Case No.

In The Supreme Court of the United States

SCOTT ERIK STAFNE

Petitioner,

v.

BANK OF NEW YORK MELLON,
A NEW YORK BANKING CORPORATION

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

APPENDIX

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March 8, 2021

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TABLE OF APPENDICES

Appendix 1. Ninth Circuit Memorandum 1–3

Appendix 2. United States District Court Amended Partial Judgment 4–5

Appendix 3. United States District Court Minute Order 6–8

Appendix 4. United States District Court Minute Order 9

Appendix 5. United States District Court Order 10–17

Appendix 6. United States District Court Order 18–26

Appendix 7. United States District Court Partial Judgment in a Civil Case 27–28

Appendix 8. United States District Court Minute Order 29–30

Appendix 9. Ninth Circuit Order 31–32

Appendix 10. United States District Court Order 33

Appendix 11. United States District Court Order Reviewing of Request to Recuse ... 34–37

Appendix 12. United States District Court Order Denying Motion for Reconsideration 38–39

Appendix 13. United States District Court Minute Order 40–43

Appendix 14. United States District Court Minute Order 42–44

Appendix 15. United States District Court Minute Order 44–46

Appendix 16. United States District Court Minute Order 47–48

Appendix 17. Constitutional Provisions 49–56

Appendix 18. Ninth Circuit Order in Robertson 57–60

Appendix 19. Exhibit 1-Statutory Warranty Deed 61–63

Appendix 20. Exhibit 2-Deed of Trust recorded in 2003 64–76

Appendix 21. Exhibit 5-Deed of Trust recorded in 2004 77–99

Appendix 22. Exhibit 6-Deed of Trust recorded 2005 100–18

Appendix 23. Exhibit 7- Deed of Trust in 2006 119–25

Appendix 24. Exhibit 9Q Boundary Line Agreement 126–39

Appendix 25. Exhibit 12-Assignment of Deed of Trust 140–42

Appendix 26. Exhibit 13-Assignment of Deed of Trust 143–45

Appendix 27. Exhibit 14- Corporate Assignment of Deed of Trust 146–47

Appendix 28. Exhibit 15-Assignment to Depositor 2015 148–49

Appendix 29. Exhibit 17-Assignment of Second Deed of Trust 2016 150–52

Appendix 30. Exhibit 19-SLS Statement showing Depositor owns loan 153–55

Appendix 31. Declaration of Cyndee Rae Estrada in Support of Stafne's Factual FRCP 12(b)(1) 156–58

Appendix 32. Exhibit 1- Estrada Declaration in Support of 12(b)(1) Motion 159–60

Appendix 33. Plaintiff's Opposition to Stafne's Factual 12(b)(1) Motion 161–77

Appendix 34. Declaration of Stafne in Support of Response to Motion to Substitute Parties 178–98

Appendix 35. Second Factual Motion to Dismiss Pursuant to FRCP 12(b)(1) 199–220

Appendix 36. Motion to Substitute Real Party in Interest 221–33

Appendix 37. Declaration of Johnson in Support of Motion to Substitute Real Party in Interest 234–36

Appendix 38. Declaration of attorney Burnside in Support of Motion to Substitute Real Party in Interest 237–40

Appendix 39. Declaration of Janati in Support of Motion to Substitute Real Party in Interest 241–44

Appendix 40. Stafne's Reply to Opposition to Motion to Prove Authority 245–55

Appendix 41. Attorneys' Opposition to Motion to Prove Authority 256–59

Appendix 42. Stafne's Motion to Require Attorneys Prove Authority to Bring Lawsuit 260–68

Appendix 43. Declaration of Stafne in Support of Motion to Prove Authority 269–72

Appendix 44. Stafne Answer and Affirmative Defenses 273–84

Appendix 45. Supplemental Declaration 285–93

Appendix 46. Declaration, Exhibit 1- Affidavit of Attempted Service 294–96

Appendix 47. Stafne Declaration, Exhibit 2- Nationstar correspondence................297–99

Appendix 48. Attorney's Opposition to Motion to Dismiss for Lack of Subject-Matter Jurisdiction.. 300–17

Appendix 49. Stafne's First Motion to Dismiss for Lack of Subject-Matter Jurisdiction 318–32

Appendix 50. Corporate Disclosure Statement... 333–34

Appendix 51. Complaint... 335–43

Appendix 52. Limited Power of Attorney 344–50

Appendix 53. Pooling and Servicing Agreement.. 351–580

Appendix 54. *Abrams v. Twin Falls* Complaint filed in Snohomish County............. 581–97

Appendix 55. Stafne's Reply to Opposition to Second FRCP 12(b)(1) Motion....... 598–611

Appendix 56. Attorney's Response to Todd Stafne's Boundary Line Arguments.....612–13

APPENDIX 1

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NOT FOR PUBLICATION

FILED

OCT 8 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BANK OF NEW YORK MELLON, a New York banking corporation, Plaintiff-Appellee, v. SCOTT ERIK STAFNE, an individual; MAYUMI OHATA STAFNE, in her capacity as the personal representative of the estate of Todd Stafne, Defendants-Appellants.	No. 16-36032 D.C. No. 2:16-cv-00077-TSZ MEMORANDUM[*]

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Submitted September 3, 2020[**]
Seattle, Washington

Before: McKEOWN and VANDYKE, Circuit Judges, and CALDWELL,[***] District Judge.

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[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[***] The Honorable Karen K. Caldwell, United States District Judge for the Eastern District of Kentucky, sitting by designation.

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Scott Stafne and the Estate of Todd Stafne appeal the district court's grant of summary judgment to the Bank of New York Mellon ("BNYM") in a judicial foreclosure action. The parties are familiar with the facts and we do not repeat them here. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

We review de novo the district court's determination of subject matter jurisdiction. *U.S. ex rel. Solis v. Millennium Pharm., Inc.*, 885 F.3d 623, 625 (9th Cir. 2018). The district court had jurisdiction to hear the case. Stafne challenges BNYM counsel's ability to bring the case, but far from having "no relationship at all" to their clients, *Kowalski v. Tesmer*, 543 U.S. 125, 131 (2004), the district court found any suggestion that BNYM's attorneys did not actually represent BNYM to be so lacking in merit as to be frivolous. The same description applies to Stafne's argument that a missing definite article in "Bank of New York Mellon" renders the litigant fictitious, depriving the court of jurisdiction. His argument that the senior district judge who heard his case was a "retired judge" merely "acting as an Article III judge in this case," is without merit. Senior judges "are, of course, life-tenured Article III judges." *Nguyen v. United States*, 539 U.S. 69, 72 (2003).

Stafne has waived his argument as to party substitution by failing to raise it in his opening brief, *see In Re J.T. Thorpe, Inc*., 870 F.3d 1121, 1124 (9th Cir. 2017), and did not preserve his argument regarding the timing of the sale of his loan to BNYM by failing to raise it in opposition to summary judgment, *Shakur v.*

Schriro, 514 F.3d 878, 892 (9th Cir. 2008).

We review de novo the district court's grant of summary judgment. *Branch Banking & Tr. Co. v. D.M.S.I., LLC*, 871 F.3d 751, 759 (9th Cir. 2017). The quitclaim deed to Todd Stafne, executed after the deed of trust, could not stave off foreclosure, as it was subject to BNYM's lien on the property. A quitclaim deed conveys "only the grantor's interest, subject to valid title claims and encumbrances." *United States v. Spahi*, 177 F.3d 748, 751–52 (9th Cir. 1999) (citing *Thorstad v. Fed. Way Water & Sewer Dist*., 870 P.2d 1046, 1048 (Wash. Ct. App. 1994)). The district court therefore properly granted summary judgment to BNYM, and in doing so rightly dismissed Appellants' counterclaims. The Estate of Todd Stafne's reliance on a separate state court case relating to the property's boundaries, notwithstanding its issuance after the district court's judgment in this case, is unavailing, and Appellants' other arguments are without merit.

AFFIRMED.[1]

[1] Appellant's Motion to Take Judicial Notice of Findings of Fact and Stipulated Conclusions of Law (Dkt. 64) and Appellant's Motion for Miscellaneous Relief (Dkt. 93) are denied.

APPENDIX 2

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, Plaintiff, v. SCOTT STAFNE; and MAYUMI OHATA STAFNE, as Administrator of the Estate of Todd Stafne, Defendants.	AMENDED PARTIAL JUDGMENT IN A CIVIL CASE CASE NO. C16-77 TSZ

____ **Jury Verdict**. This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_X_ **Decision by Court**. This action came on for consideration before the court. The issues have been considered and a decision has been rendered.

THE COURT HAS ORDERED THAT

Plaintiff Bank of New York Mellon's motions for summary judgment, docket nos. 63 and 81, are GRANTED in part and DENIED in part. Having found no just reason for delay, *see* Fed. R. Civ. P. 54(b), partial judgment is hereby ENTERED in favor of plaintiff Bank of New York Mellon, a New York banking corporation, in its capacity as trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2, as follows:

> The Deed of Trust recorded on March 15, 2005, as Snohomish County Instrument No. 200503150879 ("Deed of Trust"), encumbering the parcel of real property commonly known as 17207 155th Avenue Northeast, in Arlington, Washington 98223-6726, and legally described as LOT 11, SURVEY FOR TWIN FALLS, INC., AS RECORDED UNDER RECORDING NO. 200110105002, RE-RECORDED TO CORRECT SURVEY RECORDED UNDER RECORDING NO. 200111275007, RECORDS OF SNOHOMISH COUNTY, BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 22 AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 27 ALL IN TOWNSHIP 31 NORTH, RANGE 6 EAST, W.M.; (ALSO KNOWNS AS LOT 11, THE

> PLAT OF TWIN FALLS), TOGETHER WITH A NON EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES AS ESTABLISHED BY INSTRUMENT RECORDED UNDER RECORDING NO. 9212160154; SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON (the "Subject Property"), is valid and subsisting, and prior and superior to any and all right, title, interest, lien, and/or estate of defendants Scott Stafne and/or Mayumi Ohata Stafne, as Administrator of the Estate of Todd Stafne in the Subject Property.

Defendant Scott Stafne's counterclaim to quiet title is DISMISSED with prejudice. Defendant Todd Stafne's counterclaims (to the extent they survived his death) to quiet title and for declaratory judgment are DISMISSED with prejudice.

The Deed of Trust encumbering the Subject Property is judicially FORECLOSED, and the Subject Property, or so much thereof as may be necessary to satisfy the outstanding balance due to plaintiff Bank of New York Mellon, is ORDERED to be sold by the Sheriff of Snohomish County in the manner provided by law, including the publication of notice as required by RCW 6.21.030 and .040, and subject to defendant Scott Stafne's right of redemption for a one-year period pursuant to RCW 6.23.010 and .020. The Sheriff may retain from the proceeds of the sale his or her usual fees and costs, provided that the Sheriff promptly provides an accounting of such amounts, and shall deposit the remaining balance of such proceeds in the Registry of the Court.

Plaintiff Bank of New York Mellon may bid the amount owed by defendant Scott Stafne or a lesser amount, and may become the purchaser at any sale of the Subject Property. Notwithstanding RCW 6.21.110, upon the Sheriff's return of the certificate of sale, the Clerk shall take no action unless specifically ordered by the Court. Plaintiff and/or the successful purchaser shall file an appropriate motion to confirm the sale within fourteen (14) days after the sale, and shall note such motion for the fourth Friday after filing. Any response and any reply shall be due in accordance with Local Civil Rule 7(d)(3). The Court will determine the amount of any deficiency under RCW 61.12.070 after the foreclosure sale has occurred and been confirmed.

Dated this 14th day of May, 2019.

William M. McCool
Clerk

s/Karen Dews
Deputy Clerk

APPENDIX 3
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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

BANK OF NEW YORK MELLON, Plaintiff, v. SCOTT STAFNE; and MAYUMI OHATA STAFNE, as Administrator of the Estate of Todd Stafne, Defendants.	C16-77 TSZ MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) The lawsuit captioned *Stafne v. Zilly, et al.*, Case No. C17-1692 MHS (W.D. Wash.), having been dismissed with prejudice, judgment having been entered in that case, and the related post-judgment motions having been denied, the stay of this matter is hereby LIFTED and this case is returned to the active docket.

(2) Pursuant to a limited remand from the United States Court of Appeals for the Ninth Circuit, docket no. 124, plaintiff's motion to amend judgment, docket no. 120, is DENIED in part and GRANTED in part as follows:

(a) By Order entered December 7, 2016, docket no. 114, the Court granted in part and denied in part two motions for summary judgment brought by plaintiff Bank of New York Mellon ("BONY"), a New York banking corporation, in its capacity as trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2. *See also* Order (docket no. 69) (substituting BONY for its parent corporation, Bank of New York Mellon, a Delaware corporation). The Court rejected the theories underlying defendants Scott Stafne's and Todd Stafne's counterclaims to quiet title and Todd Stafne's counterclaim for declaratory judgment, and dismissed the counterclaims with

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prejudice. The Court also ruled that plaintiff was entitled to a partial judgment foreclosing the deed of trust dated March 9, 2005, and recorded in Snohomish County on March 15, 2005, Ex. B to Compl. (docket no. 1-3), with respect to real property owned by Scott Stafne, having the address of 17207 155th Ave NE, in Arlington, Washington. The Court, however, denied as premature plaintiff's requests for a deficiency judgment, attorney's fees, and costs. *See* Order at 6-7 (docket no. 114). Plaintiff's motions for summary judgment did not mention and, in the Order entered December 7, 2016, docket no. 114, the Court did not rule on any interests in the property at issue other than those of plaintiff and defendants Scott Stafne and Todd Stafne, who has since died. Plaintiff's current request to include in an amended partial judgment a foreclosure of interests[1] other than those of defendants Scott Stafne and Mayumi Ohata Stafne, as Administrator of the Estate of Todd Stafne, is therefore DENIED.

(b) Plaintiff's request to include in an amended partial judgment a summary setting forth the principal balance of Scott Stafne's indebtedness, the interest calculated through December 7, 2016, and the amounts of various fees and advances is also DENIED. Contrary to plaintiff's contention, the summary it seeks is not mandated by RCW 4.64.030(2)(a), which applies only to judgments that provide "for the payment of money." The Court's Order entered December 7, 2016, docket no. 114, did not address the parties' dispute concerning the amount owed by Scott Stafne, and it did not award a particular sum to plaintiff. Plaintiff's motions for summary judgment recited an *estimated* amount due from Scott Stafne, namely $1,049,928, *see* Pla.'s Mot. at 9 (docket no. 63); Pla.'s Mot. at 4 (docket no. 81); Janati Decl. at ¶ 4 (docket no. 65), but the proposed order plaintiff submitted, docket no. 63-1, did not contain a sum certain. Instead, plaintiff asked the Court to enter judgment "for the full amount due under the Note" and to award a deficiency judgment in an amount be stated by plaintiff in a declaration after the foreclosure sale of the property. The Court declined to do so, and plaintiff cannot now obtain the relief that was previously denied by seeking to amend the partial judgment in a manner that does not reflect the Court's ruling.

(c) Plaintiff's request to include in an amended partial judgment a direction that the proceeds of any sale of the real property be automatically applied toward payment of the indebtedness at issue is DENIED. The Court instead

[1] Real Time Resolutions, Inc. was originally named as a defendant in this action, but was voluntarily dismissed by plaintiff based on an understanding that the deed of trust held by such entity was reconveyed in 2016. *See* Notice of Voluntary Dismissal (docket no. 62). No other entities with an interest in the real property at issue have been joined in this matter, and plaintiff has made no representations concerning whether any such entities have been provided notice of this litigation.

ORDERS that, after deducting the usual fees and costs of the Snohomish County Sheriff, the proceeds of any sale shall be deposited into the Registry of the Court.

(d) Plaintiff's request to amend the partial judgment to include certain language concerning the status of the deed of trust, plaintiff's right to bid and become a purchaser at any sale of the property, and Scott Stafne's right to redeem the property for a one-year period is GRANTED. The form of the original partial judgment was consistent with RCW 4.64.030(2)(b), which requires that a judgment relating to the "right, title, or interest in real property" contain an abbreviated legal description of the property at issue. The partial judgment entered December 7, 2016, docket no. 115, contained the full legal description of the property, as set forth in the deed of trust recorded on March 15, 2005, as Snohomish County Instrument No. 200503150879, *see* Ex. B to Compl. (docket no. 1-3). The original partial judgment, however, did not specify that defendants' counterclaims were dismissed with prejudice, did not indicate that the deed of trust is valid and subsisting, and prior and superior to any and all right, title, interest, lien, and/or estate of Scott Stafne and/or Todd Stafne (or his heirs) in the property, did not state that plaintiff could bid and become the purchaser at any sale, and did not specify the redemption period. The Clerk is therefore DIRECTED to enter an amended partial judgment in the form approved by the Court.

(3) The Clerk is further DIRECTED to send a copy of this Minute Order and the Amended Partial Judgment to all counsel of record and the United States Court of Appeals for the Ninth Circuit (with reference to No. 16-36032).

Dated this 14th day of May, 2019.

William M. McCool
Clerk

s/Karen Dews
Deputy Clerk

APPENDIX 4
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON,

Plaintiff,

v.

SCOTT STAFNE, et al.,

Defendants.

C16-77 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Defendant's motion to dismiss plaintiff's claims for a lack of subject matter jurisdiction, docket no. 11, is DENIED. Plaintiff Bank of New York Mellon, a Delaware Corporation, has alleged facts that establish subject matter jurisdiction. *See* 28 U.S.C. § 1332.

(2) Defendant's request for the Court to abstain from deciding this case, docket no. 11, is also DENIED. The principle underlying abstention doctrines exercised by federal courts is based on "avoiding needless friction with state policies, whether the policy relates to the enforcement of the criminal law … or the final authority of a state court to interpret doubtful regulatory laws of the state." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 718 (1996). No such issue is implicated here. "The doctrine of prior exclusive jurisdiction applies to a federal court's jurisdiction over property only if a state court has previously exercised jurisdiction over that same property and retains that jurisdiction in a separate, concurrent proceeding." *Sexton v. NDEX W., LLC*, 713 F.3d 533, 537 (9th Cir. 2013). No state court exercised jurisdiction over defendant's property prior to plaintiff filing its complaint in this Court.

(3) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

Dated this 28th day of April, 2016.

William M. McCool
Clerk

s/Karen Dews
Deputy Clerk

APPENDIX 5
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5 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE
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BANK OF NEW YORK MELLON, a
8 Delaware corporation, as trustee for
Structured Asset Mortgage
9 Investments II Trust, Mortgage Pass-
Through Certificates Series 2005-AR2,
10 Plaintiff,
11 v.
12 SCOTT STAFNE, et al.,
13 Defendants.

C16-77-TSZ

ORDER

14
15 THIS MATTER comes before the Court on various motions filed by both plaintiff
16 and defendant Scott Stafne. Stafne has filed a Motion to Prove Authority to Bring
17 Lawsuit, docket no. 28; a Motion to Dismiss Pursuant to FRCP 12(b)(1), docket no. 42;
18 and a Motion for Protective Order, docket no. 51. Plaintiff has filed a Motion to
19 Substitute Real Party in Interest, docket no. 36; and a Motion to Compel Discovery,
20 docket no. 40. The Court will address each motion in turn.
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Background

This is a simple case about a homeowner defaulting on his mortgage. Through this latest series of motions, the focus has shifted onto which entity has the right to sue, the attorney-client relationship, and standing and subject-matter jurisdiction. Put briefly, Scott Stafne borrowed $800,000 from Countrywide Home Loans, Inc. in 2005 to finance the purchase of a home in Arlington, Washington, executing a Deed of Trust and promissory note. Countrywide subsequently transferred the note to JPMorgan Chase Bank, N.A. ("Chase"), as then-trustee for Structured Asset Mortgage Investments II Trust 2005-AR2 ("SAMI"). In September 2006, Chase sold its trustee business for this type of investment to the Bank of New York, thus transferring the trusteeship of SAMI to the Bank of New York. The Bank of New York thereafter acquired via merger the Mellon Financial Corporation and became the Bank of New York Mellon, from where much of the current confusion springs. By 2009 Stafne fell into default on his debt, spurring heavy correspondence between Countrywide, as servicer, and Stafne. By this point the Bank of New York Mellon contracted with Nationstar as its attorney-in-fact to conduct certain foreclosure business. Nationstar thereafter engaged plaintiff's counsel to proceed with a judicial foreclosure. The Court previously denied Stafne's Motion to Dismiss For Lack of Subject Matter Jurisdiction. *See* docket no. 22.

Discussion

A. Motion to Substitute Real Party in Interest

The Court first addresses plaintiff's motion to substitute the Bank of New York Mellon, a New York corporation ("BONY"), in place of its corporate parent Bank of

1 New York Mellon, a Delaware corporation ("BNYM"). *See* docket no. 36. This motion
2 arises out of a mistake by BNYM's attorney-in-fact, Nationstar, as to which entity within
3 the Bank of New York Mellon corporate family was in fact the trustee for SAMI, and
4 thus the proper entity to sue. The genesis of the difficulty appears to be that Stafne's
5 promissory note was eventually indorsed, somewhat ambiguously, to "The Bank of New
6 York Mellon F/K/A The Bank of New York, Successor Trustee, To JPMorgan Chase
7 Bank, As Trustee." Janati Decl., docket no. 39, Ex. B. Nationstar subsequently
8 examined its internal records and saw that "The Bank of New York, Mellon Corporation"
9 was noted as the trustee of SAMI, concluding that this listing referred to BNYM.
10 Johnson Decl., docket no. 37, ¶ 4; Ex. A. Accordingly, the complaint was drawn up with
11 BNYM listed as plaintiff. After motion practice that attacked BNYM's propriety as
12 plaintiff on different grounds, *see* docket no. 11, it came to light that BONY, not its
13 corporate parent BNYM, was the proper trustee of SAMI. Plaintiff brings this motion to
14 substitute BONY in its place.

15 Rule 17(a)(3) allows for the substitution of the real party in interest "as if [the
16 action] had been originally commenced by the real party in interest." The rule "provides
17 a liberal standard for the substitution of the real party in interest," *Beaudu v. Starwood*
18 *Hotels & Resorts Worldwide, Inc.*, 2005 WL 1877344, *1 (W.D. Wash. Aug. 8, 2005), so
19 as to "prevent forfeiture of an action" when a "reasonable mistake has been made."
20 *United States for Use & Benefit of Wulff v. CMA, Inc.*, 890 F.2d 1070, 1074 (9th Cir.
21 1989).
22
23

1 Despite the leniency of the rule and its salutary purpose, Stafne contends the suit
2 must be dismissed. Stafne's argument flows as follows: BNYM is not the trustee for
3 SAMI which means it has no standing to sue, depriving this Court of subject-matter
4 jurisdiction, resulting in there being no case for BONY to substitute into. Put another
5 way, defendant argues that the fact BNYM is not the trustee creates a jurisdictional defect
6 that Rule 17 cannot repair. However, Stafne's argument misapprehends the relationship
7 between standing and the merits. Courts regularly grant motions to substitute in the
8 correct corporate entity in analogous situations. *See, e.g.*, *Liberty Mut. Ins. Group v.*
9 *Panelized Structures, Inc.*, 2013 WL 760343, *3 (D. Nev. Feb. 26, 2013) (distinguishing
10 parent-subsidiary relationship from unrelated entities); *Siemens USA Holdings, Inc. v.*
11 *United States*, 960 F. Supp. 2d 221, 225 (D.D.C. 2013) (permitting corporate parent to
12 file motion to substitute in subsidiary). Defendant's argument that BNYM lacks standing
13 to make such a motion "completely ignores the rule's substitution provisions, which
14 specifically contemplate transfer from a non-party to the real party in interest without any
15 interruption of the proceedings." *Liberty Mut. Ins. Group.*, 2013 WL 760343 at *4.
16 Further, whether an entity has enforceable contractual rights relates to the merits, not
17 standing. *Lindsey v. Starwood Hotels & Resorts Worldwide Inc.*, 409 Fed. App'x 77, 78
18 (9th Cir. 2010). The Court concludes that the wrong corporate entity was listed as
19 plaintiff due to a reasonable mistake that has not prejudiced any defendant. *See United*
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1 *States for Use & Benefit of Wulff*, 890 F.2d at 1074. Accepting Stafne's argument would
2 result in a forfeiture, the very outcome that the drafters of Rule 17 strove to avoid.[1]
3 Accordingly, plaintiff's motion, docket no. 36, is GRANTED.[2] BONY is hereby
4 substituted in place of BNYM. The Clerk is DIRECTED to modify the caption to reflect
5 that the Bank of New York Mellon, a New York banking corporation, is substituted in
6 this action for Bank of New York Mellon, a Delaware corporation.

7 **B. Motion to Prove Authority to Bring Lawsuit**

8 Stafne next moves to require plaintiff's counsel, Davis Wright Tremaine
9 ("DWT"), to "provide proof of their authority to act as attorneys, pursuant to an attorney-
10 client relationship, with regard to" a slew of BNYM corporate entities. *See* docket no.
11

12 [1] The two cases defendant relies upon are easily distinguishable. The first, *Zurich Insurance Co. v. Logitrans, Inc.*, 297 F.3d 528 (6th Cir. 2002), involved "sister
13 companies under the common ownership of a single corporate entity," as opposed to a parent-subsidiary relationship *Id.* at 533 (Gilman, J., concurring) ("In my opinion, any or
14 all of [real party in interest's] direct or indirect owners … would have had constitutional standing to bring suit against [defendant], even though none of these parent entities is the
15 real party in interest."); *see also* 13A C. Wright & A. Miller, Federal Practice & Procedure, § 3531 n.61 (3d ed. 2014) (describing the *Zurich* decision as "particularly
16 troubling"). The other, *Cortlandt Street Recovery Corp. v. Hellas Telecommunications, S.a.r.l*, 790 F.3d 411 (2d Cir. 2015) merely observed the issue created by *Zurich*, with the
17 opinion's author adding, in a separate concurrence, that *Zurich* "is not the law of this [Second] Circuit, and … [I] express some doubt that it should be." *Id.* at 425 (Sack, J.,
18 concurring).

[2] The Court thus necessarily rejects defendant's argument that BNYM is judicially
19 estopped from seeking to substitute BONY in its place. The Ninth Circuit has held that if "incompatible positions are based not on chicanery, but only on inadvertence or mistake,
20 judicial estoppels does not apply." *Milton H. Greene Archives, Inc. v. Marilyn Monroe LLC*, 692 F.3d 983, 994 (9th Cir. 2012) (quoting *Johnson v. Oregon*, 141 F.3d 1361,
21 1369 (9th Cir. 1998)). There is no evidence BNYM sought to perpetrate a fraud on the Court by its earlier representations that it was the trustee of SAMI, and the Court is
22 unsure how such a change in position inures to BNYM or BONY's benefit.
23

1 28. However, Stafne lacks a good-faith basis to argue that DWT lacks such a
2 relationship. Apparently Stafne has made this same argument in the past against DWT.
3 *See Robertson v. GMAC Mortgage LLC*, C12-2017-MJP, docket no. 82 (W.D. Wash.
4 Feb. 19, 2013) (Pechman, J.). Judge Pechman wrote that such a motion "is wholly
5 without merit, unnecessary and is frivolous." *Id.* at *3. This Court agrees, and the
6 motion is DENIED.

7 **C. Motion to Compel**

8 Plaintiff additionally moves to compel defendant Stafne to produce discovery in
9 response to its First Requests for Production of Documents and Requests for Admission
10 served on May 23, 2016. *See* docket no. 40; Burnside Decl., docket no. 41, ¶ 6. In his
11 response, Stafne states that his position is that he "does not have to go to the time and
12 expense of further discovery until this Court rules on DWT's Motion to Substitute."
13 Stafne's Resp., docket no. 46, at 2. He then continues by addressing the merits of
14 BNYM's motion to substitute, discussed *supra*. Even that discussion veers into an
15 argument founded on the statute of limitations.[3] Nowhere, however, does Stafne provide
16 a basis for ignoring validly propounded discovery requests.

17 In his response to the Requests for Production ("RFPS") Stafne by and large
18 responded that the "documents are available for inspection during reasonable office hours
19
20

[3] The Court declines Stafne's invitation to re-examine its previous findings as to diversity
21 jurisdiction. The only impact of granting BNYM's motion to substitute is to replace one
diverse party, BNYM (a Delaware corporation), with another, BONY (a New York
22 corporation). This swap has no impact on the diversity calculus.
23

1 upon reasonable notice." *See* Burnside Decl., docket no. 41, Ex. F (Stafne's Responses at
2 10). Plaintiff's counsel agreed to send someone to Stafne's office to copy documents on
3 Friday, June 24, 2016, but on the day before Stafne stated he would not be available and
4 would only permit DWT to make copies on his copier at a rate Stafne would determine.
5 *Id.* Ex. G. However, soon after plaintiff filed its motion to substitute Stafne wrote an
6 email informing plaintiff that he had decided to not turn over discovery because he would
7 shortly be filing a motion to dismiss for "constitutional imperfections." *Id.* Ex. I.

8 A party objecting to discovery must either seek a protective order or provide
9 written objections. *See In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 331, 337 (N.D.
10 Cal. 2005). Stafne has done neither with respect to the RFPs. Plaintiff's Motion to
11 Compel, docket no. 40, is GRANTED. The Court ORDERS defendant Scott Stafne to
12 produce all-non privileged, responsive documents to plaintiff's counsel's office by
13 5:00 pm on Wednesday, August 31, 2016. Stafne will bear the cost of making such
14 production.

15 **D. Motion to Dismiss**

16 Defendant Stafne additionally brings a motion to dismiss for lack of subject matter
17 jurisdiction, once again arguing that DWT lacks an attorney-client relationship with a
18 plaintiff who has standing to sue. In addition, Stafne contends that the Power of Attorney
19 through which plaintiff engaged Nationstar (and thus through which Nationstar engaged
20 DWT) does not allow for DWT to invoke the Court's jurisdiction. *See* docket no. 42. On
21 the whole, Stafne's motion merely reiterates the same arguments that are the subject of
22 the pending motions, and thus it is DENIED for the reasons discussed above.

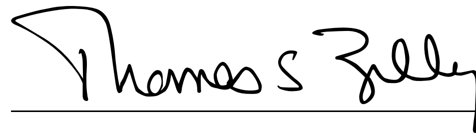
23

E. Motion for Protective Order

The last motion before the Court is by Stafne and entitled a "Motion for Protective Order" to prevent the continuation of his deposition because, chiefly, "presently there is no plaintiff with standing and/or any real party in interest bringing this case against Stafne." *See* docket no. 51. Thus, Stafne's motion is in essence a recycling of his previous argument that the Court lacks subject-matter jurisdiction because of the issues discussed *supra* with regards to the real party in interest. As the Court has already addressed those arguments, Stafne's motion, docket no. 51, is DENIED.

IT IS SO ORDERED.

Dated this 9th day of August, 2016.



Thomas S. Zilly
United States District Judge

APPENDIX 6
A 18

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, Plaintiff, v. SCOTT STAFNE, et al., Defendants.	C16-77 TSZ ORDER

THIS MATTER comes before the Court on plaintiff's motions for summary judgment against Scott Stafne, docket no. 63, for summary judgment against Todd Stafne, docket no. 81, for attorneys' fees in connection with its successful motion to compel, docket no. 73, and for relief from deadline, docket no. 110. The Court will address each motion in turn.

Background

The facts of this case are simple and essentially undisputed. On March 9, 2005, Defendant Scott Stafne borrowed $800,000 from Countrywide Home Loan, Inc. ("Countrywide") to refinance his purchase of residential property in Arlington, Washington. Decl. of Fay Janati, Ex. B, docket no. 39-2. In connection with this loan, Scott Stafne executed a promissory note ("Note") and deed of trust. *See id.* at ¶ 1 (Note);

1 *see also* Janati Decl, Ex. C, docket no. 39-3 (Deed of Trust). Under the terms of the
2 Note, Scott Stafne agreed to repay the principal and annual interest over a thirty year
3 period ending on April 1, 2035. Janati Decl., Ex. B at ¶ 2 & 3.

4 After the loan closed, Countrywide transferred the Note to JP Morgan Chase
5 Bank, N.A. ("JPMorgan") who deposited Scott Stafne's loan in an investment portfolio
6 known as the Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through
7 Certificates Series 2005-AR2 ("SAMI Trust"). Plaintiff Bank of New York Mellon
8 ("BONY") became the holder of the Note, as trustee for the SAMI Trust, when it
9 acquired the trustee operations of JPMorgan in 2006.[1] *See* Decl. of Fred Burnside, Ex. F,
10 docket no. 64-6 at 34-35 (Purchase and Assumption Agreement § 2.1); Janati Decl., Ex.
11 F, docket no. 39-6 (Agreement of Resignation and Assumption). On August 31, 2007,
12 Scott Stafne recorded an executed quitclaim deed granting Todd Stafne a portion of the
13 property encumbered by the deed of trust.[2] *See* Declaration of Jocelynne Fallgatter, Ex.
14 L, docket no. 98-12.

