 1 of 4

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



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| M | A | L | 465  | 426  | PCOR | NCOR | SMF  | NCHG | EXAM |



NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

C  
043  
(27)

IMPORTANT NOTICE

**IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION,** and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property.

No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice). This amount is \$18,125.04 as of 2/10/2010, 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 to 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 end of 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).

Pursuant to California Civil Code Section 2923.5, the mortgagee, beneficiary, or authorized agent 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 OR the undersigned certifies that the compliance with Civil Code Section 2923.5 was made at least thirty (30) days prior to the date of this Notice of Default and Election to Sell Under Deed of Trust.

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure or if your property is in foreclosure for any other reason, contact:

FORECLOSURE MANAGEMENT COMPANY  
C/O REGIONAL SERVICE CORPORATION  
616 1st Avenue, Suite 500  
Seattle, WA 98104  
(206) 340-2550

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 REGIONAL SERVICE CORPORATION, is either the duly appointed Trustee, the substitute Trustee or acting as agent for the Beneficiary under a Deed of Trust dated 6/22/2007, executed by ALBERT C. HENDERSON JR, AN UMARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY, as Trustor, to secure obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ACCREDITED HOME LENDERS, INC., as Beneficiary, recorded 7/2/2007 , as Instrument No. 2007-0433307, of Official Records in the office of the Recorder of RIVERSIDE County, CALIFORNIA, as more fully described on said deed of trust including one note(s) for the sum of \$340,000.00. That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred as follows:

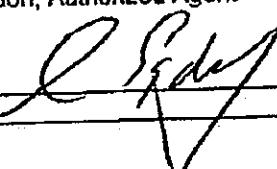
FAILURE TO PAY INSTALLMENTS OF PRINCIPAL, INTEREST, IMPOUNDS AND LATE CHARGES WHICH BECAME DUE 8/1/2009 TOGETHER WITH ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL, INTEREST, IMPOUNDS, LATE CHARGES, FORECLOSURE FEES AND EXPENSES; ANY ADVANCES WHICH MAY HEREAFTER BE MADE; ALL OBLIGATIONS AND INDEBTEDNESSES AS THEY BECOME DUE; AND ANY INSTALLMENTS ALREADY MADE, THAT AT A LATER DATE PROVE TO BE INVALID.

That by reason thereof, the present beneficiary under such Deed of Trust, has executed and delivered to said Trustee, a written Declaration and Demand for Sale, and has deposited with said Trustee, such Deed of Trust and all the 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: 2/10/2010

Regional Service Corporation, Trustee  
By , Anna Egdorf, Authorized Agent

By \_\_\_\_\_



BENEFICIARY DECLARATION OF COMPLIANCE WITH (OR EXCEPTION FROM)  
CALIFORNIA CIVIL CODE §2923.5 AND AUTHORIZATION OF AGENT (FOR NOTICE OF  
DEFAULT)

FORECLOSURELINK, INC.  
4401 HAZEL AVE, STE 225  
FAIR OAKS CA 95628

Borrower(s): ALBERT HENDERSON

Beneficiary: Vericrest Financial, Inc.  
Property: 2035 SILVER DROP LANE

Loan No.: HEMET                    CA 92545  
TS No.: 9800815103

The undersigned beneficiary<sup>1</sup> or authorized agent for the beneficiary hereby represents and declares that:

1. [ ] The beneficiary or beneficiary's authorized agent has contacted the borrower pursuant to, and has complied with, Civil Code § 2923.5(a)(2) (contact provision to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure"). State the date "contact" with the borrower(s) was accomplished pursuant to Civil Code § 2923.5(a) (2): \_\_\_\_\_, 20 \_\_\_\_.
2. [X] The beneficiary or beneficiary's authorized agent has exercised due diligence to contact the borrower as required by Civil Code § 2923.5(g) and, after waiting two weeks after the telephone call requirements of Civil Code § 2923.5(g)(2) were satisfied, the beneficiary or the beneficiary's authorized agent sent to the borrower(s), by certified mail, return receipt requested, the letter required by Civil Code § 2923.5(g)(3), which was mailed on: 1-03, 2009.
3. [ ] Pursuant to Civil Code § 2923.5(h)(1), the borrower has surrendered the secured property as evidenced by either a letter confirming the surrender or by delivery of the keys to the secured property to the beneficiary, the beneficiary's authorized agent or to the trustee. The surrender letter was received on \_\_\_\_\_; the keys were received on: \_\_\_\_\_.

<sup>1</sup> "Beneficiary" as used herein shall include "mortgagee".

4. [ ] Pursuant to Civil Code § 2923.5(h)(2), the beneficiary or beneficiary's authorized agent has evidence in its file, and reasonably believes, that the borrower has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and to avoid their contractual obligations to beneficiaries.

5. [ ] Pursuant to Civil Code § 2923.5(h) (3), the beneficiary or the beneficiary's authorized agent has verified information that, on or before the date of this declaration, the borrower(s) has filed for bankruptcy, and the proceedings have not been finalized. "Finalized" is not defined by Civil Code § 2923.5(h) (3). For purposes of this Civil Code section, trustee, foreclosure agent and/or their authorized agent is defining the term as either: (1) an order entered on the court's docket closing the file by the court; or, (2) an order entered on the court's docket dismissing the bankruptcy case. If the beneficiary or the beneficiary's agent interprets "finalized" in another manner, please state the basis upon which the beneficiary believes that the bankruptcy has not been "finalized":

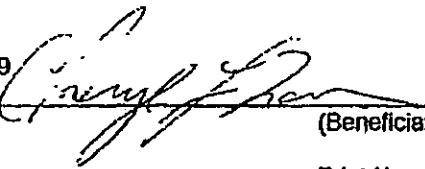
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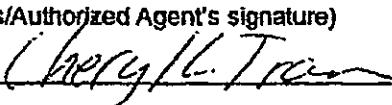
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The undersigned authorizes the trustee, foreclosure agent and/or their authorized agent to sign, on behalf of the beneficiary/authorized agent, the notice of default containing the declaration required pursuant to Civil Code § 2923.5(b).

