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CLERK  
U.S. BANKRUPTCY  
DISTRICT OF ARIZONA

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**ANDREW C. BAILEY**  
2500 N. Page Springs Rd  
Cornville, AZ 86325  
928 634-4335  
*Self-Represented Litigant*

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

**ANDREW C. BAILEY**  
Plaintiff

**Chapter 11**  
**BK Case #: 2:09-bk-06979-PHX-RTBP**  
**AP Case #: 2:09-ap-01728-RTBP**

vs

THE BANK OF NEW YORK MELLON, F/K/A  
THE BANK OF NEW YORK

CWALT, INC. ALTERNATIVE LOAN TRUST  
2007- HY4 MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2007-HY4  
(CWALT)

**AMENDED COMPLAINT FOR  
ENFORCEMENT OF QUALIFIED  
WRITTEN REQUEST AND  
TEMPORARY RESTRAINING  
ORDER**

BAC HOME LOANS SERVICING LP  
F/K/A COUNTRYWIDE HOME LOANS  
(BAC)

COUNTRYWIDE HOME LOANS

THE MORTGAGE ELECTRONIC  
REGISTRATION SERVICE (MERS)

Related to  
Subject property:  
2560 N. Page Springs Rd,  
Cornville, AZ 86325  
Countrywide Account #: 164999184

JOHN DOES "1001-2000"  
Defendants

Plaintiff sues Defendants to compel discovery pursuant to F.R.B.P 7001(2) and 7001(9),  
to answer the Qualified Written Request pursuant to the Real Estate Settlement  
Procedures Act 12 U.S.C. § 2605 and Debt Validation Letter pursuant to the Fair Debt

1 Collection Practices Act 15 U.S.C §1692, and to stay any foreclosure or other action  
2 before and until the resolution of this complaint, and states:

3 **I. Jurisdiction, Venue and Statutory Predicate**  
4

5 1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157.

6 This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in  
7 this Court pursuant to 28 U.S.C. §§ 1408 and 1409.  
8

9 2. The statutory predicate for the relief requested herein is Federal Rule of Bankruptcy  
10 Procedure 7001(2) to determine the validity, priority, or extent of a lien or other interest in  
11 property, other than a proceeding under Rule 4003(d), and Federal Rule of Bankruptcy  
12 Procedure 7001(9) to obtain a declaratory judgment relating to the foregoing.

13 Other Rules and Statutes apply, including but not limited to 12 U.S.C. § 2605 and  
14 15 U.S.C §1692.  
15

16 **II. Parties Known and Unknown**  
17

18 3. There are multiple known and unknown stakeholders with potential claims relating to the  
19 subject Property and "mortgage loan " (hereafter the Transaction). Plaintiff seeks discovery  
20 as to exactly who these stakeholders and other parties are, what their respective rights are  
21 under the law, and how much, if anything, he owes each of them.  
22

23 4. Plaintiff is a resident of the State of Arizona living in and otherwise using and occupying  
24 his home located at 2560 North Page Springs Rd, Cornville, AZ 86325  
25 (hereafter the "Property")

1 5. Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF  
2 NEW YORK is and was, at all times material hereto, a corporation doing business in the  
3 State of Arizona and functioning as alleged trustee for another corporation or entity  
4 identified as CERTIFICATEHOLDERS, CWALT, INC. ALTERNATIVE LOAN TRUST 2007-  
5 HY4 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-HY4 .  
6

7 6. Defendant CERTIFICATEHOLDERS, CWALT, INC. ALTERNATIVE LOAN TRUST 2007-  
8 HY4 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-HY4 (CWALT) is a  
9 corporate or other entity unknown to the Plaintiff. The current status and standing of  
10 Defendant CWALT in the instant case is unknown to Plaintiff.  
11

12 7. Defendant BAC HOME LOANS SERVICING LP F/K/A COUNTRYWIDE HOME  
13 LOANS (BAC) is and was, at all times material hereto, the alleged "originator" and  
14 "servicer" of the subject "loan". The current status and standing of Defendant BAC in the  
15 instant case is unknown to Plaintiff.  
16

17 8. Defendant COUNTRYWIDE HOME LOANS (COUNTRYWIDE) is and was, at all  
18 times material hereto, the alleged "originator" and "servicer" of the subject "loan". The  
19 current status and standing of Defendant COUNTRYWIDE in the instant case is unknown  
20 to Plaintiff.  
21

22 9. Defendant THE MORTGAGE ELECTRONIC REGISTRATION SERVICE (MERS)  
23 is a corporation organized in the State of Delaware doing business in the State of Arizona.  
24 MERS, a mortgage recording service, is the current beneficiary under the deed of trust,  
25 according to the records of Yavapai County, Arizona. The current status and standing of

1 Defendant MERS in the instant case is unknown to Plaintiff.

2  
3 10. None of the above named and identified Defendants appear to be creditors in the  
4 Transaction. Defendants JOHN DOES "1001-2000" include the creditors in the Transaction  
5 and are undisclosed, unnamed and unknown investors, participants, corporate or other  
6 entities, conduits, trustees, servicers, custodians and others in a commonly-applied  
7 mortgage securitization scheme that may or may not have included the Transaction and who  
8 may or may not be investors or certificateholders in Defendant CWALT, an entity selling a  
9 mortgage-backed investment vehicle or vehicles which may or may not be secured in whole  
10 or in part by the Transaction.

11  
12 11. In addition to Plaintiff's Chapter 11 case (2:09-bk-06979-PHX-RTBP) there are three  
13 (3) companion cases to the instant action, each with a similar but distinct group of "JOHN  
14 DOES", to wit:

15 2:09-ap-01731-RTBP (JOHN DOES 1-1000), and

16 2:09-ap-01729-RTBP (JOHN DOES 2001-3000), and

17 2:09-ap-01727-RTBP (JOHN DOES 3001-4000)

18  
19 **III. Background Material Facts and Grounds for Complaint**

20 Plaintiff reaffirms and realleges paragraphs 1 through 11 hereinabove as if set forth more  
21 fully hereinbelow.

22  
23 12. On April 8th, 2009 three of Plaintiff's unsecured creditors filed an involuntary petition  
24 against the Plaintiff for relief under Chapter 7 of title 11 of the United States Code (the  
25 "Bankruptcy Code").

1 13. On May 28th, 2009 (the "Petition Date"), this Court entered an order granting Plaintiff's  
2 motion to convert to Chapter 11 thereby commencing the above-captioned case.

3  
4 14. Plaintiff is operating his businesses and managing his properties as debtor-in-possession  
5 pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6  
7 15. Plaintiff has subsequently filed and revised all schedules and other necessary  
8 documents, and has satisfied all of the requirements of the Bankruptcy Court and the US  
9 Trustee in the case to date.

10  
11 16. The United States Trustee's office conducted the initial creditors' meeting  
12 pursuant to 11 U.S.C. § 341 on September 4, 2009.

13  
14 17. The Transaction is Plaintiff's purchase of a financial product or security as set forth and  
15 illustrated by Composite Exhibit "A" (Deed of Trust and Note).

16  
17 18. Plaintiff has secured the services of a mortgage audit firm which has performed a  
18 forensic review of the Transaction with the goal of determining who Plaintiff's creditors  
19 are, and how much is owed to them.

20  
21 19. On September 21, 2009, Plaintiff served a Qualified Written Request pursuant to the  
22 Real Estate Settlement Procedures Act 12 U.S.C. § 2605 and a Debt Validation Letter  
23 pursuant to the Fair Debt Collection Practices Act 15 U.S.C § 1692 on the Defendants  
24 through their attorneys of record, where known, in a diligent attempt to clarify the above  
25 issues. No 20-day acknowledgement or 60-day response to the subject requests have been

1 received as of the date of this Complaint. A Certificate of Non-Response and a Certificate  
2 of Dishonor are being filed with the appropriate authorities.

3  
4 20. Plaintiff has secured the services of an expert in securitized residential mortgage  
5 products and mortgage-backed securities as set forth in Exhibit "B".  
6

7 21. Plaintiff's expert witness has executed a Declaration of his findings, opinions and  
8 recommendations as set forth in Exhibit "C".  
9

10 22. Based on the above, Plaintiff has received conflicting representations as to the alleged  
11 creditor's identity, and now believes a title defect or cloud on title exists thus rendering title  
12 to the Property in the Transaction unmarketable.  
13

14 23. Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK  
15 has instituted a foreclosure proceeding to foreclose on a mortgage as to the Property which  
16 mortgage was originally issued in the name of Defendant COUNTRYWIDE.  
17 COUNTRYWIDE was also the originating "lender" or "mortgage broker" on the Note. The  
18 subject action seeks to foreclose on the same Property which is the subject of the mortgage  
19 and foreclosure action originally issued by Defendant COUNTRYWIDE herein and is  
20 simultaneously the same Property which is the subject of a Proof of Claim filed by  
21 Defendant BAC HOME LOANS SERVICING LP herein.  
22

23 24. Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK  
24 has apparently taken the position that either Defendant COUNTRYWIDE or Defendant  
25 BAC or Defendant MERS or all three previously assigned the mortgage originally issued by

1 Defendant COUNTRYWIDE and re-conveyed to MERS as to the Property to Defendant  
2 THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK, or that a  
3 photocopy of the original un-assigned and un-endorsed note dated March 29, 2007 executed  
4 months and years prior to multiple subsequent recorded and unrecorded assignments and  
5 sales is sufficient foundation for Defendant THE BANK OF NEW YORK MELLON,  
6 F/K/A THE BANK OF NEW YORK'S November 12, 2009 foreclosure action.  
7

8 25. No such Assignment or re-assignment or other evidence has been produced to the  
9 Plaintiff or to the Court, and Defendant THE BANK OF NEW YORK MELLON, F/K/A THE  
10 BANK OF NEW YORK has failed to prove that it is the holder of all rights under the Note,  
11 which would permit the legal holder thereof to declare a default which would trigger a  
12 foreclosure.  
13

