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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12 JOSEPH R. FRANCIS,

13 Plaintiff,

14 vs.

15 UNITED STATES OF AMERICA,

16 Defendant.
17

No. CV 09-9449 RGK (FFMx)

DECLARATIONS IN SUPPORT OF
BRIEF OF THE UNITED STATES OF
AMERICA; EXHIBIT THEREON

18 Attached hereto in support of the brief of the United States of America in
19 this matter are the declarations of Internal Revenue Service Agent George Beas
20 and Officer Farrell Stevens.

21 DATED: *January 8, 2010*

Respectfully submitted,

22 GEORGE S. CARDONA
Acting United States Attorney
23 SANDRA R. BROWN
Assistant United States Attorney
24 Chief, Tax Division

Valerie Makarewicz

25
26 DARWIN THOMAS
VALERIE MAKAREWICZ
27 Assistant United States Attorneys

28 Attorneys for the United States of America

DECLARATION OF REVENUE AGENT GEORGE BEAS

I, GEORGE BEAS, declare and state as follows:

1. I am a Revenue Agent of the Internal Revenue Service, with my post of duty at Los Angeles, California. In the course of my duties I was assigned to assist in the investigation of the tax matters of Joseph R. Francis for the tax years 2002 and 2003. A criminal investigation of Mr. Francis by the Government resulted in an indictment for tax evasion being filed against Mr. Francis. In addition to gathering other information in the course of my investigation, I closely followed the criminal prosecution against Mr. Francis. Based on the materials gathered in my investigation, I believe the facts set forth below to be true and correct to the best of my knowledge.

2. Mantra Films, Inc. ("Mantra Films") was incorporated on November 25, 1998. Plaintiff is the president, Chief Executive Officer, and sole shareholder of Mantra Films. Mantra Firms is an S Corporation for tax purposes, so its income and losses are passed through to its shareholder, who must then report the income or loss on his own individual income tax returns.

3. Sands Media, Inc. ("Sands Media") was incorporated on January 16, 2001. Plaintiff is the president, Chief Executive Officer, and sole shareholder of Sands Media, Inc. Sands Media also elected to be treated as an S Corporation for tax purposes.

4. Rothwell Limited is a Cayman Islands corporation formed in 2000. In or about July 2001, an investment brokerage account was opened with Morgan Stanley in Irvine, California, on behalf of Rothwell Limited. In an effort to conceal his beneficial ownership of this brokerage account, plaintiff caused Morgan Stanley to open the Rothwell Limited account by using nominee signatories. An individual named Colin Chaffee is listed as the administrator and/or signatory for the Rothwell Limited brokerage account with Morgan Stanley. On or about November 19, 2001, plaintiff also caused Rothwell Limited

1 to open a bank account at the Bermuda Commercial Bank Limited, in Hamilton,
2 Bermuda, again by using nominee signatories. Although the account at Morgan
3 Stanley is held in the name of Rothwell Limited, plaintiff admitted that he is the
4 beneficial owner of that account when he pled guilty to two criminal counts that
5 charged plaintiff with fraudulently omitting interest income from the Rothwell
6 Limited account on his original and amended tax returns for 2003. Plaintiff also
7 pled guilty to one charge of bribing a public official under 18 U.S.C. §
8 201(c)(1)(A).

9 5. Asia Pacific Mutual Insurance Company ("Asia Pacific") is purported to
10 be a business insurance company located in Vanuatu.

11 6. Plaintiff's 2001 tax return was examined by the IRS with regards to,
12 among other things, a TEFRA tax shelter scheme. Plaintiff has petitioned the
13 United States Tax Court with respect to the TEFRA tax deficiency determined on
14 his 2001 return. That case is currently pending before the Tax Court.

15 7. On April 11, 2003, plaintiff signed under penalty of perjury and filed
16 with the IRS a 2002 U.S. Income Tax Return for his S Corporation, Mantra Films,
17 which falsely claimed deductions totaling \$1,002,141.50 for professional services
18 and "footage" expenses, while that money was actually used for the construction
19 of a residence in Punta Mita, Mexico ("Mexico Residence"). This tax return
20 included a false "insurance" expense of \$333,333.33 for a payment made to Asia
21 Pacific, purported to be a business insurance company located in Vanuatu.