Dated: 12/30/09

  
(Beneficiary's/Authorized Agent's signature)

Print Name: 

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# Exhibit 4

# Assignment of DOT

Prepared by and after Recording  
Return to:

Foreclosure Management Company  
10500 Barkley, Suite 102  
Overland Park, KS 66212  
19519CA09

DOC # 2010-0171499  
04/14/2010 08:00A Fee:24.00  
Page 1 of 3  
Recorded in Official Records  
County of Riverside  
Larry W. Ward  
Assessor, County Clerk & Recorder



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### ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, the undersigned, Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for Accredited Home Lenders, Inc., whose address is 4318 Miller Rd, Flint, MI 48501-2026, "Assignor," does hereby grant, sell, assign, transfer and convey to Deutsche Bank National Trust Company on behalf of LSF MRA Pass-Through Trust whose address is 1761 East St. Andrew Place Santa Ana, CA 92705, "Assignee," all interest of the undersigned Assignor in and to the following described Deed of Trust:

Date of Deed of Trust: June 22, 2007

Executed by: Albert C. Henderson Jr., an unmarried man as his sole and separate property

To and in favor of: Mortgage Electronic Registration Systems, Inc. as nominee for Accredited Home Lenders, Inc.

Filed of Record: in Instrument/Document No.2007-433307 of the Public Records of Riverside County, California, on 07/02/2007.

Property Address: 2035 Silver Drop Lane Hemet, CA 92545

Legal Description: See Exhibit A

Given: to secure a certain Promissory Note in the amount of \$340,000.00 payable to Beneficiary.

Commonly known as: 2035 Silver Drop Lane Hemet, CA 92545  
Parcel No.: 454-352-023

Together with the note(s) and obligations therein described or referred to, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Mortgage.

TO HAVE AND TO HOLD the same unto Assignee and unto its successors and assigns forever, subject only to the terms and conditions of the above-described Deed of Trust.

Assignor is the present holder of the above-described Deed of Trust.

Executed this the 5 day of April, 2010.

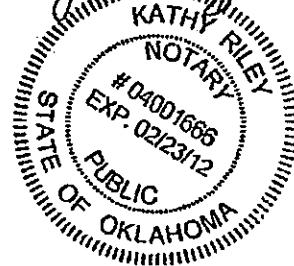
Mortgage Electronic Registration Systems,  
Inc., as nominee for Accredited  
Home Leaders, Inc.

By: Hal Bartow, AVP.  
Its:

STATE OF Oklahoma }  
COUNTY OF Oklahoma } SS.

On the 5 day of April, in the year 2009, before me, the undersigned, personally appeared Hal Bartow, AVP., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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 capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the State of Oklahoma.

Kathy Riley  
Notary Public



## Exhibit A

## Legal Description

## Exhibit "A"

PARCEL 1:

LOT 123 OF TRACT NO. 30558-1, IN THE CITY OF HEMET, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 364, PAGES 22 THROUGH 28, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

EASEMENTS AND RIGHTS OF OWNERS AS SET FORTH IN THAT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COTTONWOOD, RECORDED ON FEBRUARY 4, 2005, AS INSTRUMENT NO. 2005-0177477 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, AND ANY AMENDMENT THERETO ("DECLARATION").

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# Exhibit 5

# Subst. of Trustee

RECORDING REQUESTED BY  
CALIFORNIA TITLE COMPANY

1147182-30

Recording Requested By

When recorded, mail to:

REGIONAL TRUSTEE SERVICES CORPORATION  
616 1st Avenue, Suite 500  
Seattle, WA 98104

Trustee's Sale No: 05-FM-90747



DOC # 2010-0233399

05/20/2010 08:00A Fee:21.00

Page 1 of 2

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



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SUBSTITUTION OF TRUSTEE

WHEREAS ALBERT C. HENDERSON JR, AN UMARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY was the original Trustor, and STEWART TITLE GUARANTY was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ACCREDITED HOME LENDERS, INC. was the original Beneficiary under that certain Deed of Trust dated 6/22/2007, and recorded on 7/2/2007 under Instrument No. 2007-0433307, records of RIVERSIDE County, CALIFORNIA; and WHEREAS, Deutsche Bank National Trust Company on behalf of LSF MRA Pass-Through Trust, 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 the place and stead of said original Trustee thereunder,

NOW, THEREFORE, the undersigned hereby substitutes REGIONAL SERVICE CORPORATION, a California corporation, whose address is 616 1st Avenue, Suite 500, Seattle, WA 98104, as Successor 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: FEB 12 2010

Deutsche Bank National Trust Company on  
behalf of LSF MRA Pass-Through Trust

By Marina Prezel-Gambill  
AUTHORIZED SIGNATORY

(Name - Title)



*\*Marina Preger-Gambill*

STATE OF OK )  
COUNTY OF OK ) ss.

On FEB 12 2010

before me,

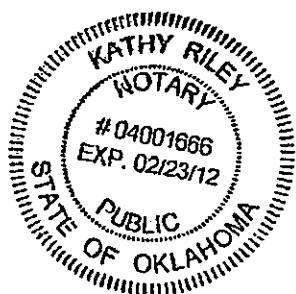
Kathy Riley

Notary Public personally appeared \* MARINA PREGER-GAMBILL, 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.

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

WITNESS my hand and official seal.

*Kathy Riley*  
NOTARY PUBLIC



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# Exhibit 6

# Mers/Chong

RECEIVED & FILED

DEC 8 12 17 PM '09

1 U.S. BANKRUPTCY COURT  
2 MARY A. SCHOTT, CLERK  
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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

9-10

10 MORTGAGE ELECTRONIC  
11 REGISTRATION SYSTEMS, INC.,

12 Appellant,

13 v.

14 LISA MARIE CHONG, LENARD E.  
15 SCHWARTZER, BANKRUPTCY  
16 TRUSTEE, *et al.*,

Appellees.

Dist. Ct. Case No. 2:09-CV-00661-KJD-LRL

Bankr. Ct. Case No. BK-S-07-16645-LBR

ORDER

17 Presently before the Court is Appellant's Appeal under 28 U.S.C. § 158(a) from the  
18 Bankruptcy Court's Order Denying Motion to Lift Stay entered in the Adversary Proceeding No. BK-  
19 S-07-16645-LBR, docket no. 49, March 31, 2009. Having considered the briefs and the record on  
20 appeal, including the arguments of parties at the consolidated hearing on November 10, 2009, the  
21 Court affirms the Order of the Bankruptcy Court.