14 26. Further, Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW  
15 YORK, as alleged Trustee for unnamed 'Certificateholders' of a series of mortgage-backed  
16 securities, has failed to demonstrate that it, and not the Certificateholders, is the party with  
17 the true ownership interest in the Mortgage the subject of this action, or that the  
18 Certificateholders have acceded or legally assigned their rights to and under the subject  
19 Mortgage to Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW  
20 YORK, specifically the right to seek a foreclosure.  
21

22 27. As such, Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW  
23 YORK has not demonstrated that it has suffered an actual or threatened injury as a  
24 consequence of any default, which distinct and palpable injury is legally required under  
25 applicable Federal and State law in order for Defendant THE BANK OF NEW YORK

1 MELLON, F/K/A THE BANK OF NEW YORK to satisfy the legal prerequisite to prove that it  
2 has a sufficient personal stake in and legal standing to institute the foreclosure on the  
3 Property.  
4

5 28. As a severance of the ownership and possession of the original Note and Mortgage has  
6 occurred and as the true owner and holder of both the original Note and Mortgage are  
7 unknown as a result of one or more alleged assignments and the parsed sale of certain rights  
8 under the Note in part to at least one third party (Defendant MERS), Defendant THE BANK  
9 OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK is legally precluded from  
10 foreclosing on the Property unless and until it can demonstrate full legal standing to do so.  
11

12 29. As set forth above, Defendants BAC and COUNTRYWIDE are only the alleged  
13 "servicers" of the Note, and as such cannot institute or maintain a foreclosure proceeding.  
14

15 30. As set forth above, Defendant MERS is only the "recorder" of the Note, and as such  
16 cannot institute or maintain a foreclosure proceeding.  
17

18 31. Plaintiff served his First Set of Interrogatories and First Request to Produce Documents  
19 on Defendants on January 11, 2010 as set forth in Exhibit "D".  
20

21 32. This Complaint is being timely filed in accordance with applicable law to challenge the  
22 foreclosure prior to any Trustee Sale or the issuance of any Certificate of Title following  
23 sale.  
24  
25



1 **IV. RELIEF SOUGHT**

2  
3 Plaintiff reaffirms and realleges paragraphs 1 through 32 hereinabove as if set forth more  
4 fully hereinbelow.

5  
6 33. Plaintiff requests a hearing based on the rules of evidence and founded on common  
7 discovery and enforcement in obtaining relevant information about his loan.

8  
9 34. Plaintiff requests discovery pursuant to Bankruptcy Rules 7026 thru7037 and FRCP 26  
10 thru 37 including but not limited to enforcement of the RESPA QWR and FDCPA DVL to  
11 test the merits of Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF  
12 NEW YORK's allegation that they have the right to enforce the note.

13  
14 35. Plaintiff seeks a complete accounting from those individuals, entities or parties  
15 involved in the origination, servicing, and securitization of his loan, so that he can discover  
16 what undisclosed fees were paid under TILA and RESPA, and the true identities of the  
17 people involved in Plaintiff's table-funded loan.

18  
19 36. Plaintiff seeks the disclosure of the identity(ies) of the creditor(s) who actually funded  
20 the subject loan, and the production of documents and names, addresses and phone numbers  
21 of people who can testify under oath at the evidentiary hearing.

22  
23 37. Plaintiff requests the opportunity to admit evidence, including but not limited to the  
24 results of a forensic analysis of the subject loan and documents on record at the Yavapai  
25 County Recorder's office.

1  
2 38. Plaintiff requests the opportunity to present expert witness Neil F. Garfield, MBA, JD or  
3 other expert witness at the evidentiary hearing.

4  
5 39. Plaintiff requests that the Court give serious consideration to Dr. Garfield's expert  
6 opinions and testimony as they may apply to Plaintiff's situation and to the situation of  
7 millions of other homeowners facing foreclosure.

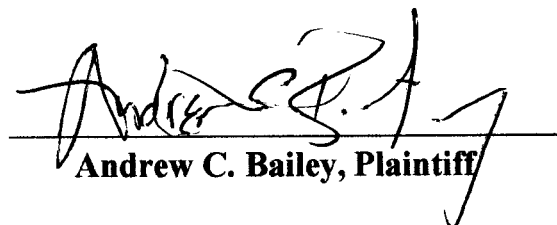
8  
9 40. Plaintiff requests a declaratory judgment relating to the foregoing,

10  
11 41. Finally, Plaintiff requests that the court impose a temporary restraining order enjoining  
12 Defendants from taking any further foreclosure or other action before the resolution of the  
13 foregoing, thereby maintaining the status quo until discovery has been conducted.

14  
15 WHEREFORE, Plaintiff respectfully requests that the Court order and grant

16 (a) an evidentiary hearing on the merits, and (b) discovery and enforcement in obtaining all  
17 relevant information, and (c) enforcement of the disclosure requirements and default clauses  
18 of the Real Estate Settlement Procedures Act and the Fair Debt Collection Practices Act,  
19 and (d) the production of documents, and (f) the opportunity to bring an expert witness or  
20 witnesses before the court, and (g) a declaratory judgment relating to the foregoing, and (f)  
21 a temporary restraining order as set forth above, and (e) such other and further relief as may  
22 be just and proper.

23  
24 Dated January 14<sup>th</sup>, 2010

25  
  
Andrew C. Bailey, Plaintiff

230

Ana Mayman-Trujillo, Recorder  
OFFICIAL RECORDS OF YAVAPAI COUNTY  
TRANSACTION TITLE INS CO DOT

B-4504 P-231  
05/04/2007 04:08P  
28.00 4134299



B-4504 P-231  
Page: 1 of 18  
DOT 4134299

After Recording Return To:

Chicago Title: 1358707

EEF
\$8
\$5
\$1
\$2
\$3



610 12 001 002

CA 91410-0423

Service Link Division 4000 Industrial Blvd  
Alliquippa, PA 15001

Prepared By:  
DENNIS GUTIERREZ

9/8

[Space Above This Line For Recording Data]

1358707

[Escrow/Closing #]

[Doc ID #]

# DEED OF TRUST

MIN

## 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 MARCH 29, 2007 together with all Riders to this document.

(B) "Borrower" is

Andrew C. Bailey, an unmarried man and Constance Baxter Marlow, an unmarried woman

Borrower is the trustor under this Security Instrument. Borrower's mailing address is  
2560 N PAGE SPRINGS RD  
CORNVILLE, AZ 86325-6122

(C) "Lender" is  
Countrywide Bank, FSB.

Lender is a  
FED SVGS BANK

organized and existing under the laws of THE UNITED STATES

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

Page 1 of 11

VMP-5A(AZ) (0200)  
CONVVA

CHL (08/05)(d)

VMP Mortgage Solutions, Inc. (800)521-7291

Form 3003 1/01 (rev. 6/02)



Composite  
Exhibit A  
1 & 2



DOC ID #:

Lender's mailing address is  
1199 North Fairfax St. Ste.500  
Alexandria, VA 22314

(D) "Trustee" is  
FIDELITY NATIONAL TITLE INSURANCE CO. AN ARIZONA CORPORATION

Trustee's mailing address is  
PO BOX 32695

PHOENIX, AZ 85064

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

(F) "Note" means the promissory note signed by Borrower and dated MARCH 29, 2007  
The Note states that Borrower owes Lender

FIVE THOUSAND and 00/100

Dollars (U.S. \$ 425,000.00) plus interest. Borrower has promised to pay this debt in regular

Periodic Payments and to pay the debt in full not later than APRIL 01, 2037.  
(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

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

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

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

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

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

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

(M) "Escrow Items" means those items that are described in Section 3.  
(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

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

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

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

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

#### TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the



DOC ID #:

repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY

of

[Type of Recording Jurisdiction]

YAVAPAI

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: 407-27-016C  
address of

which currently has the

2560 N PAGE SPRINGS RD, CORNVILLE

[Street/City]

Arizona 86325-6122 ("Property Address"):

[Zip Code]

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

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

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

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

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

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



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them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount





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not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

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

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

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

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

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

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

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

10. **Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes



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available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

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

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

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

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

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

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

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

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

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

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

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

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest



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

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

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

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

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

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

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

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notices 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



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provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

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

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

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

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

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

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

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

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

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b)



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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.

Andrew C. Bailey (Seal)  
ANDREW C. BAILEY -Borrower

Constance Baxter Marlow (Seal)  
CONSTANCE BAXTER MARLOW -Borrower

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

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

STATE OF ARIZONA,

Yavapai County ss:

The foregoing instrument was acknowledged before me this 29th day of March 2009  
by Andrew C. Bailey and Constance Baxter Marlow.

My Commission Expires: 7/26/2009

Ann Gray  
Notary Public



# InterestOnly<sup>SM</sup> ADJUSTABLE RATE NOTE

(One-Year LIBOR Index (As Published in *The Wall Street Journal*) - Rate Caps)

**THIS NOTE CONTAINS PROVISIONS ALLOWING FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE AND FOR CHANGES IN MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.**

MARCH 29, 2007  
[Date]

CORNVILLE  
[City]

ARIZONA  
[State]

2560 N PAGE SPRINGS RD, CORNVILLE, AZ 86325-6122  
[Property Address]

### 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 425,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is Countrywide Bank, FSB. 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 6.250%. The interest rate I will pay may change in accordance with Section 4 of this Note. The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

### 3. PAYMENTS

#### (A) Time and Place of Payments

I will make a payment on the first day of every month, beginning on MAY 01, 2007. Before the First Principal and Interest Payment Due Date as described in Section 4 of this Note, my payment will consist only of the interest due on the unpaid principal balance of this Note. Thereafter, I will pay principal and interest by making a payment every month as provided below.

