

B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET
(Instructions on Reverse)**ADVERSARY PROCEEDING NUMBER**
(Court Use Only)**PLAINTIFFS**

GORDY A SPIRES

DEFENDANTSG8 CAPITAL FUND VII, LLC; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC.
"MERS" and DOES 1-50, inclusive**ATTORNEYS (Firm Name, Address, and Telephone No.)**JOSEPH J REGO
LAW OFFICE OF JOSEPH J REGO
4019 PARK BOULEVARD

619-293-0310

ATTORNEYSCase No. 09-90133-LTAD
Debtor.: SPIRES VS. G8 CAPITAL
Judge.: LAURA TAYLOR
Chapter: ADFiled : March 26, 2009 11:31:28
Deputy : ACROSBY
Receipt: 203013**PARTY (Check One Box Only)**☒ Debtor ☐ U.S. Trustee/Bankruptcy Admin
☐ Creditor ☐ Other
☐ Trustee**PARTY (Check One Box Only)**☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin
☒ Creditor ☐ Other
☐ Trustee**CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)**
DECLARATORY RELIEF, INJUNCTIVE RELIEF, DEMAND FOR ACCOUNTING, RESCISSION, FRAUD,
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS, BREACH OF FIDUCIARY DUTY, BREACH OF
COVENANT OF GOOD AND FAIR DEALING, UNLAWFUL, UNFAIR AND FRAUDULENT BUSINESS
PRACTICE**NATURE OF SUIT**

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property

- ☐
- 11-Recovery of money/property - §542 turnover of property
-
- ☐
- 12-Recovery of money/property - §547 preference
-
- ☐
- 13-Recovery of money/property - §548 fraudulent transfer
-
- ☒
- 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien

- ☒
- 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property

- ☐
- 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge

- ☐
- 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation

- ☐
- 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability

- ☐
- 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
-
- ☐
- 62-Dischargeability - §523(a)(2), false pretenses, false representation,
-
- actual fraud
-
- ☐
- 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)

- ☐
- 61-Dischargeability - §523(a)(5), domestic support
-
- ☐
- 68-Dischargeability - §523(a)(6), willful and malicious injury
-
- ☐
- 63-Dischargeability - §523(a)(8), student loan
-
- ☐
- 64-Dischargeability - §523(a)(15), divorce or separation obligation
-
- (other than domestic support)
-
- ☐
- 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief

- ☒
- 71-Injunctive relief – imposition of stay
-
- ☐
- 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest

- ☐
- 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment

- ☐
- 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action

- ☐
- 01-Determination of removed claim or cause

Other

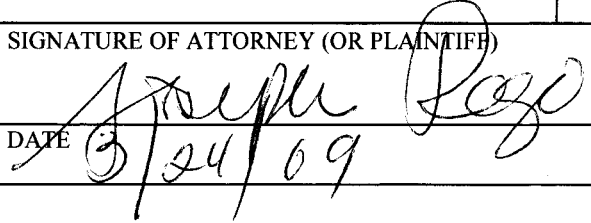
- ☐
- SS-SIPA Case – 15 U.S.C. §78aaa
- et seq.*
-
- ☐
- 02-Other (e.g. other actions that would have been brought in state court
-
- if unrelated to bankruptcy case)

☐ Check if this case involves a substantive issue of state law☐ Check if this is asserted to be a class action under FRCP 23☐ Check if a jury trial is demanded in complaint

Demand \$

Other Relief Sought

B104 (FORM 104) (08/07), Page 2

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR SPIRES, GORDY A.		BANKRUPTCY CASE NO. 08-13091-LT7	
DISTRICT IN WHICH CASE IS PENDING SOUTHERN	DIVISION OFFICE		NAME OF JUDGE
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT		ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE	
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 			
DATE 3/24/09		PRINT NAME OF ATTORNEY (OR PLAINTIFF) JOSEPH J. REGO	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

Joseph J. Rego, Esq. (SBN 163183)
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Case # : 09-90133-LTAD
Debtor.: SPIRES VS. G8 CAPITAL
Judge...: LAURA TAYLOR
Chapter: AD

Filed : March 26, 2009 11:31:28
Deputy : ACROSBY
Receipt: 203013
Amount : \$250.00

Attorney for Debtor
GORDY A SPIRES

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

GORDY A SPIRES

Debtor/Plaintiff,

v.

G8 CAPITAL FUND VII, LLC.;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.
"MERS" and DOES 1-50, inclusive.