22 I. Procedural History and Facts

23 On April 14, 2009, Appellant Mortgage Electronic Registration Systems, Inc. ("MERS") filed  
24 Notice of Appeal (#1) appealing the Bankruptcy Court's order denying Appellant's motion for relief  
25  
26

1 from stay. This appeal is one of approximately eighteen (18) similar cases in which the Bankruptcy  
2 Court ruled that Appellant lacked standing to bring the motion.

3 In the underlying bankruptcy action, MERS filed its Motion for Relief from Stay ("the  
4 Motion") pursuant to Federal Rule of Bankruptcy Practice ("Rule") 4001 on January 14, 2008  
5 seeking to have the automatic stay lifted so that MERS could conduct a non-judicial foreclosure sale  
6 on debtor's real property because the debtor lacked the ability to make payments and could not  
7 provide adequate security. Trustee Lenard E. Schwartzer ("Trustee") filed objections to the Motion  
8 claiming that MERS did not have standing as a real party in interest under the Rules to file the  
9 motion. (Appellant's Appendix ("Appx.") Doc. No. 12, p. 34). In response, Appellant filed the  
10 Declaration of Faatima Straggans, an employee of Homecomings Financial, LLC the authorized  
11 servicing agent for MERS, attempting to authenticate a copy of the original Deed of Trust ("Deed")  
12 and Note. (Appx. 36-38). The Deed described MERS as beneficiary and identified MERS as the  
13 nominee of the original lender, FMC Capital LLC. *Id.* However, the Declaration identified neither  
14 the current owner of the beneficial interest in the Note, nor any of the successors or assignees of the  
15 Deed of Trust. The Declaration also failed to assert that MERS, FMC Capital LLC or Homecomings  
16 Financial, LLC held the Note.

17 Due to the similar issues raised regarding motions for relief from stay in approximately  
18 twenty-seven (27) cases involving MERS, the Bankruptcy Court set a joint hearing for all twenty-  
19 seven cases. (Appx. 113-18). The Bankruptcy Court also ordered consolidated briefing for all cases  
20 to be filed in Case No. 07-16226-LBR, *In re Mitchell*, the "lead case". *Id.* In a majority of the cases,  
21 including the present case, Appellant attempted to withdraw the Motion but was procedurally unable  
22 to do so, because the Trustee would not consent. (Appx. 1383, 1902-1904, 1907-1909). MERS  
23 informed the Bankruptcy Court that it had attempted to withdraw the Motion, because it had been  
24 filed contrary to its own corporate procedures. (Appx. 432). Particularly in this case, MERS was  
25 unable to show that a MERS Certifying Officer was in physical possession of the Note at the time the  
26 Motion was filed. (Appx. 624).

1 A final hearing was held on August 19, 2008. (Appx. 650-729). On March 31, 2009, the  
2 Bankruptcy Court issued Memorandum Opinions and Orders denying MERS' motions for relief from  
3 stay in *Mitchell* and two other cases. (Appx. 740-54, 1581-95, 1959-72). In the remaining cases,  
4 including the present case, the Bankruptcy Court denied the motions for relief from stay by  
5 incorporating the reasoning from the *Mitchell* Memorandum Opinion. (Appx.46).

6 The Bankruptcy Court held that MERS lacked standing because it was not a real party in  
7 interest as required by the Rules. (Appx. 740-54). Specifically, the court found that “[w]hile MERS  
8 may have standing to prosecute the motion in the name of its Member as nominee, there is no  
9 evidence that the named nominee is entitled to enforce the note or that MERS is the agent of the  
10 note's holder.” (Appx. 753). The court further held that MERS' asserted interest as beneficiary  
11 under the contract terms did not confer standing because MERS had no actual beneficial interest in  
12 the note and, therefore, was not a beneficiary. (Appx. 745-48).

13 MERS now appeals that order asserting that the Bankruptcy Court erred as a matter of law  
14 when it determined that MERS may not be a beneficiary under the deeds of trust at issue in the  
15 eighteen consolidated cases where the express language of the deeds of trust provide that MERS is  
16 the beneficiary. The Trustee continues to assert that MERS lacks standing because it is not a real  
17 party in interest.

18 II. Standard of Review

19 This Court has jurisdiction pursuant to 28 U.S.C. § 158(a) and reviews the Bankruptcy  
20 Court's findings under the same standard that the court of appeals would review a district court's  
21 findings in a civil matter. 28 U.S.C. § 158(c)(2). Therefore, the Court reviews the Bankruptcy  
22 Court's factual findings under a clearly erroneous standard, and conclusions of law *de novo*. See *In*  
23 *re Healthcentral.com*, 504 F.3d 775, 783 (9th Cir. 2007); *In re First Magnus Fin. Corp.*, 403 B.R.  
24 659, 663 (D. Ariz. 2009).

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1     III. Analysis

2         This appeal arises from eighteen cases in which MERS filed motions for relief from stay in  
3     the Bankruptcy Court. In each case, either a party or the Bankruptcy Court raised the issue of  
4     whether MERS had standing to bring the motion. In holding that MERS did not have standing as the  
5     real party in interest to bring the motion for relief from stay, the Bankruptcy Court determined that  
6     MERS was not a beneficiary in spite of language that designated MERS as such in the Deed of Trust  
7     at issue. MERS seeks to overturn the Bankruptcy Court's determination that it is not a beneficiary.  
8     However, the Court must affirm the Bankruptcy Court's order under the facts presented because  
9     MERS failed to present sufficient evidence demonstrating that it is a real party in interest.

10         A motion for relief from stay is a contested matter under the Bankruptcy Code. See Fed. R.  
11     Bankr. P. 4001(a); 9014(c). Bankruptcy Rule 7017 applies in contested matters. Rule 7017  
12     incorporates Federal Rule of Civil Procedure 17(a)(1) which requires that “[a]n action must be  
13     prosecuted in the name of the real party in interest.” See also, *In re Jacobson*, 402 B.R. 359, 365-66  
14     (Bankr. W.D. Wash. 2009); *In re Hwang*, 396 B.R. 757, 766-67 (Bankr. C.D. Cal. 2008). Thus,  
15     while MERS argues the bankruptcy court erred when it determined that MERS was not a beneficiary  
16     under the deeds of trust, MERS only has standing in the context of the motion to lift stay under the  
17     Rules if it is the real party in interest. See Fed. R. Bankr. P. 7017.