22 8. On or about March 25, 2003, plaintiff signed under penalty of perjury
23 and filed with the IRS a 2002 U.S. Income Tax Return for his S Corporation,
24 Sands Media, which falsely claimed a \$3,784,390 deduction for consulting
25 services, while that money was actually used for construction of the Mexico
26 Residence. The 2002 tax return also included a false "insurance" expense of
27 \$500,000 for a payment made to Asia Pacific, and a false consulting services
28 expense of \$10,411,020, also used for the construction of the Mexico Residence.

1 9. Plaintiff also signed under penalty of perjury and filed with the IRS, a
2 false 2002 U.S. Individual Income Tax Return, Form 1040, that substantially
3 understated his true income and tax due and owing for the taxable year 2002
4 because it both omitted \$136,518 of interest income earned on the Rothwell
5 Limited account, and it carried through the false deductions taken on the S
6 corporation returns. Additionally, plaintiff transferred or caused to be transferred
7 \$1,055,980 from a Rothwell Limited account, and a second account, to Casablanca
8 de Punta Mita, S.A. de C.V., a Mexican corporation, which was used for the
9 purchase of a residential building lot in Punta Mita, Mexico.

10 10. On or about March 21, 2004, plaintiff signed under penalty of perjury and
11 filed with the IRS a 2003 U.S. Income Tax Return for his S Corporation, Mantra
12 Films, which falsely claimed a deduction of \$50,000 for "footage" expenses, while
13 the money was actually used for the construction of the Mexico Residence. The
14 return also claimed a false insurance expense deduction of \$1,666,666.67 paid to Asia
15 Pacific.

16 11. On or about March 21, 2004, plaintiff signed under penalty of perjury and
17 filed with the IRS a 2003 U.S. Income Tax Return for his S Corporation, Sands
18 Media, which falsely claimed a deduction of \$427,269 for professional fees, while the
19 money was actually used for the construction of the Mexico Residence. The return
20 also claimed a false insurance expense deduction of \$2,500,000, paid to Asia Pacific.

21 12. On or about April 15, 2004, plaintiff signed under penalty of perjury and
22 filed with the IRS a false 2003 U.S. Individual Income Tax Return, Form 1040, that
23 understated his true income and tax due and owing for the taxable year 2003,
24 because it both omitted \$562,883 of interest income earned on the Rothwell Limited
25 account, and it carried through the false deductions taken on the S corporation
26 returns. Additionally, in 2005, in order to make use of his unreported income,
27 plaintiff transferred or caused to be transferred \$1,023,023.65 from the Rothwell
28 Limited brokerage account which was used for the purchase of a residential building

1 lot adjacent to the Mexico Residence. Plaintiff's Amended 2003 U.S. Individual
2 Income Tax Return, filed on or about April 12, 2006, also failed to report the interest
3 income earned on the Rothwell Limited account.

4 13. On October 4, 2002, plaintiff established Blue Horse Trading, LLC, as
5 a means to pay, and claim fraudulent tax deductions through Mantra Films, for the
6 operating costs of his personal residence in Los Angeles. Plaintiff is the only
7 member of Blue Horse Trading, and thus plaintiff takes tax deductions for the
8 expenses of Blue Horse Trading because those items are passed through to
9 plaintiff and reported on his individual income tax returns.

10 14. On November 5, 2002, Blue Horse Trading purchased plaintiff's
11 personal residence in Los Angeles. The initial deposits for the purchase of the
12 property were made by plaintiff, but the final purchase amount of \$5,450,000 was
13 paid by Blue Horse Trading from a transfer it received from plaintiff's personal
14 account with Morgan Stanley. Starting in December 2002, Mantra Films began
15 leasing plaintiff's personal residence from Blue Horse Trading. Plaintiff, via the
16 pass-through of the losses from Blue Horse Trading, deducted all of the expenses
17 related to the maintenance of his personal residence on his personal tax return.