I will make my monthly payments of principal and interest beginning on the First Principal and Interest Payment Due Date as described in Section 4 of this Note. 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 if the payment includes both principal and interest, it will be applied to interest before Principal. If, on APRIL 01, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

P.O. Box 10219, Van Nuys, CA 91410-0219  
or at a different place if required by the Note Holder.

#### (B) Amount of My Initial Monthly Payments

My monthly payment will be in the amount of U.S. \$ 2,213.54 before the First Principal and Interest Payment Due Date, and thereafter will be in an amount sufficient to repay the principal and interest at the rate determined as described in Section 4 of this Note in substantially equal installments by the Maturity Date. The Note Holder will notify me prior to the date of change in monthly payment.

#### (C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 or 5 of this Note.

CONV

• MULTISTATE Interest Only ADJUSTABLE RATE NOTE - ONE YEAR LIBOR INDEX  
2D905-XX (04/03)(c) Page 1 of 4

Initials: **ACB**

Composite  
Exhibit A  
1 & 2



**4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES****(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of APRIL, 2017, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

**(B) The Index**

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market (LIBOR), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

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

**(C) Calculation of Changes**

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

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

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

The interest rate I am required to pay at the first Change Date will not be greater than 11.250 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.250 %.

**(E) Effective Date of Changes**

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

**(F) Notice of Changes**

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

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

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the first Change Date.

**5. 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 the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payments unless the Note Holder agrees in writing to those changes. If the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist of only interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, my partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

**6. LOAN CHARGES**

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

**7. BORROWER'S FAILURE TO PAY AS 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 FIFTEEN 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 interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

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

**(C) Notice of Default**

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

**(D) No Waiver By Note Holder**

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

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

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

**8. GIVING OF NOTICES**

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

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

**9. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

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

**10. WAIVERS**

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

**11. UNIFORM SECURED NOTE**

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

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall 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 it 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, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal 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.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead 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.



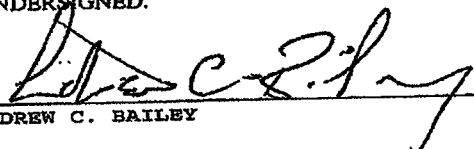
LOAN #:

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

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

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

  
\_\_\_\_\_  
ANDREW C. BAILEY (Seal)  
-Borrower

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

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

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

[Sign Original Only]



B-4504 P-231  
Page: 12 of 18  
DOT 4184288

[Space Above This Line For Recording Data]

**FIXED/ADJUSTABLE RATE RIDER**  
(LIBOR One-Year Index (As Published In *The Wall Street Journal*) - Rate Caps)

After Recording Return To:  
COUNTRYWIDE HOME LOANS, INC.  
MS SV-79 DOCUMENT PROCESSING  
P.O.Box 10423  
Van Nuys, CA 91410-0423

Prepared By:  
DENNIS GUTIERREZ

1358707  
(Sacrow/Closing #)

(Doc ID #)

THIS FIXED/ADJUSTABLE RATE RIDER is made this TWENTY-NINTH day of MARCH, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to Countrywide Bank, FSB. ("Lender") of the same date and covering the property described in the Security Instrument and located at:  
2560 N PAGE SPRINGS RD, CORNVILLE, AZ 86325-6122  
[Property Address]

CONV  
● MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family INTEREST ONLY  
2U798-XX (04/02)(0)  
Page 1 of 4

Initials:

ACB  
CSM





DOC ID #:

**THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.**

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

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

The Note provides for an initial fixed interest rate of 6.250 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

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

**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of APRIL, 2017, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

**(B) The Index**

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in the *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

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

**(C) Calculation of Changes**

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

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

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

The interest rate I am required to pay at the first Change Date will not be greater than 11.250 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.250 %.

**(E) Effective Date of Changes**

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

**(F) Notice of Changes**

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

Initials: **ACS**  
**CBM**



DOC ID #:

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

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall 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.

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.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to 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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

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

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

Initials: *AGB*  
*CBM*



DOC ID #:

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

ANDREW C. BAILEY

(Seal)

- Borrower

CONSTANCE BAXTER MARLOW

(Seal)

- Borrower

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

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



## Exhibit "A" Legal Description

All that certain parcel of land situate in the County of Yavapai, and State of Arizona, being known and designated as follows:

A portion of the SE 1/4 of Section 15, Township 16 North, Range 4 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona, bounded and described as follows:

Commencing at the Southeast corner of said Section 15;

Thence North 89°57'49" West, along the Southerly boundary of said Section 15, a distance of 909.42 feet to the True Point of Beginning;

Thence continuing North 89°57'49" West, a distance of 393.75 feet;

Thence North 07°17'21" East, a distance of 288.10 feet;

Thence South 89°57'49" East, a distance of 292.28 feet;

Thence South 12°47'43" East, a distance of 293.12 feet to the True Point of Beginning.

Tax ID: 407-27-016C-1

  
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1358707 - 1

## RESUME

### NEIL F. GARFIELD

4980 S. Alma School Rd. A-2  
480-895-5443 Fax: 772-594-6244  
email: Ngarfield@msn.com

#### SUMMARY:

Varied and integrated professional and business background in the following areas -- *investment banking, derivative security baskets, electronic funds transfer, management, information systems, accounting, auditing and law.*

- ✓ Currently teaching lawyers, judges, legislators, and layman in the Garfield Continuum Seminars for Attorney CLE credit and general information, appearing on numerous radio and TV broadcasts, Garfield is the Editor in Chief of livinglies.wordpress.com, a blog site that has reached over 1 million visits and is widely regarded as the premier resource on the internet for foreclosure cases, opinion, links to law reviews, practice guides and current events the foreclosure of securitized mortgages. Garfield draws on his Wall Street experience and trial lawyer years combined with intensive analysis of derivatives, securitized financial products and personal relationships developed over the years which give him unique insights into the realities of Wall Street in the Mortgage Meltdown of 2001-2009.
- ✓ Starting out on **Wall Street**, he became proficient in the language and conduct of highly complex financial transactions. At an early age, Mr. Garfield personally handled the negotiations leading to successful **mergers, acquisitions, multimillion dollar financing, IPO's, secondary offerings, and private financing** for dozens of companies.
- ✓ He then achieved his **MBA and JD degrees with distinction**, and began a 35 year law and business consulting career.
- ✓ Following his law career he assumed control of two **public companies** for which he successfully structured financing and merger programs, **creating and implementing novel business and marketing plans for information systems** storage and retrieval including a mobile platform for backfile conversion for clients who were installing imaging systems. Initial clientele included **Fannie Mae, Chemical Bank, the Securities and Exchange Commission, the New Mexico Legislature**, and a host of Universities and Government agencies. Under his direction the publicly traded stock increased market value from **\$150,000 to \$45,000,000** in nine months.
- ✓ Following that engagement, he bought out the **ATM/POB portfolios** of several different companies now consolidated under EFT Systems, Inc., d/b/a American Bank Card, which now manages more than **\$30 million** in electronic payments for retail sales, an **increase of 250%**. The EFT's **business expanded** to include **prepaid debit cards, ACH origination, and technology consulting** to banks and independent sales organizations.
- ✓ As president of American Bank Card, he created, funded and implemented the business plan for a cooperative marketing channel to community banks for technology sales, deployment, and support. He is now **General Counsel to the SMART cooperative of community banks** that includes a newly launched bank network, and a host of electronic funds transfer services on behalf of bank and private enterprise clients.

## **WALL STREET BACKGROUND:**

With a family securities business in his background (Garfield and Co. Members NYSE, AMEX etc.) Mr. Garfield started off as a trainee securities analyst and quickly rose to be Director of Research and Director of Mergers and Acquisitions at well-respected brokerage houses on Wall Street. At the end of this portion of his career, Mr. Garfield concurrently studied for his **MBA *magna cum laude***. He was licensed as a registered representative 1968-1972.

## **LAW CAREER**

Following his investment banking career, Mr. Garfield moved to Florida where he studied law and was awarded his **JD degree *cum laude***. Concurrently with his studies, he was the business manager for a small law firm in Fort Lauderdale.

A member of the **Florida Bar** since 1977, he devoted most of his time to practicing law from 1977 through 1992. He is also a member of the **Federal Trial Bar**, the Federal Bankruptcy Bar, and several national and local committees. Until his semi-retirement in December, 1992 he was also a member of The Florida Trial Lawyers Association, the American Bar Association and the West Broward Bar Association. He has served on committees for the Florida Bar and was a volunteer, early in his legal career for the Florida Bar Committee for mental disability law reform, where he represented individuals incarcerated for reasons associated with mental disabilities (pro bono).

He received his Undergraduate Degree from Dickinson College in 1968, his MBA from Iona College in 1974, Magna Cum Laude, and his Juris Doctor from Nova University Center for the Study of Law in 1977, Cum Laude.

The concentration of his law practice was in the areas of commercial transactions, commercial litigation, condominium law, administrative law and bankruptcy. He has been the recipient of **numerous academic awards** in business and law, including:

### **LAW**

- \*American Jurisprudence Award in Torts
- \*American Jurisprudence Award in Commercial Transactions
- \*American Jurisprudence Award in Federal Jurisdiction
- \*Horn Book Award for outstanding scholastic achievement from Nova University Law Center

(first out of 175 students)

### **BUSINESS, ACCOUNTING AND TAXATION**

- \*Medal for Academic Excellence 1974, MBA, (first in a two-year program of 159 students)
- \*Who's Who Among Students in American Universities and Colleges - 1974 - Iona College

Concurrently with his law career, he was frequently retained as a **business consultant** to small and medium sized businesses. Mr. Garfield assumed the Presidency of two public companies in 1992 and was charged with the responsibility of finding and closing on mergers, acquisitions, financing, and developing the business plans of those entities through the acquisition of qualified personnel. At the commencement of his engagement, neither company had any assets other than loosely defined business plans. In an 18 month period these companies **raised over \$2.5 million in cash, made acquisitions for real estate valued in excess of \$8 million**, and acquired several operating companies. In addition, the business plans of the companies were refined, placing DIS as the leading company in the field of backfile conversion (conversion of hard copy documents into computer storage) and consulting on information systems, storage and retrieval. During that tenure he managed 45 employees.