18         Since MERS admits that it does not actually receive or forfeit money when borrowers fail to  
19     make their payments, MERS must at least provide evidence of its alleged agency relationship with  
20     the real party in interest in order to have standing to seek relief from stay. See *Jacobson*, 402 B.R. at  
21     366, n.7 (quoting *Hwang*, 396 B.R. at 767 (“the right to enforce a note on behalf of a noteholder does  
22     not convert the noteholder’s agent into a real party in interest”)). An agent for the purpose of  
23     bringing suit is “viewed as a nominal rather than a real party in interest and will be required to  
24     litigate in the name of his principal rather than his own name.” *Hwang*, 396 B.R. at 767. This is  
25     particularly important in the District of Nevada where the Local Rules of Bankruptcy Practice require  
26     parties to communicate in good faith regarding resolution of a motion for relief from stay before it is

1 filed. LR 4001(a)(3). The parties cannot come to a resolution if those with a beneficial interest in  
2 the note have not been identified and engaged in the communication.

3 In the context of a motion for relief from stay, the movant, MERS in this case, bears the  
4 burden of proving it is a real party in interest. *In re Wilhelm*, 407 B.R. 392, 400 (Bankr. D. Idaho  
5 2009)(citing *In re Hayes*, 393 B.R. 259, 267 (Bankr. D.Mass. 2008)(“To have standing to seek relief  
6 from the automatic stay, [movant] was required to establish that it is a party in interest and that its  
7 rights are not those of another entity”)). Initially, a movant seeking relief from stay may rely upon its  
8 motion. *Id.* However, if a trustee or debtor objects based upon standing, the movant must come  
9 forward with evidence of standing. *Id.*; *Jacobson*, 402 B.R. at 367 (requiring movant at least  
10 demonstrate who presently holds the note at issue or the source of movant’s authority).

11 Instead of presenting the evidence to the Bankruptcy Court, MERS attempted to withdraw the  
12 Motion from the Bankruptcy Court’s consideration, citing the failure of a MERS Certifying Officer  
13 to demonstrate that a member was in physical possession of the promissory note at the time the  
14 motion was filed.<sup>1</sup> The only evidence provided by MERS was a declaration that MERS had been  
15 identified as a beneficiary in the deed of trust and that it had been named nominee for the original  
16 lender. Since MERS provided no evidence that it was the agent or nominee for the current owner of  
17 the beneficial interest in the note, it has failed to meet its burden of establishing that it is a real party  
18 in interest with standing. Accordingly, the order of the Bankruptcy Court must be affirmed.

19 This holding is limited to the specific facts and procedural posture of the instant case. Since  
20 the Bankruptcy Court denied the Motion without prejudice nothing prevents Appellant from refiling  
21 the Motion in Bankruptcy Court providing the evidence it admits should be readily available in its  
22 system. The Court makes no finding that MERS would not be able to establish itself as a real party  
23 in interest had it identified the holder of the note or provided sufficient evidence of the source of its  
24 authority.

25  
26 <sup>1</sup>In other cases movant did not seek to withdraw the Motion, but similarly produced no  
evidence that it held the note or acted as the agent of the noteholder.

#### IV. Conclusion

2 Accordingly, IT IS HEREBY ORDERED that the Order of the Bankruptcy Court entered  
3 March 31, 2009 is AFFIRMED.

4 DATED this 4<sup>th</sup> day of December 2009.

Karen

**Kent J. Dawson  
United States District Judge**

## Other Orders/Judgments

2:09-cv-00661-KJD-LRL Mortgage Electronic Registration Systems, Inc. v. Chong

United States District Court

District of Nevada

### Notice of Electronic Filing

The following transaction was entered on 12/7/2009 at 1:45 PM PST and filed on 12/4/2009

**Case Name:** Mortgage Electronic Registration Systems, Inc. v. Chong

**Case Number:** 2:09-cv-00661-KJD-LRL

**Filer:**

**WARNING: CASE CLOSED on 12/04/2009**

**Document Number:** 52

#### Docket Text:

**ORDER Affirming the Order of the Bankruptcy Court entered March 31, 2009. Signed by Judge Kent J. Dawson on 12/4/2009. (Copies have been distributed pursuant to the NEF - CC: copy of Order to BK Court- SD)**

#### 2:09-cv-00661-KJD-LRL Notice has been electronically mailed to:

Christopher P Burke atty@cburke.lvoxmail.com, attycburke@charter.net

David J. Winterton diane@davidwinterton.com

Jeffrey A Silvestri jsilvestri@mcdonaldcarano.com, dsampson@mcdonaldcarano.com, lstewart@mcdonaldcarano.com

Lenard E. Schwartzer usdcfilings@s-mlaw.com

Ryan Jefferson Works rworks@mcdonaldcarano.com, kbarrett@mcdonaldcarano.com

K. Issac DeVyver kdevyver@reedsmitth.com, hharding@reedsmitth.com

#### 2:09-cv-00661-KJD-LRL Notice has been delivered by other means to:

Daniel Mosteller  
Center for Responsible Lending  
910 17th Street, NW  
Suite 500  
Washington, DC 20006

The following document(s) are associated with this transaction:

**Document description:** Main Document

**Original filename:** n/a

**Electronic document Stamp:**

[STAMP\_dcecfStamp\_ID=1101333072 [Date=12/7/2009] [FileNumber=4545985-0]  
] [63a13bea5af265cfa7a4db730e91ff7f3c492e8229165ff6e0be4093423d6e3e736  
1b3d9e896b7d25e1834529f309ecc0fd01125ccb2c7fa4c7536833085a403]]

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# Exhibit 7

# In re Gallardo

Name, Address, Telephone No. & Fax No.  
Erin L. Laney

CA SBN 259863

PITE DUNCAN, LLP

4375 Julian Drive, Suite 200  
P.O. Box 17933  
San Diego, CA 92177-0933  
TELEPHONE: (858) 750-7600  
FACSIMILE: (619) 590-1385Order Entered on  
May 19, 2010  
by Clerk U.S. Bankruptcy Court  
Southern District of California

## UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA  
325 West "F" Street, San Diego, California 92101-6991

In Re

Luis E. Gallardo

Debtor.