Defendant

CHAPTER 7 CASE NO: 08-13091-LT7

ADVERSARIAL CASE NO

ADVERSARIAL COMPLAINT:

1. FOR DECLARATORY RELIEF;
 2. INJUNCTIVE RELIEF;
 3. DEMAND FOR ACCOUNTING;
 4. RESCISSION;
 5. FRAUD;
 6. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
 7. BREACH OF FIDUCIARY DUTY;
 8. BREACH OF COVENANT OF GOOD AND FAIR DEALING;
 9. UNLAWFUL, UNFAIR AND FRAUDULENT BUSINESS PRACTICE (BUS. PROFESSION CODE 17200):
- PUNITIVE DAMAGES

Plaintiff alleges:

FACTS COMMON TO ALL CAUSES OF ACTION

1. At all times material to this complaint, Plaintiff SPIRES, hereinafter referred to as

1 "Plaintiff" was a resident of the County of San Diego and the owner of the real property
2 which is the subject of this action and commonly known as 4743 Crater Rim Road,
3 Carlsbad, CA 92010 and more particularly described as: Attached as Exhibit A and
4 incorporated herein by reference.

5 Said property is the subject of this lawsuit and all claims are made herein are based
6 upon the purchase and the ownership of said property in the names(s) of the plaintiff(s).

7 2. Plaintiffs are informed and believe and thereon allege that defendant G8 CAPITAL
8 FUND VII, LLC. (hereafter referred to as "DEFENDANTS"), is an unknown entity and it
9 is unclear whether this entity is authorized to conduct business in California but for the
10 sake of the initial filing will be referred to as DEFENDANTS and this PLAINTIFF will
11 move for leave to amend this complaint when the true nature of the entity is
12 ascertained.

13 3. Defendant "MERS." is an unknown entity and it is unclear whether this entity is
14 authorized to conduct business in California but for the sake of the initial filing will be
15 referred to as DEFENDANTS and this PLAINTIFF will move for leave to amend this
16 complaint when the true nature of the entity is ascertained.

17 4. Plaintiffs are ignorant of the Defendants sued as Does 1-50 herein, and thereon
18 allege that said Doe defendants are the agents, employees, representatives,
19 subsidiaries, and controlled entities of the named defendants here and that each Doe
20 defendant at all times herein was acting as the agent and representative of each
21 other and thereby are responsible in some manner for the injuries and damages
22 complained of herein. Plaintiff will seek leave of court to amend this complaint to name
23 the true names and capacities of Doe defendants when the same are ascertained.

24 5. DEFENDANTS and its agents, officers, employees, and affiliated or associated
25 parties have engaged in and continue to engage in a pattern of unlawful, fraudulent or
26 unfair predatory real estate lending practices causing victims of their actions, including
27 PLAINTIFF(s) herein to lose or be in jeopardy of losing their homes through the
28 foreclosure process because of predatory lending practices on the part of defendants

1 that consist of, but not limited to (a) wrongfully and fraudulently stating excessive
2 income over and above the amount of monthly income actually earned by PLAINTIFF,
3 in order to get loan approval quickly and allow the DEFENDANTS to sell the loan to the
4 secondary real estate market (b) charging excessive closing costs fees to PLAINTIFF
5 that have no reasonable value basis to the services actually performed by defendant (
6 c) failing and refusing to provide escrow final closing documents in the form and
7 manner required in a HUD-1 statement (d) failing to properly follow statutory procedures
8 in the foreclosure process.

9 6. The devastation and destruction of DEFENDANTS unlawful and unfair actions are
10 well documented in the news and within government and financial institutions across
11 America.

12 **FIRST CAUSE OF ACTION**

13 **DECLARATORY RELIEF**

14 7. The allegations of paragraphs 1-6 are reallege and incorporated herein by
15 reference. This action is against all defendants.

16 8. On or about 1/11/2007 , for valuable consideration, Plaintiff(s), as borrowers, made,
17 executed and delivered to DEFENDANTS, a written promissory note in the amount of
18 \$640,115.00.

19 9. To secure payment of the principal sum and interest as provided in the note and as
20 part of the same transaction, PLAINTIFF(s), as trustor(s), executed and delivered to
21 DEFENDANTS , as lender, and MERS . as beneficiary, a deed of trust dated 1/11/2007
22 by the terms of which PLAINTIFF , as trustors, conveyed real property described in
23 paragraph 1 herein. DEFENDANTS caused said deed of trust to be recorded against
24 the property in the office of the County Record in the County of San Diego, California.
25 A copy of the Deed of Trust is attached as Exhibit B and incorporated herein by
26 reference

27 10. On July 10, 2008 DEFENDANTS and each of them caused to be recorded a notice
28 of default and election to sell, in the San Diego County Records office, alleging (a)

1 that a breach of the obligation secured by the deed of trust on the subject property had
2 occurred, consisting of PLAINTIFF(s) alleged failure to pay \$22,224.30 and the
3 DEFENDANTS, as beneficiary, elects to sell, or to cause to be sold, the trust property
4 to satisfy that obligation.