15 Scott Stafne was current on his loan payments through December of 2008, but
16 stopped payments in January of 2009, and has made no payments since that time. Second
17 Decl. of Fay Janati, docket no. 65 at ¶ 4. On February 17, 2009, Countrywide, as loan
18 servicer, issued a "Notice of Intent to Accelerate," but later opted not to accelerate Scott

19

20 [1] The Note was initially acquired by BONY's predecessor, the Bank of New York. In 2008, the Bank of New York was involved in a merger with Mellon Financial, and as a result the Bank of New York
21 changed its name to Bank of New York Mellon. Janati Decl., Ex. E, docket no. 39-5 (corporate name-change documents).

22 [2] Apparently, Scott Stafne and Todd Stafne executed a "virtually identical" quitclaim deed in April of 2010, *see* Pl.'s Mot. for Summ. J. Against Todd Stafne, docket no. 81 at 5, but this second quitclaim deed has not been provided to the Court.

23

1 Stafne's debt and instead adjusted his minimum monthly payment. Second Janati Decl.,
2 Ex. F, docket no. 65-6 (Adjustable Rate Mortgage Payment Adjustment Notice). Scott
3 Stafne was sent five additional notices of default during the period between October 2012
4 and September 2015. Second Janati Decl., Ex. B, docket no. 65-2. Having received no
5 further payments, BONY elected to accelerate the entire debt and bring this suit for
6 judicial foreclosure on January 19, 2016. Complaint, docket no. 1 at ¶ 3.15. In response,
7 both Scott Stafne and Todd Stafne filed answers alleging counterclaims to quiet title. *See*
8 docket nos. 24 (Scott Stafne) and 25 (Todd Stafne).

9 **Discussion**

10 **I. BONY's Motions for Summary Judgment**

11 The Court shall grant summary judgment if no genuine issue of material fact exists
12 and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P.
13 56(a). The moving party bears the initial burden of demonstrating the absence of a
14 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A
15 fact is material if it might affect the outcome of the suit under the governing law.
16 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). To survive a motion for
17 summary judgment, the adverse party must present affirmative evidence, which "is to be
18 believed" and from which all "justifiable inferences" are to be favorably drawn. *Id.* at
19 255, 257. When the record, however, taken as a whole, could not lead a rational trier of
20 fact to find for the non-moving party, summary judgment is warranted. *See Beard v.*
21 *Banks*, 548 U.S. 521, 529 (2006) ("Rule 56(c) 'mandates the entry of summary judgment,
22 after adequate time for discovery and upon motion, against a party who fails to make a
23

1 showing sufficient to establish the existence of an element essential to that party's case,
2 and on which that party will bear the burden of proof at trial.'" (quoting Celotex, 477
3 U.S. at 322)).

4 **A. BONY's Motion for Summary Judgment against Scott Stafne**

5 BONY argues that it is entitled to summary judgment against Scott Stafne because
6 the undisputed facts show that it is the holder of a promissory note secured by a valid
7 deed of trust and that Scott Stafne breached the terms of the note by failing to make the
8 required monthly payments.[3] Judicial foreclosure is appropriate where the lender can
9 show a breach of the terms of the promissory note and deed of trust, notice, and failure to
10 cure. *ING Bank v. Korn*, 2011 WL 5326146, at *3 (W.D. Wash. Nov. 4, 2011) (citing
11 RCW 61.12.040). Here, it is undisputed that Scott Stafne breached the terms of the Note
12 by failing to make the required monthly payments, that BONY provided notice of default
13 and its intent to accelerate, and that Scott Stafne failed to cure prior to acceleration of the
14 debt. The Note defines default as the failure to "pay the full amount of each monthly
15 payment on the date it is due," Janati Decl., Ex B, docket no. 39-2 at ¶ 7, and Scott Stafne
16 has not made any payments since December of 2008, Second Janati Decl., docket no. 39
17 at ¶ 4. Among other notices, Scott Stafne was issued a Notice of Default and Intent to
18 Accelerate in September of 2015, Second Janati Decl., Ex. B, docket no. 65-2 at 19-21,

19

20 [3] Rather than oppose the motion, Scott Stafne invites the entry of "final judgment based on [his] failure to respond to [plaintiff's] motion for summary judgment," docket no. 71 at ¶ 4. Scott Stafne erroneously
21 believes that responding to the merits of plaintiff's motion will waive any challenges to the Court's subject-matter jurisdiction. *Id.* at ¶ 5. However, whether the Court has subject-matter jurisdiction over this case is not an issue Scott Stafne can waive. *See In re Kieslich*, 258 F.3d 968, 970 (9th Cir. 2001).
22 Scott Stafne also argues in a surreply, docket no. 78, that his Notice of Appeal, docket no. 72, divests the Court of the authority to rule on the pending motions. Setting aside Scott Stafne's misunderstanding of the relevant doctrine, the Ninth Circuit has dismissed his interlocutory appeal, docket no. 100.

23

1 and BONY accelerated Scott Stafne's debt by filing this suit in January of 2016 seeking
2 payment of the entire debt. *See* Complaint, docket no. 1 at ¶ 3.15. Scott Stafne has not
3 contested that he is in default on the Note or the amount owed thereunder.

4 Scott Stafne has, however, alleged counterclaims against plaintiff to quiet title to
5 the property based on the theory that the debt is time barred. *See* Answer, docket no. 24
6 at 7-11. Contrary to the allegations in his complaint, the statute of limitations does not
7 bar foreclosure. For a deed of trust, the six-year statute of limitations only begins to run
8 when the party is entitled to enforce the entire obligation imposed by the note, which, for
9 an installment note, occurs either when the note naturally matures or when the note is
10 accelerated. *See Edmundson v. Bank of America*, 194 Wn. App. 920, 930 (2016); *see*
11 *also Washington Federal v. Azure Chelan LLC*, 195 Wn. App. 644, 663 (2016) ("For a
12 deed of trust, the six-year statute of limitations begins to run when the party is entitled to
13 enforce the obligations of the note. This can occur either . . . when the note naturally
14 matures, or when the party accelerates the note . . . .").

15 Scott Stafne's counterclaim to quiet title alleges that the statute of limitations
16 began to accrue on February 17, 2009, when Countrywide sent its Notice of Intent to
17 Accelerate.[4] To trigger acceleration, however, a creditor must clearly and unequivocally
18 indicate, by some affirmative action, that the option to accelerate has been exercised. *See*
19 *Glassmaker v. Ricard*, 23 Wn. App. 35, 37 (1979) (quoting *Weinberg v. Naher*, 51 Wash.
20

21 [4] Scott Stafne also alleges that the 2007 "Suspended Payment Agreement" accelerated his loan, but the document does nothing of the sort. Instead, the document provides "[i]f we previously notified you that
22 your loan is (or will be) accelerated and/or due in full, it remains accelerated and/or due in full . . . ." Second Janati Decl., Ex. D, docket no. 65-4 at 4. Scott Stafne has provided no evidence, and indeed there likely is none, that the debt was accelerated prior to the Suspended Payment Agreement.
23

1 591, 594 (1909)). A statement of potential future action does not constitute the
2 affirmative action required to accelerate a debt. *See Weinberg*, 51 Wash. at 594 (holding
3 that letters which stated that "the loan will be called in" unless the debtor procured an
4 insurance policy payable to the creditor were insufficient to trigger acceleration because
5 the letters simply threatened to exercise the option to accelerate). Like the creditor in
6 *Weinberg*, Countrywide's statement that it would accelerate the loan if the default was
7 not cured is a statement of potential future action and thus, was insufficient to trigger
8 acceleration of Stafne's debt. In fact, Countrywide ultimately decided not to accelerate
9 Scott Stafne's loan in 2009, and instead opted to adjust Scott Stafne's minimum payment.
10 *See* Second Janati Decl., Ex. F, docket no. 65-6. It was not until BONY filed suit in
11 January of 2016 that BONY unequivocally accelerated Scott Stafne's debt. Accordingly,
12 BONY's action for judicial foreclosure is timely and its motion for summary judgment is
13 GRANTED in part. Scott Stafne's counterclaim to quiet title is DISMISSED with
14 prejudice.

15 In addition to judicial foreclosure, BONY's motion also seeks (1) a deficiency
16 judgment to recover any deficit between the proceeds of the sheriff's sale and the amount
17 due under the Note; and (2) to recover expenses incurred in protecting its interests under
18 the Note and deed of trust, including reasonable attorney's fees and costs. Although
19 BONY may be entitled to both, its requests are premature. The Court cannot determine
20 whether BONY is entitled to a deficiency judgment or the amount of that judgment
21 without knowing the sale price of the property and the total remaining debt after the sale
22 proceeds are applied. *See* RCW 61.12.070. Similarly, although both the note and the
23

1 deed of trust provide that BONY is entitled to recover expenses, including attorneys' fees
2 and costs, incurred in protecting its interests, *see* Janati Decl., Ex. B, docket no. 39-2 at
3 ¶ 7(E) (Note); Janati Decl., Ex. C, docket no. 39-3 at ¶ 9 (deed of trust), the total amount
4 of such expenses is uncertain at this time because BONY will likely incur additional
5 expenses in connection with executing the foreclosure sale. Accordingly, BONY's
6 requests for a deficiency judgment and an award of attorneys' fees and costs under the
7 Note and deed of trust are DENIED without prejudice. BONY may renew these requests
8 within fourteen (14) days of the date of the foreclosure sale.

9 **B. BONY's Motion for Summary Judgment Against Todd Stafne**

10 BONY also moves for summary judgment against Todd Stafne seeking dismissal
11 of his counterclaim to quiet title because, among other things, Todd Stafne took title to
12 the property granted to him by the 2007 quitclaim deed subject to the deed of trust.
13 Washington has adopted a "race-notice statute" that gives priority to those interests which
14 are recorded first. *BAC Home Loans Servicing, LP v. Fulbright*, 180 Wn.2d 754, 759
15 (2014). Interests acquired by quitclaim deed are subject to any encumbrances then
16 existing on the property and all rights which had been previously granted respecting it.
17 *See Corning v. Aldo*, 185 Wash. 570, 577 (1936). Here, the quitclaim deed granting
18 Todd Stafne a portion of the property encumbered by the deed of trust was recorded in
19 2007, well after the deed of trust was recorded in 2005. Because BONY's deed of trust
20 was recorded prior to the quitclaim deed, Todd Stafne took title subject to BONY's
21 existing lien on the property.

22

23

1 Todd Stafne offers two meritless arguments in opposition to BONY's motion for
2 summary judgment against him. First, Todd Stafne argues that Scott Stafne's transfer of
3 a portion of the property by quitclaim deed in 2007 breached the terms of the deed of
4 trust and thus, BONY's foreclosure action as to property owned by Todd Stafne is barred
5 by the statute of limitations. However, the relevant terms of the deed of trust provide that
6 breach of the covenant restricting transfer of the property simply results in an option to
7 accelerate the debt. *See* Janati Decl., Ex. C, docket no. 39-3 at ¶ 18. Moreover, the six-
8 year statute of limitations on a deed of trust does not begin to run until the installment
9 note naturally matures or the note is accelerated. *See Washington Federal*, 195 Wn. App.
10 at 663. As discussed above, BONY did not unequivocally exercise its option to
11 accelerate the debt until this action was filed in January of 2016. Thus, the statute of
12 limitations on the deed of trust did not begin to accrue until January of 2016. BONY's
13 judicial foreclosure action is therefore timely.

14 Todd Stafne's final argument is that he adversely possessed the property
15 quitclaimed to him by Scott Stafne. But in Washington, "adverse possession does not
16 extinguish a mortgage that pre-dates the adverse possession." *See* 17 WILLIAM B.
17 STOEBUCK & JOHN W. WEAVER, WASH. PRAC. REAL ESTATE AND PROPERTY LAW § 8.6
18 (2d ed. 2004) (citing *Thornely v. Andrews*, 40 Wash. 580 (1905)). Here, the promissory
19 note and deed of trust were executed and recorded prior to Todd Stafne's occupation of
20 the encumbered property and thus, his possession of that property cannot extinguish
21 BONY's entitlement to foreclose under the deed of trust. Accordingly, BONY's motion
22 for summary judgment against Todd Stafne is GRANTED and Todd Stafne's
23

1 counterclaims are DISMISSED with prejudice. Finding no just reason for delay, *see* Fed.
2 R. Civ. P. 54(b), the clerk is DIRECTED to enter partial judgment foreclosing the
3 property encumbered by the deed of trust.

4 In light of the Court's rulings on BONY's motions for summary judgment, the
5 trial date and all remaining deadlines are hereby STRICKEN. BONY's motion for relief
6 from deadline, docket no. 110, is therefore DENIED as moot.

7 **II. BONY's Motion for Attorneys' Fees**

8 BONY moves for attorneys' fees and costs incurred in connection with its
9 successful motion to compel. *See* Plaintiff's Motion for Attorneys' Fees, docket no. 73.
10 As discussed above, BONY also claims it is entitled to expenses incurred in enforcing the
11 debt (which would likely include any fees incurred in connection with discovery motions)
12 under the terms of the promissory note and deed of trust. *See* Plaintiff's Motion for
13 Summary Judgment, docket no. 63 at 29-30. For the sake of efficiency and consistency,
14 the Court declines to award fees piecemeal. Accordingly, Bank of New York Mellon's
15 motion for attorney's fees, docket no. 73, is DENIED without prejudice.

16 IT IS SO ORDERED.

17 Dated this 7th day of December, 2016.

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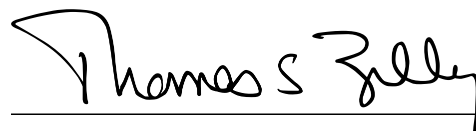
19 

20 Thomas S. Zilly
United States District Judge

21

22

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APPENDIX 7
A 27

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, Plaintiff, v. SCOTT STAFNE, et al., Defendants.	PARTIAL JUDGMENT IN A CIVIL CASE CASE NO. C16-77 TSZ

___ **Jury Verdict**. This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_X_ **Decision by Court**. This action came on for consideration before the court. The issues have been considered and a decision has been rendered.

THE COURT HAS ORDERED THAT

Plaintiff Bank of New York Mellon's motions for summary judgment, docket nos. 63 and 81, are GRANTED. Having found no just reason for delay, *see* Fed. R. Civ. P. 54(b), partial judgment is hereby ENTERED in favor of plaintiff Bank of New York Mellon as follows: any and all rights, title, and interest of defendants Scott Stafne and Todd Stafne in the parcel of real property commonly known as 17207 155th Avenue Northeast, Arlington, Washington 98223-6726, and legally described as LOT 11, SURVEY FOR TWIN FALLS, INC., AS RECORDED UNDER RECORDING NO. 200110105002, RE-RECORDED TO CORRECT SURVEY RECORDED UNDER RECORDING NO. 200111275007, RECORDS OF SNOHOMISH COUNTY, BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 22 AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 27 ALL IN TOWNSHIP 31 NORTH, RANGE 6 EAST, W.M.; (ALSO KNOWNS AS LOT 11, THE PLAT OF TWIN FALLS), TOGETHER WITH A NON EXCLUSIVE EASMENT FOR INGRESS, EGRESS AND UTILITIES AS ESTABLISHED BY INSTRUMENT RECORDED UNDER RECORDING NO. 9212160154; SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON (the "Subject Property"), are judicially foreclosed.

The deed of trust encumbering the Subject Property, bearing Snohomish County recording number 200503150879, is FORECLOSED, and the Subject Property is ORDERED to be sold by the Sheriff of Snohomish County in the manner provided by law. The Court will determine the amount of any deficiency under RCW 61.12.070 after the foreclosure sale has occurred.

Dated this 7th day of December, 2016.

William M. McCool
Clerk

s/Karen Dews
Deputy Clerk

APPENDIX 8
A 29

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, Plaintiff, v. SCOTT STAFNE AND TODD STAFNE, Defendants.	C16-77 TSZ MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Because Scott Stafne has filed a notice of appeal, docket no. 117, appealing, *inter alia*, the Partial Judgment entered on December 7, 2016, docket no. 115, the Court cannot amend the Partial Judgment without leave from the Ninth Circuit. *See Matter of Visioneering Const.*, 661 F.2d 119, 124 n. 6 (9th Cir. 1981) ("Once a notice of appeal is filed jurisdiction is vested in the Court of Appeals, and the trial court thereafter has no power to modify its judgment in the case . . . except by leave of the Court of Appeals." (citing *Smith v. Lujan*, 588 F.2d 1304, 1307 (9th Cir. 1979)); *see also* Fed. R. Civ. P. 60(a) ("[A]fter an appeal has been docketed in the appellate court and while it is pending, [a mistake in the judgment] may be corrected only with the appellate court's leave."). Plaintiff having timely filed its motion to amend the judgment, docket no. 120, the Court states pursuant to Federal Rule of Civil Procedure 62.1 that the Court would grant plaintiff's motion to amend the judgment to include the judgment summary information identified by RCW 4.64.030 if the Ninth Circuit remands for that purpose.[1]

[1] The Court notes that plaintiff's motion to amend the judgment requests that the judgment include the amount of interest owed by Scott Stafne through December 31, 2016. *See*

In issuing its judgment, the Court intended to enable plaintiff to foreclose on the property encumbered by the deed of trust. In light of plaintiff's representation that the Court's failure to include certain information required by RCW 4.64.030 prevents plaintiff from registering and executing the judgment, thus precluding a foreclosure sale, amendment is appropriate.[2]

(2) Plaintiff is directed to promptly notify the Ninth Circuit Clerk under Federal Rule of Appellate Procedure 12.1, that the district court would grant the motion to amend.

(3) The Clerk is directed to send a copy of this Minute Order to all counsel of record and to the Ninth Circuit Court of Appeals.

Dated this 3rd day of February, 2017.

William M. McCool
Clerk

s/Karen Dews
Deputy Clerk

Decl. of Betty Johnson, docket no. 121 at ¶ 5. RCW 4.64.030(2)(a) provides, however, that the judgment summary shall include "the interest owed to the date of the judgment." Thus, the Court would only amend the judgment to include accrued interest up to December 7, 2016, the date judgment was entered.

[2] The Court also notes that neither defendant has filed an opposition to plaintiff's motion.

APPENDIX 9
A 31

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 20 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BANK OF NEW YORK MELLON, a New York banking corporation,

Plaintiff-Appellee,

v.

SCOTT ERIK STAFNE, an individual and TODD STAFNE, an individual,

Defendants-Appellants.

No. 16-36032

D.C. No. 2:16-cv-00077-TSZ
Western District of Washington, Seattle

ORDER

Before: SILVERMAN and HURWITZ, Circuit Judges.

Appellants' motions to stay district court's orders (Docket Entry Nos. 5 and 7) pending appeal are denied. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

Appellee's motion for a limited remand (Docket Entry No. 9) is granted. *See* Fed. R. App. P. 12.1(b). This appeal is remanded to the district court for the limited purpose of enabling the district court to consider appellee's motion to amend the December 17, 2016 judgment.

Within 60 days after the date of this order or within 7 days after the district court's ruling on the motion to amend the judgment, whichever occurs first, appellee shall file a report on the status of district court proceedings.

The briefing schedule established on March 22, 2017 is vacated.

LAB/MOATT

A 32

Proceedings in this court shall be held in abeyance pending further court order.

APPENDIX 10

A 33

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON,

Plaintiff,

v.

SCOTT STAFNE AND TODD STAFNE,

Defendants.

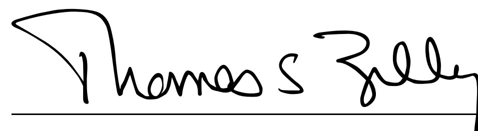
C16-77 TSZ

ORDER

THIS MATTER comes before the Court on defendant Scott Stafne's motion for recusal, docket no. 134. The Court declines to voluntarily recuse. Pursuant to Local Civil Rule 3(f), the Clerk is DIRECTED to refer defendant Scott Stafne's motion for recusal, docket no. 134, to Chief Judge Ricardo S. Martinez or his designee.

IT IS SO ORDERED.

Dated this 1st day of June, 2017.



Thomas S. Zilly
United States District Judge

APPENDIX 11

A 34

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK, MELLON, Plaintiff, v. SCOTT STAFNE, *et al.*, Defendants.	CASE NO. C16-0077TSZ ORDER ON REVIEW OF REQUEST TO RECUSE

This action, requesting money judgment and foreclosure in connection to a promissory note executed for the purchase of real property, was filed in January 2016. Dkt. #1. Defendant Scott Stafne[1] filed a Motion for Recusal on May 26, 2017. Dkt. #134. The Presiding Judge, the Honorable Thomas S. Zilly, has declined to recuse himself and, in accordance with the Local Rules of this District, referred the matter to the Undersigned for further review. Local Rules W.D. Wash. LCR 3(e); Dkt. #136.

Pursuant to 28 U.S.C. § 455(a), a judge of the United States shall disqualify himself in any proceeding in which his impartiality "might reasonably be questioned." Federal judges also

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[1] Although Mr. Stafne is proceeding *pro se* in this action, it is worth noting that he is an attorney with Stafne Trumbull LLC, and is admitted to practice in Washington State and before this Court. Thus, he is presumed to be familiar with not only the substantive law pertaining to the issues in the case against him, but also with Court Rules, procedures and statutory provisions relevant to the assertions he makes in connection with this case.

shall disqualify themselves in circumstances where they have a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding. 28 U.S.C. § 455(b)(1).

Under both 28 U.S.C. §144 and 28 U.S.C. § 455, recusal of a federal judge is appropriate if "a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th Cir.1993). This is an objective inquiry concerned with whether there is the appearance of bias, not whether there is bias in fact. *Preston v. United States*, 923 F.2d 731, 734 (9th Cir.1992); *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir.1980). In *Liteky v. United States*, 510 U.S. 540 (1994), the United States Supreme Court further explained the narrow basis for recusal:

> [J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion. . . . [O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.

Id. at 555. Rather than focus on these applicable standards, Defendant instead asserts multiple other grounds upon which he argues that Judge Zilly should recuse himself. All of his bases for recusal are without merit.

First, without a scintilla of evidence in support, Defendant questions Judge Zilly's competency based on his alleged age (which Defendant has not actually correctly calculated). Tacking together a series of generic quotes about deficits related to aging, Defendant attempts to fashion an argument that equates Judge Zilly's age with his fitness to discharge his duties. The

fact that Defendant fails to offer a shred of evidence from the record tending to indicate any impairment on Judge Zilly's part speaks for itself.

Second, Defendant attacks Judge Zilly's fitness to preside over his case on the basis of his "senior status," which he alleges is a feature of the federal judicial system which allows judges who meet the qualifications to "retire," receive their pension and continue to serve the courts in a voluntary capacity.[2] Notably, Defendant fails to cite a single legal precedent tending to establish that the fact of a presiding judge's "senior status" has ever been held (in and of itself) to constitute a proper basis for recusal.

Setting aside the complete lack of evidentiary or legal support for Judge Zilly's age or senior status as a basis for recusal, Defendant's request is noteworthy for its lack of relevance to the statute under which he might properly advocate for recusal. The statutory basis for recusal exists only if "a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *Yagman*, 987 F.2d at 626; *see* 28 U.S.C. §144 and 28 U.S.C. § 455. Defendant does not propound any evidence-based rationale which ties Judge Zilly's age or senior status to an issue of "impartiality" or "bias;" he simply wants to argue – via innuendo and stereotype – that Judge Zilly is unfit to preside over his case. The law requires more.

Lastly, it is clear that Defendant does not agree with a number of rulings made by Judge Zilly which have not been in his favor. A judge's rulings do not constitute the requisite bias under 28 U.S.C. § 144 or § 455 if prompted solely by information that the judge received in the

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[2] A simple internet search would have revealed the inaccuracy of Defendant Stafne's allegations. "Senior status" is a form of semi-retirement for United States federal judges that allows them to receive the full salary of a judge but have the option to take a reduced caseload (although many senior judges choose to maintain a full caseload).

context of the performance of his duties. Bias is almost never established simply because the judge issued adverse rulings against a party. If Defendant believes that Judge Zilly has committed legal error in his rulings, he is entitled to make that argument on appeal to the Ninth Circuit Court of Appeals. He is not entitled to claim "bias" on that basis, nor is he entitled to recusal of the judge who made the rulings.

Accordingly, the Court finds no evidence upon which to reasonably question Judge Zilly's impartiality and AFFIRMS his denial of Defendant's request that he recuse himself.

The Clerk SHALL provide copies of this order to Defendants and to all counsel of record.

Dated this 2nd day of June, 2017.

RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX 12
A 38

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK, MELLON,

Plaintiff,

v.

SCOTT STAFNE, *et al.*,

Defendants.

CASE NO. C16-0077TSZ

ORDER DENYING MOTION FOR RECONSIDERATION

THIS MATTER comes before the Court on Defendant Scott Stafne's Motion for Reconsideration, which asks the Court to reconsider its prior Order affirming Judge Zilly's refusal to recuse himself as the presiding judge in this case. Dkts. #137 and #138. For the reasons discussed below, the Court DENIES the motion for reconsideration.

Mr. Stafne filed a Motion for Recusal on May 26, 2017. Dkt. #134. The Presiding Judge, the Honorable Thomas S. Zilly, declined to recuse himself and, in accordance with the Local Rules of this District, referred the matter to the Undersigned for further review. Local Rules W.D. Wash. LCR 3(e); Dkt. #136. On June 2, 2017, the Undersigned affirmed Judge Zilly's decision. Dkt. #137. The Undersigned noted that Mr. Stafne had failed to offer any evidence supporting his allegation that Judge Zilly suffered some form of mental impairment simply because of his age. The Undersigned further noted that Mr. Stafne had incorrectly assumed that Judge Zilly was serving in his capacity without being compensated simply by

virtue of having taken senior status, and that he failed to cite a single legal precedent tending to establish that the fact of a presiding judge's senior status has ever been held (in and of itself) to constitute a proper basis for recusal. Dkt. #137. Mr. Stafne now argues that this Court committed manifest error in its prior ruling because it failed to provide a complete analysis of his allegation that volunteer, uncompensated judges may not serve as Article III judges.

"Motions for reconsideration are disfavored." LCR 7(h). "The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence." LCR 7(h)(1). In this case, Mr. Stafne presents no persuasive argument that this Court committed manifest error in its prior Order, nor any new facts or legal authority which could not have been brought to the Court's attention earlier without reasonable diligence. For these reasons, his motion for reconsideration (Dkt. #138) is DENIED.

The Clerk SHALL provide copies of this order to Defendants and to all counsel of record.

Dated this 6 day of June, 2017.

RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX 13
A 40

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, Plaintiff, v. SCOTT STAFNE AND TODD STAFNE, Defendants.	C16-77 TSZ MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Having reviewed plaintiff's proposed amended judgment, docket no. 126, it appears that the proposed amended judgment includes an abbreviated legal description that encompasses boundary lines which are inconsistent with the full legal description of the property encompassed by the Deed of Trust. *See* Proposed Amended Judgment, at 3; *see also* Response, docket no. 129. The parties are DIRECTED to submit supplemental briefing addressing this discrepancy on or before June 13, 2017. The parties' supplemental briefs shall not exceed ten (10) pages.

(2) In addition, the parties' supplemental briefs should address whether, in light of the notice informing the Court that defendant Todd Stafne is now deceased, *see* Notice of Deceased Defendant, docket no. 130, substitution of Todd Stafne's successor or representative pursuant to Fed. R. Civ. P. 25(a) is required prior to any ruling on plaintiff's motion to amend the judgment.

1 (3) The Clerk is directed to send a copy of this Minute Order to defendants and all counsel of record.

2 Dated this 6th day of June, 2017.

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4 William M. McCool
Clerk

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6 s/Karen Dews
Deputy Clerk

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APPENDIX 14
A 42

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, Plaintiff, v. SCOTT STAFNE; and MAYUMI OHATA STAFNE, as Administrator of the Estate of Todd Stafne, Defendants.	C16-77 TSZ MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) By Order filed on April 20, 2017, docket no. 124, the United States Court of Appeals for the Ninth Circuit remanded this matter for the limited purpose of enabling this Court to consider plaintiff's motion to amend judgment. Shortly thereafter, Todd Stafne died, *see* Notice (docket no. 130), and a few months later, upon plaintiff's motion, Mayumi Ohata Stafne, as Administrator of the Estate of Todd Stafne, was substituted as a defendant. Minute Order (docket no. 152). In the meanwhile, defendant Scott Stafne unsuccessfully sought to disqualify the district judge presiding over this matter. *See* Order (docket no. 137). Pursuant to the parties' subsequent stipulation, the Court postponed ruling on plaintiff's motion to amend judgment for 60 days to allow the parties to confer and propose an amended judgment on which they all agreed. Minute Order (docket no. 163). On October 23, 2017, the parties filed a Joint Status Report, docket no. 165, indicating that they need additional time to pursue settlement. The Court has now been advised that defendant Scott Stafne has filed a lawsuit captioned *Stafne v. Zilly, et al.*, Case No. C17-1692-RSL, naming as defendants both the district judge presiding over this matter and one of the two Circuit Judges who ordered the limited remand in

COA No. 16-36032. In light of these developments, the Court hereby STAYS this case until further order.

(2) The Clerk is directed to send a copy of this Minute Order to all counsel of record and to the United States Court of Appeals for the Ninth Circuit.

Dated this 15th day of November, 2017.

William M. McCool
Clerk

s/Karen Dews
Deputy Clerk

APPENDIX 15
A 44

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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 BANK OF NEW YORK MELLON,
7 Plaintiff,
8 v.
9 SCOTT STAFNE; and MAYUMI
OHATA STAFNE, as Administrator of
10 the Estate of Todd Stafne,
11 Defendants.

C16-77 TSZ

MINUTE ORDER

12 The following Minute Order is made by direction of the Court, the Honorable
13 Thomas S. Zilly, United States District Judge:

14 (1) The lawsuit captioned *Stafne v. Zilly, et al.*, Case No. C17-1692 MHS (W.D. Wash.), having been dismissed with prejudice, judgment having been entered in
15 that case, and the related post-judgment motions having been denied, the stay of this matter is hereby LIFTED and this case is returned to the active docket.

16 (2) Pursuant to a limited remand from the United States Court of Appeals for
17 the Ninth Circuit, docket no. 124, plaintiff's motion to amend judgment, docket no. 120, is DENIED in part and GRANTED in part as follows:

18 (a) By Order entered December 7, 2016, docket no. 114, the Court
19 granted in part and denied in part two motions for summary judgment brought by plaintiff Bank of New York Mellon ("BONY"), a New York banking corporation,
20 in its capacity as trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2. *See also* Order (docket
21 no. 69) (substituting BONY for its parent corporation, Bank of New York Mellon, a Delaware corporation). The Court rejected the theories underlying defendants
22 Scott Stafne's and Todd Stafne's counterclaims to quiet title and Todd Stafne's counterclaim for declaratory judgment, and dismissed the counterclaims with

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prejudice. The Court also ruled that plaintiff was entitled to a partial judgment foreclosing the deed of trust dated March 9, 2005, and recorded in Snohomish County on March 15, 2005, Ex. B to Compl. (docket no. 1-3), with respect to real property owned by Scott Stafne, having the address of 17207 155th Ave NE, in Arlington, Washington. The Court, however, denied as premature plaintiff's requests for a deficiency judgment, attorney's fees, and costs. *See* Order at 6-7 (docket no. 114). Plaintiff's motions for summary judgment did not mention and, in the Order entered December 7, 2016, docket no. 114, the Court did not rule on any interests in the property at issue other than those of plaintiff and defendants Scott Stafne and Todd Stafne, who has since died. Plaintiff's current request to include in an amended partial judgment a foreclosure of interests[1] other than those of defendants Scott Stafne and Mayumi Ohata Stafne, as Administrator of the Estate of Todd Stafne, is therefore DENIED.

(b) Plaintiff's request to include in an amended partial judgment a summary setting forth the principal balance of Scott Stafne's indebtedness, the interest calculated through December 7, 2016, and the amounts of various fees and advances is also DENIED. Contrary to plaintiff's contention, the summary it seeks is not mandated by RCW 4.64.030(2)(a), which applies only to judgments that provide "for the payment of money." The Court's Order entered December 7, 2016, docket no. 114, did not address the parties' dispute concerning the amount owed by Scott Stafne, and it did not award a particular sum to plaintiff. Plaintiff's motions for summary judgment recited an *estimated* amount due from Scott Stafne, namely $1,049,928, *see* Pla.'s Mot. at 9 (docket no. 63); Pla.'s Mot. at 4 (docket no. 81); Janati Decl. at ¶ 4 (docket no. 65), but the proposed order plaintiff submitted, docket no. 63-1, did not contain a sum certain. Instead, plaintiff asked the Court to enter judgment "for the full amount due under the Note" and to award a deficiency judgment in an amount be stated by plaintiff in a declaration after the foreclosure sale of the property. The Court declined to do so, and plaintiff cannot now obtain the relief that was previously denied by seeking to amend the partial judgment in a manner that does not reflect the Court's ruling.