BANKRUPTCY NO. 10-04710-MM7

US Bank National Association, as Trustee for CSMC Mortgage-Backed  
Pass-Through Certificates, Series 2006-7

RS NO. PD-1

Moving Party

Luis E. Gallardo

Leslie T. Gladstone

Chapter 7 Trustee

et al.

Respondent(s)

ORDER ON NONCONTESTED MOTION FOR RELIEF FROM AUTOMATIC STAY  
 REAL PROPERTY     PERSONAL PROPERTYIT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered two (2) through 2 with exhibits, if any, for a total of 3 pages, is granted. Motion Docket Entry No. 12

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SEE PAGE FOUR FOR EXPLANATION

DATED: May 19, 2010

Judge

DENIED

Signature by the attorney constitutes a certification under  
Fed. R. of Bankr. P. 9011 that the relief in the order is the  
relief granted by the court.

Submitted by:

PITE DUNCAN, LLP

(Firm name)

*Erin L. Laney*  
Judge, United States Bankruptcy CourtBy: /s/ Erin L. Laney (CA SBN 259863)  
Attorney for Movant

The Motion of US Bank National Association, as Trustee for CSMC Mortgage-Backed Pass-Through Certificates, Series 2006-7, ("Movant"), for relief from the automatic stay having been filed with the above-entitled court on April 14, 2010, and The Notice of Filing of a Motion for Relief from Automatic Stay (a file-stamped copy of which is attached hereto as Exhibit A OR Notice Docket Entry No. 13, if filed electronically), the Motion, and accompanying Declarations having been served upon the parties named below on April 14, 2010, and

- Debtor (Name): Luis E. Gallardo
- Debtor's Attorney (Name): Jason E. Turner
- Trustee (Name): Leslie T. Gladstone
- United States Trustee (in Chapter 11 & 12 cases), and
- Others, if any (Name): Lienholder  
Chase

No objection or Request for Hearing having been filed by or on behalf of the Debtor, IT IS HEREBY ORDERED as follows:

The automatic stay pursuant to 11 U.S.C. Section 362 is hereby terminated for all purposes as to Movant in connection with the estate's and the debtor's interest in

1.  The following real property:
  - a. Street address of the property including county and state:  
1051 Painted Pony Circle, Vista, California 92081
  - b. Legal description is  attached as Exhibit B or  described below:  
SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT A AND MADE A PART HEREOF
2.  The following personal property as described  below or  in Exhibit B attached:

IT IS FURTHER ORDERED that (Optional):

The 14 day stay provided by Bankruptcy Rule 4001 (a)(3) is waived; This Order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of United States Code; Movant may offer and provide Debtor with information regarding a potential Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss Mitigation Agreement, and may enter into such agreement with Debtor. However, Movant may not enforce, or threaten to enforce, any personal liability against Debtor if Debtor's personal liability is discharged in this bankruptcy case; This Order shall be binding as to US Bank National Association, as Trustee for CSMC Mortgage-Backed Pass-Through Certificates, Series 2006-7.

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EXHIBIT "A"

16356R

Parcel B of Parcel Map No. T730, in the City of Vista, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, August 23, 1978, as File No. 78-359547 of Official Records.

10-04710-MM7

Luis E. Gallardo

Order on Noncontested Motion for Relief from Automatic Stay, RS # PD-1

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Page 4

The Court is unable to grant the Motion for Relief From Automatic Stay RS No. PD-1 for two reasons. First, Movant has not followed Local Bankruptcy Rule 4001-2 and named as a Respondant the junior lienholder, despite the fact that the junior lienholder was provided notice.

Second, Movant has not supplied evidence that establishes that Movant has standing to seek stay relief. Movant has attached an "Assignment of Deed of Trust" from MERS to Movant, which assigns the trust deed and the related note. But, there is no evidence that MERS ever received an assignment of the note or had the ability to assign the note to Movant. The note attached to the motion does not indicate that the note has been endorsed to Movant or endorsed in blank such that it became bearer paper. Without evidence either that MERS could properly assign the note, or that the note was endorsed to Movant or in blank, Movant has not established standing to seek stay relief.

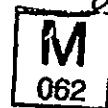
The Court will reconsider the relief sought if Movant files and serves an amended Motion and Notice of Motion naming as a Respondant the junior lienholder, and including the necessary evidence regarding standing.

Prepared by and after Recording  
Return to:  
  
Foreclosure Management Company  
10500 Barkley, Suite 102  
Overland Park, KS 66212  
19519CA09

DOC # 2010-0171499  
04/14/2010 08:00A Fee:24.00  
Page 1 of 3  
Recorded In Official Records  
County of Riverside  
Larry W. Ward  
Assessor, County Clerk & Recorder



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### ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, the undersigned, Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for Accredited Home Lenders, Inc., whose address is 4318 Miller Rd, Flint, MI 48501-2026, "Assignor," does hereby grant, sell, assign, transfer and convey to Deutsche Bank National Trust Company on behalf of LSF MRA Pass-Through Trust whose address is 1761 East St. Andrew Place Santa Ana, CA 92705, "Assignee," all interest of the undersigned Assignor in and to the following described Deed of Trust:

Date of Deed of Trust: June 22, 2007

Executed by: Albert C. Henderson Jr., an unmarried man as his sole and separate property

To and in favor of: Mortgage Electronic Registration Systems, Inc. as nominee for Accredited Home Lenders, Inc.

Filed of Record: in Instrument/Document No.2007-433307 of the Public Records of Riverside County, California, on 07/02/2007.

Property Address: 2035 Silver Drop Lane Hemet, CA 92545

Legal Description: See Exhibit A

Given: to secure a certain Promissory Note in the amount of \$340,000.00 payable to Beneficiary.

Commonly known as: 2035 Silver Drop Lane Hemet, CA 92545

Parcel No.: 454-352-023

Together with the note(s) and obligations therein described or referred to, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Mortgage.