5 11. A breach of the obligation for which the deed of trust is security, as to these
6 DEFENDANTS, PLAINTIFF are informed and believed, has not occurred or is
7 excusable because defendants herein are not the real parties in interest, are not the
8 holders of the note on the property and are therefore improper and plaintiff's cannot
9 determine who is the real party in interest to whom a tender to pay any alleged arrears
10 should be made. Moreover defendants have committed fraud and deceit against
11 plaintiff in the application, processing and servicing of the loan and the pending
12 foreclosure process by among other things:

13 (a) Violations of the federal Truth In Lending Act (TILA) 15 U.S.C. § 1601 et seq.;

14 (b) Violations of Regulation Z as required by federal statutes and regulations contained
15 within 15 U.S.C. § 6104 and 12 C.F.R. 226.101 et seq;

16 (c) Fraudulently inducing PLAINTIFF to enter into a loan contract that created negative
17 amortization in the payments of the loan and thus increasing the loan balance amount
18 instead of decreasing the loan balance through monthly amortization payments.

19 12. An actual controversy exists between PLAINTIFF and DEFENDANTS concerning
20 their respective rights and duties pertaining to the subject property and the described
21 transactions in that, inclusive of the above violations (a) PLAINTIFF contend that
22 DEFENDANTS have no standing to foreclose on the subject property; (b) PLAINTIFF
23 are unable to determine to whom the alleged arrears should be tendered without a
24 declaration of rights (c) DEFENDANTS cannot produce the original executed note on
25 the subject loan to verify that they are in fact the real party in interest; (d)
26 DEFENDANTS have failed and refused to work with and/or provide documentation and
27 facts to allow plaintiffs to make an informed decision on the true amount owed to
28 whomever the holder of the note is in order to payoff or refinance the loan on the

1 subject property; (e) DEFENDANTS have alleged different amounts due and owing on
2 the outstanding balance allegedly owed on the subject property such that PLAINTIFF
3 cannot determine the proper amount, if any, to pay the ultimate true note holder.

4 13. PLAINTIFF desire a judicial determination and declaration of PLAINTIFFS' and
5 DEFENDANTS' respective rights and duties; specifically, who is the real party in
6 interest with respect to the holder of the note on the subject property and whether
7 defendants have failed to meet statutory requirements for conducting a foreclosure sale
8 on the subject property.

9 **SECOND CAUSE OF ACTION**

10 **INJUNCTIVE RELIEF**

11 14. The allegations of paragraphs 1-13 are reallege and incorporated herein by
12 reference. This action is against all defendants.

13 15. PLAINTIFF will be subjected to irreparable harm and loss of their real property
14 described herein unless the court issues a temporary and preliminary injunction
15 stopping the pending foreclosure initiated by DEFENDANTS and maintaining the status
16 quo until the matter is resolved through trial or other means. As this property is unique,
17 damages per se will not adequately compensate the plaintiffs in the event of a recovery
18 on their behalf. It is the subject property of this action PLAINTIFF seek to hold as their
19 personal residence.

20 16. PLAINTIFF are entitled to injunctive relief in this matter based upon the following,
21 but not exclusive grounds.

22 (a) Neither of the DEFENDANTS attempting to singularly or collectively foreclose on the
23 property is the real party in interest in the foreclosure proceeding nor can they be the
24 real party in interest defending this action. Only the real party in interest can prosecute
25 or defend a lawsuit and moreover, only the real party in interest can proceed in a
26 judicial foreclosure. PLAINTIFF are informed and believe and thereon allege that
27 neither of the DEFENDANTS is the holder of the note on the subject property.

28 Therefore neither of the DEFENDANTS has the right to proceed with a foreclosure of

1 the property and the DEFENDANTS should be enjoined from proceeding with a
2 foreclosure with producing the original note and moreover establishing that they are
3 holders of the note. On information and believe, PLAINTIFF allege the DEFENDANTS
4 is not te real party in interest because it has sold or otherwise transferred the original
5 note that represents the contract between PLAINTIFF and the original note holder for
6 the purchase of the subject real property. PLAINTIFF are informed and believe and
7 thereon allege that the original note has been sold into what is know as the "secondary
8 market" of the real estate industry and has been securitized through "pooling trusts"
9 and "pooling service" bonds and or securities whereby several investors have
10 purchased the note securing the property such that is difficult or impossible to
11 determine who is the true note holder, beneficiary, mortgagee or owner of the right to
12 foreclose on the property or to sell the property with clear title in the event of a
13 foreclosure. DEFENDANTS should be required to produce the original note securing
14 the property as collateral for any debt defendant contend plaintiffs owe in order to
15 determine to whom plaintiffs owe any money to, if any.