(c) Plaintiff's request to include in an amended partial judgment a direction that the proceeds of any sale of the real property be automatically applied toward payment of the indebtedness at issue is DENIED. The Court instead

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[1] Real Time Resolutions, Inc. was originally named as a defendant in this action, but was voluntarily dismissed by plaintiff based on an understanding that the deed of trust held by such entity was reconveyed in 2016. *See* Notice of Voluntary Dismissal (docket no. 62). No other entities with an interest in the real property at issue have been joined in this matter, and plaintiff has made no representations concerning whether any such entities have been provided notice of this litigation.

ORDERS that, after deducting the usual fees and costs of the Snohomish County Sheriff, the proceeds of any sale shall be deposited into the Registry of the Court.

(d) Plaintiff's request to amend the partial judgment to include certain language concerning the status of the deed of trust, plaintiff's right to bid and become a purchaser at any sale of the property, and Scott Stafne's right to redeem the property for a one-year period is GRANTED. The form of the original partial judgment was consistent with RCW 4.64.030(2)(b), which requires that a judgment relating to the "right, title, or interest in real property" contain an abbreviated legal description of the property at issue. The partial judgment entered December 7, 2016, docket no. 115, contained the full legal description of the property, as set forth in the deed of trust recorded on March 15, 2005, as Snohomish County Instrument No. 200503150879, *see* Ex. B to Compl. (docket no. 1-3). The original partial judgment, however, did not specify that defendants' counterclaims were dismissed with prejudice, did not indicate that the deed of trust is valid and subsisting, and prior and superior to any and all right, title, interest, lien, and/or estate of Scott Stafne and/or Todd Stafne (or his heirs) in the property, did not state that plaintiff could bid and become the purchaser at any sale, and did not specify the redemption period. The Clerk is therefore DIRECTED to enter an amended partial judgment in the form approved by the Court.

(3) The Clerk is further DIRECTED to send a copy of this Minute Order and the Amended Partial Judgment to all counsel of record and the United States Court of Appeals for the Ninth Circuit (with reference to No. 16-36032).

Dated this 14th day of May, 2019.

William M. McCool
Clerk

s/Karen Dews
Deputy Clerk

APPENDIX 16
A 47

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE BANK OF NEW YORK MELLON, Plaintiff, v. SCOTT STAFNE; and MAYUMI OHATA STAFNE, as Administrator of the Estate of Todd Stafne, Defendants.	C16-77 TSZ MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) On May 14, 2019, the Court entered an Amended Partial Judgment, docket no. 172, ordering a judicial foreclosure of the Deed of Trust encumbering the Subject Property, as described in the Amended Partial Judgment (docket no. 172 at 1–2); ordering the Subject Property to be sold by the Sheriff of Snohomish County in a manner provided by law; and ordering Plaintiff and/or the successful purchaser of the Subject Property to file an appropriate motion to confirm the sale within fourteen (14) days after the sale. On October 8, 2020, the United States Court of Appeals for the Ninth Circuit affirmed this Court's order and judgment, docket no. 179. On October 30, 2020, the mandate of the Court of Appeals issued, docket no. 180.

(2) Approximately four months having elapsed since the mandate issued, the parties are DIRECTED to file a Joint Status Report on or before April 9, 2021, indicating (i) the current status of the Subject Property and (ii) what steps, if any, the parties are taking to effectuate the Sheriff's sale of the Subject Property.

(3) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

Dated this 2nd day of March, 2021.

William M. McCool
Clerk

s/Gail Glass
Deputy Clerk

CONSTITUTIONAL PROVISIONS

ARTICLE III

SECTION ONE. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION TWO. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

STATUTES

28 U.S.C. § 371

(a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

(b)

(1)Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of

this section and shall, during the remainder of his or her lifetime, continue to receive the salary of the office if he or she meets the requirements of subsection (e).

(2) In a case in which a justice or judge who retires under paragraph (1) does not meet the requirements of subsection (e), the justice or judge shall continue to receive the salary that he or she was receiving when he or she was last in active service or, if a certification under subsection (e) was made for such justice or judge, when such a certification was last in effect. The salary of such justice or judge shall be adjusted under section 461 of this title.

* * *

(d) The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires under this section.

(e)

(1) In order to continue receiving the salary of the office under subsection (b), a justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having
met the requirements set forth in at least one of the following subparagraphs:

> **(A)** The justice or judge must have carried in the preceding calendar year a caseload involving courtroom participation which is equal to or greater than the amount of work involving courtroom participation which an average judge in active service would perform in three months. In the instance of a justice or judge who has sat on both district courts and courts of appeals, the caseload of appellate work and trial work shall be determined separately and the results of those determinations added together for purposes of this paragraph.
>
> **(B)** The justice or judge performed in the preceding calendar year substantial judicial duties not involving courtroom participation under subparagraph (A), including settlement efforts, motion decisions, writing opinions in cases that have not been orally argued, and administrative duties for the court to which the justice or judge is assigned. Any certification under this subparagraph shall include a statement describing in detail the nature and amount of work and certifying that the work done is equal to or greater than the work described in this subparagraph which an average judge in active service would perform in three months.
>
> **(C)** The justice or judge has, in the preceding calendar year, performed work described in subparagraphs (A) and (B) in an amount which, when calculated in accordance with such subparagraphs, in the aggregate equals at least 3 months work.
>
> **(D)** The justice or judge has, in the preceding calendar year, performed substantial administrative duties directly related to the operation of the courts, or has performed

substantial duties for a Federal or State governmental entity. A certification under this subparagraph shall specify that the work done is equal to the full-time work of an employee of the judicial branch. In any year in which a justice or judge performs work described under this subparagraph for less than the full year, one-half of such work may be aggregated with work described under subparagraph (A), (B), or (C) of this paragraph for the purpose of the justice or judge satisfying the requirements of such subparagraph.

(E) The justice or judge was unable in the preceding calendar year to perform judicial or administrative work to the extent required by any of subparagraphs (A) through (D) because of a temporary or permanent disability. A certification under this subparagraph shall be made to a justice who certifies in writing his or her disability to the Chief Justice, and to a judge who certifies in writing his or her disability to the chief judge of the circuit in which the judge sits. A justice or judge who is certified under this subparagraph as having a permanent disability shall be deemed to have met the requirements of this subsection for each calendar year thereafter.

(2) Determinations of work performed under subparagraphs (A), (B), (C), and (D) of paragraph (1) shall be made pursuant to rules promulgated by the Judicial Conference of the United States. In promulgating such criteria, the Judicial Conference shall take into account existing standards promulgated by the Conference for allocation of space and staff for senior judges.

(3) If in any year a justice or judge who retires under subsection (b) does not receive a certification under this subsection (except as provided in paragraph (1)(E)), he or she may thereafter receive a certification for that year by satisfying the requirements of subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection in a subsequent year and attributing a sufficient part of the work performed in such subsequent year to the earlier year so that the work so attributed, when added to the work performed during such earlier year, satisfies the requirements for certification for that year. However, a justice or judge may not receive credit for the same work for purposes of certification for more than 1 year.

(4) In the case of any justice or judge who retires under subsection (b) during a calendar year, there shall be included in the determination under this subsection of work performed during that calendar year all work performed by that justice or judge (as described in subparagraphs (A), (B), (C), and (D) of paragraph (1)) during that calendar year before such retirement.

28 U.S.C.§ 291

(a) The Chief Justice of the United States may, in the public interest, designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon request by the chief judge or circuit justice of such circuit.

(b) The chief judge of a circuit or the circuit justice may, in the public interest, designate and assign temporarily any circuit judge within the circuit, including a judge designated and assigned to temporary duty therein, to hold a district court in any district within the circuit.

28 U.S.C. § 292

(a) The chief judge of a circuit may designate and assign one or more district judges within the circuit to sit upon the court of appeals or a division thereof whenever the business of that court so requires. Such designations or assignments shall be in conformity with the rules or orders of the court of appeals of the circuit.

(b) The chief judge of a circuit may, in the public interest, designate and assign temporarily any district judge of the circuit to hold a district court in any district within the circuit.

(c) The chief judge of the United States Court of Appeals for the District of Columbia Circuit may, upon presentation of a certificate of necessity by the chief judge of the Superior Court of the District of Columbia pursuant to section 11– 908(c) of the District of Columbia Code, designate and assign temporarily any district judge of the circuit to serve as a judge of such Superior Court, if such assignment (1) is approved by the Attorney General of the United States following a determination by him to the effect that such assignment is necessary to meet the ends of justice, and (2) is approved by the chief judge of the United States District Court for the District of Columbia.

(d) The Chief Justice of the United States may designate and assign temporarily a district judge of one circuit for service in another circuit, either in a district court or court of appeals, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

(e) The Chief Justice of the United States may designate and assign temporarily any district judge to serve as a judge of the Court of International Trade upon presentation to him of a certificate of necessity by the chief judge of the court.

28 U.S.C. § 294

(a) Any retired Chief Justice of the United States or Associate Justice of the Supreme Court may be designated and assigned by the Chief Justice of the United States to perform such judicial duties in any circuit, including those of a circuit justice, as he is willing to undertake.

(b) Any judge of the United States who has retired from regular active service under section 371(b) or 372(a) of this title shall be known and designated as a senior judge and may continue to perform such judicial duties as he is willing and able to undertake, when designated and assigned as provided in subsections (c) and (d).

(c) Any retired circuit or district judge may be designated and assigned by the chief judge or judicial council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. Any other retired judge of the United States may be

designated and assigned by the chief judge of his court to perform such judicial duties in such court as he is willing and able to undertake.

(d) The Chief Justice of the United States shall maintain a roster of retired judges of the United States who are willing and able to undertake special judicial duties from time to time outside their own circuit, in the case of a retired circuit or district judge, or in a court other than their own, in the case of other retired judges, which roster shall be known as the roster of senior judges. Any such retired judge of the United States may be designated and assigned by the Chief Justice to perform such judicial duties as he is willing and able to undertake in a court outside his own circuit, in the case of a retired circuit or district judge, or in a court other than his own, in the case of any other retired judge of the United States. Such designation and assignment to a court of appeals or district court shall be made upon the presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises and to any other court of the United States upon the presentation of a certificate of necessity by the chief judge of such court. No such designation or assignment shall be made to the Supreme Court.

(e) No retired justice or judge shall perform judicial duties except when designated and assigned.

28 U.S.C. § 295

No designation and assignment of a circuit or district judge in active service shall be made without the consent of the chief judge or judicial council of the circuit from which the judge is to be designated and assigned. No designation and assignment of a judge of any other court of the United States in active service shall be made without the consent of the chief judge of such court.

All designations and assignments of justices and judges shall be filed with the clerks and entered on the minutes of the courts from and to which made. The Chief Justice of the United States, a circuit justice or a chief judge of a circuit may make new designation and assignments in accordance with the provisions of this chapter and may revoke those previously made by him.

28 U.S.C. § 296

A justice or judge shall discharge, during the period of his designation and assignment, all judicial duties for which he is designated and assigned. He may be required to perform any duty which might be required of a judge of the court or district or circuit to which he is designated and assigned.

Such justice or judge shall have all the powers of a judge of the court, circuit or district to which he is designated and assigned, except the power to appoint any person to a statutory position or to designate permanently a depository of funds or a newspaper for publication of legal notices. However, a district judge who has retired from regular active service under section 371(b) of this title, when designated and assigned to the court to which such judge was appointed, having performed in the preceding calendar year an amount of work equal to or greater than the amount of work an average

judge in active service on that court would perform in 6 months, and having elected to exercise such powers, shall have the powers of a judge of that court to participate in appointment of court officers and magistrate judges, rulemaking, governance, and administrative matters. A justice or judge who has sat by designation and assignment in another district or circuit may, notwithstanding his absence from such district or circuit or the expiration of the period of his designation and assignment, decide or join in the decision and final disposition of all matters submitted to him during such period and in the consideration and disposition of applications for rehearing or further proceedings in such matters.

28 U.S.C. § 1332 (a)

(a)The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—
(1)citizens of different States;
(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;
(3)citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
(4)a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

28 U.S.C. § 1359

A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court.

Rule of Federal Procedure 17

(a) Real Party in Interest.

(1) *Designation in General.* An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;

(B) an administrator;

(C) a guardian;

(D) a bailee;

(E) a trustee of an express trust;

(F) a party with whom or in whose name a contract has been made for another's benefit; and

(G) a party authorized by statute.

(2) *Action in the Name of the United States for Another's Use or Benefit.* When a federal statute so provides, an action for another's use or benefit must be brought in the name of the United States.

(3) *Joinder of the Real Party in Interest.* The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) Capacity to Sue or Be Sued. Capacity to sue or be sued is determined as follows:

(1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;

(2) for a corporation, by the law under which it was organized; and

(3) for all other parties, by the law of the state where the court is located, except that:

(A) a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and

(B) 28 U.S.C. §§754 and 959(a) govern the capacity of a receiver appointed by a United States court to sue or be sued in a United States court.

(c) Minor or Incompetent Person.

(1) *With a Representative.* The following representatives may sue or defend on behalf of a minor or an incompetent person:

(A) a general guardian;

(B) a committee;

(C) a conservator; or

(D) a like fiduciary.

(2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.

(d) Public Officer's Title and Name. A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.

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APPENDIX 18

A 57

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 21 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DUNCAN K. ROBERTSON,

Plaintiff-Appellant,

v.

GMAC MORTGAGE, LLC, et al.,

Defendants-Appellees.

No. 14-35672

D.C. No. 2:12-cv-02017-MJP
Western District of Washington,
Seattle

ORDER

Before: HAWKINS and TALLMAN, Circuit Judges, and LEFKOW,* Senior District Judge.

Duncan K. Robertson moves under Federal Rule of Appellate Procedure 27(a) for sanctions against defendants-appellees, as well as their lawyers, relying on the inherent power of the court and 28 U.S.C. § 1927. He argues that the defendants below committed a fraud on the court by falsely asserting that Bank of

* The Honorable Joan H. Lefkow, Senior United States District Judge for the Northern District of Illinois, sitting by designation.

New York Mellon Trust Company ("BNY") is a citizen of Florida.[1] We have jurisdiction under 28 U.S.C. § 1291.[2] We deny the motion.

1. Since Robertson does not accuse any party of misleading the lawyers, we address the conduct of the lawyers as one with that of the parties. The court has inherent power to sanction a party for conduct that abuses the judicial process. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–45 (1991). "Because of their very potency, inherent powers must be exercised with restraint and discretion." *Id.* at 44. The court may sanction an attorney if it "specifically finds bad faith or conduct tantamount to bad faith." *Fink v. Gomez*, 239 F.3d 989, 994 (9th Cir. 2001). Conduct tantamount to bad faith can include "an attorney's reckless misstatements of law and fact, when coupled with an improper purpose." *Id.* Sanctions are inappropriate, however, "where there [is] no evidence that the attorney . . . 'acted

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[1] Robertson makes an additional argument that the defendants and their attorneys manufactured standing by falsely asserting that BNY was a represented party, hypothesizing that BNY would have told its attorneys that it was not a citizen of Florida. The district court's finding, that "[d]efense counsels' representations to this Court are sufficient to show they have been authorized to represent their clients," *Robertson v. GMAC Mortgage LLC*, 2013 WL 12175089, at *2 (W.D. Wash. Feb. 19, 2013), is not clearly erroneous.

[2] Because Robertson has not appealed any orders from the district court denying sanctions he may have sought below, we construe this motion as a request for the costs, expenses, and attorneys' fees incurred to establish BNY's citizenship on appeal, which an appeals court may grant. *See, e.g.*, *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 638 (9th Cir. 1987); *McConnell v. Critchlow*, 661 F.2d 116, 118 (9th Cir. 1981).

in bad faith or intended to mislead the court.'" *Id.* at 993 (quoting *Yagman v. Republic Ins.*, 987 F.2d 622, 628 (9th Cir. 1993)).

Robertson cannot show that defendants had an improper purpose to create jurisdiction where whether BNY is a citizen of Florida or of California made no difference in establishing jurisdiction. Although the defendants erroneously alleged BNY's citizenship (apparently applying the "principal place of business" standard even though Chase had recited correctly in its notice of removal that citizenship of a nationally chartered trust company is its main office, as identified in its articles of association), we do not infer bad faith or intention to mislead where the misstatement was not material.

2. "To be sanctionable under § 1927 . . . counsel's conduct must multiply the proceedings in both an 'unreasonable and vexatious manner.'" *In re Girardi*, 611 F.3d 1027, 1060–61 (9th Cir. 2010) (quoting *B.K.B. v. Maui Police Dep't*, 276 F.3d 1091, 1107 (9th Cir. 2002)). A filing submitted recklessly is sanctionable if it is also frivolous or intended to harass. *In re Keegan Mgmt. Co., Sec. Litig.*, 78 F.3d 431, 436 (9th Cir. 1996).

Robertson fails to persuade us that defendants' error multiplied the proceedings, where he points to no challenge to diversity jurisdiction based solely on the fact that BNY is not a citizen of Florida. We do not condone the defendants' attorneys' unreasonable persistence throughout the litigation in claiming BNY to

be a citizen of Florida when it was not. That being said, the filings in which this representation was made were all directed at the existence of the court's jurisdiction which, as we have already concluded, was not a frivolous argument. Nor is there any indication that it was intended to harass Robertson. Therefore, at most, this was a reckless filing, which is insufficient to justify sanctions under § 1927.

DENIED.

APPENDIX 19

A 61

Case No. 2:16-cv-00077
Bank of New York Mellon et al v Scott Stafne; Todd Stafne and Real Time Resolutions Inc.

Declaration of Scott Stafne in Opposition to
Plaintiff's Motion for Summary Judgment Against Todd Stafne

EXHIBIT 1

258169

A 62
RECORDER'S NOTE:
PORTIONS OF THIS DOCUMENT
ARE POOR QUALITY FOR SCANNING.

74.76

AFTER RECORDING MAIL TO

Name Scott Stafne

Address 801 Pine St , Ste 6C

City, State, Zip Seattle, WA 98101

200007250373
07/25/2000 01:57 PM Snohomish County
P.0002 RECORDED

No. 664243 7/25/2000 1:52 PM
Thank you for your payment.
SERI

200007250373

Statutory Warranty Deed

THE GRANTOR Twin Falls, Inc , a Washington Corporation for and in consideration of Ten Dollars and other valuable consideration in hand paid, conveys and warrants to Scott Stafne, A Single Man the following described real estate, situated in the County of Snohomish, State of Washington

Ptn of Sec 22 Twp 31 Rge 6, Snohomish County, Washington
Legal description as attached hereto and made a part hereof on page 2

Assessor's Property Tax Parcel Account Number(s) 31062200400400

Dated this 18th day of July, 2000

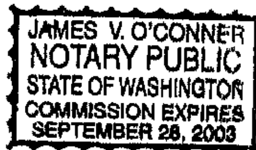
Twin Falls, Inc

By [signature]
Scott Stafne, President

STATE OF WASHINGTON } ss
COUNTY OF KING

I certify that I know or have satisfactory evidence that Scott Stafne is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he authorized to execute the instrument and acknowledged it as the President of Twin Falls Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument

Dated July 18, 2000


JAMES V. O'CONNER
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
SEPTEMBER 28, 2003

[signature]
Notary Public in and for the State of Washington
Residing at Seattle
My appointment expires 09/28/03

Unofficial Document

East 330.15 feet from the Northwest corner thereof;
Thence South 0 32'08" West 374.40 feet along a line which is parallel with and 330.00 feet East of as measured perpendicular from the West line of said West half;
Thence North 90 00'00" East 295.01 feet;
Thence North 0 32'08" East 362.84 feet to the North line of said West half;
Thence North 87 45'14" West 295.13 feet to the Point of Beginning;

Together with and subject to an easement for ingress, egress and utilities recorded under Snohomish County A.F. No. 9310130917

RECEIVED
OCT 14 1993
LDC/COUNTER

LOT 8

That portion of the West half of the Southeast quarter of Section 22, Township 31 Range 6 East W.M described as follows;
Beginning at a Point on the South line of said West half which bears South 87 45'14" East 625.28 feet from the Southwest corner thereof;
Thence North 3 10'20" East 1767.39 feet parallel with the West line of said West half;
Thence South 87 13'29" East 755.99 feet parallel with the North line of said West half to the East line of said West half;
Thence South 5 09'49" West 530.46 feet along the East line of said West half
Thence North 87 13'29" West 447.45 feet;
Thence South 3 10'20" West 684.05 feet;
Thence South 87 13'29" East 70.00 feet;
Thence South 3 10'20" West 550.00 feet to the South line of said West half;
Thence North 87 45'14" West 360.14 feet to the Point of Beginning.

ALSO:
That portion of the West half of the Northeast quarter of Section 27, Township 31 North Range 6 East W.M. described as follows;
Beginning at a Point on the North line of said West half which bears South 87 45'14" East 625.28 feet from the Northwest corner thereof;
Thence South 0 32'08" West 362.84 feet along a line parallel with and 625.00 feet East of as measured perpendicular from the West line of said West half;
Thence North 90 00'00" East 360.00 feet;
Thence North 0 32'08" East 348.72 feet to the North line of said West half;
Thence North 87 45'14" West 360.14 feet to the Point of Beginning.

Together with and subject to an easement for ingress, egress and utilities described under Snohomish County, A.F. No. ____________

APPENDIX 20

A 64

Case No. 2:16-cv-00077

Bank of New York Mellon et al v Scott Stafne; Todd Stafne and Real Time Resolutions Inc.

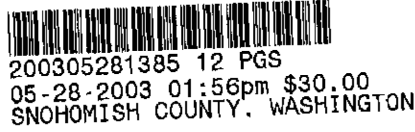
Declaration of Scott Stafne in Opposition to

Plaintiff's Motion for Summary Judgment Against Todd Stafne

EXHIBIT 2

A 65

RETURN ADDRESS:
PACIFICA MORTGAGE COMPANY
CLOSING DEPT.
10900 NE 4TH STREET, #100
BELLEVUE, WASHINGTON 98004



200305281385 12 PGS
05-28-2003 01:56pm $30.00
SNOHOMISH COUNTY, WASHINGTON

LOAN NO: 801965

CHICAGO
570 4867

30.00 (12)

CONSTRUCTION DEED OF TRUST

INSURED BY
CHICAGO TITLE

Reference # (if applicable): ____________ Additional on page ____________
Grantor(s): SCOTT STAFNE

Grantee(s)/Assignee/Beneficiary:
PACIFICA MORTGAGE COMPANY, Beneficiary
CHICAGO TITLE INSURANCE CO., Trustee

Legal Description:

PTN SE QTR, 22-31-6~~E~~, AND NE QTR, ~~26~~ 27-31-6

Additional on page 2

Assessor's Tax Parcel ID#: 310622-004-004-00

THIS DEED OF TRUST IS DATED MAY 7, 2003, among SCOTT STAFNE, AS HIS SEPARATE ESTATE,
whose mailing address is 211 PINE ST 3705 SEATTLE, WA 98101, (referred to below as "Grantor"); PACIFICA MORTGAGE COMPANY, whose mailing address is 10900 NE 4TH STREET, SUITE 100, BELLEVUE, WASHINGTON 98004 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and CHICAGO TITLE INSURANCE CO. whose mailing address is 3030 HOYT AVE. EVERETT, 98201 (referred to below as "Trustee").

Unofficial Document

CONVEYANCE AND GRANT. For valuable consideration, Grantor conveys to Trustee in trust with power of sale, right of entry and possession and for the benefit of Lender as Beneficiary, all of Grantor's right, title, and interest in and to the following describe real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, located in SNOHOMISH County, State of WA the "Real Property"):

AS PER THAT CERTAIN LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

The Real Property or its address is commonly known as 17207 155 AVENUE NE ARLINGTON, WA 98223.
The Real Property tax identification number is 310622-004-004-00.

Grantor hereby assigns as security to Lender, all of Grantor's right, title, and interest in and to all leases, Rents, and profits of the Property. This assignment is recorded in accordance with RCW 65.08.070; the lien created by this assignment is intended to be specific, perfected and choate upon the recording of this Deed of Trust. Lender grants to Grantor a license to collect the Rents and profits, which license may be revoked at Lender's option and shall be automatically revoked upon acceleration of all or part of the Indebtedness.

DEFINITIONS. The following words shall have the following meanings when used in this Deed of Trust. Terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

Beneficiary. The word "Beneficiary" means PACIFICA MORTGAGE COMPANY, its successors and assigns. PACIFICA MORTGAGE COMPANY also is referred to as "Lender" in this Deed of Trust.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Grantor. The word "Grantor" means any and all persons and entities executing this Deed of Trust, including without limitation SCOTT STAFNE, AS HIS SEPARATE ESTATE.

Guarantor. The word "Guarantor" means and includes without limitation any and all guarantors, sureties, and accommodation parties in connection with the indebtedness.

Improvements. The word "Improvements" means and includes without limitation all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal and interest payable under the Note and any amounts expended or advanced by Lender to discharge obligations of Grantor or expenses incurred by Trustee or Lender to enforce obligations of Grantor under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Lender. The word "Lender" means PACIFICA MORTGAGE COMPANY, its successors and assigns.

Note. The word "Note" means the Note dated MAY 7, 2003, in the original principal amount of $ 495,000.00 from Grantor to Lender, together with all renewals, extensions, modifications, refinancings, and substitutions for the Note.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all issues and profits thereon and proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the property, interests and rights described above in the "Conveyance and Grant" Section.

Related Documents. The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means CHICAGO TITLE INSURANCE CO. and any substitute or successor trustees.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS ALSO GIVEN TO SECURE ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THAT CERTAIN CONSTRUCTION LOAN AGREEMENT BETWEEN GRANTOR AND LENDER OF EVEN DATE HEREWITH. ANY EVENT OF DEFAULT UNDER THE CONSTRUCTION LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THE NOTE AND THIS DEED OF TRUST ARE GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (a) remain in possession and control of the Property, (b) use, operate or manage the Property, and (c) collect any Rents from the Property (this privilege is a license from Lender to Grantor automatically revoked upon default). The following provisions relate to the use of the Property or to other limitations on the Property. The Real Property is not used principally for agriculture or farming purposes.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Hazardous Substances. The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Deed of Trust, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. Grantor represents and warrants to Lender that: (a) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, about or from the Property; (b) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance on, under, about or from the Property by any prior owners or occupants of the Property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) Except as previously disclosed to and acknowledged by Lender in writing, (i) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, about or from the Property and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Grantor authorizes

Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for hazardous waste and hazardous substances. Grantor hereby (a) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nusisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generaltiy of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Lender.

Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without the prior written consent of Lender. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply, and shall promptly cause compliance by all agents, tenants or other persons or entities of every nature whatsoever who rent, lease or otherwise use or occupy the Property in any manner, with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interest in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon nor leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at its option, (a) declare immediately due an payable all sums secured by this Deed of Trust or (b) increase the interest rate provided for in the Note or other document evidencing the Indebtedness and impose such other conditions as Lender deems appropriate, upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of Real Property interest. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Washington law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are a part of this Deed of Trust.

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest

of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right To Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender, together with such other hazard and liability insurance as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender including stipulations that coverages will not be cancelled or diminished without at least ten (10) days' prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property at any time become located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance for the full unpaid principal balance of the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at its election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid without interest to Grantor as Grantor's interests may appear.

Unexpired Insurance at Sale. Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Deed of Trust at any trustee's sale or other sale held under the provisions of this Deed of Trust, or at any foreclosure sale of such Property.

EXPENDITURES BY LENDER. If Grantor fails to comply with any provision of this Deed of Trust, or if any action or proceeding is commenced that would materially affect Lender's interest in the Property, Lender on Grantor's behalf may, but shall not be required to, take any action that Lender deems appropriate. Any amount that Lender expends in so doing will bear interest at the rate provided for in the Note from the date incurred or

paid by Lender to the date of repayment by Grantor. All such expenses, at Lender's option, will (a) be payable on demand, (b) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (i) the term of any applicable insurance policy or (ii) the remaining term of the Note, or (c) be treated as a balloon payment which will be due and payable at the Note's maturity. This Deed of Trust also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of the default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust.

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice all at Grantor's expense, and Grantor will deliver or cause to be delivered to Lender such instruments as may be requested by it from time to time to permit such participation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust.

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (a) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (b) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (c) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (d) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default (as defined below), and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either

A 71

DEED OF TRUST
(Continued)

Loan No: 801965

(a) pays the tax before it becomes delinquent, or (b) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust.

Security Agreement. This instrument shall constitute a security agreement to the extent any of the Property constitutes fixtures or other personal property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party), from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code), are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust.

Further Assurances. At any time, and from time to time, upon request of Lender Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations of Grantor under the Note, this Deed of Trust, and the Related Documents, and (b) the liens and security interest created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or agreed to the contrary by Lender in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Grantor pays all the Indebtedness when due, terminates the line of credit, and otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Any reconveyance fee shall be paid by Grantor, if permitted by applicable law. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto", and the recitals in the reconveyance of any matters or facts shall be conclusive proof of the truthfulness of any such matters or facts.

DEFAULT. Each of the following, at the option of Lender, shall constitute an event of default ("Event of Default") under this Deed of Trust:

Default on Indebtedness. Failure of Grantor to make any payment when due on the Indebtedness.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Default in Favor of Third Parties. Should Borrower or any Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's or any Grantor's ability to

repay the Loans or perform their respective obligations under this Deed of Trust or any of the Related Documents.

Compliance Default. Failure of Grantor to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by or on behalf of Grantor under this Deed of Trust, the Note or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral documents to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The death of any Grantor, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Foreclosure, Forfeiture, etc. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any of the Property. However, this subsection shall not apply in the event of a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the foreclosure or forfeiture proceeding, provided that Grantor gives Lender written notice of such claim and furnishes reserves or a surety bond for the claim satisfactory to Lender.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding event occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. Lender, at its option, may but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure the Event of Default.

Right to Cure. If such a failure is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Grantor, after Lender sends written notice demanding cure of such failure: (a) cures the failure within fifteen (15) days; or (b) if the cure requires more than fifteen (15) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default and at any time thereafter, Trustee or Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to exercise its power of sale and to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

A 73

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding or pending foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lenders's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at lenders option, either (a) pay a reasonable rental for the use of the property, or (b) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or by law.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waivers any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Waiver; Election of Remedies. A waiver by any party of a breach of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy provided in this Deed of Trust, the Note, in any Related Document, or provided by law shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust after failure of Grantor to perform shall not affect Lender's right to declare a default and to exercise any of its remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all reasonable expenses incurred by Lender which in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee (pursuant to Lender's instructions) are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceedings in which Grantor, Lender, or Trustee shall be a party, unless required by applicable law, or unless the action or proceeding is brought by Trustee.

A 74

Loan No: 801965

DEED OF TRUST (Continued)

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's 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 SNOHOMISH County, Washington. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Grantor, the book and page or the Auditor's File Number where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

NOTICES TO GRANTOR AND OTHER PARTIES. Subject to applicable law, and except for notice required or allowed by law to be given in another manner, any notice under this Deed of Trust shall be in writing, may be sent by telefacsimile (unless otherwise required by law), and shall be effective when actually delivered, or when deposited with a nationally recognized overnight courier, or, if mailed, shall be deemed effective when deposited in the United State mail, first class, certified or registered mail, postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. For notice purposes, Grantor agrees to keep Lender and Trustee informed at all times of Grantor's current address.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Applicable Law. This Deed of Trust has been delivered to Lender and accepted by Lender in the State of Washington. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of Washington.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Multiple Parties. All obligations of Grantor under this Deed of Trust shall be joint and several, and all references to Grantor shall mean each and every Grantor. This means that each of the persons signing below is responsible for all obligations in this Deed of Trust.

Serverability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Deed of Trust in all other respects shall remain valid and enforceable.

Successors and Assigns. Subject to the limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the Indebtedness.

A 75

Loan No: 801965

DEED OF TRUST
(Continued)

Time Is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waivers and Consents. Lender shall not be deemed to have waived any rights under this Deed of Trust (or under the Related documents) unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's right or any of Grantor's obligations as to any future transactions. Whenever consent by Lender is required in this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Washington as to all Indebtedness secured by this Deed of Trust.