1968 - 1969: Director Research Department, and Registered Representative, Spingarn, Heine Company, Members, NYSE, AMEX, etc.

1968 Trainee - Security Analyst and Registered Representative, A.L. Stamm & Company, Members, NYSE, AMEX, etc.

## TEACHING AND PUBLIC SPEAKING EXPERIENCE:

1. Iona College **Graduate School** of Business Administration: Taught individual classes in a variety of management, auditing and accounting courses as substitute for usual professor.
2. Broward Community **College**: Taught variety of subject dealing with law and business for adult education. Guest lecturer on business, law, and psychology of learning and performance.
3. **Seminars**: Conducted numerous seminars in law, business and personal development. Methods employed: lecture, Socratic and experiential. Garfield Continuum Seminars on Foreclosure Defense, Litigation and Securitized Mortgages is qualified for Continuing Legal Education Credits in 26 states varying from 6.5 to 9.5 credits.
4. **Trials**: Every trial is an educational seminar for the jury or judge. In the course of 17 years of practice, has appeared as lead counsel in over 2000 contested hearings, bench trials and jury trials and approximately 20 oral arguments on appeal.
5. **Radio**: In 1985-1986, host of several radio programs, including the Neil Garfield Condo Connection show on what was then WGBS. This program dealt with educating the public concerning the law and practice as it related to living in condominiums, cooperatives, and home owner associations.
6. **Television**: Periodically over the years has appeared as the spotlighted guest or on a panel on PBS and other stations relating to condominium law, administrative law, and general business subjects.
7. *Currently preparing curriculum for seminar and matriculated course offerings in electronic commerce and electronic banking.*

## PERSONAL:

Married December 6, 2003 to Joyce Molloy Children: Marc Andrew Garfield DPM (40, prior marriage, **Podiatrist**) Virginia beach, Va., Chelsea Lauren Garfield (35, prior marriage, Director of Website for Citizens property Insurance, Florida, Danielle Kinorah Garfield, age 20, attending Broward Community College, Cocnut Creek, Florida American Heritage School in Plantation, Florida. Brother, Gary J. Garfield, M.D., is a practicing **Cardiologist** in Coral Springs, Florida. Father, Frederick M. Garfield, M.D., was a retired **Physician**. Cousin, Brian Garfield is an **Author** in Hollywood, California ("Death Wish," "Hopscotch", "Kolchak's Gold," etc.). Hobbies include music (keyboard player), reading and travel. The Garfield family created the **first fully U.S. automated pharmaceutical plant** at the beginning of this century. It is now an exhibit at the Smithsonian Institute in Washington, D.C.. The family also created and patented the process by which lanolin is extracted from cholesterol, providing the base for all cosmetics and paints made in the world.

**ANDREW C. BAILEY**  
 2500 N. Page Springs Rd  
 Cornville, AZ 86325  
 928 634-4335  
*Debtor in Pro Per*

**UNITED STATES BANKRUPTCY COURT  
 FOR THE DISTRICT OF ARIZONA**

Andrew C. Bailey Plaintiff	Chapter 11
vs.  BANK OF NEW YORK MELLON F/K/A BANK OF NEW YORK COUNTRYWIDE HOME LOANS, BAC HOME LOANS SERVICING, LP ET AL  Defendants	<u>Case# 2:09-ap-01728-RTBP</u>  <b>DECLARATION OF NEIL          FRANKLIN GARFIELD AS          EXPERT WITNESS</b>

STATE OF ARIZONA     )  
                                   )  
 County of Maricopa    )     ss.

Neil Franklin Garfield, deposes and states unsworn under penalty of perjury as follows:

1. I am over the age of eighteen years and qualified to make this affidavit.

*exhibit c*

since May 31, 1977

3. I am the author and editor of [www.livinglies.wordpress.com](http://www.livinglies.wordpress.com) a blog site on the Internet which contains most of the public records and public domain reports, articles, books, treatises and documentation upon which I rely for my opinion in this case. I am the author of the manuals and workbooks that are used to accompany the workshops and seminars that present under the name GARFIELD CONTINUUM. Those manuals are the nearest thing available in the marketplace to treatises involving foreclosure of securitized residential mortgages. In addition I have an indirect interest in Foreclosure Defense Group that performs forensic analysis of loan documents, title examinations, analysis of securitization documentation, and prepares Qualified Written Requests, Debt Validation Letters and demand letters for clients, most of whom are attorneys licensed in the jurisdiction in which the subject property is located. Foreclosure Defense Group sponsors the Garfield Continuum Seminars in which I teach laymen and lawyers to understand civil procedure, evidence, motion practice, discovery, ethics, securitization theory and practice, defensive and offensive strategies with servicers, MERS, Trustees, mortgage brokers, "originating lenders," investment bank underwriters, special purpose vehicles and bond issuance. Subjects also include elements of property law, contract law, negotiable instruments, Uniform Commercial Code, tort law and consumer protection under Federal and State enabling legislation.
4. I have recently testified at deposition as an expert in the class action suit in Case

No.: 3:09-cv-180-ECR-VPC, United States District Court District of Nevada,<sup>1</sup> to render opinions in the topic areas related to the securitization of mortgage loans, derivative securities, the securities industry; real property law, Uniform Commercial Code practices, predatory lending practices, Truth in Lending Act requirements, loan origination and underwriting, accounting in the context of securitization and REMIC entities, Special Purpose Vehicles, Structured Investment Vehicles, pooling and servicing of securitized loans, assignment and assumption of securitized residential mortgage loans, creation of trusts under deeds of trust, pooling agreements, and issuance of asset backed securities and specifically mortgage-backed securities by special purpose vehicles in which an entity is named as trustee for the holders of certificates of mortgage backed securities, the economics of securitized residential mortgages during the period of 2001-2008, appraisal fraud and its effect on APR disclosure, usury, exceeding the legal limit for interest charged, non-judicial foreclosure of securitized and non-securitized residential mortgages, and judicial foreclosure of securitized and non-securitized residential mortgages, all particularly as to the laws of the State of Arizona, California, Florida and Ohio, based upon the

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<sup>1</sup> JOSEFA S. LOPEZ, JOSE TRINIDAD CASAS, MARIA C. CASAS, LYNDON B. GRAVES, TYRONE EVENSON, MICHELLINA EVENSON, BRYAN GRAY, HELEN GRAY, PATRICK FRANKOSKI, and CHRISTOPHER PETERNELL, individually and on behalf of a class of similarly situated individuals, Plaintiffs vs. EXECUTIVE TRUSTEE SERVICES, LLC.; COUNTRYWIDE HOME LOANS, INC., a New York corporation; MERSCORP, INC., a Virginia corporation; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a subsidiary of MERSCORP, Inc., a Delaware corporation; RECONTRUST, SAXON MORTGAGE SERVICES, INC., GALE GROUP dba T.D. FINANCIAL SERVICES dba T.D. SERVICE COMPANY, SECURITY UNION TITLE INSURANCE COMPANY, CAPITAL ONE dba CHEVY CHASE BANK, NATIONAL DEFAULT SERVICING CORPORATION, FEDERAL HOME LOAN MORTGAGE CORPORATION, a Virginia corporation; FEDERAL NATIONAL MORTGAGE ASSOCIATION, a District of Columbia corporation; GMAC MORTGAGE, L.L.C., a Delaware corporation; NATIONAL CITY MORTGAGE, a foreign company and a division of NATIONAL CITY BANK, a subsidiary of National City Corporation; NATIONAL CITY CORPORATION, a Delaware corporation and a subsidiary of PNC Financial Services, Inc.; PNC FINANCIAL SERVICES, INC., a Pennsylvania corporation; J.P. MORGAN CHASE BANK, N.A., a New York corporation; CITIMORTGAGE, INC., a New York corporation; HSBC MORTGAGE CORPORATION, U.S.A., a Delaware corporation; AIG UNITED GUARANTY CORPORATION, a foreign corporation; WELLS FARGO BANK, N.A., a California corporation, d/b/a WELLS FARGO HOME EQUITY and d/b/a WELLS FARGO HOME MORTGAGE, a division of WELLS FARGO BANK, N.A., a California corporation; BANK OF AMERICA, N.A., a Delaware corporation, and GE MONEY BANK, an Ohio corporation; JOHN AND JANE

credentials in the Resume attached hereto.

5. I have no direct or indirect interest in the outcome of the case at Bar for which I am offering my observations, analysis, opinions and testimony. The cost of my preparation, analysis, review, meetings, teleconferences, appearances and all other work is \$500 per hour plus all out of pocket expenses all of which must be prepaid regardless of outcome.
6. With respect to **Case #: 2:09-bk-06979-PHX-RTBP and related matters in administrative and judicial proceedings** I have received and reviewed some of the pleadings and memorandums, some of the orders entered, conferred with the forensic analyst that reviewed the purported loan closings on the subject properties, the closing loan documents and additional pleadings relating to the subject "loan" transactions. I have confirmed the information related to me through my review of said closing documentation, as well as my own internet searches with respect to the parties purporting to be the "Lender" (see end-note 1) in the transaction subject to the instant matters.
7. My opinions are based upon public records and documentation written or prepared by the purported originating parties that are named or designated as a "lender"<sup>i</sup> or "beneficiary" or "Payee" or "trustee" in the contracts and deed executed by the homeowner in this case, as well as the documentation that in my opinion was relevant to the securitization of the financial product sold to the homeowner as a residential home loan and simultaneously or contemporaneously sold as a financial

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DOES I-X; BLACK AND WHITE PARTNERSHIP I-X.