16 (b) DEFENDANTS and each of them have failed to make good and reasonable efforts
17 to attempt to make a mortgage workout plan between PLAINTIFF and DEFENDANTS,
18 all of which would have worked out to DEFENDANTS' advantage and given them
19 adequate protection of their interest in the property. Said failure and refusal to act in
20 good faith is manifested by:

21 (1) Failing and refusing to honor an agreed workout plan submitted by PLAINTIFF;

22 (2) Failure to follow California Civil Code section 2924, et seq, in dealing with
23 PLAINTIFF;

24 (3) Failure and refusal to comply with the fair debt collection practices of the State of
25 California in attempting to collect a debt and federal equivalent of said laws.

26 17. DEFENDANTS have filed a MOTION FOR RELIEF FROM STAY on the subject
27 property and intend to sell the property forthwith if the motion is successful and unless
28 restrained will sell or cause to be sold, the subject property all, to PLAINTIFF'S great

1 and irreparable injury in that PLAINTIFFS will have no right to redeem the subject
2 property from the sale and have no adequate remedy at law with regard to their rights in
3 the property.

4 18. Any scheduled sale is wrongful and should be enjoined by virtue of the facts
5 alleged in this complaint and PLAINTIFF have no other plain, speedy, or adequate
6 remedy, and the injunctive relief prayed for herein is necessary and appropriate at this
7 time to prevent irreparable loss to PLAINTIFFS' interests.

8 **THIRD CAUSE OF ACTION**

9 **DEMAND FOR ACCOUNTING**

10 19. The allegations of the Second Cause of Action are incorporated by reference
11 herein as though set forth fully.

12 20. The true amount of money, if any, owed to DEFENDANTS by PLAINTIFF is
13 unknown as DEFENDANTS allege different figures for payoff of the loan than
14 PLAINTIFF contend is owed. Prior to filing this action PLAINTIFF requested copies of
15 their entire file from DEFENDANTS pursuant to section 12 USC 2605 (e) of the Real
16 Estate Settlement and Procedures Act(RESPA). DEFENDANTS have failed and refuse
17 to respond to said request and have violated the provisions of said section and
18 therefore have committed an unlawful and unfair business act.

19 21. What PLAINTIFF owe to the ultimate true note holder on the property, if anything,
20 cannot be determined without an accounting. Accordingly, PLAINTIFF seek an
21 accounting from DEFENDANTS and the true note holder so that is any money is due
22 and payable to defendants the true amount can factually be determined and
23 PLAINTIFFS can then be in a position to tender the true sums due to the factual note
24 holder.

25 **FOURTH, FIFTH & SIXTH CAUSES OF ACTION**

26 **RESCISSION; FRAUD; NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

27 22. The allegations of paragraph 1-22 are incorporated herein and reallege by
28 reference as though fully set forth.

23. DEFENDANTS, as a pattern and practice in the home loan industry, including the making of the loan and contract in this action, used deceit and misrepresentation to lull borrowers into real estate loans by steering them into loans that have low teaser rates and negative amortization rates with immediate provisions for interest rate adjustment that quickly raise the monthly payments to an amount higher than the borrower is able to pay. Moreover the loans, including the loan which is the subject of this property contained unreasonable and unconscionable prepayment penalty provisions.

24. PLAINTIFF are informed and believe and therein allege that DEFENDANT unbeknown to PLAINTIFF, placed them into a sub-prime and predatory loan designed to extract the maximum amount of money from the PLAINTIFF and with the maximum penalties and costs, when in fact PLAINTIFFS based upon their financial and credit condition, at the time of the loan, qualified for better terms and conditions and for a loan that would not have been in a category that created high adjustable rate interest increases and negative amortization payments.

25. DEFENDANT and other Doe defendants deceitfully and fraudulent placed PLAINTIFF in such a position as those thousands of borrowers for which DEFENDANTS are now being sued throughout the country and within the State of California and the City of San Diego.