SERVICING NOTICE. Grantor is hereby notified that the servicing for the loan is subject to sale, transfer, or assignment. If and when the servicing is sold transferred or assigned, the purchasing servicing agent is required to provide notification to Grantor.

EACH GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND EACH GRANTOR AGREES TO ITS TERMS.

BORROWER:

[signature]
SCOTT STAFNE

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF WA)
) SS
COUNTY OF ~~SNOHOMISH~~ KING)

On this day before me, the undersigned Notary Public, personally appeared, SCOTT STAFNE, AS HIS SEPARATE ESTATE

personally known to me or proved to me on the basis of satisfactory evidence to be the individuals described in and who executed the Deed of Trust, and acknowledged that they signed the Deed of Trust as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this ~~7TH~~ 27 **day of** MAY, 2003.

By [signature] **Residing at** Seattle

Notary Public in and for the State of WA [signature] **My commission expires** 9/15/05

REQUEST FOR FULL RECONVEYANCE

To: CHICAGO TITLE INSURANCE CO Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. You are hereby requested, upon payment of all sums owing to you, to reconvey without warranty, to the persons entitled thereto, the right, title and interest now held by you under the Deed of Trust.

Date: ______________ **Beneficiary:** PACIFICA MORTGAGE COMPANY
By: ______________
Its: ______________

A 76

EXHIBIT

LEGAL DESCRIPTION

Order No.: 5704867

THE LAND REFERRED TO IS SITUATED IN THE STATE OF WASHINGTON,COUNTY OF SNOHOMISH , AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 31 NORTH, RANGE 6 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID WEST HALF WHICH BEARS SOUTH 87°45'14" EAST 625.28 FEET FROM THE SOUTHWEST CORNER THEREOF;
THENCE NORTH 3°10'20" EAST 1,767.39 FEET PARALLEL WITH THE WEST LINE OF SAID WEST HALF;
THENCE SOUTH 87°13'29" EAST 755.99 FEET PARALLEL WITH THE NORTH LINE OF SAID WEST HALF TO THE EAST LINE OF SAID WEST HALF;
THENCE SOUTH 5°09'49" WEST 530.46 FEET ALONG THE EAST LINE OF SAID WEST HALF;
THENCE NORTH 87°13'29" WEST 447.45 FEET;
THENCE SOUTH 3°10'20" WEST 684.05 FEET;
THENCE SOUTH 87°13'29" EAST 70.00 FEET;
THENCE SOUTH 3°10'20" WEST 550.00 FEET TO THE SOUTH LINE OF SAID WEST HALF;
THENCE NORTH 87°45'14" WEST 360.14 FEET TO THE POINT OF BEGINNING;
EXCEPT THAT PORTION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 31 NORTH, RANGE 6 EAST, W.M., SNOHOMISH COUNTY, WASHINGTON, LYING NORTHEASTERLY OF THE CLIFF-EDGE, AS SAID CLIFF-EDGE IS SHOWN ON THAT RECORD OF SURVEY RECORDED JULY 17, 1998, UNDER AUDITOR'S FILE NUMBER 9807175001, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, WITH ADDITIONAL DATA SHOWN ON THAT AFFIDAVIT OF MINOR CORRECTION RECORDED JULY 28, 1998 RECORDED UNDER AUDITOR'S FILE NUMBER 9807280545, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

ALSO:

THAT PORTION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 31 NORTH, RANGE 6 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID WEST HALF WHICH BEARS SOUTH 87°45'14" EAST 625.28 FEET FROM THE NORTHWEST CORNER THEREOF;
THENCE SOUTH 0°32'08" WEST 362.84 FEET ALONG A LINE PARALLEL WITH AND 625.00 FEET EAST OF AS MEASURED PERPENDICULAR FROM THE WEST LINE OF SAID WEST HALF;
THENCE NORTH 90°00'00" EAST 360.00 FEET;
THENCE NORTH 0°32'08" EAST 348.72 FEET TO THE NORTH LINE OF SAID WEST HALF;
THENCE NORTH 87°45'14" WEST 360.14 FEET TO THE POINT OF BEGINNING;

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES DESCRIBED UNDER AUDITOR'S FILE NUMBER 9310130917, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

APPENDIX 21

A 77

Case No. 2:16-cv-00077

Bank of New York Mellon et al v Scott Stafne; Todd Stafne and Real Time Resolutions Inc.

Declaration of Scott Stafne in Opposition to
Plaintiff's Motion for Summary Judgment Against Todd Stafne

EXHIBIT 5

A 78

Unofficial Document

200407260508 22 PGS
07-26-2004 12:55pm $41.00
SNOHOMISH COUNTY, WASHINGTON

Return To: LOAN # 6449973020
FL9-700-01-01 JACKSONVILLE POST CLOSING
BANK OF AMERICA
9000 SOUTHSIDE BLVD
BLDG 700, FILE RECEIPT DEPT
JACKSONVILLE, FL 32256
Assessor's Parcel or Account Number 310622-004-004-00 NE Qtr 26-31-06
Abbreviated Legal Description PTN SE Qtr 22-31-06

[Include lot, block and plat or section, township and range] Full legal description located on page THREE
Trustee PRLAP, INC

22/41

[Space Above This Line For Recording Data]

CHICAGO 5213188 **DEED OF TRUST** LOAN # 6449973020

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 JULY 16, 2004 , together with all Riders to this document

(B) "Borrower" is
SCOTT STAFNE, A SINGLE MAN

Borrower is the trustor under this Security Instrument

(C) "Lender" is BANK OF AMERICA, N A

A 79

Lender is a NATIONAL BANKING ASSOCIATION
organized and existing under the laws of THE UNITED STATES OF AMERICA
Lender's address is 10850 WHITE ROCK RD, 1ST FLOOR, RANCHO CORDOVA, CA 956700000

Lender is the beneficiary under this Security Instrument
(D) "Trustee" is PRLAP, INC

(E) "Note" means the promissory note signed by Borrower and dated JULY 16 2004
The Note states that Borrower owes Lender SIX HUNDRED THOUSAND AND 00/100 Dollars
(U S $ 600,000 00) plus interest Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than AUGUST 01, 2034
(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]

[X] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[ ] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions
(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization
(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers
(L) "Escrow Items" means those items that are described in Section 3
(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for (i) damage to, or destruction of, the Property, (ii) condemnation or other taking of all or any part of the Property, (iii) conveyance in lieu of condemnation, or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property
(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan
(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument
(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U S C Section 2601 et seq) and its implementing regulation, Regulation X (24 C F R Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter As used in this Security Instrument, "RESPA" refers to all requirements and

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A 80

EXHIBIT
LEGAL DESCRIPTION

Order No 5213188

THE LAND REFERRED TO IS SITUATED IN THE STATE OF WASHINGTON, COUNTY OF SNOHOMISH , AND IS DESCRIBED AS FOLLOWS

THAT PORTION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 31 NORTH, RANGE 6 EAST, W M , DESCRIBED AS FOLLOWS

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID WEST HALF WHICH BEARS SOUTH 87°45'14" EAST 625 28 FEET FROM THE SOUTHWEST CORNER THEREOF,
THENCE NORTH 3°10'20" EAST 1,767 39 FEET PARALLEL WITH THE WEST LINE OF SAID WEST HALF,
THENCE SOUTH 87°13'29" EAST 755 99 FEET PARALLEL WITH THE NORTH LINE OF SAID WEST HALF TO THE EAST LINE OF SAID WEST HALF,
THENCE SOUTH 5°09'49" WEST 530 46 FEET ALONG THE EAST LINE OF SAID WEST HALF,
THENCE NORTH 87°13'29" WEST 447 45 FEET,
THENCE SOUTH 3°10'20" WEST 684 05 FEET,
THENCE SOUTH 87°13'29" EAST 70 00 FEET,
THENCE SOUTH 3°10'20" WEST 550 00 FEET TO THE SOUTH LINE OF SAID WEST HALF,
THENCE NORTH 87°45'14" WEST 360 14 FEET TO THE POINT OF BEGINNING,
EXCEPT THAT PORTION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 31 NORTH, RANGE 6 EAST, W M , SNOHOMISH COUNTY, WASHINGTON, LYING NORTHEASTERLY OF THE CLIFF-EDGE, AS SAID CLIFF-EDGE IS SHOWN ON THAT RECORD OF SURVEY RECORDED JULY 17, 1998, UNDER AUDITOR'S FILE NUMBER 9807175001, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, WITH ADDITIONAL DATA SHOWN ON THAT AFFIDAVIT OF MINOR CORRECTION RECORDED JULY 28, 1998 RECORDED UNDER AUDITOR'S FILE NUMBER 9807280545, RECORDS OF SNOHOMISH COUNTY, WASHINGTON,

ALSO

THAT PORTION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 31 NORTH, RANGE 6 EAST, W M , DESCRIBED AS FOLLOWS

BEGINNING AT A POINT ON THE NORTH LINE OF SAID WEST HALF WHICH BEARS SOUTH 87°45'14" EAST 625 28 FEET FROM THE NORTHWEST CORNER THEREOF,
THENCE SOUTH 0°32'08" WEST 362 84 FEET ALONG A LINE PARALLEL WITH AND 625 00 FEET EAST OF AS MEASURED PERPENDICULAR FROM THE WEST LINE OF SAID WEST HALF,
THENCE NORTH 90°00'00" EAST 360 00 FEET,
THENCE NORTH 0°32'08" EAST 348 72 FEET TO THE NORTH LINE OF SAID WEST HALF,
THENCE NORTH 87°45'14" WEST 360 14 FEET TO THE POINT OF BEGINNING,

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES DESCRIBED UNDER AUDITOR'S FILE NUMBER 9310130917, RECORDS OF SNOHOMISH COUNTY, WASHINGTON

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON

Unofficial Document

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 SNOHOMISH

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

PTN SE 1/4 22-31-06 AND NE 1/4 26-31-06 LEGAL DESCRIPTION ATTACHED HERETO AND MADE APART HEREOF.

Parcel ID Number 310622-004-004-00 which currently has the address of
17207 155TH AVENUE NORTHEAST [Street]
ARLINGTON [City], Washington 98223 [Zip Code]
("Property Address")

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

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

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

UNIFORM COVENANTS Borrower and Lender covenant and agree as follows

1 **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the

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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 SES

A 83

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

Initials

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

Initials SES

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

Initials

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

Initials SES

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

Initials

A 88

market value of the Property immediately before the partial taking, destruction, or loss in value Any balance shall be paid to Borrower

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

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

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

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

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

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

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

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

Initials SE

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

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

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

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

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

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

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

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

Initials [handwritten initials]

A 90

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

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

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

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property.

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A 91

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

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

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

22 Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise) The notice shall specify (a) the default, (b) the action required to cure the default, (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured, and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property at public auction at a date not less than 120 days in the future The notice shall further inform Borrower of the right to reinstate after acceleration, 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, and any other matters required to be included in the notice by Applicable Law 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/or 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 give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require After the time required by Applicable Law and after publication of the notice of sale, 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 the Property for a period or periods permitted by Applicable Law by public announcement at the time and place fixed in the notice of 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 or to the clerk of the superior court of the county in which the sale took place

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A 92

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 Such person or persons shall pay any recordation costs and the Trustee's fee for preparing the reconveyance

24 **Substitute Trustee.** In accordance with Applicable Law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law

25 **Use of Property** The Property is not used principally for agricultural purposes

26 **Attorneys' Fees** Lender shall be entitled to recover its reasonable attorneys' fees and costs in any action or proceeding to construe or enforce any term of this Security Instrument The term "attorneys' fees," whenever used in this Security Instrument, shall include without limitation attorneys' fees incurred by Lender in any bankruptcy proceeding or on appeal

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it

Witnesses

_______________ 　　 _______________ (Seal)
SCOTT STAFNE -Borrower

_______________ 　　 _______________ (Seal)
-Borrower

_______________ (Seal) 　　 _______________ (Seal)
-Borrower 　　 -Borrower

_______________ (Seal) 　　 _______________ (Seal)
-Borrower 　　 -Borrower

_______________ (Seal) 　　 _______________ (Seal)
-Borrower 　　 -Borrower

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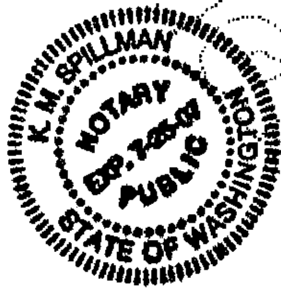
A 93

STATE OF WASHINGTON } ss
County of Pierce
On this day personally appeared before me
Scott Stafne

to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that he/she/they signed the same as his/her/their free and voluntary act and deed, for the uses and purposes therein mentioned
GIVEN under my hand and official seal this 20th day of July 2004

Notary Public in and for the State of Washington residing at

My Appointment Expires on 7-25-2007



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LOAN # 6449973020

ADJUSTABLE RATE RIDER

THIS ADJUSTABLE RATE RIDER is made this 16TH day of JULY, 2004 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 (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to BANK OF AMERICA, N.A

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at 17207 155TH AVENUE NORTHEA, ARLINGTON, WA 98223

[Property Address]

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT INCREASES IN THE INTEREST RATE WILL RESULT IN HIGHER PAYMENTS. DECREASES IN THE INTEREST RATE WILL RESULT IN LOWER PAYMENTS

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

A INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 5 500 % The Note provides for changes in the interest rate and the monthly payments, as follows

4 INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the FIRST day of AUGUST, 2009 and on that day every 12TH month thereafter Each date on which my interest rate could change is called a "Change Date"

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index The "Index" is

THE ONE-YEAR LONDON INTERBANK OFFERED RATE ("LIBOR") WHICH IS THE AVERAGE OF INTERBANK OFFERED RATES FOR ONE-YEAR U S DOLLAR-DENOMINATED DEPOSITS IN THE LONDON MARKET 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 ONE-QUARTER percentage points (2 250 %) to the Current Index The Note Holder will then round the result of this addition to the [ ] Nearest [X] Next Highest [ ] Next Lowest 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 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

[ ] **Interest-Only Period**

The "Interest-only Period" is the period from the date of this Note through

For the interest-only period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to pay the interest which accrues on the unpaid principal of my loan The result of this calculation will be the new amount of my monthly payment

The "Amortization Period" is the period after the interest-only period For the amortization period, after calculating my new interest rate as provided above, 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

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(D) Limits on Interest Rate Changes

(Please check appropriate boxes, if no box is checked, there will be no maximum limit on changes.)

[ ] (1) There will be no maximum limit on interest rate changes

[ ] (2) The interest rate I am required to pay at the first Change Date will not be greater than % or less than %

[ ] (3) My interest rate will never be increased or decreased on any single Change Date by more than percentage points (%) from the rate of interest I have been paying for the preceding period

[X] (4) My interest rate will never be greater than 10 500 %, which is called the "Maximum Rate"

[ ] (5) My interest rate will never be less than %, which is called the "Minimum Rate"

[ ] (6) My interest rate will never be less than the initial interest rate

[X] (7) The interest rate I am required to pay at the first Change Date will not be greater than 10 500 % or less than 2 250 % Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO percentage points (2 000 %) from the rate of interest I have been paying for the preceding period

(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 interest rate and the amount of my monthly payment before the effective date of any 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

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

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

(1) 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 B(2) BELOW SHALL THEN CEASE TO BE IN EFFECT, AND UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL INSTEAD BE DESCRIBED 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 the 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 a 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

(2) 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 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 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

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A 99

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

(Seal)
SCOTT STAPNE -Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

APPENDIX 22
A 100

Case No. 2:16-cv-00077
Bank of New York Mellon et al v Scott Stafne; Todd Stafne and Real Time Resolutions Inc.

Declaration of Scott Stafne in Opposition to
Plaintiff's Motion for Summary Judgment Against Todd Stafne

EXHIBIT 6

A 101

200503150879 18 PGS
03-15-2005 02:53pm $37.00
SNOHOMISH COUNTY, WASHINGTON

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

Assessor's Parcel or Account Number 31062200400400
Abbreviated Legal Description
LOT 11, SURVEY RECORDING. 200111275007 IN SECTION , TOWNSHIP 31 N, RANGE 6 E

[Include lot, block and plat or section, township and range] 18137
Full legal description located on page 3

Trustee
~~LS~~ TITLE OF WASHINGTON
Landsafe

COMMONWEALTH LAND TITLE
REF: 2011 8345-T3

Additional Grantees located on page

[Space Above This Line For Recording Data]

0009502053203005
[Doc ID #]

DEED OF TRUST

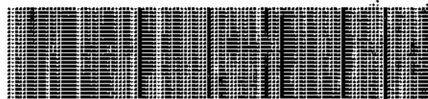
MIN 1000157-0004871975-7

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 09, 2005 , together with all Riders to this document.
(B) **"Borrower"** is * a single man
SCOTT E STAFNE, AS HIS SEPARATE ESTATE

Borrower is the trustor under this Security Instrument
(C) **"Lender"** is
COUNTRYWIDE HOME LOANS, INC.
Lender is a CORPORATION
organized and existing under the laws of NEW YORK



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A 102

DOC ID #: 0009502053203005

Lender's address is
4500 Park Granada, Calabasas, CA 91302-1613
(D) "Trustee" is
LS TITLE OF WASHINGTON
2707 COLBY AVE., SUITE 118, EVERETT, WA 98201
(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 09, 2005 The Note states that Borrower owes Lender
EIGHT HUNDRED THOUSAND and 00/100
Dollars (U S $ 800,000.00) 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, 2035
(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]

[X] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[ ] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] Other(s) [specify]

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions
(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization
(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers
(M) "Escrow Items" means those items that are described in Section 3.
(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for (i) damage to, or destruction of, the Property, (ii) condemnation or other taking of all or any part of the Property, (iii) conveyance in lieu of condemnation, or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property
(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan
(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument
(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C Section 2601 et seq) and its implementing regulation, Regulation X (24 C F R Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA
(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument

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

COUNTY of SNOHOMISH
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

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LOT 11, SURVEY FOR TWIN FALLS, INC., AS RECORDED UNDER RECORDING NO. 200110105002, RE-RECORDED TO CORRECT SURVEY RECORDED UNDER RECORDING NO. 200111275007, RECORDS OF SNOHOMISH COUNTY, BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 22 AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 27 ALL IN TOWNSHIP 31 NORTH, RANGE 6 EAST, W.M.; (ALSO KNOWNS AS LOT 11, THE PLAT OF TWIN FALLS); TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES AS ESTABLISHED BY INSTRUMENT RECORDED UNDER RECORDING NO. 9212160154; SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

which currently has the address of 17207 155TH AVE NE, ARLINGTON [Street/City], Washington 98223-6726 [Zip Code] ("Property Address")

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

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

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

UNIFORM COVENANTS Borrower and Lender covenant and agree as follows

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

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

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

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

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

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

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

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

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

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

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

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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 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Initials SES

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

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

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

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

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

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

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

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous

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A 110

DOC ID #: 0009502053203005

Substance, creates a condition that adversely affects the value of the Property The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products)

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property at public auction at a date not less than 120 days in the future. The notice shall further inform Borrower of the right to reinstate after acceleration, 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, and any other matters required to be included in the notice by Applicable Law. 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/or 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 give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, 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 the Property for a period or periods permitted by Applicable Law by public announcement at the time and place fixed in the notice of 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 or to the clerk of the superior court of the county in which the sale took place.

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 Such person or persons shall pay any recordation costs and the Trustee's fee for preparing the reconveyance

24. Substitute Trustee. In accordance with Applicable Law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law

25. Use of Property. The Property is not used principally for agricultural purposes

26. Attorneys' Fees. Lender shall be entitled to recover its reasonable attorneys' fees and costs in any action or proceeding to construe or enforce any term of this Security Instrument The term "attorneys' fees," whenever used in this Security Instrument, shall include without limitation attorneys' fees incurred by Lender in any bankruptcy proceeding or on appeal

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

Initials ______

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A 111

DOC ID #: 0009502053203005

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

_____________________ (Seal)
SCOTT E STAFNE -Borrower

_____________________ (Seal)
-Borrower

_____________________ (Seal)
-Borrower

_____________________ (Seal)
-Borrower

STATE OF WASHINGTON
County of King } ss:

On this day personally appeared before me

Scott E

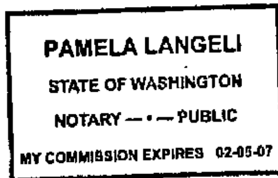
to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that he/she/they signed the same as his/her/their free and voluntary act and deed, for the uses and purposes therein mentioned

GIVEN under my hand and official seal this _____ day of

Pamela Langeli

Notary Public in and for the State of Washington, residing at Redmond

My Appointment Expires on 02 05 07


PAMELA LANGELI
STATE OF WASHINGTON
NOTARY — • — PUBLIC
MY COMMISSION EXPIRES 02-05-07

A 112

Unofficial Document

ADJUSTABLE RATE RIDER

(LIBOR One-Month Index - Payment Caps)

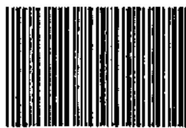
After Recording Return To
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

PARCEL ID #:
31062200400400

Prepared By

000950205320300 5
[Doc ID #]

Initials SES



Unofficial Document

DOC ID #: 0009502053203005

THIS ADJUSTABLE RATE RIDER is made this NINTH day of MARCH, 2005 , 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 Adjustable Rate Note (the "Note") to COUNTRYWIDE HOME LOANS, INC.

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

17207 155TH AVE NE
ARLINGTON, WA 98223-6726
[Property Address]

THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE LIMIT STATED IN THE NOTE.

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for changes in the interest rate and the monthly payments, as follows

2. INTEREST

(A) Interest Rate

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 1.000 % The interest rate I will pay may change

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of the Note

Unofficial Document

DOC ID #: 0009502053203005

(B) Interest Rate Change Dates

The interest rate I will pay may change on the first day of MAY, 2005 , and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date " The new rate of interest will become effective on each Interest Rate Change Date.

(C) 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 month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available as of the date 15 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.

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding TWO & 45/100 percentage point(s) (2.450 %) 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%) This rounded amount will be my new interest rate until the next Interest Rate Change Date My interest rate will never be greater than 9.950 %.

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DOC ID #: 0009502053203005

3. PAYMENTS

(A) Time and Place of Payments

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

I will make my monthly payments on the FIRST day of each month beginning on May, 2005. I will make these payments every month until I have paid all the principal and interest and any other charges described below that I may owe under this Note Each monthly payment will be applied to interest before Principal If, on APRIL 01, 2035, I still owe amounts under the 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

Each of my initial monthly payments will be in the amount of U.S. $ 2,573.12. This amount may change.

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the first day of MAY, 2006, and on that day every 12th month thereafter Each of these dates is called a "Payment Change Date" My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment.

I will pay the amount of my new monthly payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal installments at the interest rate effective during the month preceding the Payment Change Date The result of this calculation is called the "Full Payment" The Note Holder will then calculate the amount of my monthly payment due the month preceding the Payment Change Date multiplied by the number 1 075 The result of this calculation is called the "Limited Payment" Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new

Unofficial Document

DOC ID #: 0009502053203005

required monthly payment will be lesser of the Limited Payment and the Full Payment I also have the option each month to pay more than the Limited Payment up to and including the Full Payment for my monthly payment

(E) Additions to My Unpaid Principal

My monthly payment could be less than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments If so, each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid principal The Note Holder also will add interest on the amount of this difference to my unpaid principal each month The interest rate on the interest added to Principal will be the rate required by Section 2 above

(F) Limit on My Unpaid Principal; Increased Monthly Payment

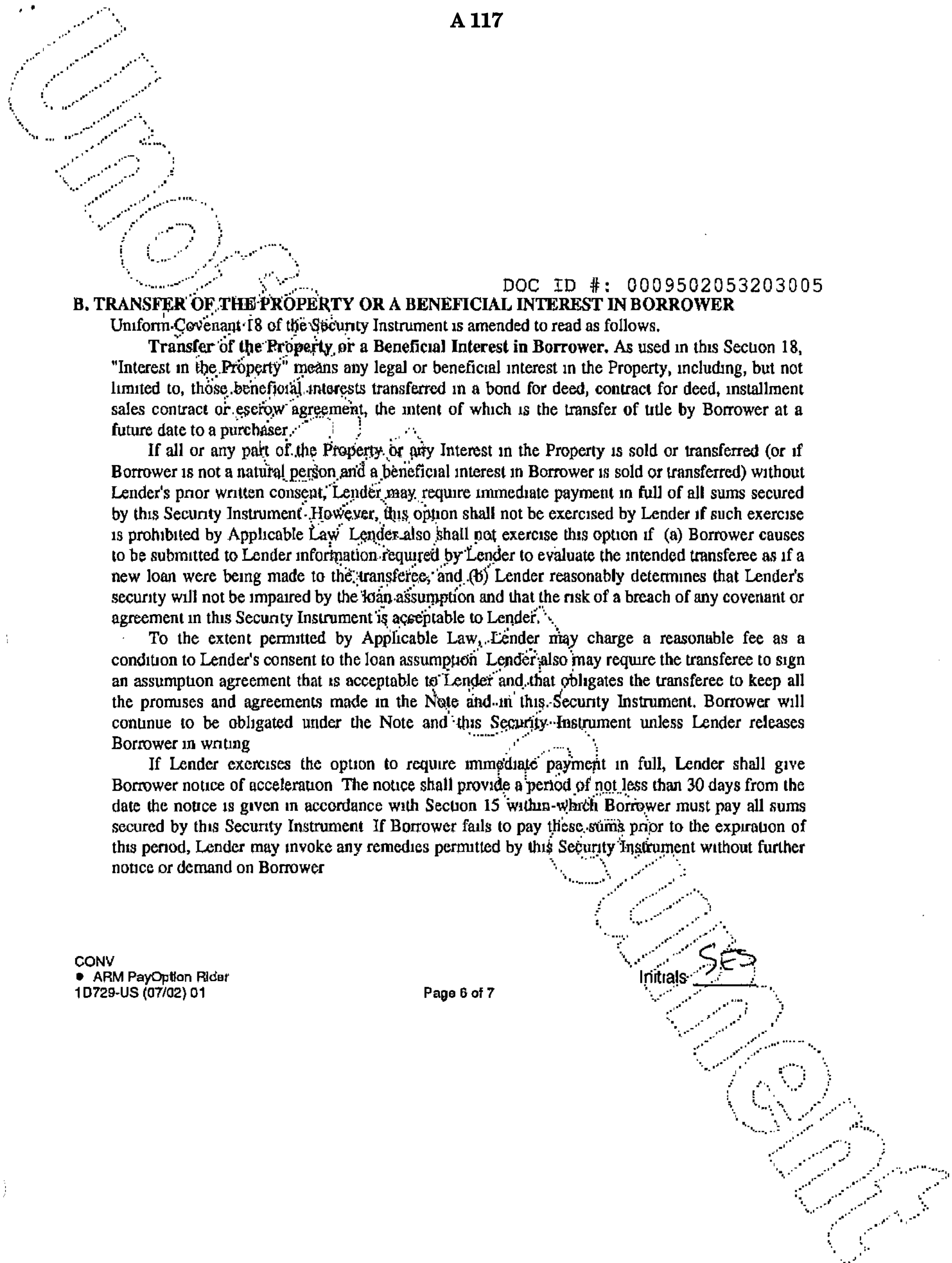
My unpaid principal can never exceed a maximum amount equal to ONE HUNDRED FIFTEEN percent (115 %) of the Principal amount I originally borrowed My unpaid principal could exceed that maximum amount due to the Limited Payments and interest rate increases In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment The new monthly payment will be in an amount that would be sufficient to repay my then unpaid principal in full on the Maturity Date in substantially equal installments at the current interest rate

(G) Required Full Payment

On the fifth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my monthly payment until my monthly payment changes again I also will begin paying the Full Payment as my monthly payment on the final Payment Change Date.

4. NOTICE OF CHANGES

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



DOC ID #: 0009502053203005

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

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

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

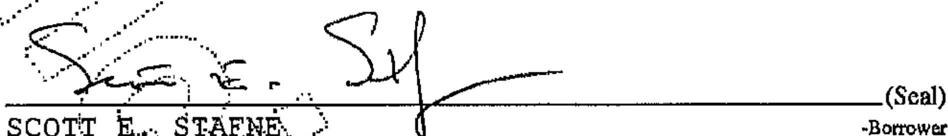
Initials: SES

A 118

Unofficial Document

DOC ID #: 0009502053203005

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



_____________________________ (Seal)
SCOTT E. STAFNE -Borrower

_____________________________ (Seal)
-Borrower

_____________________________ (Seal)
-Borrower

_____________________________ (Seal)
-Borrower

APPENDIX 23
A 119

Case No. 2:16-cv-00077
Bank of New York Mellon et al v Scott Stafne; Todd Stafne and Real Time Resolutions Inc.

Declaration of Scott Stafne in Opposition to
Plaintiff's Motion for Summary Judgment Against Todd Stafne

EXHIBIT 7

A 120

200602220546 6 PGS
02/22/2006 11:20am $38.00
SNOHOMISH COUNTY, WASHINGTON

When recorded return to
Custom Title Solutions
2550 N Redhill Ave
Santa Ana, CA 92705
(800)756-3524 ext 5545

714041

1983831

Assessor's Parcel or Account Number 3106-220-040-0400
Abbreviated Legal Description:
~~SEE TITLE PRELIM~~ A PORTION OF THE WEST OF THE SE1/4 OF SECTION 22, TOWNSHIP 31 RANGE 6 EAST W M

[Include lot, block and plat or section, township and range]

Full legal description located on page X6

Trustee
LS TITLE OF WASHINGTON

[Space Above This Line For Recording Data]

1983831

LSI
[Escrow/Closing #]

00012498172602006
[Doc ID #]

DEED OF TRUST
(Line of Credit Trust Deed)

MIN 1001337-0001202560-0

THIS DEED OF TRUST, dated FEBRUARY 01, 2006 , is between
SCOTT STAFNE, SINGLE OR UNMARRIED MAN

residing at
17207 155TH AVE NE, ARLINGTON, WA 98223-8460 ,
the person or persons signing as "Grantor(s)" below and hereinafter referred to as "we," "our," or "us" and
LS TITLE OF WASHINGTON ,
as trustee and hereinafter referred to as the "Trustee," with an address at
2707 COLBY AVE, STE. 1118, EVERETT, WA 98201
for the benefit of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, ("MERS") a Delaware corporation, with an address of P O Box 2026, Flint, MI 48501-2026, tel (888) 679-MERS **MERS is the "Beneficiary" under this Deed of Trust** and is acting solely as nominee for
Countrywide Bank, N.A. ,
("Lender" or "you") and its successors and assigns, with an address of
1199 North Fairfax St. Ste.500, Alexandria, VA 22314

PREMISES In consideration of the loan hereinafter described, we hereby mortgage, grant and convey to the Trustee the premises located at:

17207 155TH AVE NE, ARLINGTON
[State, Municipality]

SNOHOMISH	Washington 98223-6726 (the "Premises")
County	ZIP

Initials SCS

* 2 3 9 9 1 *

* 1 2 4 9 8 1 7 2 6 0 0 0 0 0 2 E 0 3 4 *

Unofficial Document

A 121

DOC ID #: 00012498172602006

and further described as
SEE TITLE PRELIM EXHIBIT "A" FOR FULL LEGAL DESCRIPTION

THIS DOCUMENT IS FILED FOR
RECORD BY FIDELITY NATIONAL
TITLE INS CO AS AN ACCOMMODATION
ONLY IT HAS NOT BEEN EXAMINED
AS TO ITS EXECUTION OR AS TO ITS
EFFECT UPON THE TITLE

The Premises includes all buildings and other improvements now or in the future on the Premises and all rights and interests which derive from our ownership, use or possession of the Premises and all appurtenances thereto The Premises are not used principally for agricultural or farming purposes

WE UNDERSTAND and agree that MERS is a separate corporation acting solely as nominee for Lender and Lender's successors and assigns, and holds only legal title to the interests granted by us in this Deed of Trust, 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 or canceling this Deed of Trust

TERM The maximum term of the Note is 25 years, including any renewals or extensions thereof.