TO HAVE AND TO HOLD the same unto Assignee and unto its successors and assigns forever, subject only to the terms and conditions of the above-described Deed of Trust.

Assignor is the present holder of the above-described Deed of Trust.

Executed this the 5 day of April, 2010.

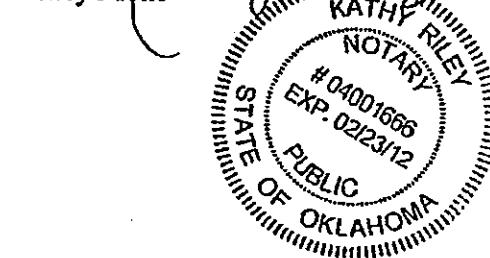
Mortgage Electronic Registration Systems,  
Inc., as nominee for as nominee for Accredited  
Home Lenders, Inc.

By: Hal Bartow, AVP.  
Its:

STATE OF Oklahoma }  
COUNTY OF Oklahoma } SS.

On the 5 day of April, in the year 2009, before me, the undersigned, personally  
appeared Hal Bartow, AVP., personally known to me or proved to me on the basis of  
satisfactory evidence to be the individual(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 capacity(ies), that by  
his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the  
individual(s) acted, executed the instrument, and that such individual made such appearance before the  
undersigned in the State of Oklahoma.

Kathy Riley  
Notary Public



## Exhibit "A"

**PARCEL 1:**

LOT 123 OF TRACT NO. 30558-1, IN THE CITY OF HEMET, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 364, PAGES 22 THROUGH 28, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

**PARCEL 2:**

EASEMENTS AND RIGHTS OF OWNERS AS SET FORTH IN THAT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COTTONWOOD, RECORDED ON FEBRUARY 4, 2005, AS INSTRUMENT NO. 2005-0177477 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, AND ANY AMENDMENT THERETO ("DECLARATION").

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# Exhibit 8

# In re Rickie Walker

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
CIVIL MINUTES**

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|                           |  |                  |                   |
|---------------------------|--|------------------|-------------------|
| <b>Case Title :</b>       | Rickie Walker  | <b>Case No :</b> | 10-21656 - E - 11 |
|                           |  | <b>Date :</b>    | 7/8/10            |
|                           |  | <b>Time :</b>    | 10:30             |
| <b>Matter :</b>           | [68] – Objection to Claim of BAC Home Loans Servicing, L.P., Claim Number 9 [MLA-4] Filed by Debtor In Possession Rickie Walker (npas) |                  |                   |
| <b>Judge :</b>            | Ronald H. Sargis   |                  |                   |
| <b>Courtroom Deputy :</b> | Janet Larson   |                  |                   |
| <b>Reporter :</b>         | NOT RECORDED   |                  |                   |
| <b>Department :</b>       | E  |                  |                   |

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**APPEARANCES for :**

**Movant(s) :**

None

**Respondent(s) :**

None

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**OBJECTION was :**

Sustained

See Findings of fact and conclusions of law below

The court will issue a minute order.

Local Rule 3007-1(c)(1) Motion – No Opposition Filed.

Proper Notice Provided. The Proof of Service filed on May 21, 2010, states that the Motion and supporting pleadings were served on other parties in interest and Office of the United States Trustee. By the courts calculation, 48 days notice was provided.

This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1). The failure of the Trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 3007-1(c)(1)(i) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Trustee and the respondent creditor are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties pleadings.

The Objection to Proof of Claim number 9 of BAC Home Loans Servicing, LP is sustained and the claim is disallowed in its entirety with leave for the owner of the promissory note to file a claim by August 8, 2010. No appearance required.

The Proof of Claim at issue, listed as claim number 9 on the courts official claims registry, asserts \$75,128.22 claim. The Debtor objects to the Claim on the basis that BAC Home Loans Servicing, LP has not offered any evidence that it is the beneficiary of the note and deed of trust or otherwise legally able to assert the claim. The Deed of Trust and Note attached to the Proof of Claim list PMAC Lending Services, Inc. as the mortgagee. The note is not endorsed and no evidence is offered to show that the Deed of Trust has been assigned to another.

11 U.S.C. §502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest

objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. §502(b). Based on the evidence before the court, the creditors claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained. The court will grant leave for the owner of the note to file a Proof of Claim by August 8, 2010.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Proof of Claim filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Proof of Claim number 9 of BAC Home Loans Servicing, LP is sustained and the claim is disallowed in its entirety, without prejudice to the filing of a proof of claim by the party entitled to assert a claim in this case.

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# Exhibit 9

# IRS Publication

## **Part III**

### **Administrative, Procedural, and Miscellaneous**

**26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.**

(Also Part I, §§ 860D, 860F, 860G, 1001; 1.860G–2, 1.1001–3, 301.7701–2, 301.7701–3, 301.7701–4.)

Rev. Proc. 2009-23

#### **SECTION 1. PURPOSE**

This revenue procedure describes the conditions under which modifications to certain mortgage loans will not cause the Internal Revenue Service (Service) to challenge the tax status of certain securitization vehicles that hold the loans or to assert that those modifications give rise to prohibited transactions.

This revenue procedure provides certainty in the current economic environment with respect to certain potential tax issues that may be implicated by loan modifications made pursuant to the Home Affordable Modification Program ("HAMP"), described below. No inference should be drawn about whether similar consequences would obtain if a transaction falls outside the limited scope of this revenue procedure. Furthermore, there should be no inference that, in the absence of this revenue

procedure, transactions within its scope would have impaired the tax status of securitization vehicles or would have given rise to prohibited transactions.

## SECTION 2. BACKGROUND—THE HAMP

.01 The deep contraction in the economy and in the housing market has created distress for homeowners and communities throughout the country. Large numbers of homeowners are unable to afford their current monthly mortgage payments and are at risk of losing their homes. In response, on February 18, 2009, the United States Government announced the Homeowner Affordability and Stability Plan (the "Plan"). The Plan is intended to help at-risk homeowners to modify their mortgages to avoid foreclosure. On March 4, 2009, as a key component of the Plan, the United States Government released further details about the HAMP. See documents entitled "Home Affordable Modification Program Guidelines" and "Making Home Affordable, Summary of Guidelines."