18 15. On March 3, 2008, pursuant to a Grant Deed where no transfer tax was
19 paid, Blue Horse Trading granted title to his personal residence to plaintiff. On
20 the same day, with title for the personal residence in his name, plaintiff and
21 Washington Mutual Bank recorded a Deed of Trust for a promissory note, wherein
22 plaintiff borrowed \$5 million and used the personal residence as collateral for the
23 loan. Attached hereto and marked Exhibit A is a redacted copy of the Deed of
24 Trust. One day later, on March 4, 2008, pursuant to a Grant Deed where again no
25 transfer tax was paid, plaintiff granted title to his personal residence back to Blue
26 Horse Trading.

27 16. On April 11, 2007, a federal grand jury in the District of Nevada
28 indicted plaintiff on two counts of tax evasion in violation of 26 U.S.C. § 7201 for

1 taxable years 2002 and 2003. On September 23, 2009, in the case entitled United
2 States v. Joseph R. Francis, CR 08-494 (U.S.D.C., C.D. Ca.), plaintiff pled guilty
3 to a three-count Information. Plaintiff admitted to two violations of 26 U.S.C. §
4 7207 with respect to the 2003 tax year, admitting that he willfully filed his 2003
5 U.S. Personal Income Tax Return and his Amended 2003 U.S. Personal Income
6 Tax Return knowing that the returns were false as to a material matter in that they
7 omitted interest income earned on the Rothwell Limited Morgan Stanley account.
8 On November 6, 2009, the Court sentenced plaintiff.

9 17. On October 15, 2009, after the plea agreement was entered but prior to
10 imposition of his sentence, plaintiff signed under penalty of perjury and filed his
11 2008 individual income tax return with the IRS. On Schedule B of plaintiff's
12 return, plaintiff did not list the interest income earned on the Rothwell Limited
13 Morgan Stanley account, but rather stated via footnote that he is "the subject of a
14 criminal tax case and, as a result, has claimed his constitutional privilege against
15 self-incrimination under the Fifth Amendment to the United States Constitution on
16 various parts of this tax return. His claim of privilege is indicated by one or more
17 asterisks (****)." Plaintiff included a lengthy footnote, wherein he stated in part
18 that "[t]he taxpayer's efforts to obtain complete information is ongoing and if, in
19 the future, the taxpayer receives information that's inconsistent, contradicts or
20 causes a calculation or anything else to materially change, the taxpayer will file an
21 amended return to 1) accurately report the changed position and calculation
22 2) ascertain and confirm that all material federal tax issues have been considered
23 and fairly addressed, and 3) arrive at a conclusion which is supported by the law
24 and facts as stated." To date, plaintiff has not filed an Amended 2008 Individual
25 Income Tax return.

26 18. On November 6, 2009, the IRS notified plaintiff that a determination had
27 been made that jeopardy existed with respect to the ability of the IRS to collect the
28 2001, 2002, and 2003 income tax liabilities of plaintiff, in the following amounts:

Period	Tax	Penalty	Interest
2001	\$9,009,940.00	\$3,603,976.00	\$5,044,443.00
2002	\$4,359,031.00	\$3,269,273.00	\$3,610,278.14
2003	\$1,997,166.00	\$1,497,875.00	1,427,106.00

19. The jeopardy tax assessment made by the IRS for the 2002 taxable year, which is the subject of the instant action, arose from the following adjustments to plaintiff's 2002 income tax return:

A. I included interest income earned on the Rothwell Limited account with Morgan Stanley, in the amount of \$136,518.

B. Plaintiff reported a Schedule C loss relating to Blue Horse Trading, LLC in the amount of \$101,910, which I disallowed.

C. The decrease to plaintiff's reported capital gain by \$3,000 is a computation adjustment that resulted from the flow-through adjustments generated from plaintiff's S corporations, Mantra Films and Sands Media.