LOAN This Deed of Trust will secure your loan to us in the principal amount of $ 36,638.00 or so much thereof as may be advanced and readvanced from time to time to
SCOTT STAFNE

the Borrower(s) under the Home Equity Credit Line Agreement And Disclosure Statement (the "Note") dated FEBRUARY 01, 2006 , plus interest and costs, late charges and all other charges related to the loan, all of which sums are repayable according to the Note This Deed of Trust will also secure the performance of all of the promises and agreements made by us and each Borrower and Co-Signer in the Note, all of our promises and agreements in this Deed of Trust, any extensions, renewals, amendments, supplements and other modifications of the Note, and any amounts advanced by you under the terms of the section of this Deed of Trust entitled "Our Authority To You" Loans under the Note may be made, repaid and remade from time to time in accordance with the terms of the Note and subject to the Credit Limit set forth in the Note

OWNERSHIP: We are the sole owner(s) of the Premises We have the legal right to mortgage, grant and convey the Premises to the Trustee

BORROWER'S IMPORTANT OBLIGATIONS

(a) PAYMENT AND PERFORMANCE We will pay to you all amounts secured by this Deed of Trust as they become due, and shall strictly perform our obligations

(b) TAXES We will pay all real estate taxes, assessments, water charges and sewer rents relating to the Premises when they become due. We will not claim any credit on, or make deduction from, the loan under the Note because we pay these taxes and charges We will provide you with proof of payment upon request

(c) MAINTENANCE We will maintain the building(s) on the Premises in good condition We will not make major changes in the building(s) except for normal repairs We will not tear down any of the building(s) on the Premises without first getting your consent We will not conduct or permit any nuisance or waste on or to the Premises We will not use the Premises illegally If this Deed of Trust is on a unit in a condominium or a planned unit development, we shall perform all of our obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development and constituent documents

(d) INSURANCE We will keep the building(s) on the Premises insured at all times against loss by fire, flood and any other hazards you may specify We may choose the insurance company, but our choice is subject to your reasonable approval The policies must be for at least the amounts and the time periods that you specify We will deliver to you upon your request the policies or other proof of the insurance The policies must name you as "mortgagee" and "loss-payee" so that you will receive payment on all insurance claims, to the extent of your interest under this Deed of Trust, before we do The insurance policies must also provide that you be given

Initials SES

DOC ID #: 00012498172602006

not less than 10 days prior written notice of any cancellation or reduction in coverage, for any reason Upon request, we shall deliver the policies, certificates or other evidence of insurance to you In the event of loss or damage to the Premises, we will immediately notify you in writing and file a proof of loss with the insurer You may file a proof of loss on our behalf if we fail or refuse to do so You may also sign our name to any check, draft or other order for the payment of insurance proceeds in the event of loss or damage to the Premises If you receive payment of a claim, you will have the right to choose to use the money either to repair the Premises or to reduce the amount owing on the Note

(e) CONDEMNATION We assign to you the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Premises, or part thereof, or for conveyance in lieu of condemnation, all of which shall be paid to you, subject to the terms of any Prior Deed of Trust

(f) GOVERNMENTAL REQUIREMENTS. We will comply with all laws, ordinances and regulations applicable to the use or occupancy of the Premises

(g) SECURITY INTEREST. We will join with you in signing and filing documents and, at our expense, in doing whatever you believe is necessary to perfect and continue the perfection of your lien and security interest in the Premises It is agreed that the Lender shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Agreement secured hereby

(h) OUR AUTHORITY TO YOU If we fail to perform our obligations under this Deed of Trust, you may, if you choose, perform our obligations and pay such costs and expenses You will add the amounts you advance to the sums owing on the Note, on which you will charge interest at the interest rate set forth in the Note If, for example, we fail to honor our promises to maintain insurance in effect, or to pay filing fees, taxes or the costs necessary to keep the Premises in good condition and repair or to perform any of our other agreements with you, you may, if you choose, advance any sums to satisfy any of our agreements with you and charge us interest on such advances at the interest rate set forth in the Note This Deed of Trust secures all such advances Your payments on our behalf will not cure our failure to perform our promises in this Deed of Trust Any replacement insurance that you obtain to cover loss or damages to the Premises may be limited to the amount owing on the Note plus the amount of any Prior Deeds of Trust

(i) PRIOR DEED OF TRUST If the provisions of this paragraph are completed, this Deed of Trust is subject and subordinate to a prior deed of trust dated MARCH 09, 2005 and given by us for the benefit of
COUNTRYWIDE HOME LOANS, INC.
as beneficiary, in the original amount of $ 800,000.00 (the "Prior Deed of Trust") We shall not increase, amend or modify the Prior Deed of Trust without your prior written consent and shall upon receipt of any written notice from the holder of the Prior Deed of Trust promptly deliver a copy of such notice to you We shall pay and perform all of our obligations under the Prior Deed of Trust as and when required under the Prior Deed of Trust

(j) HAZARDOUS SUBSTANCES We shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Premises We shall not do, nor allow anyone else to do, anything affecting the Premises that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Premises of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Premises As used in this paragraph, "Hazardous Substances" are those substances defined as toxic or hazardous substances 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 As used in this paragraph, "Environmental Law" means federal laws and laws of the jurisdiction where the Premises are located that relate to health, safety or environmental protection

(k) SALE OF PREMISES We will not sell, transfer ownership of, mortgage or otherwise dispose of our interest in the Premises, in whole or in part, or permit any other lien or claim against the Premises without your prior written consent

(l) INSPECTION We will permit you to inspect the Premises at any reasonable time

NO LOSS OF RIGHTS. The Note and this Deed of Trust may be negotiated or assigned by you without releasing us or the Premises You may add or release any person or property obligated under the Note and this Deed of Trust without losing your rights in the Premises.

DEFAULT Except as may be prohibited by applicable law, and subject to any advance notice and cure period if required by applicable law, if any event or condition of default as described in the Note occurs, the Trustee may foreclose upon this Deed of Trust by notice and sale or may foreclose judicially, in either case in accordance with and to the extent provided by law You may bid at any public sale on all or any portion of the

Initials SES

Property In addition, you or the Trustee may, in accordance with applicable law, (i) enter on and take possession of the Premises, (ii) collect the rental payments, including over-due rental payments, directly from tenants, (iii) manage the Premises, and (iv) sign, cancel and change leases We agree that the interest rate set forth in the Note will continue before and after a default, entry of a judgment and foreclosure or public sale In addition, you shall be entitled to collect all reasonable fees and costs actually incurred by you in proceeding to foreclosure or to public sale, including, but not limited to, trustee's fees, reasonable attorneys fees (whether or not there is a judicial proceeding) and costs of documentary evidence, abstracts and title reports

ASSIGNMENT OF RENTS, APPOINTMENT OF RECEIVER As additional security, we assign to you the rents of the Premises You or a receiver appointed by the courts shall be entitled to enter upon, take possession of and manage the Premises and collect the rents of the Premises including those past due

WAIVERS· To the extent permitted by applicable law, we waive and release any error or defects in proceedings to enforce this Deed of Trust and hereby waive the benefit of any present or future laws providing for stay of execution, extension of time, exemption from attachment, levy and sale and homestead exemption

BINDING EFFECT· Each of us shall be fully responsible for all of the promises and agreements in this Deed of Trust Until the Note has been paid in full and your obligation to make further advances under the Note has been terminated, the provisions of this Deed of Trust will be binding on us, our legal representatives, our heirs and all future owners of the Premises This Deed of Trust is for your benefit and for the benefit of anyone to whom you may assign it Upon payment in full of all amounts owing to you under the Note and this Deed of Trust, and provided any obligation to make further advances under the Note has terminated, this Deed of Trust and your rights in the Premises shall end

NOTICE Except for any notice required under applicable law to be given in another manner, (a) any notice to us provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by regular first class mail addressed to us at the last address appearing in your records or at such other address as we may designate by notice to you as provided herein; and (b) any notice to you shall be given by certified mail, return receipt requested, to your address at
For MERS
P O Box 2026, Flint, MI 48501-2026
For Lender,
1199 North Fairfax St. Ste.500, Alexandria, VA 22314
or to such other address as you may designate by notice to us Any notice provided for in this Deed of Trust shall be deemed to have been given to us or you when given in the manner designated herein

RELEASE Upon payment of all sums secured by this Deed of Trust and provided your obligation to make further advances under the Note has terminated, the Trustee shall discharge this Deed of Trust without charge to us, except that we shall pay any fees for recording of a reconveyance of this Deed of Trust.

SEVERABILITY. If any provision in this Deed of Trust is held invalid or unenforceable, the remaining provisions shall continue in full force and effect

GENERAL You or the Trustee can waive or delay enforcing any of your rights under this Deed of Trust without losing them. Any waiver by you of any provisions of this Deed of Trust will not be a waiver of that or any other provision on any other occasion

SUBSTITUTE TRUSTEE Lender may, from time to time, appoint a successor trustee by an instrument executed and acknowledged by Lender and recorded in the county in which this Deed of Trust is recorded, and upon such recordation the successor trustee shall become vested with the same powers, rights, duties and authority of the Trustee with the same effect as if originally made Trustee hereunder.

MERGER There shall be no merger of the interest or estate created by this Deed of Trust with any other estate or interest in the Premises at any time held by you or for your benefit without your written consent.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

Initials SES

A 124

DOC ID #: 00012498172602006

THIS DEED OF TRUST has been signed by each of us under seal on the date first above written

_______________ (SEAL)
Grantor SCOTT STAFNE

_______________ (SEAL)
Grantor

_______________ (SEAL)
Grantor

_______________ (SEAL)
Grantor

STATE OF WASHINGTON } ss:
County of SNOHOMISH

On this day personally appeared before me STEVEN J. KLEIN, SCOTT STAFNE

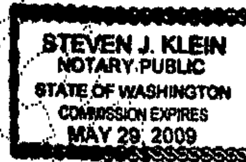
to me known to be the individual ___ described in and who executed the within and foregoing instrument, and acknowledged that HE signed the same as HIS free and voluntary act and deed, for the uses and purposes therein mentioned

GIVEN under my hand and official seal this 3RD day of FEBRUARY, 2006

____
Notary Public in and for the State of Washington, residing at GRANITE FALLS

My Appointment Expires on 5-29-2009 Steven J. Klein

PREPARED BY AYANTU BEDADA
COUNTYWIDE HOME LOANS, INC
31303 AGOURA ROAD
WESTLAKE VILLGE, CA 91361



Unofficial Document

EXHIBIT "A"

THE FOLLOWING DESCRIBED REAL ESTATE, SITUATED IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON

LOT 8

THAT PORTION OF THE WEST OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 31 RANGE 6 EAST W M DESCRIBED AS FOLLOWS,
BEGINNING AT A POINT ON THE SOUTH LINE OF SAID WEST HALF WHICH BEARS SOUTH 87 45' 14" EAST 625 28 FEET FROM THE SOUTHWEST CORNER THEREOF,
THENCE NORTH 3 10' 20" EAST 1767 39 FEET PARALLEL WITH THE WEST LINE OF SAID WEST HALF,
THENCE SOUTH 87 13' 29" EAST 755 99 FEET PARALLEL WITH THE NORTH LINE OF SAID WEST HALF TO THE EAST LINE OF SAID WEST HALF,
THENCE SOUTH 5 09' 49" WEST 530 46 FEET ALONG THE EAST LINE OF SAID WEST HALF
THENCE NORTH 87 13' 29" WEST 447 45 FEET,
THENCE SOUTH 3 10' 20" WEST 684 05 FEET,
THENCE SOUTH 87 13' 29" EAST 70 00 FEET,
THENCE SOUTH 3 10' 20" WEST 550 00 FEET TO THE SOUTH LINE OF SAID WEST HALF,
THENCE NORTH 87 45' 14" WEST 360 14 FEET TO THE POINT OF BEGINNING

ALSO
THAT PORTION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 31 NORTH RANGE 6 EAST W M DESCRIBED AS FOLLOWS,
BEGINNING AT A POINT ON THE NORTH LINE OF SAID WEST HALF WHICH BEARS SOUTH 87 45' 14" EAST 625 28 FEET FROM THE NORTHWEST CORNER THEREOF,
THENCE SOUTH 0 32' 08" WEST 362 84 FEET ALONG A LINE PARALLEL WITH AND 625 00 FEET EAST OF AS MEASURED PERPENDICULAR FROM THE WEST LINE OF SAID WEST HALF,
THENCE NORTH 90 00' 00" EAST 360 00 FEET,
THENCE NORTH 0 32' 08" EAST 348 72 FEET TO THE NORTH LINE OF SAID WEST HALF,
THENCE NORTH 87 45' 14" WEST 360 14 FEET TO THE POINT OF BEGINNING

WITH THE APPURTENANCES THERETO

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APPENDIX 24
A 126

Case No. 2:16-cv-00077
Bank of New York Mellon et al v Scott Stafne; Todd Stafne and Real Time Resolutions Inc.

Declaration of Scott Stafne in Opposition to
Plaintiff's Motion for Summary Judgment Against Todd Stafne

EXHIBIT 9Q

A 127

201004270360 13 PGS
04/27/2010 11:32am $124.00
SNOHOMISH COUNTY, WASHINGTON

AFTER RECORDING, MAIL TO:
Todd Stafne
2606 – 2nd Avenue #506
Seattle, WA 98121

Document Title: **RCW 58.04.001(1) Boundary Line Agreement**

Reference Number(s): 200911175005

Grantor: Ron Margolis, Jeffery Abrams, Charlotte Abrams, Scott Stafne, Carole Palmer, Twin Falls INC.

Grantee: Ron Margolis, Jeffery Abrams, Charlotte Abrams, Scott Stafne, Carole Palmer, Twin Falls INC.

Legal Description: A portion of the NW ¼, the SW ¼, and the SE ¼, of the SE ¼ Section 22;
A portion of the SE ¼ of the SW ¼ Section 22;
A portion of the NW ¼ and the SW ¼ of the NW ¼ Section 26;
A portion of the NW ¼ of the SW ¼ Section 26;
A portion of the NW ¼, the NE ¼, the SE ¼, and the SW ¼ of the NE ¼ of Section 276;
And a Portion of the NE ¼ of the NW ¼ Section 27, Township 31 North, Range 6 East, W.M., Snohomish County, Washington

Tax Parcel Numbers: 31062700100500, 31062700100200, 31062700201000, 31062700201100, 31062700201200, 31062200300600, 31062200400500, 31062200400400, 31062700100700, 31062200400700, 31062700100800, 31062600300500

RCW 58.04.007(1) Boundary Line Agreement

I. Parties. This Boundary Line Agreement is entered into this 20th day of April, 2010 by and between Ron Margolis, "Grantor" (and reciprocal grantee), Jeffery Abrams and Charlotte Abrams, "Grantor" (and reciprocal grantee), husband and wife, Scott Stafne, "Grantor" (and reciprocal grantee), Carole Palmer, "Grantor" (and reciprocal grantee), and Twin Falls, INC, "Grantor" (and reciprocal grantee).

II. Purpose. This Agreement is entered into pursuant to RCW 58.04.007(1) which provides, in applicable part, that whenever a point or line determining the boundary between two parcels of real property is in dispute, the landowners affected by the determination of the point or line may resolve any dispute and fix the boundary point or line by a written instrument using appropriate legal descriptions and including a survey map filed in accordance with Chapter 58.09 RCW, which written instrument shall be signed and acknowledged by each party in the manner required for the conveyance of real property. Such a Boundary Line Agreement, which adjusts the property line to follow an existing fence line, moves the property line around a structure to meet required setbacks, and/or to remedy a boundary line dispute, is also excise tax free pursuant to WAC 458.61A.109(2)(i-iii).

III. Agreement. This document is intended to be the written instrument requir3d by the statute and should be read in conjunction with a Boundary Line Agreement, Record of Survey map recorded under Snohomish County Auditor's File No. 200911175005. Grantor and Grantee agreed that said Record of Survey map depicts a boundary line which they have mutually agreed to be the boundary on the ground, said Agreement being permanently located by Professional Land Surveyor RICHARD D. ROSS, PLS Ref No. 37554, who has placed survey pins with his registration number on the caps marking the angle points on the line.

IV. Resolution of a Boundary Line Dispute. In NOVEMBER 2009, Grantor Twin Falls, INC. commissioned a survey by PLS 37554 of their record legal description. The Record of Survey established that the record legal description line was inconsistent with the property lines and building locations which had been considered to be the boundary line for several years. In order to resolve the discrepancy between the record legal description lines as surveyed by PLS 37554 and the historically occupied, used and possess line established by the property lines and buildings, the Parties are entering into this Boundary Line Agreement.

V. Binding Nature. Pursuant to RCW 58.04.007(1), this Agreement is binding upon the Parties, their successors, assignees, heirs and devisees and runs with the land. To assure such binding nature, this Agreement shall be recorded with the real estate records in Snohomish County in which the affected parcels of real estate are located and this Agreement is making explicit reference to the Record of Survey depicting this Boundary Line Agreement.

VI. Future Conveyances. Grantor and Grantee hereby agree to cooperate in the signing of deeds that quit claim the corresponding property such that each party's new record legal description will be as set forth on the Boundary Line Agreement Record of Survey map described herein.

VII. Amendment of Record Legal Descriptions. As a result of this Agreement, all Parties' record legal descriptions will be adjusted. For reference to the Parties' adjusted record legal descriptions, refer to the Boundary Line Agreement Record of Survey map recorded under Snohomish County Auditor's File No. 200911175005.

VIII. Attorney Fees/Venue. If any party, their successors, assigns, heirs or devisees fail to abide by this Agreement, requiring the other parties, their successors, assigns, heirs or devises to seek enforcement of this Agreement, the prevailing party shall be entitled to an award of their attorney fees for mediation, arbitration, trail and/or appeal as determined by the court pursuant to the lodestar system. Venue and jurisdiction of any dispute shall be in Snohomish County, Washington where the properties are located.

IX. Governing Law. This Agreement shall be construed in conformance with the laws of the State of Washington.

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Unofficial Document

Grantor – Ron Margolis	Grantee – Ron Margolis
Grantor – Jeffery Abrams	Grantee – Jeffery Abrams
Grantor – Charlotte Abrams	Grantee – Charlotte Abrams
Grantor – Scott Stafne	Grantee – Scott Stafne
Grantor – Carole Palmer	Grantee – Carole Palmer
Grantor – Todd Stafne of TWIN FALLS, Inc.	Grantee – Todd Stafne of TWIN FALLS, Inc.

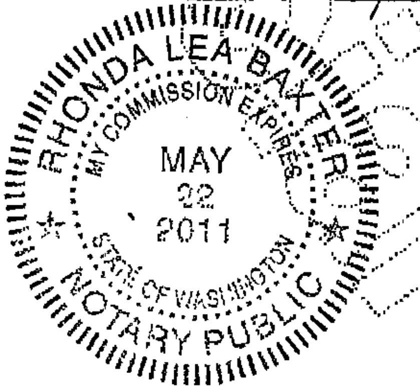
STATE OF WASHINGTON)

ss.

COUNTY OF SNOHOMISH)

I hereby certify that I know of have satisfactory evidence that JEFFERY ABRAMS personally appeared before me, signed this instrument and acknowledged it to be HIS free and voluntary act for the uses and purposes therein mentioned.

DATED this 21 day of April, 2010



NOTARY PUBLIC in and for the State of Washington

residing at Brier, WA

Commission expires: 5/22/2011

Unofficial Document

A 131

WASHINGTON SHORT-FORM INDIVIDUAL ACKNOWLEDGMENT (RCW 42.44.100)

State of Washington
County of King } ss.

I certify that I know or have satisfactory evidence that Charlotte Abrams
Name of Signer

is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: 04/21/2010
Month/Day/Year

[signature]
Signature of Notarizing Officer

Licensed Personal Banker
Title (Such as "Notary Public")

My appointment expires
01/18/2014
Month/Day/Year of Appointment Expiration

Place Notary Seal Above

OPTIONAL

Although the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

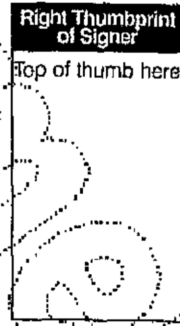
Description of Attached Document

Title or Type of Document: Boundary Line Agreement

Document Date: 04/21/2010 Number of Pages: 2

Signer(s) Other Than Named Above: ______

Right Thumbprint of Signer
Top of thumb here



© 1999 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.NationalNotary.org
Item No. 5906 • Reorder: Call Toll-Free 1-800-876-6827

Grantor – Ron Margolis

Grantee – Ron Margolis

Grantor – Jeffery Abrams.

Grantee – Jeffery Abrams

Grantor – Charlotte Abrams

Grantee – Charlotte Abrams

Grantor – Scott Stafne

Grantee – Scott Stafne

Grantor – Carole Palmer

Grantee – Carole Palmer

Grantor – Todd Stafne
of TWIN FALLS, Inc.

Grantee – Todd Stafne
of TWIN FALLS, Inc.

Unofficial Document

A 133

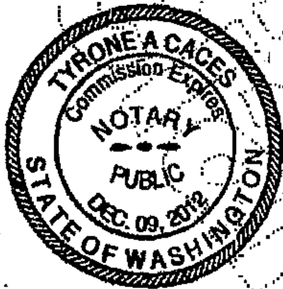
STATE OF WASHINGTON)

ss.

COUNTY OF ~~SNOHOMISH~~) King

I hereby certify that I know of have satisfactory evidence that CAROLE PALMER personally appeared before me, signed this instrument and acknowledged it to be HER free and voluntary act for the uses and purposes therein mentioned.

DATED this 22nd day of April, 2010

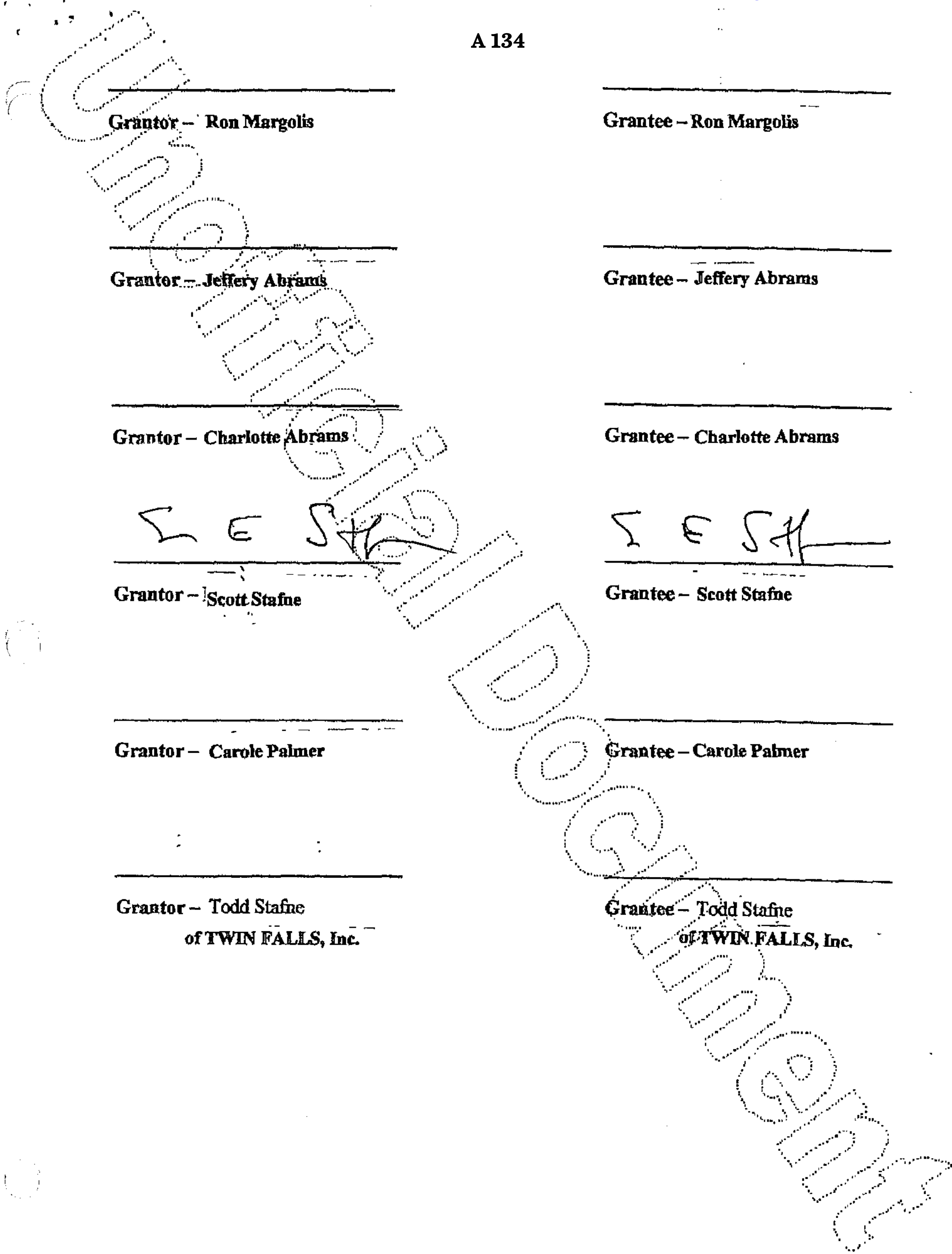


NOTARY PUBLIC in and for the State of Washington

residing at King County

Commission expires: Dec. 09, 2012

Unofficial Document



Grantor – Ron Margolis

Grantee – Ron Margolis

Grantor – Jeffery Abrams

Grantee – Jeffery Abrams

Grantor – Charlotte Abrams

Grantee – Charlotte Abrams

Grantor – Scott Stafne

Grantee – Scott Stafne

Grantor – Carole Palmer

Grantee – Carole Palmer

Grantor – Todd Stafne
of TWIN FALLS, Inc.

Grantee – Todd Stafne
of TWIN FALLS, Inc.

Unofficial Document

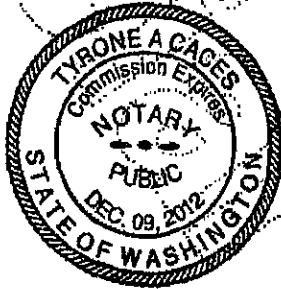
STATE OF WASHINGTON)

ss.

COUNTY OF ~~SNOHOMISH~~) King

I hereby certify that I know of have satisfactory evidence that SCOTT STAFNE personally appeared before me, signed this instrument and acknowledged it to be HIS free and voluntary act for the uses and purposes therein mentioned.

DATED this 22nd day of April, 2010



NOTARY PUBLIC in and for the State of Washington

residing at King County

Commission expires: Dec. 09, 2012

Unofficial Document

A 136

Unofficial Document

Grantor – Ron Margolis

Grantee – Ron Margolis

Grantor – Jeffery Abrams

Grantee – Jeffery Abrams

Grantor – Charlotte Abrams

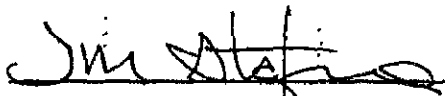
Grantee – Charlotte Abrams

Grantor – Scott Stafne

Grantee – Scott Stafne

Grantor – Carole Palmer

Grantee – Carole Palmer



Grantor – Todd Stafne
of TWIN FALLS, Inc.

Grantee – Todd Stafne
of TWIN FALLS, Inc.

A 137

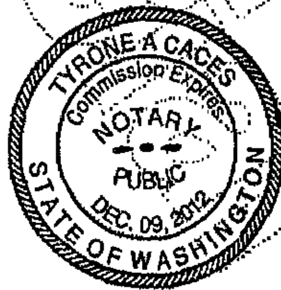
STATE OF WASHINGTON)

ss. TC

COUNTY OF ~~SNOHOMISH~~)
King

I hereby certify that I know of have satisfactory evidence that Todd Stafne personally appeared before me, and said person acknowledged that HE/SHE signed this instrument as grantor/grantee of TWIN FALLS, INC, and acknowledged it to be HIS/HER free and voluntary act for the uses and purposes therein mentioned.

DATED this 22nd day of April, 2010



NOTARY PUBLIC in and for the State of Washington
residing at King County
Commission expires: Dec. 01, 2012

Unofficial Document

A 138

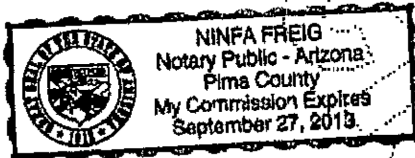
STATE OF ~~WASHINGTON)~~ Arizona

ss.

COUNTY OF ~~SNOHOMISH)~~ Pima

I hereby certify that I know of have satisfactory evidence that RON MARGOLIS personally appeared before me, signed this instrument and acknowledged it to be HIS free and voluntary act for the uses and purposes therein mentioned.

DATED this 22 day of April, 2010



NOTARY PUBLIC in and for the State of ~~Washington~~ Arizona

residing at Arizona

Commission expires: 9/27/2013

Unofficial Document

Grantor – Ron Margolis

Grantee – Ron Margolis

Grantor – Jeffery Abrams

Grantee – Jeffery Abrams

Grantor – Charlotte Abrams

Grantee – Charlotte Abrams

Grantor – Scott Stafne

Grantee – Scott Stafne

Grantor – Carole Palmer

Grantee – Carole Palmer

Grantor – Todd Stafne
of TWIN FALLS, Inc.

Grantee – Todd Stafne
of TWIN FALLS, Inc.

Unofficial Document

APPENDIX 25
A 140

Case No. 2:16-cv-00077
Bank of New York Mellon et al v Scott Stafne; Todd Stafne and Real Time Resolutions Inc.

Declaration of Scott Stafne in Opposition to
Plaintiff's Motion for Summary Judgment Against Todd Stafne

EXHIBIT 12

ELECTRONICALLY RECORDED
201112150008 2
12/15/2011 09:10 AM 15.00
SNOHOMISH COUNTY, WASHINGTON

A 141

201112150008

When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036

This space for Recorder's use

DocID# 7449502053292395

Tax ID: 31062200400400

Property Address:
17207 155TH AVE NE
Arlington, WA 98223
WA0-ADT 15500349 12/12/2011

Recording Requested By:
Bank of America
Prepared By:
Diana DeAvila
888-603-9011
450 E. Boundary St.
Chapin, SC 29036

MIN #: 1000157-0004871975-7 MERS Phone #: 888-679-6377

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is **3300 S.W. 34th Avenue, Suite 101 Ocala, FL 34474** does hereby grant, sell, assign, transfer and convey unto **THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK,AS SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE HOLDERS OF THE SAMI II TRUST 2005-AR2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR2** whose address is **9062 OLD ANNAPOLIS RD, COLUMBIA, MD 21045** all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender:	**COUNTRYWIDE HOME LOANS, INC.**
Made By:	**SCOTT E STAFNE, A SINGLE MAN AS HIS SEPARATE ESTATE**
Original Trustee:	**LANDSAFE TITLE OF WASHINGTON**
Date of Deed of Trust:	**3/9/2005**
Original Loan Amount:	**$800,000.00**

Recorded in **Snohomish County, WA** on: **3/15/2005**, book **N/A**, page **N/A** and instrument number **200503150879**

Property Legal Description:
LOT 11, SURVEY FOR TWIN FALLS, INC., AS RECORDED UNDER RECORDING NO. 200110105002, RE-RECORDED TO CORRECT SURVEY RECORDED UNDER RECORDING NO. 200112575007, RECORDS OF SNOHOMISH COUNTY, BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 22 AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 27 ALL IN TOWNSHIP 31 NORTH, RANGE 6 EAST, W.M.; (ALSO KNOWNS AS LOT 11, THE PLAT OF TWIN FALLS); TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES AS ESTABLISHED BY INSTRUMENT RECORDED UNDER RECORDING NO. 9212160154; SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on DEC 13 2011

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: [signature]
Bud Kamyabi Assistant Secretary

Unofficial Document

A 142

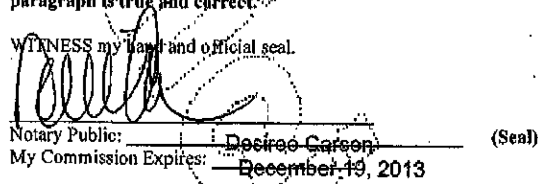
Unofficial Document

State of **California**
County of **Ventura**

On DEC 13 2011 before me, Desiree Carson, Notary Public, personally appeared Bud Kamyabi, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

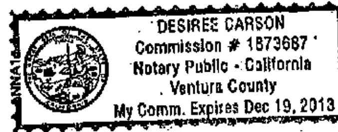
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public: Desiree Carson
My Commission Expires: December 19, 2013

(Seal)



DocID# 7449502053292395

APPENDIX 26
A 143

Case No. 2:16-cv-00077
Bank of New York Mellon et al v Scott Stafne; Todd Stafne and Real Time Resolutions Inc.