26. PLAINTIFFS, on information and belief, further allege that DEFENDANTS and other Doe defendants committed fraud by intentionally charging PLAINTIFFS unlawful and unfair closing costs. PLAINTIFFS are informed and believe and therein allege that the addition of such fees are a common practice of DEFENDANTS and is a used to hide costs and fees during the loan closing process without the knowledge of the borrowers, including plaintiffs

27. PLAINTIFF, on information and belief, further allege that DEFENDANTS and each of them violated disclosure laws during the closing of the loan, which is the subject of this action in that DEFENDANTS failed to provide a HUD-1 closing statement in the form ad manner required by the Real Estate Settlement and Procedure Act (RESPA).

1 Said disclosures are required in order to avoid fraud upon borrowers and to disclose the
2 expenses, costs and fees associated with the loan closing process and to inform the
3 borrowers such as plaintiff the actual costs of the loan closing. DEFENDANTS
4 intentionally and deceitfully failed to provide such reports all with the intent to deceive,
5 mislead and commit a fraud upon plaintiffs and in fact did commit fraud.

6 28. The manner in which all defendants have conducted themselves is a threat upon
7 the public safety of the people of the State of California and subjects such as contracts,
8 as well as the subject contract of this action to rescission.

9 29. At the time of entering into the contract and placement of the loan, PLAINTIFFS
10 were ignorant of the true facts and the intent of defendants and doe DEFENDANTS
11 herein and had no reason to know of such fraud and deceitful acts and justifiably relied
12 upon said DEFENDANTS to comply with the law and to be fair with PLAINTIFFS.

13 DEFENDANTS had a fiduciary duty to act with fairness toward PLAINTIFFS, to comply
14 with the law governing real estate loans and to not do anything to harm PLAINTIFFS or
15 knowingly place PLAINTIFFS in a position that would ultimately be detrimental to them.

16 30. PLAINTIFFS became aware of the grounds for rescission when PLAINTIFFS
17 sought to workout a plan for restructuring the loan note with DEFENDANTS.

18 31. By the commission of the acts complained of herein, DEFENDANTS breached its
19 fiduciary duty of good faith and fair dealing to PLAINTIFFS..

20 32. PLAINTIFFS, because of the fraud, breach of fiduciary duty and the unfair and
21 unlawful business practice of DEFENDANTS and doe DEFENDANTS has rescinded
22 the contract between them and said defendants, their successors, assigns, obligees,
23 trustees and transferees of the note contract.

24 33. As provided by law PLAINTIFFS declare the contract, which is the subject of this
25 action, void, voidable and rescinded pursuant to California Civil Code section 1689 (b)
26 (1) (5) (6).

27 34. PLAINTIFFS provided notice to DEFENDANTS that the rescind the contract. If any
28 DEFENDANTS t pleads that PLAINTIFF did not provide such notice, when notice is

1 intended by filing and service of this Complaint as provided for in California Civil Code
2 section 1691 (b).

3 35. PLAINTIFFS, pursuant to California Civil Code section 1691 by the notice provided
4 to DEFENDANTS and by this Complaint offer to restore to DEFENDANTS the subject
5 property in return for DEFENDANTS return to PLAINTIFF all monied paid to
6 DEFENDANTS in connection with the placement of the loan, service of the loan, loan
7 payments made, improvements made to the property and other such costs and
8 expenses plaintiffs have paid in connection with maintenance and upkeep of the
9 property.

10 36. PLAINTIFF seek relief by way of rescission as provided for in California Civil Code
11 Section 1692.

12 37. During the pendency of this action for rescission PLAINTIFF also seek immediate
13 injunctive relief by way of an order prohibiting DEFENDANTS and each of them
14 foreclosing on the subject property and requiring DEFENDANT to restore all that
15 PLAINTIFF are entitled to under rescission of the contract.

16 **SEVENTH CAUSE OF ACTION**

17 **BREACH OF FIDUCIARY DUTY**

18 38. PLAINTIFFS reallege the allegations of the Fourth, Fifth and Six Causes of Action
19 as set forth fully herein.

20 39. DEFENDANTS owed and owes a fiduciary duty to PLAINTIFFS to act only in a
21 manner that would protect PLAINTIFFS interest and not jeopardize their rights in the
22 subject property and not subject them to loss of the property and suffer other damages
23 through illegal, unlawful and unfair acts on defendants part. DEFENDANTS have in
24 fact breached that fiduciary duty by the commission of the acts alleged herein, which
25 have caused PLAINTIFF'S damage in a amount as yet unknown. PLAINTIFF will seek
26 leave to amend this complaint to allege such damages when the sum of damages is
27 actually known.