D. The increase to plaintiff's S corporations (Mantra Films and Sands Media) income in the total amount of \$16,133,836 are flow-through adjustments made to the corporations' returns. The S corporations' income increased because I disallowed certain expenses taken on the corporations' returns.

1. I disallowed expenses claimed by Mantra Films in the total amount of \$1,438,525.63.

2. I disallowed expenses claimed by Sands Media in the total amount of \$14,695,310.

3. Disallowing these expenses on plaintiff's corporation's returns results in an increase of the corporations' income in the total amount of \$16,133,836. As plaintiff is the 100% shareholder of these corporations, this income was included on plaintiff's 2002 income tax return.

E. The remaining adjustments to plaintiff's 2002 return are computational in nature.

1 F. The penalty under 26 U.S.C. § 6663 (fraud penalty) was calculated
2 to be \$3,269,273. This penalty is 75% of the balance due of the understatement of
3 tax, which for 2002 was \$4,359,031.00.

4 G. Pursuant to 26 U.S.C. § 6601, interest on the amount due and
5 owing, which includes the understatement and penalty, was computed to be
6 \$3,610,278.14.

7 20. The jeopardy tax assessment made by the IRS for the 2003 tax year,
8 which is the subject of the instant action, arose from the following adjustments to
9 plaintiff's 2003 income tax return:

10 A. I included interest income earned on the Rothwell Limited
11 account with Morgan Stanley, in the amount of \$562,883.

12 B. Plaintiff reported a Schedule C loss relating to Blue Horse
13 Trading, LLC, in the amount of \$16,135, which I disallowed.

14 C. The decrease to plaintiff's reported capital gain by \$3,000 is a
15 computational adjustment that resulted from the flow-through adjustments
16 generated from plaintiff's S corporations, Mantra Films and Sands Media.

17 D. The increase to plaintiff's S corporations (Mantra Films and
18 Sands Media) income in the total amount of \$5,421,951 are flow-through
19 adjustments made to the corporations' returns. The S corporations' income
20 increased because I disallowed certain expenses taken on the corporations' returns.

21 1. I disallowed expenses claimed by Mantra Films in the total
22 amount of \$2,494,682.

23 2. I disallowed expenses claimed by Sands Media in the total
24 amount of \$2,927,269.

25 3. By disallowing these expenses on the corporations' returns,
26 the result is an increase of these corporations' income in the total amount of
27 \$5,421,951 for taxable year 2003. As plaintiff is the 100% shareholder of these
28 corporations, this income is to be included on plaintiff's 2003 income tax return.

1 E. The remaining adjustments to plaintiff's 2003 return are
2 computational in nature.

3 F. The penalty under 26 U.S.C. § 6663 (fraud penalty) was calculated
4 to be \$1,497,875. This penalty is 75% of the balance due of the understatement of
5 tax, which for 2003 was \$1,997,166.

6 G. Pursuant to 26 U.S.C. § 6601, interest on the amount due for
7 2003, which includes the understatement and penalty, was computed to be
8 \$1,427,106.

9 21. The amount of the jeopardy tax assessment made by the IRS for the
10 2001 taxable year arises from the case of JRF Investments 2001 LLC, et. al. v.
11 Commissioner, Docket No. 5699-07, currently pending before United States Tax
12 Court. The jeopardy assessment for 2001 is in the same amount at issue before the
13 Tax Court. Additionally, because the amount at issue before the Tax Court
14 involves the fiscal year 2001, it straddles plaintiff's taxable years 2001 and 2002
15 as to plaintiff's personal liabilities.

16 ///

17 ///

18 ///

1 22. Prior to the jeopardy assessment for 2001, the amount at issue before
2 the Tax Court was not assessed, but was a pending liability. As an unassessed
3 pending liability, it was subject to the same jeopardy factors as the 2002 and 2003
4 liabilities.