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product to an investor. In my opinion, both financial products (i.e., the transaction with the property owner and the transaction with the creditor/investor who purchased mortgage-backed bonds from an entity that was not disclosed at closing to the property owner) were securities, and neither set of securities were properly registered or regulated. The information that would reveal the identity(ies) of the creditor(s) has been withheld from Debtor. It can only be said, in the context of an absence of answers to the qualified written requests that the creditor can be described but not identified. The initiating parties in foreclosure are not creditors and do not appear to have ever advanced money, goods or services, nor did they enter into any arrangement wherein they expected payment to be due to them. Rather, as is apparent from the information at hand, the payment was, as is always the case, due to the creditor who advanced the money or his/her/its successor. The parties have assumed the identity of "beneficiary", "lender" and/or "payee" despite the fact that the loan was securitized which means that it was sold to investors who were the source of the advance of funds. Since the sale of bonds to the investor is customarily a transaction that precedes the sale of the financial product sold to the property owner, it is my opinion that it may be fairly and reasonably assumed that at the time the documents were executed, the creditor was the bond holder, contrary to the nominal designations on the closing documents.

8. The customary practice in securitization of residential mortgage loan products was to withhold information concerning the identity of the creditor and to withhold the disclosure of profits and fees made on the multiple yield spreads and premiums paid

thereon, amounting in this case to a substantial portion of the total principal of the loans themselves, using average data from the marketplace congruent with the time and place of these transactions. The actual information that would provide the identity of the creditor and thus allow inquiry for a complete accounting and audit of the subject transactions is in the sole care, custody and control of the loan servicer or another intermediary conduit in the securitization chain, including but not limited to the Trustee or depositor for the Special Purpose Vehicle that re-issued the homeowner's note and encumbrance as a derivative hybrid debt instrument (bond) and equity instrument (ownership of percentage share of a pool of assets, of which the subject loan was one such asset in said pool).

- 8.1. According to information from Debtor, Debtor has made unsuccessful attempts through industry standard letters requesting the identity of the lender, the documentation authenticating the identity of the lender, and an accounting from the lender as to all money paid or received in connection with the subject obligation.
- 8.2. At such time that the intermediary participants in the securitization comply with the requests for said information, I will be able to identify with certainty the true owner of the alleged obligation, thus enabling me to provide the court with a complete description of the entire transaction starting with the creditor and ending with the debtor and any co-obligors or other conditions added during the process of securitization of the loan product sold to the property owner. In such event the identity of the creditor(s) and the opportunity to obtain a full accounting

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will be present. Until then, I am dealing with only partial information in that there are four parts to the required accounting:

- 8.2.1. The debits and credits arising from the moment of the closing of the subject transactions
- 8.2.2. The debits and credits arising from transactions between the property owner and each servicer
- 8.2.3. The debits and credits arising from transactions with third parties either during or after the first phase of securitization was completed
- 8.2.4. The debits and credits arising from transactions in which insurance proceeds or other third party proceeds were received and distributed including the Federal Reserve, Federal Agencies, the U.S. Department of the Treasury, The FDIC and other unknown and therefore unnamed parties.
- 8.3. Until such time as the full accounting is available and subject to audit, it is impossible to know the amount due from the property owner on the obligation that might have been created at the alleged closing of the subject transactions.
- 8.4. Without knowing the amount due on the obligation it is therefore impossible to determine whether a default exists, and if so, who is suffering financial loss as a result of the default.
- 8.5. Until such time that the identity is revealed by Defendants, I must rely upon internet searches making certain presumptions regarding the subject loan transactions. The main presumptions are that the standards of the industry were followed in the securitization of the subject transaction and that the subject



transactions were in fact securitized. I arrive at those conclusions both from information appearing in the record and from my knowledge that where these particular parties are involved, the probability of securitization is nearly 100%. The prospectus that was filed with the SEC apparently covering the parties and time period consistent with the Bailey "Loan" Transaction reveals explicit terms and conditions upon which I base my opinions.

- 8.6. In my opinion the party identified as "LENDER" "originated" loans acting as a mortgage broker and not as a mortgage lender. The real lender was the source of funds advanced for the funding of the loan. I rely upon common definitions of creditor, debtor, lender etc. found in bankers' glossaries, law dictionaries, and through my practical experience and training in securities analysis, underwriting, my training in law school, my training in business school and my experience on Wall Street, and as a practicing lawyer in commercial transactions and commercial litigation.
- 8.7. Answers are required either in response to the qualified written request or through discovery. Confirmation of my opinions would include but not be limited to the manner in which each firm in the securitization reflected the transaction on its own financial records. In most cases it appears merely as fee income or profit on sale which would confirm that the party never was a creditor.
- 8.8. It appears as though all originated loans were subject to previously existing agreements including Pooling and Service Agreements and Assignment and Assumption Agreement, in which the originated loans were already pledged

or conveyed to third parties (investors/creditors/LENDERS) at the time of Plaintiff's "closing."

- 8.9. At each level of securitization a successor "Trustee" was named purporting to acquire all powers of the "Trustee" before the loan was transmitted, transferred, sold or hypothecated to another party. In each case there does not appear to actually be a "Trust" as the beneficiaries of each "Trust" are either ambiguous or not present at all.
- 8.10. In each case the nominal "Trust" actually contained no assets, the same having been transferred to yet another entity PRIOR to the existence of the subject transaction.
- 8.11. In the case of the entity that issued bonds to the creditors as mortgage backed securities, in each case the mortgages to back those securities did not yet exist. In each case, though, the body of the bond indenture explicitly conveys a percentage interest in the "pool" to the creditor forming what appears to be a general partnership, with the indenture in reality being a partnership or operating agreement.
- 8.12. In each case, the "Trustee" is named but then described and its powers circumscribed increasingly as one reads through the enabling document, such that it appears that the party named as "Trustee" is in actuality an agent with very limited powers.
- 8.13. In many cases and in particular with the parties involved in this litigation, they were the recipients of proceeds from the Federal Reserve that "purchased"

the mortgage backed securities, thus making the Federal Reserve the creditor in whole or in part in these subject transactions.

8.14. Typically all such indentures create a hybrid security that is both bond and equity, to wit: the bond provides for a stated interest rate of return and provides ownership of a percentage of a pool of assets comprised of residential loans, which would most certainly have included the subject loan.

8.15. In many cases the "trusts" were disbanded and no longer exist as legal entities. Without further disclosure from these parties, it is impossible to know whether the vehicles used for processing the creditor's investment in mortgage loans still exists and if so, its status.

8.16. In most cases there have been multiple assignments or transmittals of documents or rights with regard to multiple parts of the securitization chain. These various stakes or revenue streams could include but not be limited to servicing rights, foreclosure rights, collection on the note, collection of federal bailout grants or loans, collection of payments from co-obligors added during the securitization of the Debtor's note, and collection of payments on credit default swaps which frequently are leveraged as much as thirty times the original value of the note(s) in the pool of assets subject to the CDS. Thus it is not known by the servicer or originator whether the Plaintiff/Debtor's note is or ever was in default – a fact that can only be known by the creditor and which is either not known or being withheld by the securitization parties in the case at bar. Based upon published reports, in my opinion, there is a very high probability that all or

part of the Debtor's note was paid in whole or in part by third parties, that different parties came to claim rights to enforce the mortgage and note and that the intention to split the note from the mortgage while heretofore unusual in the marketplace was commonplace in securitization of residential loans. Hence, it is my opinion that the holder of the note, either singular or plural, are not the same parties as those who purportedly hold the mortgage and that this was a result that was intended by the mortgage originator and the parties to the securitization chain, since it was a typical practice in the investment banking industry in their process of securitizing loans throughout the period of 2001-2009.

8.17. The above facts result in a conflict of interest, claims and stakes by numerous parties contained within the securitization chain, some of which parties are known and some of which are not known to Plaintiff/Debtor and therefore not known to the undersigned declarant.

8.17.1. It also appears that the standard industry practice of creating a yield spread premium between the lender and originator was extended and expanded in the case of the securitization chain such that in this case, in my opinion, the Plaintiff/Debtor's loan was sold to the investors at a gross profit (i.e. a second yield spread premium) to the participants in the securitization chain of at least 35% of the total principal balance of the note. In my opinion, this disclosure does not appear on any of the closing documents identifying the parties participating in fee-splitting or yield spread premiums nor the amounts involved as required by the Truth in Lending Act and the Real

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Estate Settlement Procedures Act. Further, no information appears in Plaintiff/Debtor's closing documentation that would have caused him to inquire about such a premium, which exceeds any yield spread premium ever paid prior to the securitization of residential mortgages. In my opinion, it is equally probable that the investors were kept unaware that less than 2/3 of their investment was actually going to fund Plaintiff/Debtor's loan and other similarly situated. Based upon direct conversation with Plaintiff/Debtor, he also was unaware that such large profits or premiums were being generated by virtue of his identity and signature on the purported loan documents.

8.18. Additional information submitted by licensed appraisers still in good standing with the licensing board along with public records documentation in other states indicates a pattern of behavior consistent with the subject "loan" Transaction, corroborates the existence of the second yield spread premium and shows that the appraisal on the property, upon which the property owner reasonably and legally relies as per the requirements of law and regulation, was artificially inflated per direct instructions from the purported "lender" or other firms in the securitization chain ultimately receiving their instructions from the investment banking firm that did the underwriting of the securities sold to the creditors/investors and which issued the instructions regarding the underwriting of the purported loans to homeowners including the subject transaction.

9. My opinions are also based upon substantial knowledge, training, experience,

study and analysis of securities, securities regulation, securitization, derivatives and various precursor asset protection or bankruptcy remote schemes in commercial and real estate settings.

10. My opinions are also based upon direct interaction via telephone, email or written correspondence with many intermediary conduits and some underwriters of the reissued securities to investors who bought mortgage-backed securities.