Declaration of Scott Stafne in Opposition to
Plaintiff's Motion for Summary Judgment Against Todd Stafne

EXHIBIT 13

A 144

201308160247 2 PGS
08/16/2013 9:42am $15.00
SNOHOMISH COUNTY, WASHINGTON

When recorded mail to:
CoreLogic
Mail Stop: ASGN
1 CoreLogic Drive
Westlake, TX 76262-9823

This space for Recorder's use

DocID# 508950205321908 7

Tax ID: 31062200400400

Property Address:
17207 155TH AVE NE
Arlington, WA 98223
WA0-ADT 26626856 7/29/2013 NSBO610

Recording Requested By:
Bank of America, N.A.
Prepared By:
Marcus Jones
800-444-4302

16001 N. Dallas Pkwy
Addison, TX 75001

ASSIGNMENT OF DEED OF TRUST

For Value Received, Bank of America, N.A. whose address is 1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063 does hereby grant, sell, assign, transfer and convey unto NATIONSTAR MORTGAGE, LLC whose address is 350 HIGHLAND DRIVE, LEWISVILLE, TX 75067 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender:	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC.
Made By:	SCOTT E STAFNE, A SINGLE MAN AS HIS SEPARATE ESTATE
Original Trustee:	LANDSAFE TITLE OF WASHINGTON
Date of Deed of Trust:	3/9/2005
Original Loan Amount:	$800,000.00

Recorded in Snohomish County, WA on: 3/15/2005, book N/A, page N/A and instrument number 200503150879

Property Legal Description:
LOT 11, SURVEY FOR TWIN FALLS, INC., AS RECORDED UNDER RECORDING NO. 200110105002, RE-RECORDED TO CORRECT SURVEY RECORDED UNDER RECORDING NO. 200112575007, RECORDS OF SNOHOMISH COUNTY, BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 22 AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 27 ALL IN TOWNSHIP 31 NORTH, RANGE 6 EAST, W.M.; (ALSO KNOWNS AS LOT 11, THE PLAT OF TWIN FALLS); TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES AS ESTABLISHED BY INSTRUMENT RECORDED UNDER RECORDING NO. 9212160154; SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on 7.31.13

Bank of America, N.A.

By: [signature]

Jonathan K. Alexander
Assistant Vice President

Unofficial Document

State of TX, County of DALLAS

On JUL 3 1 2013, before me, Darla R. Adams, a Notary Public, personally appeared Jonathan K. Alexander, Assistant Vice President of Bank of America, N.A. personally known to me to be the person(s) whose name(s) is/are subscribed to the within document 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 document the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public: Darla R. Adams
My Commission Expires: 10/30/2013

Unofficial Document

DocID# 5089502053219087

APPENDIX 27

A 146

Case No. 2:16-cv-00077
Bank of New York Mellon et al v Scott Stafne; Todd Stafne and Real Time Resolutions Inc.

Declaration of Scott Stafne in Opposition to
Plaintiff's Motion for Summary Judgment Against Todd Stafne

EXHIBIT 14

A 147

When Recorded Return To:
Nationstar Mortgage LLC
C/O Nationwide Title Clearing, Inc.
2100 Alt. 19 North
Palm Harbor, FL 34683

201503030377 1 PG
03/03/2015 9:50am $14.00
SNOHOMISH COUNTY, WASHINGTON

CORPORATE ASSIGNMENT OF DEED OF TRUST

CORRECTIVE GAP ASSIGNMENT: THIS DOCUMENT IS BEING RECORDED TO REMEDY A GAP IN THE RECORDED OWNERSHIP INTEREST SHOWN FOR THE MORTGAGE DATED 03/09/2005 RECORDED 03/15/2005 INS NO 200503150879 -- CONTACT NATIONSTAR MORTGAGE, LLC FOR THIS INSTRUMENT 350 HIGHLAND DRIVE, LEWISVILLE, TX, 75067, TELEPHONE # 469-549-2000, WHICH IS RESPONSIBLE FOR RECEIVING PAYMENTS.

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, **THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR2, WHOSE ADDRESS IS 350 Highland Dr., Lewisville, TX, 75067, (ASSIGNOR),** by these presents does convey, grant, assign, transfer and set over the described Deed of Trust with all interest secured thereby, all liens, and any rights due or to become due thereon to **BANK OF AMERICA, NATIONAL ASSOCIATION, WHOSE ADDRESS IS 9000 SOUTHSIDE BLVD - BLDG 600, JACKSONVILLE, FL 32256-0000, ITS SUCCESSORS AND ASSIGNS, (ASSIGNEE)**

Said Deed of Trust is dated 03/09/2005, and executed by **SCOTT E. STAFNE**, there and with **LANDSAFE TITLE OF WASHINGTON** as Original Trustee, to **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC., ITS SUCCESSORS AND ASSIGNS**, and recorded 03/15/2005, in Auditor File # 200503150879, in the office of the Recorder of SNOHOMISH County, WA. .
LOT 11, SURVEY RECORDING 200111275007 IN SECTION, TOWNSHIP 31 N, RANGE 6 E
Parcel ID #: 31062200400400

IN WITNESS WHEREOF, this Assignment is executed on 2/23/2015 (MM/DD/YYYY).
THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR2, by NATIONSTAR MORTGAGE LLC, its Attorney-in-Fact

By: ______________________
Nadine Homan
Vice President of Loan Documentation
All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

STATE OF FLORIDA COUNTY OF PINELLAS
The foregoing instrument was acknowledged before me on 2/23/2015 (MM/DD/YYYY), by Nadine Homan as Vice President of Loan Documentation of NATIONSTAR MORTGAGE LLC as Attorney-in-Fact for THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR2, who, as such Vice President of Loan Documentation being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

____
Nicole Baldwin
Notary Public - State of FLORIDA
Commission expires: 08/05/2016

Nicole Baldwin
Notary Public State of Florida
My Commission # EE 222285
Expires August 5, 2016

Document Prepared By: E.Lance/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
NSDAV 25613924 *C* -- MULTIPLE DOCR T1815025108 [C-1] FRMWA1

D0009495339

APPENDIX 28

A 148

Case No. 2:16-cv-00077
Bank of New York Mellon et al v Scott Stafne; Todd Stafne and Real Time Resolutions Inc.

Declaration of Scott Stafne in Opposition to
Plaintiff's Motion for Summary Judgment Against Todd Stafne

EXHIBIT 15

A 149

When Recorded Return To:
Nationstar Mortgage LLC
C/O Nationwide Title Clearing, Inc.
2100 Alt. 19 North
Palm Harbor, FL 34683

201503030376 1 PG
03/03/2015 9:50am $14.00
SNOHOMISH COUNTY, WASHINGTON

CORPORATE ASSIGNMENT OF DEED OF TRUST

CONTACT NATIONSTAR MORTGAGE, LLC FOR THIS INSTRUMENT 350 HIGHLAND DRIVE, LEWISVILLE, TX, 75067, TELEPHONE # 469-549-2000, WHICH IS RESPONSIBLE FOR RECEIVING PAYMENTS.

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, **NATIONSTAR MORTGAGE LLC, WHOSE ADDRESS IS 350 HIGHLAND DR., LEWISVILLE, TX, 75067, (ASSIGNOR),** by these presents does convey, grant, assign, transfer and set over the described Deed of Trust with all interest secured thereby, all liens, and any rights due or to become due thereon to **THE BANK OF NEW YORK MELLON, AS TRUSTEE FOR STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-AR2, WHOSE ADDRESS IS C/O 350 HIGHLAND DRIVE, LEWISVILLE, TX 75067, ITS SUCCESSORS AND ASSIGNS, (ASSIGNEE)**

Said Deed of Trust is dated 03/09/2005, and executed by **SCOTT E. STAFNE,** there and with **LANDSAFE TITLE OF WASHINGTON** as Original Trustee, to **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC., ITS SUCCESSORS AND ASSIGNS,** and recorded 03/15/2005, in Auditor File # 200503150879, in the office of the Recorder of SNOHOMISH County, WA. .
LOT 11, SURVEY RECORDING 200111275007 IN SECTION, TOWNSHIP 31 N, RANGE 6 E
Parcel ID #: 31062200400400

IN WITNESS WHEREOF, this Assignment is executed on 2/23/2015 (MM/DD/YYYY).
NATIONSTAR MORTGAGE LLC

By: [signature]
Nadine Homan
Vice President of Loan Documentation

All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

STATE OF FLORIDA COUNTY OF PINELLAS
The foregoing instrument was acknowledged before me on 2/23/2015 (MM/DD/YYYY), by Nadine Homan as Vice President of Loan Documentation of NATIONSTAR MORTGAGE LLC, who, as such Vice President of Loan Documentation being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

[signature]
Nicole Baldwin
Notary Public - State of FLORIDA
Commission expires: 08/05/2016

Nicole Baldwin
Notary Public State of Florida
My Commission # EE 222286
Expires August 5, 2016

Document Prepared By: E.Lance/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
NSDAV 25561638 *C* -- MULTIPLE DOCR T1815025108 [C-1] FRMWA1

D0009495358

Unofficial Document

APPENDIX 29

A 150

Case No. 2:16-cv-00077
Bank of New York Mellon et al v Scott Stafne; Todd Stafne and Real Time Resolutions Inc.

Declaration of Scott Stafne in Opposition to
Plaintiff's Motion for Summary Judgment Against Todd Stafne

EXHIBIT 17

ELECTRONICALLY RECORDED
201607290116 2
07/29/2016 08:28 AM 16.00
SNOHOMISH COUNTY, WASHINGTON

A 151

When Recorded Return To:

Kate Brown
REAL TIME RESOLUTIONS, INC.
PO BOX 36655
Dallas, TX 75235

201607290116

CORPORATE ASSIGNMENT OF DEED OF TRUST

Snohomish, Washington
SELLER'S SERVICING #:124981726 "STAFNE"
SELLER'S LENDER ID#: 430

MIN #: 100133700012025600. SIS #: 1-888-679-6377

Date of Assignment: July 22nd, 2016
Assignor: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE BANK, N.A., ITS SUCCESSORS AND ASSIGNS at P.O BOX 2026, FLINT, MI 48501
Assignee: BANK OF AMERICA, N.A. at 9000 SOUTHSIDE BOULEVARD, JACKSONVILLE, FL 32256

Executed By: SCOTT STAFNE, SINGLE OR UNMARRIED MAN To: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE BANK, N.A., ITS SUCCESSORS AND ASSIGNS
Date of Deed of Trust: 02/01/2006 Recorded: 02/22/2006 in Book/Reel/Liber: N/A Page/Folio: N/A as Instrument No.: 200602220546 In the County of Snohomish, State of Washington.

Property Address: 17207 155TH AVE NE, ARLINGTON, WA 98223

MERS is appointed as the nominee for the Beneficiary to exercise the rights, duties and obligations of the Beneficiary as Beneficiary may from time to time direct, including but not limited to appointing a successor trustee, assigning, or releasing, in whole or in part the Security Instrument, foreclosing or directing the trustee to institute foreclosure of the Security Instrument, or taking such other actions as Beneficiary may deem necessary or appropriate under the Security Instrument.
The Beneficiary designates MERS as the nominee for the Beneficiary and any notice required by applicable law or the Security Instrument to be served on the Beneficiary must also be served on MERS as the designated nominee for Beneficiary.

KNOW ALL MEN BY THESE PRESENTS, that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the said Assignor hereby assigns unto the above-named Assignee, the said Deed of Trust having an original principal sum of $36,638.00 with interest, secured thereby, and the full benefit of all the powers and of all the covenants and provisos therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the Assignor's interest under the Deed of Trust.

TO HAVE AND TO HOLD the said Deed of Trust, and the said property unto the said Assignee forever, subject to the terms contained in said Deed of Trust. IN WITNESS WHEREOF, the assignor has executed these presents the day and year first above written:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE BANK, N.A., ITS SUCCESSORS AND ASSIGNS
On 7/22/16

By: ____________
SHAUNA BOEDEKER, VICE PRESIDENT

Unofficial Document

*KB*KBRELT*07/22/2016 09:17:38 AM* RELT04RELTA000000000000000000040953* WASNOHO* 124981726 WASTATE_TRUST_ASSIGN_ASSN *KB*KBRELT*

A 152

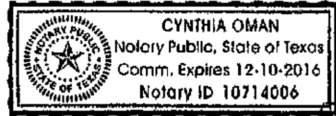
CORPORATE ASSIGNMENT OF DEED OF TRUST Page 2 of 2

STATE OF Texas
COUNTY OF Dallas

On 07-22-16, before me, CYNTHIA OMAN, a Notary Public in and for Dallas in the State of Texas, personally appeared SHAUNA BOEDEKER, VICE PRESIDENT, 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, and that by his/her/their signature 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,

CYNTHIA OMAN
Notary Expires: 12/10/2016



CYNTHIA OMAN
Notary Public, State of Texas
Comm. Expires 12-10-2016
Notary ID 10714006

(This area for notarial seal)

Unofficial Document

*KB*KBRELT*07/22/2016 09:17:38 AM* RELT04RELTA0000000000000000040953* WASNOHO* 124981726 WASTATE_TRUST_ASSIGN_ASSN
*KB*KBRELT*

APPENDIX 30
A 153

Case No. 2:16-cv-00077
Bank of New York Mellon et al v Scott Stafne; Todd Stafne and Real Time Resolutions Inc.

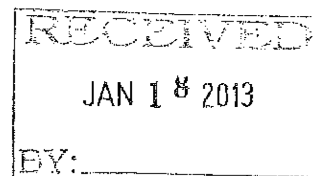
Declaration of Scott Stafne in Opposition to
Plaintiff's Motion for Summary Judgment Against Todd Stafne

EXHIBIT 19

A 154

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE

January 9, 2013



Stafne Law Firm
Attn: Michelle Darnell
293 North Olympic Avenue
Arlington, WA 98223

RE: Loan Number: **1006482377**
Scott E. Stafne
17207 155th Ave. NE
Arlington, WA 98223

Dear Michelle Darnell,

This letter is in response to your client's correspondence dated December 29, 2012 and your correspondence dated December 29, 2012 regarding a validation of debt on the above referenced loan.

As per Scott E. Stafne's request, we have added Stafne Law Firm as an authorized third party on the account. You will be able to receive and/or provide information concerning the above referenced account. This authorization will remain in place until such a time your client calls to cancel the authorization or sends us a written request to remove the authorization.

You have asked for information to validate the mortgage debt. We have enclosed the following documentation for these purposes:

- Copy of the Promissory Note
- Copy of the Deed of Trust
- Name / Signature Affidavit
- Specialized Loan Servicing's Payment History
- Prior Servicer Payment History
- Copies of Property Inspections
- A Payoff Quote

The Note evidences that your client entered into a contractual obligation of debt regarding the loan referenced above.

In your correspondence, you requested information in regard to the original creditor and current holder of your client's mortgage loan. That information is as follows:

Original Creditor:
Countrywide Home Loans, Inc.
4500 Park Granada
Calabasas, CA 91302

Current Creditor and Note holder information:
SAMI 2005-AR2
c/o Specialized Loan Servicing LLC
8742 Lucent Boulevard, Suite 300
Highlands Ranch, CO 80129
Phone: (800) 315-4757

As we are the servicer of the loan on behalf of the current creditor, correspondence regarding this loan will be handled by us.

The Mortgage Electronic Registration System (MERS) system tracks the ownership and the servicing of the security instruments (Deed of Trust or Mortgage) for MERS loans on public record. The MIN number is 1000157-0004871975-7. Please check the MERS website for further information.

As stated above, we have provided a verification of debt, documents related to your client's loan and documents relating to our servicing of their loan. However, in your correspondence, you have requested information that does not pertain to the origination, servicing or validation of your client's loan. Therefore, we have not enclosed other requested documents not related to origination, servicing or validation of the loan.

In compliance with the laws set forth by the state of Washington, enclosed is the following information:

- The loan is currently due for the January 1, 2009 payment.
- The current principal balance is $823,229.05.
- There are no funds held in a suspense account.
- The escrow balance is negative $29,192.50.

If you have any questions regarding this information, please contact Customer Care toll free at 800-315-4757, Monday through Friday, 6:00 a.m. until 6:00 p.m., Mountain Time or TDD 800-268-9419, Monday through Friday, 8:00 a.m. until 5:00 p.m., Mountain Time.

Sincerely,

Melissa ID#11222
Customer Care Support
Specialized Loan Servicing, LLC

Enclosure (s)

BANKRUPTCY NOTICE- IF YOU ARE A CUSTOMER IN BANKRUPTCY OR A CUSTOMER WHO HAS RECEIVED A BANKRUPTCY DISCHARGE OF THIS DEBT: EASE BE ADVISED THAT THIS NOTICE IS TO ADVISE YOU OF THE STATUS OF YOUR MORTGAGE LOAN. THIS NOTICE CONSTITUTES NEITHER A DEMAND R PAYMENT NOR A NOTICE OF PERSONAL LIABILITY TO ANY RECIPIENT HEREOF, WHO MIGHT HAVE RECEIVED A DISCHARGE OF SUCH DEBT IN CCORDANCE WITH APPLICABLE BANKRUPTCY LAWS OR WHO MIGHT BE SUBJECT TO THE AUTOMATIC STAY OF SECTION 362 OF THE UNITED STATES ANKRUPTCY CODE. HOWEVER, IT MAY BE A NOTICE OF POSSIBLE ENFORCEMENT OF THE LIEN AGAINST THE COLLATERAL PROPERTY, WHICH HAS NOT EN DISCHARGED IN YOUR BANKRUPTCY. IF YOU HAVE ANY QUESTIONS PLEASE CONTACT OUR CUSTOMER CARE CENTER AT 800-306-6057.

8742 Lucent Blvd, Suite 300, Highlands Ranch, Colorado 80129
Direct 800-315-4757 Fax 720-241-7218

APPENDIX 31
A 156

1 THE HONORABLE THOMAS S. ZILLY

2
3
4
5
6
7

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8
9
10
11
12
13

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-AR2, PLAINTIFF, v. SCOTT STAFNE, an individual; TODD STAFNE, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation, DEFENDANTS.	CASE NO. 2:16-cv-00077-TSZ CYNDEE RAE ESTRADA'S DECLARATION IN SUPPORT OF STAFNE'S REPLY TO DAVIS, WRIGHT TREMAIN'S OPPOSITION TO STAFNE'S 2ND FRCP 12(b)(1) MOTION

14
15
16
17
18
19
20
21
22
23
24

DECLARATION

25 I, Cyndee Rae Estrada, declare as follows:

26

STAFNE LAW FIRM
239 NORTH OLYMPIC AVENUE
ARLINGTON, WA 98223
TEL. 360.403.8700 /FAX 360.386.4005

1
2 2. I am over the age of 18 and competent to testify in a court of law.
3
Background
4 3. I am a licensed loan officer and have been a loan officer for over fifteen years and licensed
5 since 2009. I have been a certified forensic auditor since 2011. I am a Notary Public and have
6 been a Certified Housing Councilor since 2004. I am familiar with originating a Loan and all of
7 the Loan documents. I am familiar with the funding of a Loan and the servicing of a Loan. I
8 have been an underwriter and a loan closer in the funding department of my mortgage broker. I
am a Trusted Advisor to Fannie Mae. I participate in on-going training seminars with Fannie
9 Mae. I was certified as a housing counselor in 2004 and worked hand-in-hand with Fannie Mae
10 for the past eleven years. I am familiar with the manner and procedure by which the records of
11 mortgage companies are obtained, prepared and maintained. I have been called upon to testify in
12 court in over 40 cases as an expert in mortgage compliance and as a rebuttal witness. I am a
consultant and witness for the Sandra Day O'Connor School of Law Arizona State University.
13
14 4. In my work as housing counselor I am required to work with mortgage loan servicers and
15 trustees of mortgage backed securities (MBS) securitized trusts.
16
17 5. I have frequently been involved in situations where I wanted to obtain a modification with
18 regards to loans where I was told that BNY Mellon, with I understand to mean The Bank of New
York Mellon's mortgage back securities management group were BNY Mellon was said to be
19 acting as the trustee for the investors in a securitized trust.
20
21 6. When I am told that BNY Mellon is acting as the trustee for a securitized trust, I will confirm
22 that information by contacting BNY Mellon directly through their Property Inquires department.
Assessment
23 7. Pursuant to Mr. Stafne's request that I do so, I requested information as to whether BNY
24 Mellon had any ownership interest as trustee in any trust that includes the property 17207 155th
25 Ave N.E., Arlington, WA 98223.
26
8. The response to my request is attached as Exhibit 1.

STAFNE LAW FIRM
239 NORTH OLYMPIC AVENUE
ARLINGTON, WA 98223
TEL. 360.403.8700 /FAX 360.386.4005

1
2 9. I have attached hereto a copy of my curriculum vitae as Exhibit 2.
3
4 10. I have attached hereto as Exhibit 3 a copy of my various certifications relating to my
5 expertise as a housing counselor.
6 11. It is my understanding that BNY Mellon maintains "BNY Mellon Property Inquiries" as a
7 means whereby investors and others can confirm if there is actual ownership of specific
8 properties in any and all trusts with regard to which BYN Mellon acts as a trustee.
9
10 12. It is surprising to me how many times servicers claim that a mortgage loan is owned by
BNY Mellon as a trustee of a securitized trust has been outright contradicted by BNY Mellon
11 Property Inquiries.

12 Conclusion

13
14 For the above reasons, all of the Plaintiff's statements, arguments, declarations and affidavits
should be stricken from these proceedings, as they have failed at all instances, to provide proof
15 of standing.
16
17 I hereby declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct.
18
19 Executed July 21st, 2016, at Phoenix (City) Arizona (State).
20
21 By: Cyndee Rae Estrada
Name: Cyndee Rae Estrada, Expert Witness
22
23
24
25
26

STAFNE LAW FIRM
239 NORTH OLYMPIC AVENUE
ARLINGTON, WA 98223
TEL. 360.403.8700 /FAX 360.386.4005

Case No. 2:16-cv-00077
Bank of New York Mellon et al v Scott Stafne; Todd Stafne and Real Time Resolutions Inc.

DECLARATION OF CYNDEE RAE ESTRADA

EXHIBIT 1

Re: 17207 155th Ave NE, Arlington, WA 98223

From: [redacted].com on behalf of [redacted]Inquiries@BNYMellon[redacted]
Sent: Fri 7/15/16 6:26 AM
To: Corporate Capital and Consulting (corpcapital@hotmail.com)

Thank you for your recent correspondence.

After researching our database, we do not show any records of the address(es) listed in your email. If you have documents showing we are the Trustee, please send it to this mailbox so it can be researched further. All applicable documents should be sent to me via email. However, please note that BNY Mellon is solely the trustee and any property preservation, release, assignment, etc. would be handled by the applicable servicer. If you know the applicable servicer, please contact them directly. If not, please send any documentation you have showing BNY Mellon as trustee so that we can direct your email to the appropriate party.

Thank you for contacting BNY Mellon.

BNY Mellon Property Inquiries
Global Corporate Trust - Mortgage Backed Securities • Phone 800.269.6776

17207 155th Ave NE, Arlington, WA 98223

Corporate Capital and Consulting to: Bank of New York Mellon 07/14/2016 03:39 PM

Gentlemen:

Please provide me the information regarding my property at the above address.

I have requested correspondence directly with you, the owners of my property, to resolve issues of modification and repayment. I was told you would know what to send me for the resolution of my challenges.

Thank you in advance!

Scot Erik
ScotErik@aol.com

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2,

Plaintiff,

v.

SCOTT STAFNE, an individual; Todd Stafne, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation,

Defendants.

No. 2:16-cv-00077 TSZ

PLAINTIFF'S OPPOSITION TO STAFNE'S SECOND MOTION TO DISMISS

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
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TABLE OF CONTENTS

Page(s)

I. INTRODUCTION AND SUMMARY OF ARGUMENT 2

II. ARGUMENT 2

A. Standard of Review 2

B. Stafne's Motion is Better Addressed in the Context of the Pending Motions. 3

C. Stafne's Declaration Does Not Support His Motion and Is Fictitious 4

III. CONCLUSION 6

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Defendant Scott Stafne's Second Motion to Dismiss duplicates his pending Motion to Prove Authority and implicates Plaintiff's pending Motion to Substitute. This motion is a waste of the parties' and the Court's resources. The Court should deny Stafne's Motion because the issues therein are already addressed in motions already pending before the Court. Specifically:

First, Stafne's first "issue" implicates Plaintiff BNYM's standing to bring this action against Stafne. Plaintiff has already filed a Motion to Substitute, which is fully briefed and pending before this Court. Dkts. 36 - 39-7. Additionally, The Bank of New York Mellon ("BONY") has ratified BNYM's ability to bring this action on its behalf. *See* Dkt. 39, Fay Janati Decl., ¶ 12. Stafne's Second Motion to Dismiss adds nothing to the current briefing.

Second, Stafne's second "issue" implicates DWT's ability to represent the Plaintiff in this action. Stafne has already filed a Motion to Prove Authority, which is fully briefed and pending before this Court. Dkts. 28 - 29-7, 32-34. Again, Stafne's Second Motion to Dismiss adds nothing to the current briefing.

Third, Stafne's third "issue" challenges Nationstar's authority to act as attorney of fact for BNYM and bring this action. This issue ***again*** implicates BNYM's standing to bring this action against Stafne, which ***again*** is an issue pending before this Court in Plaintiff's Motion to Substitute, Dkt. 36, and ***again*** has been ratified by BONY, Dkt. 39, ¶ 12. (In any event, as noted in prior briefing, Nationstar has received annual Powers of Attorney, and attached hereto as Exhibit 1 is a copy of the intervening period between August 2015 and June 2016.)

II. ARGUMENT

A. Standard of Review

Under a Rule 12(b)(1) motion to dismiss, the Court assumes the material facts alleged in the complaint are true. *Savage v. Glendale Union High Sch., Dist. No. 205, Maricopa Cty.*, 343 F.3d 1036, 1039 n.1 (9th Cir. 2003); *Orsay v. United States Dep't of Justice*, 289 F.3d 1125, 1127 (9th Cir. 2002); *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) ("the plaintiff's

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1 factual allegations will ordinarily be accepted as true unless challenged by the defendant"
2 (citing 5C Charles Alan Wright & Arthur R. Miller, *Federal Prac. & Procedure* § 1363, at 107
3 (3d ed. 2004))). Plaintiff bears the burden of proving by a preponderance of the evidence that
4 each of the requirements for subject-matter jurisdiction has been met. *Leite*, 749 F.3d at 1121.

5 **B. Stafne's Motion is Better Addressed in the Context of the Pending Motions.**

6 Stafne's Second Motion to Dismiss was filed June 30, 2016 and has a noting date of
7 July 22, 2016. *See* Dkt. 42. In contrast, Stafne's Motion to Prove Authority was filed June 2,
8 2016, and is fully briefed before this Court, with a noting date of June 17, 2016. Dkts. 28 - 29-
9 7, 32-34. Likewise, Plaintiff's Motion to Substitute was filed June 24, 2016, and is fully
10 briefed before this Court, with a noting date of July 15, 2016. Dkts. 36 - 39-7.

11 Stafne alleges that he does not intend to duplicate the above motions, *see* Mot. at 9, but
12 then proceeds to quote Plaintiff's Motion to Substitute at length and argues DWT does not have
13 authority to act as attorneys for Plaintiff. *Id.* at 9-10; *see also id.* at 11 ("In summary, DWT's
14 motion to substitute parties … demonstrate[s] that these attorneys at law who actually
15 represented only Nationstar had no contact with BONY or BNYM or any of their affiliates or
16 related entities before suing Stafne."). In particular, Stafne goes on to question Nationstar's
17 POA (a new version of which was attached to the Janati Decl., *see* Dkt. 39, Ex. A, and an
18 intervening POA is attached hereto), and to argue that because Nationstar is an independent
19 contractor under the POA it cannot retain DWT on behalf of the Trust. *Id.* at 12-13. Stafne
20 argues the POA only gives Nationstar … the power to foreclose; not the power to invoke this
21 Court's diversity jurisdiction pursuant to 28 USC 1332." Mot. at 13; *id.* at 14.

22 Stafne's argument is nonsensical and not supported in law or fact. Worse, these
23 arguments are duplicative of the briefings already before the Court. Stafne does not articulate a
24 basis for why diversity jurisdiction allegedly does not exist, nor can he. Similarly, he does not
25 allege how either Nationstar or DWT could have manipulated diversity jurisdiction. As
26 detailed in Plaintiff's Motion to Substitute, both BNYM and BONY are diverse from all
27

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1 defendants and the amount in controversy exceeds $75,000. And as also noted in Plaintiff's
2 Motion to Substitute, an attorney-in-fact cannot file a lawsuit in its own name. Dkt. 36 at 8 n.4
3 (*citing Choi v. Kim*, 50 F.3d 244, 247 (3d Cir. 1995); *Nat'l Ins. Underwriters, by Nat. Aviation*
4 *Underwriters v. Mark*, 704 F. Supp. 1033, 1035 (D. Colo. 1989)).

5 **C. Stafne's Declaration Does Not Support His Motion and Is Fictitious.**

6 It is unclear why Stafne filed a declaration in support of his Second Motion to Dismiss
7 when its only purpose was to accuse Burnside of taking "advantage of [his] diabetic condition"
8 by conducting Mr. Stafne's deposition that went longer than scheduled. Dkt. 43 ¶ 4. This
9 assertion is false.

10 ***First***, Stafne had multiple opportunities throughout his deposition to take a break and
11 the deposition was concluded as soon as Burnside became aware of Stafne's diabetic condition:

12 Q. (By Mr. Burnside) We've been at it for almost an hour, if you want to break
13 now, otherwise I've got --
A. No, I can go on. I want to give you as much time as possible unless I have
14 to go to the bathroom.
Q. Understood. I appreciate that.
15
Declaration of Fred Burnside, Ex. A at 41:9-14.
16
17 Q. I'm sort of at a natural breaking point right now if you want to take a break,
otherwise I can dive into the next substantive areas of inquiry, whatever you
18 prefer.
A. Let's dive in.
19 MS. BUGAIGHIS: Could I take a break though?
THE WITNESS: Then I'll take one too.
20 (Recess 2:06 p.m. to 2:17 p.m.)

21 *Id.* at 55:20-56:2.

22 Q. MR. BURNSIDE: Sure. Do you want to take a break now?
23 A. THE WITNESS: If you don't mind.
Q. MR. BURNSIDE: Go for it.
24 (Recess 4:20 p.m. to 4:26 p.m.)

25 *Id.* at 147:24-148:3.

26 Q. (By Mr. Burnside) Showing you what's been marked as Exhibit 14.
27

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A. I can't believe that that was accepted. Fred, you know, I'm wondering, what time is it?
Q. It's 5:00 o'clock.
A. I'm happy to go longer. I think I want to stop. This is really kind of --
Q. Eye opening?
A. Well, emotionally. I was able to just go on and not even notice my emotions, which I usually can do. But this makes a whole big difference in how I'm looking at this.
Q. Well, let me ask you this.
A. And I'm happy to come back and do this again.
Q. We can suspend the deposition and resume it later --
A. Sure.
Q. -- with the idea that it's not complete, we're not saying it's over.
A. Yeah, I know.
Q. Do you have time to go through just a couple more documents?
A. Sure. And especially those you think might help me better understand what has happened.

Id. at 179:7-180:8

MS. FALLGATTER: Can we take a break so I can make a call or two?
MR. BURNSIDE: Sure.
(Recess 5:11 p.m. to 5:14 p.m.)

Id. at 184:14-17.

MS. FALLGATTER: Can we go off the record for a second.
MR. BURNSIDE: Yes.
(Discussion off the record.)
MR. BURNSIDE: We are suspending the deposition as a result of it's 6:10 and Mr. Stafne has some diabetes related issues that require him to take a break and get some food in him, to make him feel better. And we're going to resume the deposition at a subsequent date that works for both of us. And I will communicate with Mr. Stafne in advance to coordinate that and any documents that might be needed.
(Signature reserved.)
(Deposition adjourned at 6:12 p.m.)

Id. at 222:23-223:11.

Second, Stafne admitted he should have stopped the deposition of his own volition earlier. The day after Stafne's deposition, Stafne sent an email to Burnside stating that he "should have stopped the deposition at 5:00 pm" and that "my brother and his counsel found

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you charming and questioned the language of my blog [referring to you as loathsome and soulless.]" Burnside Decl., Ex. B.

Thus, Stafne manufactured his assertion that Burnside of took "advantage of [his] diabetic condition."

III. CONCLUSION

For the foregoing reasons, the Court should deny Stafne's Second Motion to Dismiss.

DATED this 18th day of July, 2016.

Davis Wright Tremaine LLP
Attorneys for Plaintiff

By *s/ Zana Z. Bugaighis*
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E-mail: fredburnside@dwt.com
E-mail: zanabugaighis@dwt.com

EXHIBIT 1

AFTER RECORDING RETURN TO
ATTN: POA
4000 Horizon Way
Irving, TX 75063

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, **THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK as successor in interest to JP Morgan Chase Bank, N.A.** having an office at 101 Barclay Street, NYC, NY 10286 (the "Bank"), hereby appoint **Nationstar Mortgage LLC**, to be the Bank's true and lawful Attorneys-in-Fact (the "Attorneys") to act in the name, and on behalf, of the Bank with power to do only the following in connection with the trusts included on **Schedule A**, on behalf of the Bank:

1. The modification or re-recording of a Mortgage or Deed of Trust, where said modification or re-recordings is for the purpose of correcting the Mortgage or Deed of Trust to conform same to the original intent of the parties thereto or to correct title errors discovered after such title insurance was issued and said modification or re-recording, in either instance, does not adversely affect the lien of the Mortgage or Deed of Trust as insured.