5 I declare under penalty of perjury that the foregoing is true and correct.

6 DATED: 01/08/2010 in Los Angeles, California.
7

8 
9 GEORGE BEAS
Revenue Agent

This page is part of your document - DO NOT DISCARD



20080362382

Pages:
023



Recorded/Filed in Official Records
Recorder's Office, Los Angeles County,
California

Fee: 76.00

Tax: 0.00

Other: 0.00

Total: 76.00

03/03/08 AT 08:00AM

Title Company

TITLE(S) : _____



LEAD SHEET

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

EG00719

THIS FORM IS NOT TO BE DUPLICATED

EXHIBIT

A

Recording Requested By:

WASHINGTON MUTUAL BANK FA

Return To:

WASHINGTON MUTUAL BANK FA

2210 ENTERPRISE DR

FLORENCE, SC 29501

DOC OPS M/S FSCE 440

03/03/08



20080362382

Prepared By:

DESIREE KEY

1587430-63

(Space Above This Line For Recording Data)

ZCA1 4370-19-66
M28

DEED OF TRUST

3015085941-868

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 FEBRUARY 01, 2008 together with all Riders to this document.

(B) "Borrower" is JOSEPH FRANCIS, A SINGLE MAN

Borrower's address is

[REDACTED] LOS ANGELES, CA 90077

Borrower is the trustor under this Security Instrument.

(C) "Lender" is WASHINGTON MUTUAL BANK, FA

Lender is a FEDERAL SAVINGS BANK

organized and existing under the laws of THE UNITED STATES OF AMERICA

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

Form 3005 1/01

VMP-6(CA) (0207)

Page 1 of 15

Initials:

VMP MORTGAGE FORMS - (800)521-7291



3

Lender's address is 2273 N. GREEN VALLEY PARKWAY, SUITE 14, HENDERSON, NV 89014

Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is CALIFORNIA RECONVEYANCE COMPANY, A CALIFORNIA CORP

(E) "Note" means the promissory note signed by Borrower and dated FEBRUARY 01, 2008. The Note states that Borrower owes Lender FIVE MILLION AND 00/100

Dollars

(U.S. \$ 5,000,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MARCH 01, 2038.

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

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

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

- | | | |
|---|---|---|
| <input 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"/> Other(s) [specify] |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Biweekly Payment Rider | |

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

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

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

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

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

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

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

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and

Initials: 

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restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

THE LEGAL DESCRIPTION IS ATTACHED HERETO AS A SEPARATE EXHIBIT A
AND IS MADE A PART HEREOF.

Parcel ID Number: 4270-019-023

which currently has the address of

LOS ANGELES

("Property Address"):

[Street]
[City], California 90077 [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 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:

I. 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

Initials

[Handwritten Signature]

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

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

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the

Initials: 

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or

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loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

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

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

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

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

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

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

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

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to

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make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred

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in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual

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knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

24. Substitute Trustee. Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument is recorded and the name and address of the successor trustee.

Initials 

08 03562382

16

State of California
County of LOS ANGELES

On 2/1/08

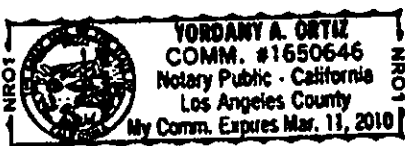
JOSEPH FRANCIS

} ss.

before me, Yordany A. Ortiz - A Notary Public
personally appeared

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

Yordany A. Ortiz (Seal)



08 0362382

Initials. JO

ACKNOWLEDGEMENT

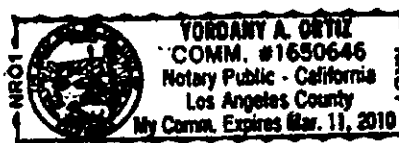
State of California)
County of LOS ANGELES,)

On 2/1/08, before me, Yordany A Ortiz, a Notary Public in and for said State, personally appeared Joseph Francis who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me all that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Yordany A Ortiz



(affix seal)

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LGLD

3015085941-868

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LEGAL DESCRIPTION

THE LEGAL DESCRIPTION IS ATTACHED HERETO AS A SEPARATE
EXHIBIT AND IS MADE A PART HEREOF.