.02 The HAMP includes detailed protocols for identifying borrowers at risk of default. As is more fully set forth in the program documents, the HAMP is intended to reach borrowers with high mortgage debt service compared to income and other indications of being at risk of default. Delinquency is not a requirement for eligibility. Rather, because loan modifications are more likely to succeed if they are made before a borrower misses a payment, the HAMP is also intended to reach borrowers for whom default is imminent despite the fact that those borrowers are current on their mortgage payments. In determining whether default is imminent for a particular borrower, the HAMP takes into account a broad range of information, including whether the borrower has had a change in circumstances that causes financial hardship, or is facing a recent

or imminent increase in the monthly mortgage payment that would likely create a financial hardship.

.03 The HAMP applies both to loans that investors hold directly and to those that are held through securitization vehicles such as investment trusts and real estate mortgage investment conduits (REMICs).

### SECTION 3. BACKGROUND—REMICS

.01 REMICs are widely used securitization vehicles for mortgages. REMICs are governed by sections 860A through 860G of the Internal Revenue Code.

.02 For an entity to qualify as a REMIC, all of the interests in the entity must consist of one or more classes of regular interests and a single class of residual interests, see section 860D(a), and those interests must be issued on the startup day, within the meaning of § 1.860G–2(k) of the Income Tax Regulations.

.03 A regular interest is one that is designated as a regular interest and whose terms are fixed on the startup day. Section 860G(a)(1). In addition, a regular interest must (1) unconditionally entitle the holder to receive a specified principal amount (or other similar amount), and (2) provide that interest payments, if any, at or before maturity are based on a fixed rate (or to the extent provided in regulations, at a variable rate).

.04 An interest issued after the startup day does not qualify as a REMIC regular interest.

.05 Under section 860D(a)(4), an entity qualifies as a REMIC only if, among other things, as of the close of the third month beginning after the startup day and at all times thereafter, substantially all of its assets consist of qualified mortgages and

permitted investments. This asset test is satisfied if the entity owns no more than a *de minimis* amount of other assets. See § 1.860D-1(b)(3)(i). As a safe harbor, the amount of assets other than qualified mortgages and permitted investments is *de minimis* if the aggregate of the adjusted bases of those assets is less than one percent of the aggregate of the adjusted bases of all of the entity's assets. § 1.860D-1(b)(3)(ii).

.06 With limited exceptions, a mortgage loan is not a qualified mortgage unless it is transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC. See section 860G(a)(3)(A)(i).

.07 The legislative history of the REMIC provisions indicates that Congress intended the provisions to apply only to an entity that holds a substantially fixed pool of real estate mortgages and related assets and that "has no powers to vary the composition of its mortgage assets." S. Rep. No. 99-313, 99<sup>th</sup> Cong., 2<sup>d</sup> Sess. 791-92, 1986-3 (Vol. 3) C.B. 791-92.

.08 Section 1.1001-3(c)(1)(i) defines a "modification" of a debt instrument as any alteration, including any deletion or addition, in whole or in part, of a legal right or obligation of the issuer or holder of a debt instrument, whether the alteration is evidenced by an express agreement (oral or written), conduct of the parties, or otherwise. Section 1.1001-3(e) governs which modifications of debt instruments are "significant." Under § 1.1001-3(b), for most federal income tax purposes, a significant modification produces a deemed exchange of the original debt instrument for a new debt instrument.

.09 Under § 1.860G-2(b), related rules apply to determine REMIC qualification. Except as specifically provided in § 1.860G-2(b)(3), if there is a significant modification

## **SECTION 4. BACKGROUND—TRUSTS**

.01 Section 301.7701-2(a) of the Procedure and Administration Regulations defines a “business entity” as any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Code.

.02 Section 301.7701-4(a) provides that an arrangement is treated as a trust if the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

.03 Section 301.7701-4(c) provides that an “investment” trust is not classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders.

## **SECTION 5. SCOPE**

This revenue procedure applies to a modification made pursuant to the HAMP of a mortgage loan that is held by a REMIC or by an investment trust.

## **SECTION 6. APPLICATION**

If one or more modifications of mortgage loans are described in Section 5 of this revenue procedure—

.01 The Service will not challenge a securitization vehicle’s qualification as a REMIC on the grounds that the modifications are not among the exceptions listed in § 1.860G-2(b)(3);

.02 The Service will not contend that the modifications are prohibited transactions under section 860F(a)(2) on the grounds that the modifications result in one or more dispositions of qualified mortgages and that the dispositions are not among the exceptions listed in section 860F(a)(2)(A)(i)–(iv);

.03 The Service will not challenge a securitization vehicle's classification as a trust under § 301.7701–4(c) on the grounds that the modifications manifest a power to vary the investment of the certificate holders; and

.04 The Service will not challenge a securitization vehicle's qualification as a REMIC on the grounds that the modifications result in a deemed reissuance of the REMIC regular interests.

## **SECTION 7. OTHER GUIDANCE**

For the treatment of mortgage loans modified pursuant to certain foreclosure prevention programs, see Rev. Proc. 2008-47, 2008-31 I.R.B. 272, and Rev. Proc. 2008-28, 2008-23 I.R.B. 1054.

## **SECTION 8. EFFECTIVE DATE**

This revenue procedure is effective for loan modifications on or after March 4, 2009.

## **SECTION 9. DRAFTING INFORMATION**

The principal author of this revenue procedure is Diana Imholtz of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information, contact Ms. Imholtz on (202) 622-3930 (not a toll-free call).

of an obligation that is held by a REMIC, then the modified obligation is treated as one that was newly issued in exchange for the unmodified obligation that it replaced.

See § 1.860G-2(b)(1). For this purpose, the rules in § 1.1001-3(e) determine whether a modification is “significant.” See § 1.860G-2(b)(2). Thus, even if an entity initially qualifies as a REMIC, one or more significant modifications of loans held by the entity may terminate the qualification if the modifications cause less than substantially all of the entity’s assets to be qualified mortgages.