10. My opinions are based upon certain assumptions regarding securitization of the subject loan which can only be verified by review and analysis of the actual securitization documents, applicable credit default swaps or other insurance or hedge products, and audit, review and analysis of the effect, if any, of federal bailout money received by the creditor, (i.e., the party who actually advanced the funds from which the subject obligation was funded) or any parties who received such funding or money relating to or arising from the subject homeowner obligation created by the financial loan product sold to the homeowner in this instance.

11. I express the following opinions that are offered within a reasonable degree of factual certainty and financial probability based upon filings with the Securities and Exchange Commission, prior knowledge of intermediary/conduit parties in the subject transactions, and the known participants in this loan and its securitization:

11.1. The subject real estate and securities transactions were securitized, to wit:  
The subject homeowner and the unidentified Lender(s)/investor(s) entered into a transaction which was represented as a loan transaction whereby the investor(s) lent money to the homeowner and other homeowners similarly situated.

11.2. In terms of the real estate portion of the transaction, the homeowner was the borrower and the investor was the lender. The investor is still the lender if the investor has not sold, transferred or alienated the hybrid mortgage backed security and if the investor has not been directly or indirectly paid through credit default swaps, with or without subrogation, or paid through a federal program with or without subrogation. Since no such instruments appear on record, any right of subrogation would appear to be equitable. Thus for purposes of this declaration, the unknown and undisclosed investor(s) constitute the only Lender presumed to exist until the undersigned is presented with contrary evidence admissible in a court of law.

11.3. The only parties that can claim to be creditors (or a holder in due course of the note) are those who would suffer a monetary or pecuniary loss resulting from non-payment of the obligation either because they advanced the actual funds from which the Bailey Loan Product was funded or because they would have paid value prior to default or notice of default. These parties fall within one or more of the following classifications:

11.3.1. Investors who purchased asset backed securities in which ownership of the LOANS was described with sufficient specificity as to at least express the intent to convey ownership of the obligation as evidenced by the promissory note and an interest in real property consisting of a security interest held by an entity that was described as the beneficiary of a Trust created by an instrument entitled Deed of Trust;

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THEREFORE I CONCLUDE THAT THE CREDITORS ARE THE UNIDENTIFIED INVESTORS AND ALL OTHER PARTIES ARE INTERMEDIARY OR REPRESENTATIVE OR DISINTERESTED.

11.4. Title is affected by the following:

- 11.4.1. Insurers that paid some party on behalf of said investors;
- 11.4.2. counter-parties on credit default swaps;
- 11.4.3. conveyances or constructive trusts arising by operation of law through cross collateralization and over-collateralization within the aggregate asset pools or later within the Special Purpose Vehicle tranches ("tranches" is an industry term of art referring to the types of division within a Special Purpose Vehicle);
- 11.4.4. the United States Treasury Department through the Troubled Assets Relief Program in which approximately \$700 billion has been authorized and paid to purchase or pay the obligation on "troubled" (non-performing) assets of the LOANS. The subject "loan" is part of the class of assets targeted by TARP;
- 11.4.5. the United States Federal Reserve, which has extended credit on said troubled assets and has exercised options to purchase said troubled assets;
- 11.4.6. any other party that has traded in mortgage backed securities from the aggregated pools or securitized tranches containing interests in the LOANS.



12. However, it is unlikely that any holder in due course exists because in the practice of securitization as it was followed universally within the investment banking community, the recorded encumbrance was never effectively or constructively transferred because it was never executed in recordable form nor was an effort made to create such a document by the parties to the instant case until they decided to issue a notice of delinquency, notice of default, notice of sale, and Petition for Unlawful Retainer and Writ of Possession.

12.1. Hence any transfer or purported transfer of the note was not accompanied by the encumbrance being incident to said transfer because applicable recording statutes require an interest or change of interest in real property to be recorded. Hence the loan product sold to the subject homeowner included a promissory note that was evidence of a real obligation that arose when the transaction was funded but lost its negotiability, thus barring anyone from claiming holder in due course status.

12.1.1. The negotiability of the note is negatively affected by (1) the splitting of the note and mortgage as described above, (2) by the addition of terms, conditions, third party obligors and undisclosed profits, fees, kickbacks all contrary to existing federal and state applicable statutes and common law and (3) knowledge of title and chain of title defects in the ownership of the note, beneficial interest in the encumbrance, and position as obligee on the obligation originally undertaken by the subject homeowner. .

- 12.2. None of the known participants in the subject securitization chain (including but not limited to Defendants herein) falls within any of the classifications of "Lenders" or holders in due course on the subject financial products sold to the subject homeowner as LOANS. A Lender or Creditor is a party who advances or creates money for the benefit of another with the expectation of receiving it back, usually with a profit denominated as "interest." The investor fits this definition. All other parties including the putative foreclosing parties in the case at bar, fall into the class of intermediaries or conduits, playing the role of payment mechanism or document repository or record keeper.
- 12.3. None of the known securitization participants has suffered any financial loss relating to the LOANS, nor are they threatened with any future loss if foreclosure remains enjoined by the automatic stay.
- 12.4. None of the known securitization participants has ever been the real party in interest as a lender or financial institution underwriting a loan while funding same with respect to the LOANS.
- 12.5. None of the known securitization participants will suffer any monetary loss through non-performance of the LOAN.
- 12.6. All of the known securitization participants received fees and profits relating to the LOANS.
- 12.7. The existence and identity of the real parties in interest was withheld from the homeowner in the closing and servicing of the LOANS, and since.
13. Several transactions have purportedly taken place regarding the Bailey "Loan."

None of them appear to have actually conveyed anything since all conveyance documentation was effective simultaneously or contemporaneously with closing of the subject transactions. The investors are still the source of funding, the securities were sold to the investors with conveyance of ownership of the "Loan" product purchased by Bailey, and the transfers claimed by "successor" parties all occurred AFTER the conveyance was effective in favor of the investors. Since the loans were conveyed before the transfers for good consideration, I conclude that none of the other parties possess any title, color of title, or claim under the note and mortgage executed by Bailey.

14. Further, the award of title to any of these other parties would be in derogation of the title and claims of the investors who are the only and actual sources of funding/consideration. The interest in the obligation, the note as evidence of the obligation, and the security interest for the obligation were purportedly transferred multiple times without recording the change in ownership of an interest in real property in the appropriate county records. In my opinion, the "Lender" in securitized loans is only a nominee for an undisclosed principal. The transaction with the homeowner is subject to a pre-existing contractual relationship wherein the investors advanced the cash for the loan and profits, fees, expenses, rebates, and kickbacks. This is known to many of the known and unknown securitization participants, inasmuch as they have been the recipients of memoranda from legal counsel and advisers (not protected by attorney client privilege or the attorney work product privilege) in which they have been informed that any nominee that does not advance

cash for funding the loan and does not receive any payments on the obligation in particular allows multiple parties to make claims on the same property from the same borrower, using the same note and the same security interest.

14.1. The intended monetary effect of the use of such a nominee was to provide obfuscation of profits and fees that were disclosed neither to the investor who put up the money nor to the borrower in this LOAN. In the case at bar, it is my opinion based upon a reasonable degree of certainty (beyond more likely than not) that the total fees and profits generated were actually in excess of the principal stated on the note --- which is to say that investors unknowingly placed money at risk the amount of which vastly exceeded the funding on the loan to the borrower.

14.1.1. The only way this could be accomplished was by preventing both the borrower and the investor from accessing the true information, which is why the industry practice of nominees like the private MERS system were created. Even where MERS is not specifically named in the originating documents presented to the homeowner at the "closing" it was industry practice from 2001-2008 to utilize MERS "services". Therefore it is possible and even probable that the data from the closing was entered into the MERS electronic registry and that an assignment was executed to MERS purportedly giving MERS some power over the obligation, the note and/or the encumbrance. As a general rule in securitized transactions and especially where MERS is named as nominee, documents of transfer

(assignments, endorsements, etc.) are created and executed contemporaneously with the notice of default thus selecting a participant in the securitization chain to be the party who initiates collection and foreclosure.

15. The notice of default in the case at bar was in all probability substantially before any fabrication or creation of documents of transfer and before any such documents were recorded. Further it does not appear that any such documents were executed in recordable form under the laws of the State and in accordance with the local administrative rules governing recordation of instruments that purport to show an interest in real estate. Hence it is my opinion, as above, that the existence of any document of transfer in this case is inconsistent with the authority – apparent or actual --- to execute same without some additional documentation establishing a foundation for the document of transfer (assignment, endorsement etc.). No such document having been produced the inescapable conclusion is that no authority exists and that if permitted to move forward with a foreclosure or foreclosure sale, a title defect would be created beyond the current cloud on title, thus rendering the title permanently unmarketable without the entry of a court order from a court of competent jurisdiction declaring the rights of all stakeholders --- potential and otherwise. This opinion should not be construed to deny the existence or validity of the note, mortgage or underlying obligation. It is meant solely to convey the opinion that none of the existing parties known to the homeowner have any authority, apparent or otherwise, to declare the obligation in default or to pursue collection on

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the only potential party to a foreclosure wherein the purported creditor alleges financial injury and therefore a right to collect the obligation, enforce the note or enforce the security instrument is either a party who has actually advanced cash and stands to lose money or an authorized representative who can disclose the principal, provide proof of service or notice, and thus show such authority.