08 0362582

ORDER NO. 1587430-63

19

EXHIBIT "A"
(LEGAL DESCRIPTION)

LOT 7 OF TRACT NO. 13772, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 285, PAGES 33 TO 35, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TOGETHER WITH THAT PORTION OF BEL-AIR PLACE AS SHOWN ON TRACT NUMBER 13772 AS PER MAP RECORDED IN BOOK 285 PAGES 33, 34 AND 35 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY VACATED BY RESOLUTION ON 05-1400622, RECORDED OCTOBER 17, 2005 AS INSTRUMENT NO. 05-2493512, OFFICIAL RECORDS, AND THAT WOULD PASS WITH A LEGAL CONVEYANCE OF LOT 7.

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R2US
M28

3015085941-888

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

THIS FIXED/ADJUSTABLE RATE RIDER is made this 1ST day of FEBRUARY, 2008, 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 WASHINGTON MUTUAL BANK, FA

("Lender") of the same date and covering the property described in the Security Instrument and located at [REDACTED]

LOS ANGELES, CA 90077

(Property Address)

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 6.875 %. 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 MARCH 01, 2013, 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."



MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family -
Fannie Mae Uniform Instrument Form 3187 6/01

-168R (0401)

Page 1 of 4 Initials: [Signature]

VMP Mortgage Solutions

(800)521-7291



08 0362382

21

(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 AND 25/100 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 11.875 % 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 11.875 %.

(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.

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:

Initials: 

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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.

Initials: 

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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.

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

 (Seal)
 -Borrower

 (Seal)
 -Borrower

JOSEPH FRANCIS

 (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

**This is a true and certified copy of the record
if it bears the seal, imprinted in purple ink,
of the Registrar-Recorder/County Clerk**

DEC 7 2009

Diane C. Logan REGISTRAR-RECORDER/COUNTY CLERK
LOS ANGELES COUNTY, CALIFORNIA



1 DECLARATION OF REVENUE OFFICER FARRELL STEVENS

2 I, FARRELL STEVENS, declare and state as follows:

3 1. I am a Revenue Officer of the Internal Revenue Service, with my post of
4 duty at Glendale, California. In the course of my duties, I was assigned to assist in
5 the investigation of the tax matters of plaintiff, Joseph R. Francis, by examining
6 the availability of assets from which the IRS might be able to collect tax
7 deficiencies determined against plaintiff. Based on the materials and data gathered
8 in my investigation, I believe the facts set forth below are true and correct to the
9 best of my knowledge.

10 2. I checked for assets from which to collect the assessed taxes by looking
11 for real property, vehicles, aircraft, bank accounts, investment accounts, retirement
12 accounts, wages, partnership and S-corporation income, all of which could be
13 subject to collection by the IRS if such assets are shown to be owned by or
14 payable to plaintiff. I also looked for information about other competing creditors
15 or potential creditors of plaintiff, as this could affect the IRS's ability to collect the
16 taxes due from assets belonging to plaintiff if such assets are or become
17 encumbered.

18 3. I checked real property records and found no matching records that
19 plaintiff owned any real property. I checked real property records using addresses
20 known to be associated with plaintiff, and found that these properties were either
21 no longer owned by plaintiff, or in the instance of plaintiff's personal residence,
22 had been transferred to Blue Horse Trading, LLC, and had a substantial \$5 million
23 mortgage, leaving the property with minimal or no equity. Since Blue Horse
24 Trading, LLC is a separate legal entity from plaintiff, the property would not be
25 immediately (or possibly ever) subject to an IRS lien.

26 4. I checked Department of Motor Vehicles under plaintiff's name and
27 found that plaintiff owns a 2008 Mercedes Benz S-550, with an estimated value of
28 approximately \$60,000, and that plaintiff may be leasing a 2009 Mercedes Bens

1 and a 2006 Ferrari. Federal Aviation Administration (FAA) records were checked
2 for aircraft registered to plaintiff. Using information already in the possession of
3 the IRS along with FAA records, I was able to find that a Gruman Model G-1159
4 is registered to Aero Falcon, LLC, a limited liability corporation of which plaintiff
5 is a member-owner. This plane is held in the name of a separate legal entity from
6 plaintiff and would not be immediately (or possibly ever) subject to an IRS lien.