2. The subordination of the lien of a Mortgage or Deed of Trust to an easement in favor of a public utility company of a government agency or unit with powers of eminent domain; this section shall include, without limitation, the execution of partial satisfactions/releases, partial reconveyances or the execution or requests to trustees to accomplish same.

3. The conveyance of the properties to the mortgage insurer, or the closing of the title to the property to be acquired as real estate owned, or conveyance of title to real estate owned.

4. The completion of loan assumption agreements and modification agreements.

5. The full or partial satisfaction/release of a Mortgage or Deed of Trust or full conveyance upon payment and discharge of all sums secured thereby, including, without limitation, cancellation of the related Mortgage Note.

6. The assignment of any Mortgage or Deed of Trust and the related Mortgage Note, in connection with the repurchase of the mortgage loan secured and evidenced thereby.

7. The full assignment of a Mortgage or Deed of Trust upon payment and discharge of all sums secured thereby in conjunction with the refinancing thereof, including, without limitation, the assignment of the related Mortgage Note.

8. With respect to a Mortgage or Deed of Trust, the foreclosure, the taking of a deed in lieu of foreclosure, or the completion of judicial or non-judicial foreclosure or termination, cancellation or recession of
termination, cancellation or rescission of any such foreclosure, including, without limitation, any and all of the following acts:

   a. the substitution of trustee(s) serving under a Deed of Trust, in accordance with state law and the Deed of Trust;

   b. the preparation and issuance of statements of breach or non-performance;

   c. the preparation and filing of notices of default and/or notices of sale;

   d. the cancellation/rescission of notices of default and/or notices of sale;

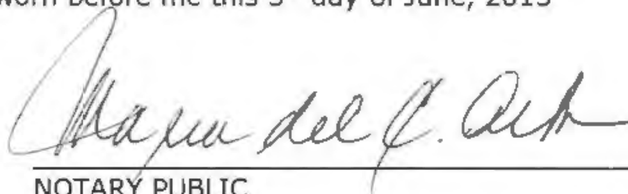
ACKNOWLEDGEMENT

STATE OF NEW YORK §

COUNTY OF QUEENS §

On the 5th day of June in the year 2015 before me, the undersigned, personally appeared Loretta A. Lundberg and Gavin Tsang, known to be or proved to me on the basis of satisfactory evidence to be the Managing Director and Vice President, respectively of The Bank of New York Mellon, as Trustee and acknowledged that they executed the same as their free act and deed and the free act and deed of the Trustee.

Subscribed and sworn before me this 5th day of June, 2015



NOTARY PUBLIC
My Commission expires

MARIA DEL C. AITA
Notary Public, State of New York
No. 01AI6278271
Qualified in Queens County
Commission Expires March 25, 2017

e. the taking of a deed in lieu of foreclosure; and

f. the preparation and execution of such other documents and performance of such other actions as may be necessary under the terms of the Mortgage, Deed of Trust or state law to expeditiously complete said transactions in paragraphs 8.a. through 8.e., above; and

9. to execute any other documents referred to in the above-mentioned documents or that are ancillary or related thereto or contemplated by the provisions thereof; and

to do all things necessary or expedient to give effect to the aforesaid documents including, but not limited to, completing any blanks therein, making any amendments, alterations and additions thereto, to endorse which may be considered necessary by the Attorney, to endorse on behalf of the Trustee all checks, drafts and/or negotiable instruments made payable to the Trustee in respect of the documents, and executing such other documents as may be considered by the Attorney necessary for such purposes.

The relationship of the Bank and the Attorney under this Power of Attorney is intended by the parties to be that of an independent contractor and not that of a joint venturer, partner, or agent.

This Power of Attorney is effective for one (1) year from the date hereof or the earlier of (i) revocation by the Bank, (ii) the Attorney shall no longer be retained on behalf of the Bank or an affiliate of the Bank; or (iii) the expiration of one year from the date of execution.

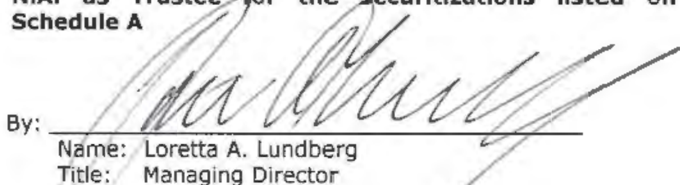
The authority granted to the Attorney by the Power of Attorney is not transferable to any other party or entity.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to its conflicts of law principles.

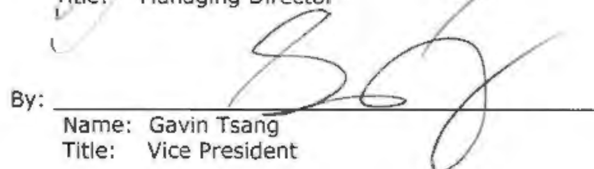
All actions heretofore taken by said Attorney, which the Attorney could properly have taken pursuant to this Power of Attorney, be, and hereby are, ratified and affirmed.

IN WITNESS WHEREOF, The Bank of New York Mellon f/k/a The Bank of New York successor in interest to JPMorgan Chase Bank, National Association as Trustee pursuant to the Pooling and Servicing Agreements listed on Schedule A hereto attached and these present to be signed and acknowledged in its name and behalf by Loretta A. Lundberg and Gavin Tsang its duly elected and authorized Managing Director and Vice President this 5th day of June, 2015.

The Bank of New York Mellon, f/k/a The Bank of New York, successor in interest to JPMorgan Chase Bank, N.A. as Trustee for the securitizations listed on Schedule A

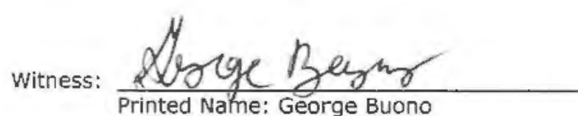


By: ____________________
Name: Loretta A. Lundberg
Title: Managing Director



By: ____________________
Name: Gavin Tsang
Title: Vice President

Witness: ____________________
Printed Name: Edward Cofie



Witness: ____________________
Printed Name: George Buono

SCHEDULE A

BSABS 2006-SD1	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE BEAR STEARNS ASSET BACKED SECURITIES TRUST, ASSET-BACKED CERTIFICATES, SERIES 2006-SD1
BSABS 2004-SD1	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE BEAR STEARNS ASSET BACKED SECURITIES TRUST, ASSET-BACKED CERTIFICATES, SERIES 2004-SD1
BSABS 2005-SD3	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE BEAR STEARNS ASSET BACKED SECURITIES TRUST, ASSET-BACKED CERTIFICATES, SERIES 2005-SD3
BSABS 2003-SD2	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE BEAR STEARNS ASSET BACKED SECURITIES TRUST, ASSET-BACKED CERTIFICATES, SERIES 2003-SD2
BSABS 2003-SD3	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE BEAR STEARNS ASSET BACKED SECURITIES TRUST, ASSET-BACKED CERTIFICATES, SERIES 2003-SD3
BSABS 2004-SD2	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE BEAR STEARNS ASSET BACKED SECURITIES TRUST, ASSET-BACKED CERTIFICATES, SERIES 2004-SD2
BSARM 2002-11	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., FKA BANK ONE, NATIONAL ASSOCIATION AS TRUSTEE FOR THE BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2002-11
BSARM 2003-1	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., FKA BANK ONE, NATIONAL ASSOCIATION AS TRUSTEE FOR THE BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2003-1
BSARM 2003-3	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., FKA BANK ONE, NATIONAL ASSOCIATION AS TRUSTEE FOR THE BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2003-3

BSARM 2003-4	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., FKA BANK ONE, NATIONAL ASSOCIATION AS TRUSTEE FOR THE BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2003-4
BSARM 2003-5	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., FKA BANK ONE, NATIONAL ASSOCIATION AS TRUSTEE FOR THE BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2003-5
BSARM 2003-6	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., FKA BANK ONE, NATIONAL ASSOCIATION AS TRUSTEE FOR THE BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2003-6
BSARM 2003-8	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., FKA BANK ONE, NATIONAL ASSOCIATION AS TRUSTEE FOR THE BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2003-8
BALTA 2006-1	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-1
BALTA 2004-4	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-4
BALTA 2004-12	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-12
BALTA 2003-6	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2003-6

BALTA 2004-10	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-10
BALTA 2004-11	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-11
BALTA 2004-2	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-2
BALTA 2004-5	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-5
BALTA 2004-7	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-7
BALTA 2004-8	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-8.
BALTA 2004-9	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-9
BALTA 2005-2	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-2

BALTA 2005-7	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-7
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BALTA 2006-1	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-1
BALTA 2006-2	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-2
SAMI 2003-AR1	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2003-AR1
SAMI 2003-AR4	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2003-AR4
SAMI 2004-AR2	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-AR2
SAMI 2004-AR3	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-AR3

SAMI 2004-AR4	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-AR4
SAMI 2004-AR5	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-AR5
SAMI 2004-AR6	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-AR6
SAMI 2004-AR7	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-AR7
SAMI 2004-AR8	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-AR8
SAMI 2005-AR1	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR1
SAMI 2005-AR2	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR2
SAMI 2005-AR4	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR4
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SAMI 2005-AR7	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR7
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SAMI 2006-AR3	THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-AR3
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APPENDIX 34
A 178

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-AR2, PLAINTIFF, v. SCOTT STAFNE, an individual; TODD STAFNE, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation, DEFENDANTS.	CASE NO. 2:16-cv-00077-TSZ DEFENDANT SCOTT STAFNE'S DECLARATION IN SUPPORT OF HIS RESPONSE TO PLAINTIFF'S MOTIONS TO SUBSTITUTE PARTIES PURSUANT TO REAL PARTY IN INTEREST PURSUANT TO FED. R. CIV. P. 17(a)(3) AND TO COMPEL DISCOVERY NOTED: July 15, 2016

DECLARATION

1. My Name is Scott Erik Stafne. I am over the age of majority and competent to give this declaration.

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A 179

2. I am an attorney licensed to practice law before this Court. I am also a defendant and counterclaimant in this action. I make this affidavit on the basis of personal knowledge as more fully appears herein.

3. I also make this declaration in my capacity as an attorney and invoke all those rights attorneys customarily have to make declarations and present evidence on behalf of their clients, notwithstanding that I am appearing *pro se*.

4. Further, it is my intent to testify as an expert where appropriate pursuant to FRE 702, 703, and 704 based on my knowledge, skill, experience, training, and education as will be more fully developed herein.

5. The purpose of this declaration is to provide testimony and evidence responsive to Davis Wright Tremaine, LLC's (DWT) motions (1) "to substitute real party in interest pursuant to Fed. R. Civ. Pro. 17(a)(3)", Dkt. 36 (Motion to Substitute), and (2) "to compel discovery." Dkt. 40 (Motion to Compel).

6. I am filing one declaration in response to both the Motion to Substitute and the Motion to Compel. My refusal to provide discovery is based on DWT's Motion to Substitute and supporting documents, which contain judicial admissions that it does not represent the Plaintiff identified in the Complaint as "Bank of New York Mellon, a Delaware corporation." Further, that the purported plaintiff entity identified as "Bank of New York Mellon, a Delaware corporation" in the Complaint does not own or have any interest in the stale loan DWT has filed the instant Complaint to enforce.

7. Given this Court's order establishing a trial schedule (Dkt. 23) (which precludes either side from adding parties or amending their pleadings at this point) and DWT's admission that the present purported plaintiff has no standing to invoke this Court's jurisdiction I am hesitant to continue to make discovery. This reluctance stems from

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A 180

1 my belief that this case has been brought against me by lawyers who have an animus
2 against me because of my representation of homeowners. It is my belief that the
3 Constitution does not support federal courts being used as instrumentalities of abuse
4 by lawyers, who have no client, or have managed to solicit one, who has similar
5 interests, in attacking a lawyer based on a stale debt they have been able to acquire.

6 8. I will first testify about the evidence which shows that I have at all times contested the
7 standing and real party in interest status of the purported plaintiff "Bank of New York
8 Mellon, a Delaware corporation." I will establish this because DWT claims in the
9 Motion to Substitute" that June 2, 2016 was the first time they first had notice that the
10 "Bank of New York Mellon, a Delaware corporation" was not the real party in
11 interest. Dkt 36, 38.

12 9. DWT should have learned from its client that "Bank of New York Mellon, a Delaware
13 corporation" was not the name of any "BNY Mellon" entity during its Rule 11
14 investigation of those facts necessary to prepare the complaint. For purposes of this
15 declaration I define "BNY Mellon in the same way as does Mr. Burnside in his
16 declaration in support of the Motion to Substitute. (Dkt 36) "BNY Mellon" means:
17 "The Bank of New York Mellon and all of its consolidated subsidiaries."

18 10. I base my opinion set forth in the preceding paragraph on my experience, education,
19 and training, which includes practicing law in federal and state courts since 1974. In
20 the last four or five years I have actively been involved in representing debtors and
21 borrowers, frequently in foreclosure litigation. This latter experience reinforces my
22 opinion that DWT as a law firm purporting to represent a creditor seeking to enforce a
23 debt should have identified the proper name of the plaintiff it was representing before
24 filing a complaint as this is required by the FDCPA.

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7. Mr. Burnside's description of the actions he took to verify that "Bank of New York Mellon, a Delaware corporation" had standing and was the real party in interest for purposes of preparing and filing this lawsuit (Dkt 38) reveal that he had no contact and did not seek access to "Bank of New York Mellon, a Delaware corporation" before preparing and filing this litigation against me on January 29, 2016 after the statute of limitations on the note and/or deed of trust had expired. Had he attempted to contact such an entity he would have learned it did not exist or have discovered its true name.

11. DWT filed a CORPORATE DISCLOSURE STATEMENT on January 26, 2016 which stated:

> Pursuant to Fed. R. Civ. P. 7.1,[[1]] Plaintiff New York Mellon Co., as trustee for Structured Asset Mortgage Investments II Trust, Mortgage pass-through Certificates Series 2005-AR2, makes this Corporate Disclosure Statement.
>
> The Bank of New York Mellon, a Delaware corporation, is a publicly held company. No corporations own 10% or more of its stock.

Dkt. 3, 1:18-22.

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[1] This federal rule states:

(a) Who Must File; Contents. A nongovernmental corporate party must file 2 copies of a disclosure statement that:
(1) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or
(2) states that there is no such corporation.

(b) Time to File; Supplemental Filing. A party must:
(1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and
(2) promptly file a supplemental statement if any required information changes.

LCR 7.1 states:

(a) Who Must File; Copies
Any nongovernmental party, other than an individual or sole proprietorship, must file a corporate disclosure statement identifying:
(1) any parent corporation and any publicly held corporation owning more than 10% of its stock;
(2) any member or owner in a joint venture or limited liability corporation (LLC);
(3) all partners in a partnership or limited liability partnership (LLP); or
(4) any corporate member, if the party is any other unincorporated association
If there is no parent, shareholder, member, or partner to list in response to items (1) through (4), a corporate disclosure statement must still be filed stating that no such entity exists.

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12. The following description of the proceedings before this Court are intended to show the Court that I notified DWT early on that "Bank of New York Mellon, a Delaware corporation" did not have standing or any real party in interest status to bring this lawsuit. Further this description is intended to show some of the prejudice that I endured because DWT failed to obtain information about the actual name of the plaintiff for whom it was purporting to appear.

13. On January 29, 2016, this Court filed an Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement. The Order directs that a report be submitted to this Court by March 29, 2016. Dkt. 7. This Order required counsel to confer together to produce a report by March 29, 2016 which "must contain" among other things "1. A statement of the nature and complexity of the case. 2. A proposed deadline for joining additional parties". *Id.*, p. 2.

14. On February 29, 2016, I filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. Dkt 11. In this motion I argue "Bank of New York Mellon, a Delaware corporation" has not adequately alleged its own citizenship to establish the existence of diversity jurisdiction. Dkt. 7:13-9:4.

15. On March 12, 2016, DWT filed a response to my motion to dismiss. Dkt 12. In that response DWT argued that BONY is not the trustee of the SAMI trust:

> On September 15, 2006, the Office of the Comptroller of the Currency approved Chase's sale of its trustee operations for securitized trusts to Bank of New York, a wholly owned subsidiary of Bank of New York Mellon Corporation. After October 1, 2006, Chase was no longer trustee or the holder of Stafne's Note. Compl. ¶ 3.4. Bank of New York Mellon Corporation—Plaintiff here—then assumed the role of trustee of the SAMI Trust and Nationstar, as its attorney-in-fact, indorsed the Note to Bank of New York Mellon as successor to JPMorgan in its capacity as trustee for the SAMI Trust. See Compl. ¶ 3.4 & Attach. A at 4 (***indorsement to Bank of New York Mellon, as successor trustee, but not as BONY Trust***). BNYM's main office, headquarters, and principal place of business are in New York. Id. ¶ 1.1.

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1 Dkt. 12, 2:13-21 (emphasis supplied).

2 22. The argument DWT made above in order to convince this Court that Bank of New
3 York Mellon, a Delaware corporation, had standing and was a real party in interest is
4 admitted to be false by DWT in its motion to substitute. Dkt. 36. There DWT
5 concedes:

6 > BNYM now seeks to substitute BONY as Plaintiff under Rule 17(a)(3),
7 > because although BONY is wholly owned by BNYM, further
> investigation into the statements in Stafne's June 2, 2016, declaration
8 > confirms that it is the New York, rather than Delaware, corporation that
> is the Bank of New York corporation that acts as Trustee for the Trust
9 > owning Stafne's loan (the Structured Asset Mortgage Investments II
10 > Trust, Mortgage Pass-Through Certificates Series 2005-AR2 ("SAMI
> Trust")).

11

12 Dkt. 36, p. 1:25-2:3.

13 23. Notwithstanding that this Court had not ruled on my Motion to Dismiss, for lack of
14 subject matter jurisdiction, (and well before DWT moved to substitute parties) DWT,
15 counsel for my brother, Todd, and I filed a joint status report on March 29, 2016
16 (Dkt. 17). In that report, DWT stated: "this is an exceedingly simple case…Plaintiff
17 Bank of New York Mellon now seeks to foreclose on the Deed of Trust securing the
18 Note". *Id*. 1:25-2:2. Further, DWT asserted: "plaintiff does not anticipate the need to
19 add additional parties. Plaintiff proposes April 29, 2016 as the deadline for adding
20 additional parties." *Id*. 5:12-13 .

21

22 24. I proposed that if the Court assumed jurisdiction over the case, May 15, 2016 would
23 be an appropriate deadline for adding parties. *Id*. 5:18-21.

24 25. With regard to disclosures, I suggested the Court should first determine whether it had
25 jurisdiction over the case before entering a scheduling order regarding initial
26 disclosures. *Id*. 6:13-20.

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26. With regard to discovery DWT asserted: "Plaintiff does not expect extensive discovery. Plaintiff intends to engage in discovery from Defendants as to each element of its claims against Defendants and any defenses Defendants may raise."

27. I responded, with regard to this court's discovery inquiry:

> If this Court retains jurisdiction, Scott Stafne intends to conduct discovery related to plaintiff's citizenship and standing to bring this action. Further, Scott Stafne intends to conduct discovery to obtain servicer's records, including without limitation those monthly records documenting collection efforts maintained during those periods the loan was in default, which describe the entity's activities in monitoring delinquent loans (for example, phone calls, letters and mortgage payment rescheduling plans in cases where the delinquency is deemed temporary). Further, Scott Stafne intends to conduct discovery related to charges for insurance, particularly its practices regarding its determination of its insurable interest.

Dkt. 17 8:8-17

28. DWT asserted that discovery would not take long: "Plaintiff believes discovery can be completed by June 13, 2016." *Id*. 8:25-26.

29. I asserted: " If this Court assumes jurisdiction, Scott Stafne believes that discovery cannot be completed before December 31, 2016." *Id*. 9:1-2.

30. DWT asserted that this case could be ready for trial almost immediately:_Plaintiff believes this matter will be ready for trial on August 22, 2016." *Id*. 9:22

31. I asserted: " If this Court assumes jurisdiction over this matter, Stafne believes trial should be take place in the later part of January, 2017." *Id*. 9:23-4.

32. Paragraph 18 of of the joint status report (Dkt. 17) is entitled "Filing Dates of Disclosure Statements by Nongovernmental Corporate Party." DWT and my responses to this topic are set forth below:

> Plaintiff: Plaintiff Bank of New York Mellon filed its Corporate Disclosure Statement on January 26, 2016 [Dkt. 3].

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1 Defendant Scott Stafne: Scott Stafne does not believe the corporate disclosure statement is accurate.

2 *Id*. 11:6-10.

3

4 33. On March 31, 2016, I received a copy of "Bank of New York Mellon's Initial

5 Disclosures." I have attached a copy of that document as Exhibit 1 hereto

6 (highlighting added). I will refer to some of the highlighted references here,

7 but rely upon all of the highlighted references for the purposes of evidence in

8 support of my responses to DWT's Motions to Substitute and to Compel.

9 34. DWT states in its initial disclosures:

10

11 Pursuant to Fed. R. Civ. P. 26(a)(1), Plaintiff Bank New York Mellon, a Delaware corporation, as trustee for Structured Asset Mortgage II
12 Trust. Mortgage Pass-Through Certificates Series 2005-AR 2 ("BNYM") submits its initial disclosure to Defendants. …
13 … BNYM is continuing its investigation and reserves the right to supplement or amend this disclosure.
14 **B. Documents**
15 BMYM will not produce documents that are subject to the attorney-client privilege and/or work product doctrine, … BNYM makes these
16 initial disclosures[2] in order to expedite the discovery process … BNYM's investigations into its claims are ongoing and BNYM
17 reserves the right to supplement these disclosures. …

18 Dated this 29th day of March, 2016
Davis Wright Tremaine LLP

19

20 By s/ Zana Z. Bugaighis__________
21 Attorneys for Bank of New York Mellon Corporation

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[2] Actually, DWT provided no meaningful disclosures in this document. It is my opinion based on my experience and training within a reasonable degree of certainty that these attorneys did not and could not provide such disclosures about which entity was the trustee because they did not represent any BNY Mellon entity. It is my opinion based on my education, training, and experience within a reasonable degree of legal certainty that DWT only represents Nationstar and that Nationstar is not an attorney in fact for any BNY Mellon entity because Bank of New York Mellon is not the actual name of any entity within the BNY Mellon universe and the POA does not create an agency relationship between them.

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35. I believe the statements made in the Initial Disclosure Statement, which are highlighted on Exhibit 1 attached hereto, are fraudulent and/or deceptive given the recent admissions by DWT that "Bank of New York Mellon, a Delaware corporation" is not the trustee and was never consulted prior to these attorneys' preparation and signing of (1) the complaint and (2) the disclosures provided to Stafne.

36. DWT insisted on taking a merits deposition in this case before this Court had ruled on my jurisdictional challenge. I asked DWT to provide me legal authority with regard to its right to command my attendance at a deposition where the subject matter jurisdiction of a court had been challenged and the court had not yet determined that it had subject matter jurisdiction. DWT failed to do respond.

37. On May 11, 2016, before the deadline for adding parties, I filed with this Court a supplemental declaration regarding its subject matter jurisdiction. Dkt. 21. In that declaration, I raised precisely the same issues regarding Bank of New York Mellon, a Delaware corporation, being the real party in interest as were raised in my June 2, 2016 declaration. *Id.* 1:1-9:14. Specifically, I argued that the correct name of Bank of New York Mellon, a Delaware corporation had to be "The Bank of New York Mellon Corporation."

38. I attached as specific exhibits to that declaration (Dkt. 21) those same and/or similar exhibits which were attached to my June 2, 2016 declaration. This is significant because this declaration which was filed before the deadline to join additional parties had expired which, along with all the previous filings referenced, demonstrates DWT had evidence and understood the nature of my standing and real party in interest challenges to the Complaint before I filed my June 2, 2016 declaration substantiating that DWT had no attorney-client relationship with any BNY Mellon entity.

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39. For example, Exhibit 1 to Dkt. 21 is an Affidavit of Attempted Service which demonstrates Bank of New York Mellon, a Delaware corporation, refused service of my state court action upon that entity because "[t]he correct name is The Bank of New York Mellon Corporation. In order to for them to accept the name must be noted in full as The Bank of New York Mellon Corporation, as it is listed with DE Secretary of State,. [sic]" *Id*. The Affidavit further instructs: "In addition the complete name must be listed on all of the documents being served. The Bank of New York Mellon Corporation has given very specific instructions to Corporation Trust Company with respect to accepting documents on their behalf." *Id*. The affidavit was notarized and sworn to under the penalties of perjury. *Id*.

40. Exhibit 2 to my May 11, 2016 declaration (Dkt. 21) was a letter from Nationstar dated May 21, 2014 (and date-stamped received in the Stafne Trumbull law offices on June 3, 2014) which indicated that on that date Nationstar's records indicated JPMorgan Chase was the owner of my loan.

41. Exhibit 3 to Dkt. 21 was a copy of the Ninth Circuit's decision in *Robertson v. GMAC Mortgage LLC*.

42. Exhibit 4 to Dkt. 21 was a of copy emails from the attorney who represented The Bank of New York Mellon Trust Company, National Association, in the Robertson evidentiary hearing following remand for that purpose. The emails from that attorney (who succeeded DWT in the Robertson case), included FDIC, OCC, and corporate documents related to that BNYM entity, which were later certified and presented as exhibits at the Robertson evidentiary hearing. A copy of the OCC certified documents can be found as an exhibit to my Declaration in Support of Motion to Change the Scheduling Dates. Dkt. 27-2.

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A 188

1 43. Exhibit 5 to Dkt. 21 is an admission by the attorney representing The Bank of New
2 York Mellon National Trust Company, National Association, in the Robertson case
3 that The Bank of New York Corporation and The Bank of New York Mellon National
4 Trust Company, National Association are separate, different legal entities and not
5 simply trade names of the same corporation.
6
44. The last exhibits I attached to Dkt. 21 were cases, which I claimed tended to prove a
7 strategic manipulation of federal jurisdiction by BNY Mellon entities. In this regard, I
8 testified:
9

> 10 23. The strategic misrepresentation of Bank of New York Mellon (if that is what is happening here) as being something different than The Bank of New York Mellon entities, is, in my opinion, deceptive and problematic. Further, it is my judgment this deceptive practice, which appears to be perpetuated by federal courts failure to accurately identify BNY entities in their decisions undermines the purposes of diversity jurisdiction statutes contemplated by 28 USC 1332 and may rise to the level of constitutional affronts to individuals' rights pursuant to the federal nature of our government, U.S. Const. Art. IV, § 4, U.S. Const. Amend. IX, and U.S. Const. Amend. X.
>
> 24. An example of New York Mellon entities misuse and abuse of its various names in order to allege diversity jurisdiction is the case of Diunugala v JP Morgan Chase Bank, N.A. et al, Case No. Case No. 12cv2106-WQH-KSC (SD Cal.)(attached as Exhibit 6.) In that case The Bank of New York Mellon Trust Company N.A. asserted diversity jurisdiction in California by claiming it was actually Bank of New York Mellon Corporation, which it claimed was, incorporated in Delaware. Had The Bank of New York Mellon Trust Company acknowledged that it was the trustee and a California corporation there would have been no diversity jurisdiction because both the plaintiff and Bank of New York Mellon Trust Company were California citizens.
>
> 25. The removal petition filed in Diunugala is attached as Exhibit 7. The removal petition asserts, as does the complaint in this case, that Bank of New York Mellon Corporation is a Delaware corporation is the trustee notwithstanding the complaint appears to have alleged The Bank of New York Mellon Trustee Company N.A. was the trustee. Accordingly, the
> claim made in the removal petition that this defendant was a Delaware corporation does not appear to be tethered to the facts.
>
> 26. Similarly in the Robertson case Bank of New York Mellon Trust Company, N.A. asserted as the basis for diversity and removal

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> jurisdiction that it was a citizen of Florida. Curiously, there were two law firms which appeared on behalf of Bank of New York Mellon Trust Company, N.A. in the Robertson case. One of those firms represents Bank of New York Mellon in this case. The portion of that law firm's removal petition which asserted that Bank of New York Mellon Trust Company is a citizen of Florida is attached as Exhibit 8, hereto.
>
> 24. What is significant in that case is that Bank of New York Mellon Trust Company, N.A., after repeatedly pleading Florida as their citizenship (and the district Court subsequently so ruling) is now claiming it is not a Florida citizen for purposes of diversity. Moreover, Bank of New York Mellon Trustee Company is now claiming that Robertson may not be acting in good faith if he does not stipulate to Bank of New York Trustee Company's citizenship as being in California even though that is the citizenship he [Robertson] pleaded for this entity in his initial complaint.
>
> 25. Mr. Robertson is now investigating whether an argument can be made whether Bank of New York entities can forfeit their right to invoke diversity jurisdiction if it can be established they systematically misrepresent their actual identity and citizenship to federal courts.
>
> 25. [sic] Accordingly, If this Court decides that the denial of federal jurisdiction is not appropriate for those other reasons previously stated in my Rule 12(b)(1) motion, I believe it should pursuant to its own jurisdictional responsibilities determine [sic] hold an evidentiary hearing to determine whether the Bank of New York Mellon entities by purporting to act as an entity which they are not is engaging in systemic conduct inimical with the letter and spirit of RCW 28 USC 1332 in order to prevent state courts from having the initial opportunity to determine the meaning of state laws dealing with the dispossession of land with their own boundaries.

45. A week later, on April 28, 2016, this Court issued a minute order (Dkt. 22) which stated, among other things, "Defendant's motion to dismiss Plaintiffs claims for lack of subject matter jurisdiction, docket no. 11, is DENIED. Plaintiff Bank of New York Mellon, a Delaware Corporation, has alleged facts that establish subject matter jurisdiction. See U.S.C. § 1332." Significantly, this Court did not reference 28 U.S.C. § 1332(c)(1), which should have prevented it from assuming jurisdiction over the case because the purported corporate entity had not pled any principal place of business.

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1 Further, this Court did not consider whether a name which was not tethered to an
2 entity in the real world can have a citizenship.

3 46. A day later, on April 29, 2016, this Court issued a scheduling order. It established the
4 following deadlines related to this case:

5 BENCH TRIAL DATE November 14, 2016
6 Length of Trial 2−5 days

7 Deadline for joining additional parties May 27, 2016

8 Deadline for amending pleadings May 27, 2016

9 Disclosure of expert testimony under FRCP 26(a)(2) June 2, 2016

10 All motions related to discovery must be filed by and noted on the motion
11 calendar no later than the third Friday thereafter (see LCR 7(d))

12 Discovery completed by July 25, 2016

13 All dispositive motions must be filed by and noted on the motion calendar no
14 later than the fourth Friday thereafter (see LCR 7(d))

15 August 25, 2016

16 All motions in limine must be filed by and noted on the motion calendar no
17 later than the Friday before the Pretrial Conference. (See LCR 7(d)(4))

18 October 13, 2016

19 Agreed pretrial order due October 31, 2016

20 Trial briefs and proposed findings of fact and conclusions of law, and
21 designations of deposition testimony pursuant to CR 32(e)

22 October 31, 2016

23 Pretrial conference to be held at 03:00 PM on November 4, 2016

24 Dkt. 23

25 47. I promptly filed an answer, affirmative defenses and counterclaims on May 9, 2016.
26 Dkt. 24. I denied all the allegations of ¶ 1.1 of the Complaint. (Dkt. 1).