17. In my opinion, as above, and with a reasonable degree of factual and legal certainty, the disclosed principals in the securitization chain are not the Lender(s) nor are they agents for the Lender(s). In my opinion, as stated in this paragraph, these parties are interlopers or impostors whose design is to take title to property they have no right to claim, and to enforce a note which is evidence of an obligation that is not owed to them but rather to another. The details of this information, whether the special purpose vehicle still exists, whether the investor(s) has been paid in full through federal or insurance payment, are known only to these securitization participants.
18. In my opinion the attorneys for the known securitization participants do not have any authority to represent the Creditors, and could not represent them due to the obvious conflict of interest, to wit: the investor(s) upon learning that a substantial amount of their advance of cash was pocketed by the intermediaries and now is left with a mortgage whose nominal value is far below what was paid, and whose fair market value is far below the nominal value, would have potential substantial claims against the securitization participants for fraud, breach of contract, and other claims.
19. I have also reviewed, for the past 40 years, published Financial Accounting

Standards obviously intended for auditors involved in auditing and rendering opinions on the financial statements of entities involved in securitization, securities issuance and securities sale and trading. If the known participants in the securitization scheme followed the rules, they did not post the instant transaction as a loan receivable. The transaction most likely was posted on their ledgers as fee income or profit, which was later reported on their income statement in combination with all other such transactions. These rules explain how and why the transactions were posted on or off the books of the larger originating entity. These entries adopted by said companies constitute admissions that the transaction was not considered a loan receivable on its balance sheet (or on the ledgers used to prepare the balance sheet) but rather shown on the income statement as a fee for service as a conduit. These admissions in my opinion are fatal to any assertion by any such party currently seeking to enforce mortgages in their own name on their own behalf, including but not limited to the securitization participant in this case.

20. In my opinion, with a high degree of certainty, the Plaintiff/Debtor's title was and is subject to a cloud on title, a claim of unmarketable title and possibly a title defect that cannot be cured without court order as a result of the manner in which Plaintiff/Debtor's loan was securitized. In all cases reviewed by me, which include more than fifty securitization chains, the Prospectus and other published documents clearly express that a securitized mortgage is treated sometimes as being secured by real estate, and sometimes as not being secured by real estate, depending on the context and purpose of the accounting. The naming of a party other than the Lender

as beneficiary under the Mortgage Deed as distinct from a third party named as Payee on the promissory note and the same or other third party named as beneficiary under the policy of title insurance demonstrates an intent or presumption or reasonable conclusion that there was intent by some or all of the parties at various times in the steps of the securitization process to separate the Note from the Deed of Trust, thus creating a cloud on title for both the owner of the property and any party seeking to express or claim an interest in the real property by virtue of the encumbrance.

FURTHER, AFFIANT SAYETH NAUGHT.

Signed on January 17, 2010

/s/ Neil Franklin Garfield, Esq.

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1 **ANDREW C. BAILEY**  
2 2500 N. Page Springs Rd  
3 Cornville, AZ 86325  
4 928 634-4335  
5 *Debtor in Pro Per*

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**UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF ARIZONA**

In re:

**ANDREW C. BAILEY**  
Debtor/Plaintiff

Vs

**BANK OF NEW YORK MELLON, f/k/a**  
**BANK OF NEW YORK**  
Movant/Defendant

**Chapter 11**

**Case #: 2:09-bk-06979-PHX-RTBP**  
(Associated Case # 2:09-ap-01728-RTBP)

**DEBTOR'S FIRST SET OF**  
**INTERROGATORIES AND FIRST**  
**REQUEST FOR PRODUCTION OF**  
**DOCUMENTS**

(Related to Docket #82)

Subject Property:

2560 N Page Springs Rd  
Cornville, AZ 86325

**DEBTOR'S FIRST SET OF INTERROGATORIES**  
**AND FIRST REQUEST FOR**  
**PRODUCTION OF DOCUMENTS**

Pursuant to Rule 33 and Rule 34 of the Federal Rules of Civil Procedure, Debtor requests  
Movant/Defendant **BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK** to  
answer the following Interrogatories and produce documents in accordance with the  
following Request for Production of Documents.

*exhibit D*

1 mail," "voice mail," digital images and graphics, digital or analog audiotapes and files, and  
2 digital or analog videotapes and files.

3 5. The word "person(s)" includes not only natural persons, but also firms, partnerships,  
4 associations, corporations, subsidiaries, divisions, departments, joint ventures,  
5 proprietorships, syndicates, trusts, groups, and organizations; federal, state, or local  
6 governments or government agencies, offices, bureaus, departments, or entities; other legal,  
7 business, or government entities; and all subsidiaries, affiliates, divisions, departments,  
8 branches, and other units thereof or any combination thereof.

9 6. As used herein, any reference to any "person" includes the present and former officers,  
10 executives, partners, directors, trustees, employees, attorneys, agents, representatives, and  
11 all other persons acting or purporting to act on behalf of the person and also its subsidiaries,  
12 affiliates, divisions, and predecessors and successors in interest.

13 7. The words "you," "your," "defendants" or "movants" refer to defendants, defendant-  
14 intervenors, movants, and their agents, representatives, attorneys, experts, and all other  
15 persons acting or purporting to act on behalf of Movants.

16 8. The singular of each word shall be construed to include its plural and vice versa, and the  
17 root word and all derivations (*i.e.*, "ing," "ed," etc.) shall be construed to include each other.

18 9. The words "and" as well as "or" shall be construed both conjunctively as well as  
19 disjunctively.

20 10. The word "each" shall be construed to include "every" and vice versa.

21 11. The word "any" shall be construed to include "all" and vice versa.

22 12. The present tense shall be construed to include the past tense and vice versa.

23 13. The masculine shall be construed to include the feminine and vice versa.

24 14. The words "knowledge," "information," "possession," "custody," and "control" of a  
25 person shall be construed to include such person's agents, representatives, and attorneys.

1 15. The word "including" shall have its ordinary meaning and shall mean "including but not  
2 limited to" and shall not indicate limitation to the examples or items mentioned.

3 16. The phrase "reflect, refer, or relate to" means reflecting, referring to, relating to,  
4 regarding, discussing, concerning, constituting, mentioning, pertaining to, alluding to, or  
5 associated with.

6 17. The words "to present" mean to the date on which you respond to these interrogatories  
7 and requests.

8 **INSTRUCTIONS**

9 1. Unless otherwise specified, if your response in regard to a portion of the time period  
10 addressed in any interrogatory differs from your response in regard to another portion of  
11 such period, provide a response for each such portion and indicate the period of time to  
12 which each response relates.

13 2. Deem any reference to a non-natural person to include the legal predecessors of such  
14 non-natural person.

15 3. When an interrogatory asks you to "describe" or "identify" a document, provide the  
16 following information with respect to each such document:

17 a. The date appearing on such document; or if it has no date, so state and give the date or  
18 approximate date such document was prepared, produced, created, or came into being;

19 b. Any identifying or descriptive code number, file number, title or label of such document;

20 c. The general nature or description of such document;

21 d. The name of the person(s) who signed, authored, produced or created such document;

22 e. The name of the person(s) who prepared such document if different from the name  
23 provided pursuant to subpart (d) of this instruction;

24 f. The name of the person(s) to whom such document was addressed and the name of each  
25 such person other than the addressee to whom such document, or copy or reproduction

1 b. The name and address of the agency, employer or entity at which such person worked  
2 and/or to which such person reported;

3 c. The title(s) and related periods of service for such person with each such agency,  
4 employer or entity.

5 8. When an interrogatory calls for the "description" or "identity" of any "document" you  
6 contend to be subject to a privilege against disclosure in response to these interrogatories,  
7 provide with respect to each such document or communication the following:

8 a. The nature of the document you contend is privileged (*e.g.*, letter, memorandum, chart,  
9 picture, report, etc.);

10 b. The number of pages comprising the document and a description of any identifying  
11 marks or designations (*e.g.* Bates numbers) if any, on the document;

12 c. The date of the document which you contend is privileged;

13 d. The name(s) of the author(s) and of any recipient(s) of the document;

14 e. The name and address of any person who is not included in your response to subpart (d)  
15 with respect to such document and who has access to or has seen, read, or heard any portion  
16 of the material in the document that you contend to be privileged; and

17 f. The nature of the privilege asserted.

18 9. In answering each of these interrogatories, furnish all information available to you that is  
19 relevant or that might lead to the discovery of relevant evidence, including information in  
20 the possession of your attorneys, or their investigators, and all persons acting on your  
21 behalf, including but not limited to your employees, agents, officers, or representatives.

22 If you are unable to answer these interrogatories in full after exercising due diligence to  
23 supply a complete answer, so state and answer to the extent possible. Specify the reasons  
24 for your inability to answer and state whatever information or knowledge you have  
25 concerning the unanswered portions.

1 1C. For each interrogatory or part of an interrogatory that you refuse to answer on grounds  
2 of burdensomeness, explain in as much detail as possible the basis for your refusal.

3 11. These interrogatories are deemed to be continuing; as such, you are requested to file and  
4 serve by way of supplemental answers thereto such additional information as may be  
5 required to complete your answers to these interrogatories.

6  
7 **INTERROGATORIES**

8 Where applicable, with respect to your answer to each of these interrogatories, please:

- 9 A. identify each person on whose testimony you will or may rely in support of your answer;  
10 B. identify each document on which you will or may rely in support of your answer.

11  
12 1. State the name, job title and business address of each person providing information in  
13 response to these discovery requests:  
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2. State the type of business organization BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK is, and name each State of the Union in which BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK is chartered or registered:

3. State the name, job title, and business address of each person who has first-hand personal knowledge of the time and circumstances under which the promissory note obligating Andrew C. Bailey and/or alienable in this instant case was created, sold, transferred and/or assigned for value:

1 7. If the name of the current beneficiary under the promissory note obligating Andrew  
2 C. Bailey and/or alienable in this instant case in Item (6) above is different from your  
3 name BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK explain  
4 why:  
5  
6  
7

8 8. BAC HOME LOANS SERVICING LP has filed with the Bankruptcy Court a  
9 Proof of Claim with respect to the subject promissory note. Explain the nature of  
10 BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK's relationship with  
11 BAC HOME LOANS SERVICING LP in this instant case. If none, state "none".  
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17 9. Explain why the alleged copy of the promissory note submitted as Exhibit "A"  
18 attached to BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK's  
19 Motion for Lift from Stay includes no allonge or endorsement showing any  
20 assignment of the note to BANK OF NEW YORK MELLON, f/k/a BANK OF NEW  
21 YORK:  
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10. If BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK did not keep or cannot produce a copy of an allonge or other paper showing assignment to BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK of the promissory note obligating Andrew C. Bailey and/or alienable in this instant case, explain why:

11. Identify the name, address and telephone number of each person or entity likely to have discoverable information relevant to the foregoing or that you may use to support your action.