7 5. I checked IRS records for 2008 to see if plaintiff received any wages,
8 interest income, dividends, partnership income, S-Corporation income, or non-
9 employee compensation, and whether plaintiff owned any retirement accounts.
10 However, I found that the potential collection from these sources was minimal
11 when compared to the amount of the unpaid taxes.

12 6. I received information showing plaintiff was the holder of a brokerage
13 account at UBS Financial Services, Inc. Further, by examining the plea
14 agreement, I determined that plaintiff was the beneficial owner of the Rothwell
15 Limited brokerage account at Morgan Stanley. These two accounts were
16 immediately levied on November 6, 2009. The Rothwell Limited account used a
17 nominee as the signatory, is registered as belonging to a foreign entity, is highly
18 liquid, and I believed, could be easily transferred electronically outside the United
19 States in a matter of hours, which would put it outside the reach of plaintiff's
20 creditors. Other than these two accounts, and perhaps the one automobile owned
21 by plaintiff, plaintiff's wage income, and plaintiff's Los Angeles residence which
22 is held by a nominee entity, there appears to be no other assets owned by plaintiff
23 that are located in the United States and are readily available for collection action,
24 or sufficient to pay plaintiff's tax liability.

25 7. I researched several databases available to the IRS and found that
26 plaintiff was/is involved in several civil lawsuits that either resulted in judgments
27 against plaintiff or where judgments are still being sought. In August 2008, a
28 judgment against plaintiff was entered for \$2,838,356.00, in favor of Wynn Las

1 Vegas, LLC. Additionally, I found at least 4 ongoing Federal cases in which
2 plaintiff is being sued by parties who seek money judgments in unspecified
3 amounts. I spoke with an attorney for a person suing plaintiff and the plaintiffs in
4 that case are seeking unlimited punitive damages against plaintiff.

5 8. I analyzed the full collection potential of plaintiff's assets and income held
6 specifically in plaintiff's name and found that these assets were worth less than the
7 outstanding judgments against plaintiff. Additionally, I knew that plaintiff has a
8 residence in Mexico which would allow him to flee the United States and make
9 repatriation of any funds plaintiff transfers offshore virtually impossible.

10 9. On December 22, 2009, I received an unsolicited telephone call from
11 Ben Suter, of Keesal, Young & Logan, who identified himself as counsel
12 representing Morgan Stanley. Suter called with respect to the levy that was served
13 upon the Rothwell Limited account held by Morgan Stanley. Suter told me that
14 the Rothwell Limited account now listed an individual named Brian Trowbridge
15 as "Director" of the account, with an address that matched the address of the
16 Rothwell Limited account in the Turks & Caicos Islands. Suter stated that on
17 December 18, 2009, Mr. Trowbridge sent Morgan Stanley an e-mail instructing
18 Morgan Stanley to liquidate the entire account and forward the proceeds to Mr.
19 Trowbridge. Additionally, Suter stated that counsel for plaintiff, Cori Flanders-
20 Palmer, had contacted him and stated that her client (plaintiff) did not agree with
21 the IRS's assertion of the nominee levy and of plaintiff's rights to the Rothwell
22 Limited account. Suter said that Flanders-Palmer also "threatened" legal action
23 against Morgan Stanley if it honored the IRS levy, because, she asserted, the funds
24 did not belong to plaintiff.

25 10. On January 7, 2010, I spoke with Assistant United States Attorney
26 Valerie L. Makarewicz, who told me that on January 5, 2010, she spoke with Ben
27 Suter. AUSA Makarewicz informed me that Mr. Suter confirmed to her the
28 accuracy of the information set forth in paragraph 9, above. AUSA Makarewicz

1 informed me that Suter told her that the word "threatened" came directly from
2 Suter himself.

3 I declare under penalty of perjury that the foregoing is true and correct.

4
5 DATED: 1/07/10 in Glendale, California.

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8 FARRELL STEVENS
9 Revenue Officer
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