.10 Certain loan modifications, however, are not significant for purposes of § 1.860G-2(b)(1), even if the modifications are significant under the rules in § 1.1001-3. In particular, under § 1.860G-2(b)(3)(i), if a change in the terms of an obligation is “occasioned by default or a reasonably foreseeable default,” the change is not a significant modification for purposes of § 1.860G-2(b)(1), regardless of the modification’s status under § 1.1001-3.

.11 Section 860F(a)(1) imposes a tax on REMICs equal to 100 percent of the net income derived from “prohibited transactions.” The disposition of a qualified mortgage is a prohibited transaction unless the “disposition [is] pursuant to—(i) the substitution of a qualified replacement mortgage for a qualified mortgage . . . , (ii) a disposition incident to the foreclosure, default, or imminent default of the mortgage, (iii) the bankruptcy or insolvency of the REMIC, or (iv) a qualified liquidation.” Section 860F(a)(2)(A).

.12 Under section 860C(b)(1), “The taxable income of a REMIC shall be determined under an accrual method of accounting . . . except that— . . . (C) there shall not be taken into account any item of income, gain, loss, or deduction allocable to a prohibited transaction, . . . ”

## **SECTION 4. BACKGROUND—TRUSTS**

.01 Section 301.7701-2(a) of the Procedure and Administration Regulations defines a “business entity” as any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Code.

.02 Section 301.7701-4(a) provides that an arrangement is treated as a trust if the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

.03 Section 301.7701-4(c) provides that an “investment” trust is not classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders.

## **SECTION 5. SCOPE**

This revenue procedure applies to a modification made pursuant to the HAMP of a mortgage loan that is held by a REMIC or by an investment trust.

## **SECTION 6. APPLICATION**

If one or more modifications of mortgage loans are described in Section 5 of this revenue procedure—

.01 The Service will not challenge a securitization vehicle’s qualification as a REMIC on the grounds that the modifications are not among the exceptions listed in § 1.860G-2(b)(3);

.02 The Service will not contend that the modifications are prohibited transactions under section 860F(a)(2) on the grounds that the modifications result in one or more dispositions of qualified mortgages and that the dispositions are not among the exceptions listed in section 860F(a)(2)(A)(i)–(iv);

.03 The Service will not challenge a securitization vehicle's classification as a trust under § 301.7701–4(c) on the grounds that the modifications manifest a power to vary the investment of the certificate holders; and

.04 The Service will not challenge a securitization vehicle's qualification as a REMIC on the grounds that the modifications result in a deemed reissuance of the REMIC regular interests.

## **SECTION 7. OTHER GUIDANCE**

For the treatment of mortgage loans modified pursuant to certain foreclosure prevention programs, see Rev. Proc. 2008-47, 2008-31 I.R.B. 272, and Rev. Proc. 2008-28, 2008-23 I.R.B. 1054.

## **SECTION 8. EFFECTIVE DATE**

This revenue procedure is effective for loan modifications on or after March 4, 2009.

## **SECTION 9. DRAFTING INFORMATION**

The principal author of this revenue procedure is Diana Imholtz of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information, contact Ms. Imholtz on (202) 622–3930 (not a toll-free call).

1           Albert C. Henderson Jr.  
2           2035 Silver Drop Lane  
3           Hemet, California 92545

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

DEC 30 2010

J. Karnes

5           Plaintiffs in Pro Per

7  
8           **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9           **COUNTY OF RIVERSIDE**

10          ALBERT C. HENDERSON, JR.

**Case No.:**

11          Plaintiffs,

**NOTICE OF PENDING ACTION**

12          vs.

APN 454-352-023

13          CARRINGTON MORTGAGE SERVICES;  
14          VERICREST FINANCIAL;  
15          REGIONAL TRUSTEE SERVICES;  
16          DEUTSCHE BANK NATIONAL TRUST  
17          ON BEHALF OF LSF-MRA PASS THRU  
18          TRUST;  
19          FORECLOSURE MANAGEMENT  
20          COMPANY C/O REGIONAL SERVICE  
21          CORPORATION;  
22          GMAC MODEL HOME FINANCE;  
23          ANNEMARIE TUKES, an individual;  
24          MARINA PREGEL-GAMBIL, an  
25          individual;  
26          CHERYL C. TRAN, an individual;  
27          HAL BARTOW, an individual;  
28          ANNA EGDORF, an individual;  
             and DOES 1-XXX, Inclusive  
             Defendants.

1 Notice is given that the above-entitled action was filed in the above-entitled court on December  
2 \_\_\_\_\_, 2010 by Plaintiff: ALBERT C. HENDERSON, JR., against Defendants:

3 CARRINGTON MORTGAGE SERVICES;  
4 VERICREST FINANCIAL;  
5 REGIONAL TRUSTEE SERVICES;  
6 DEUTSCHE BANK NATIONAL TRUST ON BEHALF OF LSF-MRA PASS THRU TRUST;  
7 FORECLOSURE MANAGEMENT COMPANY C/O REGIONAL SERVICE  
8 CORPORATION;  
9 GMAC MODEL HOME FINANCE;  
10 ANNEMARIE TUKEs, an individual;  
11 MARINA PREGEL-GAMBIL, an individual;  
12 CHERYL C. TRAN, an individual; HAL BARTOW, an individual;  
13 ANNA EGDORF, an individual;  
14 and DOES 1-XXX, Inclusive  
15 Defendants.

16 This Action alleges a real property claim affecting certain real property that is situated in  
17 Riverside County, California, which is commonly known as:

18 2035 Silver Drop Lane, Hemet, CA 92545

19 APN 454-352-023-6

20 And more fully described in Exhibit A attached hereto and incorporated herein by this reference.

21 Dated: \_\_\_\_\_

22 \_\_\_\_\_  
23 Albert C. Henderson, Jr.  
24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_

# Exhibit A

## Legal Description

## Exhibit "A"

PARCEL 1:

LOT 123 OF TRACT NO. 30558-1, IN THE CITY OF HEMET, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 364, PAGES 22 THROUGH 28, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

EASEMENTS AND RIGHTS OF OWNERS AS SET FORTH IN THAT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COTTONWOOD, RECORDED ON FEBRUARY 4, 2005, AS INSTRUMENT NO. 2005-0177477 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, AND ANY AMENDMENT THERETO ("DECLARATION").