28 40. The actions of the DEFENDANTS and each of them was done in a malicious, cold

1 and conniving manner and designed to cause plaintiffs to lose their property through
2 means of defendant' devious and underhanded practices. Such actions are tantamount
3 to intentional and malicious actions and warrant an award of punitive damages in an
4 appropriate amount.

5 **EIGHTH CAUSE OF ACTION**

6 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

7 41. The allegations of the Seventh Cause of action are reallege herein as though set
8 forth fully.

9 42. DEFENDANTS and each of them, under the terms of the contract note and the
10 understanding of the parties, had a duty of good faith and fair dealing with plaintiffs In
11 the execution and carrying out of the terms and conditions of the contract.

12 43. By way of the acts alleged herein defendants breached their duty of good faith and
13 fair dealing all to PLAINTIFF'S' damage in an amount to be determined at trial.

14 **NINTH CAUSE OF ACTION**

15 **UNFAIR AND UNLAWFUL BUSINESS PRACTICE**

16 44. The allegations of paragraphs 1-43 are reallege and incorporated herein by
17 reference as though set forth fully.

18 45. The violations of DEFENDANTS are unlawful, deceitful and unfair and said actions
19 violate the public policy of the State of California and the unfair and unlawful practice
20 prohibitions of Business and Professions Code section 17200.

21 46. The acts of DEFENDANTS that constitute violations of Section 17200 of the
22 Business and Professions Code are those alleged herein as well as the following
23 unlawful and unfair business practices:

24 (a) Failing and refusing to comply with California Civil Code section 1788 et seq.

25 Regarding fair debt collection in the State of California in that DEFENDANTS failed
26 and refused to comply with California Civil Code 1788.17 which subsumes 15 USC

27 1692 g regarding validation of a debt. DEFENDANTS acting as a debt collector, failed
28 to provide a proper validation notice required by said statutes in that the name of the

1 creditor was not provided in the Debt Validation Notice required by California Civil Code
2 1788.17 and 15 USC 1692 g (a) (2). The violation of said code and the law it
3 subsumes via the fair debt collection practice act (FDCPA) provide for injunctive relief
4 as well as damage in an amount of a minimum of \$1000.00 which PLAINTIFF seek, in
5 addition to an injunction under Business and Professions Code section 17200 and
6 similarly situated injunctive laws that apply to facts as alleged herein.

7 (b) DEFENDANTS have failed and refuse to comply with California Civil Code section
8 2943 which provides that a beneficiary statement must be provided to a trustor within
9 21 days of request for loan information, including note balances, etc. PLAINTIFFS
10 request for loan information was never responded to up and including the date of filing
11 of this complaint.. Since DEFENDANTS did not comply with the 21 day requirement of
12 California Civil Code section 2943, the law was violated by DEFENDANTS and
13 PLAINTIFFS are entitled to an award of \$300 in statutory fees.

14 (c) DEFENDANTS failed to comply with the provisions of 12 USC 2603 (a) in that
15 DEFENDANTS, at the time of closing of the sale transaction involving the subject
16 property herein, failed to provide a HUD-1 statement in the form required by the statute.

17 (d) Defendants have violated the Regulation Z, 12 CFR section 226 by failing and
18 clearly and conspicuously make numerous required disclosures, including but not
19 limited to:

- 20 (1) The correct finance charge
21 (2) The correct annual percentage rate
22 (3) The correct amount financed
23 (4) The security interests taken.

24 As a result of these violations, PLAINTIFF are entitled to the amount of \$2000 in
25 statutory damages from DEFENDANT.

26 47. DEFENDANTS actions as complained herein demonstrate a pattern and practice
27 of unlawful and unfair business practices perpetrated upon a large portion of the
28 consuming public inclusive of plaintiffs herein. Such pattern and practice is so grievous

1 that it constitutes an unconscionable act and violates the provisions of the California
2 Code section 1770 (a) (19) in that DEFENDANTS are guilty of inserting unconscionable
3 terms with the loans contracts inclusive of the contract that is the subject of this action.

4 48. Based on the actions by the DEFENDANTS individually and collectively
5 DEFENDANTS should be enjoined from conducting business to the detriment of
6 PLAINTIFFS and others similarly situated and DEFENDANTS, individually and
7 collective should be enjoined from foreclosing on plaintiffs property and to provide
8 restitution to plaintiffs according to proof.