1 **DEFINITIONS**

2  
3 1. BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK includes any and all persons  
4 and entities presently or formerly acting for or in concert with BANK OF NEW YORK  
5 MELLON, f/k/a BANK OF NEW YORK.

6 2. BAC HOME LOANS SERVICING LP includes any and all persons and entities presently or  
7 formerly acting for or in concert with BAC HOME LOANS SERVICING LP, COUNTRYWIDE  
8 HOME LOANS, COUNTRYWIDE BANK, or BANK OF AMERICA.

9 3. "Document" includes each record held in BANK OF NEW YORK MELLON, f/k/a BANK  
10 OF NEW YORK's possession or generated by BANK OF NEW YORK MELLON, f/k/a BANK  
11 OF NEW YORK.

12 4. The word "document(s)" includes all "writings," "recordings," and "photographs," as  
13 those terms are defined in Rule 1001 of the Federal Rules of Evidence, and should be  
14 construed in the broadest sense permissible. Accordingly, "document(s)" includes, but is  
15 not limited to, all written, printed, recorded or graphic matter, photographic matter, sound  
16 reproductions, or other retrievable data (whether recorded, taped, or coded electrostatically,  
17 electromagnetically, optically or otherwise on hard drive, diskette, compact disk, primary or  
18 backup tape, audio tape or video tape) from whatever source derived and however and by  
19 whomever prepared, produced, reproduced, disseminated or made. Without limiting the  
20 generality of the foregoing, "document(s)" includes the original and any non-identical copy  
21 and also every draft and proposed draft of all correspondence, internal memoranda, notes of  
22 meetings, telegrams, telexes, facsimiles, electronic mail, reports, transcripts or notes of  
23 telephone conversations, diaries, notebooks, minutes, notes, tests, reports, analyses, studies,  
24 testimony, speeches, worksheets, maps, charts, diagrams, computer printouts, and any other  
25 writings or documentary materials of any nature whatsoever, whether or not divulged to  
other parties, together with any attachments thereto and enclosures therewith. In addition,  
the word "Document(s)" encompasses all forms and manifestations of electronically or  
optically coded, stored, and/or retrievable information, including but not limited to "e-

1 thereof, was given or sent;

2 g. The name of the person or entity having present possession, custody and/or control of  
3 such document;

4 h. The present location of such document;

5 i. If such document was, but is no longer in your possession or control, state what  
6 disposition was made of such document, the reason for such disposition, and the date  
7 thereof.

8 j. Whether or not any draft, copy, or reproduction of such document contains any script,  
9 notation, change, addendum, or the like, not appearing on such document itself, and if so,  
10 the answer shall give the description and identification of each such draft, copy or  
11 reproduction in accordance with the above subparts (a) through (i).

12 4. The above information shall be given in sufficient detail to enable any person or party to  
13 whom a subpoena or request for production is directed to identify the documents sought to  
14 be produced and to enable counsel to determine whether such document, when produced, is  
15 in fact the document so described and identified.

16 5. Notwithstanding any other instruction in this First Set of Interrogatories that is or may be  
17 to the contrary, if a document has already been produced by you to the Debtor/Plaintiff,  
18 such document may be identified by specifying the Bates numbers for all pages of such  
19 document.

20 6. A request that you identify a document is not limited to documents within your  
21 possession, and such requests shall extend to all documents under your control.

22 7. When an interrogatory asks you to "identify" a person, the answer shall contain the  
23 following information with respect to each such person:

24 a. The full name, current or last known business and residence addresses, and business and  
25 residence phone numbers of such person;

1 4. State the name and contact information of the creditor in the instant case.  
2 (NOTE: The creditor is the person who actually provided the money for the Debtor's  
3 loan in expectation of payment, and who stands to lose money in the event of  
4 default.)  
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9 5. State the names and contact information of all persons or entities, in order of  
10 assignment, who at any time were constructive holders or holders in due course of  
11 the promissory note obligating Andrew C. Bailey and/or alienable in this instant  
12 case:  
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21 6. State the name and contact information of the current beneficiary under the  
22 promissory note obligating Andrew C. Bailey and/or alienable in this instant case:  
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25

1 **REQUEST FOR PRODUCTION OF DOCUMENTS**

2 Debtor/Plaintiff hereby requests that Movant/Defendant BANK OF NEW YORK  
3 MELLON, f/k/a BANK OF NEW YORK produce the following documents for inspection  
4 and copying within 30 days of service of this request, or any earlier date on which the  
5 parties agree, subject to the foregoing Definitions and Instructions set forth above, at the  
6 offices of the Yavapai County Recorder, 6<sup>th</sup> Street, Cottonwood, AZ or at another location  
7 agreeable to the parties hereto.  
8

9 1. Produce the original promissory note signed by Andrew C. Bailey and/or alienable in this  
10 instant case. If none, state "none."  
11

12 2. Produce all documents identified by you in response to each interrogatory set forth  
13 above. If none, state "none".  
14

15 3. Produce all documents associated with BAC HOME LOANS SERVICING LP's  
16 authorization of BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK's right  
17 to enforce the promissory note obligating Andrew C. Bailey and/or alienable in this instant  
18 case. If none, state "none".  
19

20 4. Produce a copy of the allonge or endorsement attached to the promissory note obligating  
21 Andrew C. Bailey and/or alienable in this instant case showing an assignment of the  
22 promissory note from MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC to  
23 BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK. If none, state "none."  
24

25 5. Produce any and all Pooling and Servicing Agreement or other contractual agreement or

1 6. Produce the account and general ledger statement of each transaction BANK OF NEW  
2 YORK MELLON, f/k/a BANK OF NEW YORK alleges Andrew C. Bailey has made with  
3 BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK with respect to the  
4 promissory note alienable in this instant case, showing all receipts and disbursements. If  
5 none, state "none".  
6

7 7. Produce all bills of sale and allonges and agreements illustrating where the promissory  
8 note alienable in this instant case was sold or assigned for value, from inception to the  
9 present. If none, state "none".  
10

11 8. Produce all insurance claim information and credit default claim or settlement or  
12 payment records relative to any alleged default under the promissory note alienable in this  
13 instant case. If none, state "none".  
14

15 9. Produce all information pertaining to Federal TARP or other bailout settlements or  
16 payments relative to any alleged default under the promissory note alienable in this instant  
17 case. If none, state "none".  
18

19 10. Produce all contracts, agreements, and/or memos illustrating that law firm  
20 Gust Rosenfeld, PLC has authority to represent BANK OF NEW YORK MELLON, f/k/a  
21 BANK OF NEW YORK in this instant case. If none, state "none".  
22

23 11. Produce all assignments, contracts, agreements, and/or memos identifying both the  
24 creditor and the current beneficiary in this instant case. If none, state "none".  
25

1 12. Produce all contracts, agreements, and/or memos illustrating that BANK OF NEW  
2 YORK MELLON, f/k/a BANK OF NEW YORK or its attorney law firm Gust Rosenfeld,  
3 PLC has authority to represent the creditor and/or the current beneficiary in this instant  
4 case. If none, state "none".  
5

6 13. Produce all contracts, agreements, and/or memos illustrating that BANK OF NEW  
7 YORK MELLON, f/k/a BANK OF NEW YORK has authority to represent CWALT, Inc.,  
8 Alternative Loan Trust 007-HY4 Mortgage Pass-Through Certificates, Series 2007-HY4, its  
9 assignees and/or successors in interest in this instant case. If none, state "none".  
10

11 14. Produce all contracts, agreements, and/or memos illustrating that BANK OF NEW  
12 YORK MELLON, f/k/a BANK OF NEW YORK has authority to represent the bondholders  
13 or certificateholders of CWALT, Inc., Alternative Loan Trust 007-HY4 Mortgage Pass-  
14 Through Certificates, Series 2007-HY4, its assignees and/or successors in interest in this  
15 instant case. If none, state "none".  
16

17 15. Produce all documents or data compilations that are in your possession, custody or  
18 control that you may use in support of your action.  
19

20 Respectfully submitted this 19th day of January, 2010

21 (Previously submitted in the administrative case on the 11<sup>th</sup> day of January, 2010)  
22

23  
24 Signed 

25 Andrew C. Bailey, Plaintiff and Debtor in Pro Per

1  
2  
3 **CERTIFICATE OF SERVICE**  
4

5 I, Andrew C. Bailey, certify that on the 11th day of January, 2010, a true and correct copy  
6 of Debtor's First Set of Interrogatories and First Request for Production of Documents was  
7 served upon the attorney for Movant by both certified mail and facsimile transmission to:  
8

9 Gerard R. O'Meara, Esq,

10 Bar # 002434

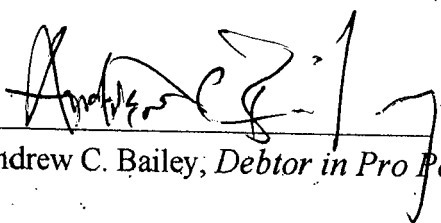
11 Gust Rosenfeld, PLC

12 1 South Church Avenue, Suite 1900

13 Tucson, AZ 85701-1620

14 (Attorney for BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK)  
15  
16  
17  
18

19 Signed this 11<sup>th</sup> day of January, 2010.  
20

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22   
23 Andrew C. Bailey, *Debtor in Pro Per*  
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