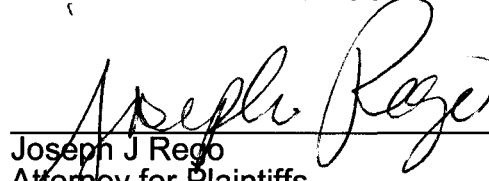
9 **WHEREFORE PLAINTIFF PRAYS:**

- 10 1. For general damages according to proof;
11 2. For special damages according to proof;
12 3. For statutory damages as outlined within the complaint and as determined by the
13 facts of this case;
14 4. For a temporary restraining order stopping and restraining defendants from
15 proceeding with any notice of sale of the property and to restrain defendants from
16 pursuing foreclosure upon the property until the claims herein have litigated and an
17 adjudication by the parties;
18 5. For a preliminary and permanent injunction against all defendants ordering all
19 foreclosure proceedings cease until further order of the court.
20 6. For a declaration of rights of the parties as to the subject property of this action;
21 7. For rescission of the note contract;
22 8. For punitive damages in an appropriate amount.
23 9. Attorney fees

24
25 Respectfully submitted,

THE LAW OFFICE OF JOSEPH REGO

26
27 Dated: 3/24/09



Joseph J. Rego
Attorney for Plaintiffs

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EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Carlsbad, County of San Diego, State of California, described as follows:

Parcel A:

Lot 32 of Carlsbad Tract No. 01-06 Calavera Hills Village 'X', in the City of Carlsbad, County of San Diego, State of California, according to Map thereof No. 14706, filed in the Office of the County Recorder of San Diego County, California, on October 29, 2003.

Reserving therefrom each easement reserved in the Declaration of Restrictions for Calavera Hills II Planned Development described below.

Parcel B:

A non-exclusive easement on and over the "Common Area" as defined in the Declaration (defined below) for use, occupancy and enjoyment of, and ingress and egress to, the amenities located thereon, subject to the terms and provisions of the Declaration. This easement is appurtenant to Parcel A above described and shall become effective as to each portion of the common area upon the later to occur of (i) the recordation of this deed, or (ii) the conveyance of record of the Common Area to the Association.

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EXHIBIT B

BALLOON NOTE

(Fixed Rate)

NOTE #: 11806549

SYSTEMS

Loan #: 11806549

MIN: 100136300118065498

CFL # 609 5924

THIS LOAN IS PAYABLE IN FULL AT MATURITY. YOU MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE. LENDER IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. YOU WILL, THEREFORE, BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT YOU MAY OWN, OR YOU WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER YOU HAVE THIS LOAN WITH, WILLING TO LEND YOU THE MONEY. IF YOU REFINANCE THIS LOAN AT MATURITY, YOU MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF YOU OBTAIN REFINANCING FROM THE SAME LENDER.

January 11, 2007

BONITA

California

[Date]

[City]

[State]

4743 CRATER RIM ROAD CARLSBAD, CA 92010

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 640,115.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is GE Money Bank, a federal savings bank

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

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

2. INTEREST

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 9.250 %.

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

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

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

I will make my monthly payments on the 1st day of each month beginning on March 1,

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

I will make my monthly payments at 4828 Loop Central Drive, Houston, TX 77081-2226

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 5,061.14

4. BORROWER'S RIGHT TO PREPAY

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

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

MULTISTATE BALLOON FIXED RATE NOTE — Single Family — FANNIE MAE UNIFORM INSTRUMENT

Form 3160 1/01

ENCLOSURE 08/25/2005

Page 1 of 3



11806549

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5. LOAN CHARGES

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

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

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

(B) Default

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

(C) Notice of Default

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

(D) No Waiver By Note Holder

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

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

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

7. GIVING OF NOTICES

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

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

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

9. WAIVERS

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

10. UNIFORM SECURED NOTE

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

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 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.



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

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

Gordy Anthony Spires 1/12/07
 - Borrower - GORDY ANTHONY SPIRES - Date -

PAY TO THE ORDER OF

[Sign Original Only]

PAY TO THE ORDER OF
 WMC MORTGAGE CORP
 WITHOUT RECOURSE

JESSICA FUENTES
 ASSISTANT SECRETARY
 GE MONEY BANK A FEDERAL SAVINGS BANK

WITHOUT RECOURSE

JESSICA FUENTES
 ASSISTANT SECRETARY
 WMC MORTGAGE CORP.



21937834

Recording requested by
First American TitleRecording Subdivision Sale-out Dept.
Return To:
WMC MORTGAGE CORP.

3100 THORNTON AVENUE

BURBANK, CA 91504

Attn: (WHOLESALE)

Prepared By:
JAMIE WALKERGE Money Bank, a federal
savings bank

3100 THORNTON AVENUE

BURBANK, CA 91504

DOC # 2007-0048264

JAN 23, 2007 3:46 PM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY SMITH COUNTY RECORDERFEES: 66.00
PAGES: 20 DA: 1

11/20/07

2663429-12

[Place Above This Line For Recording Data]

ESCROW # 1506-2638m

Serv #: 11806549

DEED OF TRUST

SPIRES

Loan #: 11806549

MIN: 100136300118065498

PIN: 168-331-20-00

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated January 11, 2007, together with all Riders to this document.

(B) "Borrower" is GORDY ANTHONY SPIRES, AN UNMARRIED MAN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is GE Money Bank, a federal savings bank

Lender is a federal savings bank

United States of America
CA 91504organized and existing under the laws of
Lender's address is 3100 Thornton Ave., Burbank,

(D) "Trustee" is WESTWOOD ASSOCIATES, A CALIFORNIA CORPORATION

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

DOCUKCAL
DOCUKCAL.VTX 12/19/2005

Form 3005 1/01

(page 1 of 14 pages)



11806549

Name: GORDY ANTHONY
SPIRES
Customer: LEHMLocation: KASOTA
Pool: WMC-WARE

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(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.

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(F) "Note" means the promissory note signed by Borrower and dated January 11, 2007. The Note states that Borrower owes Lender

Six Hundred Forty Thousand One Hundred Fifteen And 00/100 Dollars (U.S. \$ 640,115.00) plus interest. Borrower has promised to pay this debt in regular Periodic

Payments and to pay the debt in full not later than February 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 | ☐ Condominium Rider | ☐ Second Home Rider |
| ☐ Balloon Rider | ☒ Planned Unit Development Rider | ☐ Biweekly Payment Rider |
| ☐ 1-4 Family Rider | ☒ Other(s) [specify] Balloon Rider | |

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §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



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covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY of SAN DIEGO

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AND KNOWN AS EXHIBIT 'A'.

which currently has the address of 4743 CRATER RIM ROAD

CARLSBAD
[City]

[Street]
California 92010
[Zip Code]

("Property Address"):

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

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

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

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within



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 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



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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.

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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.



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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.

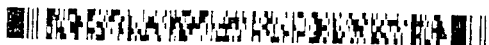
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In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not 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.



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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.

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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. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground 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



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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.

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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

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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.

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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



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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.

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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



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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.

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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



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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.

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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.



11806549

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.

11806549

Gordy Anthony Spires 1/12/07
- Borrower - GORDY ANTHONY SPIRES - Date -



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[Space Below This Line For Acknowledgment]

State of California

County of San Diego

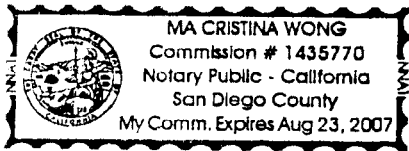
On January 12, 2007 before me, Ma Cristina Wong, Notary Public
(here insert name and title of the officer)

personally appeared

Gordy Anthony Spires

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

WITNESS my hand and official seal.



Signature Ma Cristina Wong (Seal)



ADDENDUM TO NOTE

PREPAYMENT PENALTY - FIRST (12) MONTHS OF NOTE

serv #: 11806549

Loan #: 11806549

This addendum is made this 11th day of January, 2007, and is incorporated into and shall be deemed to amend and supplement the Note of the same date given by the undersigned (the "Borrower") to GE Money Bank, a federal savings bank

(the "Lender") covering the property described in the Security Instrument and located at:
4743 CRATER RIM ROAD CARLSBAD, CA 92010

[Property Address]

To the extent that the provisions of this Prepayment Note Addendum (the "Addendum") are inconsistent with the provisions of the Security Instrument and/or the Note, the provisions of this Addendum shall prevail over and shall supercede any such inconsistent provisions of the Security Instrument and/or the Note.

Section 4 of the Note is amended to read in its entirety as follows:

BORROWER'S RIGHT TO PREPAY

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

Except as provided below, I may make a full or partial prepayment at any time. If I make any partial prepayment, I must still make each later payment as it becomes due and in the payment amount established in accordance with the provisions of the Note. I may make a full prepayment at any time. However, if within the first Twelve months after the execution of the Note, I make any prepayment(s) within any 12-month period the total amount of which exceeds Twenty percent (20.000 %) of the original principal amount of this loan, I will pay a prepayment charge in an amount equal to the payment of Six (6) months' advance interest on the amount by which the total of my prepayments(s) within that 12-month period exceeds Twenty percent (20.000 %) of the original principal amount of the loan.

Gordy Anthony Spires 1/12/07
- Borrower - GORDY ANTHONY SPIRES - Date -