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1 48. The first three affirmative defenses should have put DWT, Burnside, Bugaighis, and
2 Nationstar on notice that I disputed their authority to bring this lawsuit against me in
3 federal court. These defenses state:
4 A. This court lacks diversity jurisdiction over this action.
5 B. Bank of New York Mellon Corporation has no standing to bring this action.
6 C. Bank of New York Mellon and Bank of New York Mellon N.A. are not the real
7 parties in interest.
8
9 49. On May 12, 2016, (still before the deadline to add additional parties) Mr. Burnside
10 took my deposition. *See* Dkt 41, Ex A. Although the notice indicated the deposition
11 was to take place between 1:00 pm and 5:00 pm, Mr. Burnside deviated from that
12 schedule and kept me at his office until approximately 7:00 pm. I expressed my
13 concern to Mr. Burnside that this was a litigation tactic to take advantage of a medical
14 condition I have. We discussed this both by phone and by email. Our email discussion
15 is attached as Exhibit 2 hereto. I reference this here because I have concerns that
16 DWT may be using abusive litigation tactics, such as fabricating a case with a plaintiff
17 which does not exist, in order to harm and/or distract me so that I have no time to do
18 anything but respond to them.
19
20 50. During the deposition Mr. Burnside insisted I answer questions as to why I believed
21 DWT violated the Fair Debt Collection Practices Act by unlawfully invoking this
22 Court's diversity jurisdiction. The following exchange indicates that I provided DWT
23 with notice during my deposition that Bank of New York Mellon, a Delaware
24 corporation, and none of the other entities named in the complaint had standing or any
25 real party in interest status to bring this lawsuit against me.
26

6 So what is it that I or Zana or Davis Wright

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A 192

> 7 did that you claim violated the FDCPA?
> 8 A. All right. One, Nationstar is a Texas
> 9 corporation, and with its nerve center by -- so is
> 10 Real Time Solutions a Texas corporation. You have
> 11 manipulated the plaintiff in this case in order to get
> 12 around diversity jurisdiction.
> 13 Two, you have alleged in the complaint
> 14 residency rather than citizenship.
> 15 Three, none of the entities which you have
> 16 listed as the plaintiff actually exist. In fact it is
> 17 impossible for me to serve Bank of New York Mellon as
> 18 per the complaint because its registered agent will
> 19 not accept them in that manner.

Dkt. 41, p. 20.

51. On June 1, 2016, I filed a motion to modify the scheduling order in this case. I asserted that "[t]wo months time to engage in discovery in this case is not adequate given its complexity and Stafne's current caseload, litigation schedule, and other commitments, which include running for Congress in Washington's Congressional District #1." Dkt. 26, p. 5:5-8. In my declaration supporting this motion (Dkt. 27) I testified:

> 3. I have an intense schedule which will prevent me from being able to obtain sufficient facts, conduct discovery, disclose experts and prepare for a trial of this case in November, 2016. In this regard, I currently have a total of 26 clients with 22 active matters including 6 of my own.
> 4. Within the next 2 months I have to prepare for 2 hearings (including the evidentiary hearing ordered by the Ninth Circuit in Robertson v GMAC.), at least two appeals (in addition to whatever proceedings may be appropriate following the Robertson evidentiary hearing), 1 trial, and prepare numerous briefs. I cannot physically comply with this Court's abbreviated trial scheduling and provide competent representation to my other clients.

Dkt. 27-1, p. 2:7-17.

52. I attached to my declaration in support of this motion many of the same exhibits that were referred to in my declaration dated June 2, 2016, i.e. the declaration which DWT

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1 now claims first alerted it to the possibility that "Bank of New York Mellon, a
2 Delaware corporation" was not the trustee of my trust. The documents attached to this
3 declaration included without limitation: (A) Exhibit 2 copies of emails between
4 Burnside and myself regarding the scheduling of a deposition which I claimed was not
5 constitutionally appropriate prior to this Court asserting subject matter jurisdiction
6 over this case, *see* Dkt. 27-1; (B) Exhibit 3 an OCC certification which showed that
7 the proper name for Bank of New York Mellon's Trust Company was "The Bank of
8 New York Mellon Trust Company, National Association" which was not the name
9 asserted in paragraph 1.1 of DWT's complaint. *see* Dkt 27-2; (C) Exhibit 4 a copy
10 portions of the deposition transcript of 30(b)(6) designee for The Bank of New York
11 Mellon Trust Company, National Association in the Robertson matter who testified
12 that BNY Mellon is that "BNY Mellon is a [sic] organizational name for the Bank of
13 New York Mellon. The Bank of New York Mellon trust Company, National
14 Association, is a national -- it's a subsidiary of the Bank of New York of New york
15 Mellon." Dkt. 27-3, p. 7:25-8:7 (Although counsel for The Bank of New York Mellon
16 Trust Company, National Association refused to allow the witness to discuss relevant
17 issues regarding the relationships between BNYM entities, the questions not answered
18 are significant here because they go directly to whether the Complaint names an entity
19 with standing and real party in interest status.)
20
21
22
23 53. Even counsel for The Bank of New York Mellon Trust Company, National
24 Association observed that all of the acronyms used by BNYM entities were
25 confusing. In this regard William Fig of the Portland law firm Sussman Shank
26 stated during the deposition:

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A 194

> Mr. Fig: Bill Fig again. What I'm saying, Scott, is the acronyms you're -- you're changing the acronyms, I don't think intentionally, but there are multiple Bank of New York Mellon and Trust -- Bank of New York Mellon entities, and the one we are here to talk about today and the one that was sued by Plaintiff is the [sic] Bank of New York Mellon Trust Company, N.A., National Association, which is not the entity you identified in your question…

Dkt. 27-4, p 22:7-22

54. Attached to my Declaration in Support of my Motion to Modify the Trial Schedule as Exhibit 4 (Dkt. 27-5), is a copy of the complaint I filed against Burnside, Bugaighis, DWT, the SAMI trust, The Bank of New York Mellon Corporation, The Bank of New York Mellon Trust Company, N.A., BNY Mellon N.A, JP Morgan Chase Bank N.A.; Nationstar Mortgage and SPS on May 24, 2016.

55. I emailed a copy of the complaint to Mr. Burnside shortly after it was filed.

56. Notwithstanding Burnside had a copy of the *Stafne v. Burnside* Complaint (Dkt. 27-5) in his email on May 24, 2016, Mr. Burnside spent the next few weeks attempting to evade service while continuing to work at DWT. I have attached hereto as Exhibit 5 the affidavit of service reflecting the attempts to serve Burnside and tending to prove Burnside's attempts to evade service.

57. The *Stafne v. Burnside* complaint clearly alleges:

> 4.13 On January 19, 2016, Burnside, Bugaighis, and the Law Firm filed a diversity action in this Court to collect the debt Stafne notified them was stale and to foreclose on Stafne's real property. The complaint named "Bank of New York Mellon" as the plaintiff in the caption. …
> 4.14 No entity named "Bank of New York Mellon" exists.

Dkt. 27-5, p. 7:6-12.

58. The complaint clearly notifies the defendants that I claimed they fabricated and did not facially plead diversity jurisdiction. Dkt. 27-5, p.7:23-8:15. Further, that I claimed

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Defendants have fabricated parties and claims, *Id.*, p. 8:16-9:15, and made deceptive statements in the Federal Foreclosure Complaint, *i.e.* Dkt. 1 in this case. *See* Dkt. 27, p. 8: 15-10:16. I also alleged numerous Unfair and Unconscionable debt collection practices, which included that "the Federal Foreclosure Action to unlawfully collect stale debt is being brought by defendants to harass him because of his representation of homeowners involving the same defendants and others having similar interests in the collection of debt through practices regulated by the FDCPA." Stafne further alleged "[a]s part of this harassment Stafne alleges based on information and belief that defendants have coordinated with other attorneys with regard to the filing of other personal litigation against Stafne."

59. On June 2, 2016, I filed a motion for DWT, Burnside, and Bugaighis to prove their authority to "act as attorneys, pursuant to an attorney-client relationship with regard to "Bank of New York Mellon", "Bank of New York Mellon, a Delaware corporation", Bank of New York Mellon Trust Company, N.A.", "Nationstar Mortgage LLC", and/or "Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR 2."

60. In support of that motion to provide proof of authority, I provided testimony and exhibits substantiating that DWT has made similar "mistakes" and "false statements" about another BNY Mellon entity in the *Robertson* pleadings.

61. Notwithstanding all of the foregoing history DWT claims that it was not until this declaration was filed on June 2, 2016 that it had sufficient notice to investigate whether "Bank of New York Mellon, a Delaware corporation" was a real entity. *See* Dkt. 36, p. 9:8 - 10. ("Following Stafne's June 2, 2016 Declaration, [DWT]... renewed investigation into the identity of the Bank of New York, as trustee of the SAMI Trust."

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62.But this assertion doesn't make sense in light of the facts that (a)DWT was required to have made such an investigation pursuant to Rule 11 before filing the complaint; (b) DWT outright stated that BONY was not the indorsee in its response to my Motion to Dismiss for Lack of Subject Matter Jurisdiction, *see* Dkt. 12, 2:13-21; (c) my June 2, 2016 declaration contained no new matter that DWT was not already aware of; and (d) if DWT had really wanted to obtain information from BNY Mellon with regard to whether they owned the loan they could have asked that entity, like housing counselors do. I have attached hereto as Exhibit 6 examples of communications between the housing counselors and BNY Mellon.

63. DWT's response to my Motion to Prove Authority did not hint that it was now investigating whether the proper party had been named. Rather, DWT claimed an attorney can represent any entity it appears on behalf of. Dkt. 32, pp. 1:25-2:2.DWT's response also claimed that forcing DWT to provide proof of its authority to represent BNYM (an entity which Stafne claimed did not exist) would violate its attorney-client privilege. Dkt. 2:8-15. Finally, DWT argued this Court should ignore the Robertson case. *Id*., 3:8-25.[3] Significantly, DWT, Burnside, and Bugaighis submitted no evidence in support of their response.

64. I replied to DWT's response to my Motion to Provide Authority on June 17, 2016. Dkt. 33.

65.On June 24, 2016, DWT, Burnside, and Bugaighis filed the Motion to Substitute pursuant to Fed. R. Civ. Pro. P. 17(a)(3). That motion admits that Bank of New York

[3] This perfunctory dismissal of the significance of Robertson case in DWT's response to my motion to prove authority contradicts its claim that it viewed this matter which such significance on June 2, 2016 that it decided to re-open its investigation of whether it represented the party on whose behalf it had appeared.

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1 Mellon, a Delaware corporation has no standing to bring this action and is not a real
2 party in interest.
3 66. This admission has come at a time when I am being bullied by Fred Burnside to
4 provide discovery and allow him to continue my deposition.
5 67. From reading Mr. Burnside's account of our discovery conference (Dkt 41, 3:18-4:4) it
6 would appear we live in two realities. I did indicate that we needed to go to court. But I
7 have been indicating this through my actions all along. I did not tell Mr. Burnside that I
8 had spent no time on discovery. I had to find years worth of documents some more than
9 a decade old. It is my judgment Mrs. Rodriguez who was with me during this
10 conference provides, in her declaration, a much more accurate account of what
11 occurred than has Mr. Burnside.
12
13 68. In any event, I find myself in a position where I believe DWT is purporting to use this
14 Court's authority (which is nil without Article III jurisdiction) in a manner harmful to
15 my ability to practice law on behalf of others, attend to my health, and look after my
16 own personal affairs.
17
18 69. It is true that I feel strongly about these matters. I do not believe justice at this point in
19 history is likely to be achieved in an adversarial system of justice where only one party
20 has the resources to mount effective advocacy. For many people our courts are a rigged
21 system where we have little chance to achieve justice.
22 70. Yes, I do represent homeowners. Yes, I do believe DWT bullies homeowners and plays
23 fast and loose with the law. And my experience in this case reinforces my judgment in
24 this regard.
25
26 71. I criticize and ostracize DWT for conduct that I believe is not acceptable in a federal
court. I do it publicly, picking language which is appropriate for the larger ongoing

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political debate about whether our country, including our courts, is working for 99% of the people. Bringing up my political statements obviously has no purpose other than to appeal to any bias DWT believes this Court may harbor against me.

72. Attempting to marginalize me because of my political beliefs and outrage with their conduct speaks volumes about what DWT believes will motivate this Court. My words criticizing these lawyers is not relevant to any of the legal issues here. Nonetheless, DWT apparently believes that my criticism of Mr. Burnside and DWT are the best cards it has to play.

73. I presume that this Court will look past whatever it thinks of me and DWT. I hope and expect it will decide this case based on the facts presented and consistent with applicable law.

74. I have attached hereto as Exhibit 7 those research articles referred to in note 5 of my response to DWT's Motion to Compel.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my information and belief.

DATED this 11th day of July 2016, at Arlington, Washington.

By:______*/s Scott E. Stafne*__________
SCOTT E. STAFNE, WSBA#6964

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THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-AR2, PLAINTIFF, v. SCOTT STAFNE, an individual; TODD STAFNE, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation, DEFENDANTS.	CASE NO. 2:16-cv-00077-TSZ DEFENDANT SCOTT STAFNE'S MOTION TO DISMISS PURSUANT TO FRCP 12(b)(1) NOTE ON MOTION CALENDAR: July 22, 2016 ORAL ARGUMENT REQUESTED

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A 200

TABLE OF CONTENTS

1
2
3

Page(s)

4 I. RELIEF REQUESTED……………………………………………………………1
5 II. ISSUES………………………………………………………………………1
6
III. Evidence and Pleadings Relied Upon in Support of this Motion……………..……..…..3
7
IV. FACTS………………………………………………………………………..3
8
IV. ARGUMENT……………………………………………………………….7
9
10 A. Introduction………………………………………………………………7
11 B. Legal Standards……………………………………………………………8
12 C. DWT's judicially admits (1) it only represents BONY pursuant to a purported
13 Power of Attorney with Nationstar; and (2) the complaint names an entity which
14 does not have standing…………………………………………………………..10
15
D. DWT, Burnside, Bugaighis, and Nationstar have presented no evidence that they
16
had the authority to bring this lawsuit against Stafne………………………………13
17
18 E. The POA does not provide a basis for Nationstar and its attorneys to invoke this
19 Court's diversity jurisdiction without the express approval of the trustee……………14
20 V. CONCLUSION………………………………………………………………..21
21
22
23
24
25
26

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I. ***Relief Requested:***

Defendant Scott Stafne moves pursuant to Federal R. Civ. Pro. 12(b)(1) to dismiss this lawsuit because the attorneys for Nationstar have not established (1) that they have authority to represent Bank of New York Mellon, a Delaware corporation and/or (2) that Bank of New York Mellon, a Delaware corporation, has standing to bring this lawsuit against Stafne and/or (3) that Nationstar Mortgage, LLC (Nationstar) has authority to appoint Davis Wright Tremaine, LLP (DWT) as attorney for any Bank/Trustee/Trust for purposes of invoking this Court's diversity jurisdiction pursuant to 28 USC 1332 to bring this foreclosure action.

II. Issues:

1. Does The Bank of New York Mellon, a Delaware corporation, have standing to bring this action against Stafne where the attorneys who have claimed to represent this non-existent entity now concede that it has no interest in Stafne's note? (Short Answer: No)

2. Does the law firm of Davis Wright Tremaine LLC (DWT) through attorneys Frederick Benjamin Burnside (Burnside) and Zana Bugaighis (Bugaighis) have authority to represent BONY[1] (and all its various affiliates and subsidiaries) with regard to this lawsuit *filed on January 19, 2016* against Scott Stafne based on either the Power of Attorney (POA) which is attached as Attachment E to the complaint or the POA

[1] BONY is the latest acronym to be added to already long list of acronyms which DWT uses to obfuscate the actual identities of any specific Bank of New York Mellon entities. It was added as a new acronym by DWT, Burnside, and Bugaighis in their recently filed "Motion to substitute real party in interest" as a way of explaining why the complaint does not name the real Bank of New York Mellon entity which claims to be acting as a successor trustee to JPMorgan Chase. Stafne does not accept that BONY is a legitimate name for the successor trustee to JPMorgan Chase. In fact, Stafne believes that JP Morgan Chase remains the trustee because no SEC filing suggests otherwise. See Dkt. 33, 34 ¶¶ 9-13.

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attached as Exhibit A to Janadi's declaration in support of DWT's "Motion to Substitute Real Party in Interest"? (Short Answer: No)

3. Does the POA form authorize Nationstar and its attorneys to invoke this Court's diversity jurisdiction on behalf of Bank of New York Mellon, a Delaware corporation? (Short Answer: NO)

III. Evidence and Pleadings Relied upon in Support of this Motion:

In addition to Stafne's declaration in support of this "motion to dismiss for lack of standing," Stafne also relies on the following pleadings, declarations, and evidence which has already been filed with this Court as Docket (Dkt) numbers 1; 1-7; 3; 11; 11:1-7; 12; 13; 14; 15, 15:1-4; 16; 16-1-10; 19, 19:1-5; 21:1-5; 24; 25; 26; 27; 27:1-9; 28; 29:1-6; 30; 31: 32: 33; 34:1-6; 35; 36; 37::1; 38:1-5;and 39:1-7.

IV. Facts:

The facts, and contradictions of facts, asserted in this case are complicated and have been recited, referred to, or incorporated in various filings with this Court. These include those pleadings, declarations, and evidence referred to in the preceding section above. These filings are by this reference intended to be incorporated herein for this Court's consideration in resolving this motion.

DWT, Burnside, and Bugaighis admit they have no fiduciary attorney-client relationship with BONY, see Dkt. 36 2:12-7:15; 8:9-9:16, and did not make any inquiry regarding the factual assertions about Bank of New York, a Delaware corporation before signing the complaint appearing as that corporation's attorneys. *Id*; *see also* Dkt. 38, Dkt. 38:1-5; Dkt. 39; Dkt 39:1-7. DWT, Burnside, and Bugaighis now concede the complaint they authored

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contains misstatements of facts about what they now describe as BONY entities[2] (even though not one of those entities they named in the complaint actually exists under the names alleged) And now, by way of an afterthought, these attorneys concede the entity they asserted they appeared on behalf of is not the trustee of the trust which they previously claimed owned Stafne's mortgage loan.

Stafne, an attorney, points out that such mistakes by DWT are common and asserts they represent attempts by Nationstar, DWT, Burnside, and Bugaighis to manipulate federal jurisdiction over cases that are within the core sovereignty of the States, which include cases involving real property located within a State's boundaries. *See* Dkt. 11 10:3-15:4; Dkt 14.

In its latest round of pleadings, DWT, Burnside, and Bugaighis assert a roving authority to represent BONY (and/or any and all of its related entities) premised on Power of Attorney (POA) documents. *See Infra. See also* Dkt. 37, 2:1-11; Dkt. 38; Dkt. 39 2:1-10; 2:20-26. Attachment E to the complaint is a POA, which went into effect in September, 2014. Dkt. 1-6. Exhibit 1 to Ms. Jamati's declaration is a copy of a POA which was signed on May 26, 2016.

---

[2] It is important the Court not get confused by DWT's tactic of claiming that names don't matter when entities are attempting to collect debts. See Dkt., 36, p. Burnside declaration, 38. Congress has determined that accurate names of creditors and debt collectors do matter in the context of attempting to collect debt. Indeed the Fair Debt Collection Practices Act specifically defines the term debt collector to include "any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts" § 803(6), 15 U.S.C.A. § 1692a(6). The admission by Nationstar, DWT, Burnside, and Bugaighis that they have attempted to collect this debt under the wrong name by bringing this action in this Court in the first place would appear to amount to a direct violation of the FDCPA.

While Stafne is delighted that Nationstar and DWT have owned up to the fact that they have filed this complaint on behalf of an entity which does not have standing, he does not want the Court to forget that simply substituting BNYM acronym for the new BONY (or any of its affiliates or subsidiaries) acronym still is not adequate. Stafne is entitled to know the real name of his creditors and Congress has instructed that neither state or federal courts become collection vehicles for unlawful debt collection.

The fact that Mr. Burnside does not think alleging the real name of BNYM entities is material or important, Dkt. 38, is interesting, but not authoritative. Congress has determined that real names do matter when anyone attempts to collect debts and this Court should be more concerned with what the requires than Mr. Burnside's pontifications about what the public record shows.

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1 The POA, Attachment E to the complaint, states in pertinent part:

2 KNOW ALL MEN BY THESE PRESENTS, that the undersigned, THE BANK
OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK as successor
3 in interest to JP Morgan Chase Bank, N.A., having an office at 101 Barclay
Street, NYC, NY 10285 (the "Bank"), hereby appoint Nationstar Mortgage
4 LLC, to be the Bank's true and lawful Attorney-in-Fact (the "Attorneys") to act
in the name, and on behalf, of the Bank with the power to do *only* the the
5 following in connection with the trust included on Schedule A, on behalf of the
6 Bank:

7 * * *

8 8. With respect to a mortgage or Deed of Trust,the foreclosure, the taking a
deed in lieu of foreclosure, or the completion of judicial or non-judicial
9 foreclosure or termination, cancellation or rescission of (sic)
Termination, cancellation, or rescission of any such foreclosure, including,
10 without limitations, any and all of the following acts:

a. the substitution of trustee(s) serving under a Deed of Trust, in accordance with
11 state law and the Deed of Trust;

b. the preparation and issuance of statements of breach or non-performance;

12 c. The preparation and filing of notices of default and/or notices of sale;

d. the cancellation/rescission of notices of default and/or notices of sale;

13 e. The taking of a deed in lieu of foreclosure; and

14 f. The preparation of execution of such other documents and performance of such
other actions as may be necessary under the terms of the Mortgage, Deed of Trust, or
15 state law to expeditiously complete said transaction in paragraphs 8.a. Through 8.e,
above; and

16 g. To execute any other documents referred to in the above mentioned documents or
17 that are ancillary or related thereto, or contemplated by the provisions thereof; and
to do all things necessary or expedient to give effect to the aforesaid documents
18 including, but not limited to, completing any blanks therein, making any
amendments, alterations and additions thereto, to endorse which may be
19 considered necessary by the Attorney, to endorse on behalf of the Trustee all
checks, drafts, and/or negotiable instruments made payable to the Trustee in
20 respect of the documents, and executing such other documents as may be
21 considered by the Attorney for such purposes.

The relationship of the Bank and the Attorney under this Power of Attorney
22 is intended to by the parties to be that of an independent contractor and not that
of a joint venturer, partner, or agent.

23 This Power of Attorney is effective for one (1) year from the date hereof of
the earlier of (i) revocation by the Bank, (ii) the Attorney shall no longer be
24 retained on behalf of the Bank or an affiliate of the Bank; or (iii) the expiration
25 of one year from the date of execution.

This agreement shall be governed by, and construed in accordance with, the
26 laws of the State of New York without regard to the conflicts of laws principles.

> All actions heretofore taken by said Attorney, which Attorney could properly have taken pursuant to this Power of Attorney, be, and hereby are, ratified and affirmed.

Recent pleadings establish this case was filed by DWT, Burnside, Bugaighis on behalf of their client Nationstar. But the complaint these attorneys at law filed in this Court alleging diversity jurisdiction indicates they are appearing on behalf of New York Bank Mellon, a Delaware corporation. This complaint which falsely named Bank of New York Mellon, a Delaware corporation as the creditor was filed on January 19, 2016, *when neither of these POAs were in effect.*

IV. Argument:

A. Introduction

Stafne will first discuss the legal standards pursuant to Fed. R. Civ. P. 12(b)(1) for asserting a factual challenge to the complaint based on those standing principles necessary for invoking this Court's authority to adjudicate a case or controversy under U.S. Const. Art. III. and 28 USC 1332.

In the second part of this motion Stafne will demonstrate that recent judicial admissions by DWT through attorneys Burnside and Bugaighis establish (1) the law firm and its attorneys have been retained to act as attorneys in this action against Stafne by Nationstar, not by the trustee entity the complaint purports these attorneys represent; and (2) DWT now concedes the complaint does not identify a party which had standing to file this complaint[3].

---

[3] In this section of his motion to dismiss Stafne will discuss DWT's claim that BONY (or perhaps one of its many affiliates or subdivisions) is the real party which has been harmed. Stafne does not agree with any aspect of this assertion, but will not address the inappropriateness and inadequacy of these factual allegations until he responds to DWT's motion to substitute parties. For now, what is significant regarding this motion and what will be discussed in the second part of this motion is that Nationstar, DWT, Burnside, and Bugaighis now concede that the complaint does not identify an entity that has constitutional standing to bring this action against Stafne.

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In the third part of this motion Stafne will demonstrate the Power of Attorney forms which DWT claims authorized Nationstar to hire DWT, Burnside, and Bugaighis to bring this lawsuit against Stafne were not in effect on January 19, 2016, the day this lawsuit was filed.

Finally, Stafne will demonstrate the POA between Nationstar and Bank[4] violates public policy to the extent it authorizes attorneys to bring actions in federal court alleging diversity jurisdiction on behalf of a client they do not represent and have not consulted with regard to whether that entity wants to assert diversity jurisdiction.

B. Legal Standards

"The district courts of the United States ... are 'courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.' " *Exxon Mobil Corp. v. Allapattah Servs., Inc.,* 545 U.S. 546, 552, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.,* 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994)). Article III, Section 2 of the Constitution provides that federal courts may decide "Cases" or "Controversies." "One essential aspect of this requirement is that any person invoking the power of a federal court must demonstrate standing to do so. This requires a party to prove that she has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision. *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661, 186 L. Ed. 2d 768 (2013) (citing *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560–561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)).

[4] Stafne's reference to the "Bank" in this motion refers only to that terminology as it is used in the POA; namely "**KNOW ALL MEN BY THESE PRESENTS**, that the undersigned, **THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK as successor in interest to JP Morgan Chase Bank, N.A.,** having an office at 101 Barclay Street, NYC, NY 10285 (the "Bank") ..." Stafne does not by the use of the term Bank agree that this is the proper name of any entity or that the "Bank" is a trustee of the SAMI trust at issue in this litigation or that the stale note and deed of trust were ever in that trust.

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1 The burden of establishing standing falls squarely on "[t]he party invoking
2 jurisdiction." *Lujan,* 504 U.S. at 561. ("Once subject matter jurisdiction is challenged, '[a]
3 plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of
4 the evidence that jurisdiction exists.'")(quoting *Giammatteo v. Newton,* 452 F. App'x 24, 27
5 (2d Cir.2011))).
6
7 Under Rule 12(b)(1), a defendant may challenge jurisdictional allegations either
8 facially or factually, *see Leite v. Crane Co.,* 749 F.3d 1117, 1121-22 (9th Cir.), *cert. denied,*
9 135 S. Ct. 361, 190 L. Ed. 2d 252 (2014). *See also Safe Air for Everyone v. Meyer*, 373 F.3d
10 1035, 1039 (9th Cir.2004) A "factual" attack contests the truth of the factual allegations in a
11 complaint, usually by introducing evidence outside the pleadings. *Id.,* 373 F.3d at 1039;
12 *Thornhill Publ'g Co. v. Gen. Tel. & Elec. Corp.,* 594 F.2d 730, 733 (9th Cir.1979).
13
14 Although "[a]s a general rule, the 'injury-in-fact' requirement means that a party must
15 have personally suffered an injury ... [c]ourts may permit a party with standing to assign its
16 claims to a third party, who will stand in the place of the injured party and satisfy the
17 constitutional requirement of an 'injury-in-fact.' " *W.R. Huff Asset Mgmt. Co., LLC v. Deloitte*
18 *& Touche LLP,* 549 F.3d 100, 107 (2d Cir.2008) (citations omitted). While assignment of a
19 claim need not come in "a particular form," an assignment will satisfy Article III's standing
20 requirements *only* if "the language [of the assignment] manifests [the previous owner's]
21 intention to transfer *at least title or ownership, i.e.,* to accomplish a completed transfer of *the*
22 *entire interest* of the assignor in the particular subject of assignment." *Advanced Magnetics,*
23 *Inc. v. Bayfront Partners, Inc.,* 106 F.3d 11, 17 (2d Cir.1997) (citations omitted) (emphasis
24 added); *see also W.R. Huff,* 549 F.3d at 108 ("In our view, *Sprint* makes clear that the
25 *minimum* requirement for an injury-in-fact is that the plaintiff have *legal title* to, or a
26 proprietary interest in, the claim." (citing *Sprint Comm'c Co., L .P. v. APCC Servs., Inc.,* 554

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U.S. 269, 289, 128 S.Ct. 2531, 171 L.Ed.2d 424 (2008)). The grant of a power of attorney, *i.e.,* where "one person grants another the power to sue on and collect on a claim ..., is not the equivalent of an assignment of ownership; and, standing alone, a power of attorney does not enable the grantee to bring suit in his own name." *Advanced Magnetics, Inc.,* 106 F.3d at 17–18 (citing *Titus v. Wallick,* 306 U.S. 282, 289, 59 S.Ct. 557, 83 L.Ed. 653 (1939)); *see also W.R. Huff,* 549 F.3d at 108 (reaffirming the distinction between a grant of power of attorney and assignment of title to a claim).

As is observed in other pleadings a law firm or attorney who does not represent an injured party do not have Article III standing to bring a lawsuit because attorneys are not parties who have sustained a particularized and concrete injury. See Dkt 28, pp. 3:22 - 9:4; Dkt. 33, pp. 1:21 - 6:14, 7:18 -9:6. *See also Pueblo of Santa Rosa v. Fall*, 273 U.S. 315 (1927); *Meredith v. The Ionian Trader*, 279 F.2d 471, 472-73 (2d Cir. 1960); *In re Retail Chemists Corp*., 66 F.2d 605, 608 (2d Cir. 1933) Any case that is brought by a law firm or an attorney, without actually representing an injured party, is an absolute nullity under U.S. Const. Art. III. *Id.*

C. DWT's judicially admits (1) it only represents BONY pursuant to a purported Power of Attorney with Nationstar; and (2) the complaint names an entity which does not have standing

In the caption of the complaint DWT, Burnside, and Bugaighis claim to represent "BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-AR2." Dkt. 1, Caption. In the first paragraph of their complaint, titled "PARTIES" DWT alleges:

> 1.1 Bank of New York Mellon, a Delaware corporation, serves as trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through

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> Certificates series 2005-AR2, and in that capacity owns and holds Defendant Scott Stafne's note. Bank of New York Mellon's affiliate entities include Bank of New York Mellon Trust Company, N.A., which has its main officers and headquarters in California. Bank of New York Mellon's main office, headquarters, and principal place of business are in New York. Bank of New York Mellon is acting in this foreclosure proceeding in this case through its Attorney in Fact, Nationstar Mortgage, LLC."

DWT through Burnside and Bugaighis recently admitted they do not have a traditional fiduciary, attorney-client relationship with any entity, which may or may not be the trustee of the SAMI trust. *See* Dkt. 36, entitled "Bank of New York Mellon's Motion to substitute real party in interest pursuant to Fed. R. Civ. P. 17(a)(3)." That motion is noted for consideration on July 15, 2016 and it is not Stafne's intent to respond to that motion here. The contents of that motion and the declarations offered in support of that motion are offered here to demonstrate the complaint presently before this Court does not meet Const. Art. III standing requirements because the attorneys who wrote and signed it now admit the complaint does not identify any party asserting a concrete and particularized injury.

Judicial admissions set forth in that motion filed by DWT and authored by Bugaighis include without limitation:

> Thus, to avoid further motions practice, BNYM now seeks to substitute BONY as Plaintiff under Rule 17(a)(3), because although BONY is wholly owned by BNYM, further investigation into the statements in Stafne's June 2, 2016, declaration confirms that it is the New York, rather than Delaware, corporation that is the Bank of New York corporation that acts as Trustee for the Trust owning Stafne's loan (the Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2 ("SAMI Trust")).

Dkt. 36 1:25 - 2:3.

DWT's motion explains:

> [d]etermining which Bank of New York entity should appear as Plaintiff in this action was difficult because both corporations have the same name and several operative documents simply refer to the "Bank of New

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> York Mellon," without indication of a specific distinction between the two entities. Thus, Nationstar and its counsel made a reasonable mistake in
> identifying BNYM as Trustee rather than BONY.

Dkt. 369:4-9

Burnside testifies that once he put his mind to it and did an appropriate Rule 11 investigation, he was able to get it right. Dkt. 38. Stafne isn't so sure. *See* note 2, *supra.* Stafne is surprised that Burnside apparently solicited no help from BNYM, its purported client, in undertaking such a difficult task.

Stafne remains concerned, however, about DWT's continuing assertions of falsehood as fact. For example, DWT through Bugaighis falsely claims "[t]he identity of the SAMI Trust, in which Stafne's Note was securitized, has never been questioned and remains the same." That is not true. Stafne has presented evidence which indicates that his note and deed of trust were owned by Countrywide up until 2013 when they were assigned to Nationstar. Dkt. 29, ¶ 11, exhibits 5 & 6.

Burnside, a DWT owner, submitted a declaration in which he admits DWT, Bugaighis, and himself are attorneys for Nationstar and represent "whoever" pursuant to Nationstar's POA with Bank. Further Burnside admits that the only relationship which he has with BONY is through the POA agreement between the Bank and Nationstar, which is Attachment E to the complaint. *See* Burnside Decl., Dkt. 38 ¶¶ 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

But the POA (which speaks for itself) disputes this as the POA continues to identify the grantor as "THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK as successor in interest to JPMorgan Chase Bank, N.A. See attachment E to the complaint and Janati declaration, Exhibit A.

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1 Indeed, paragraph 6 to Burnside's declaration makes crystal clear that Burnside
2 misidentified and accordingly falsely alleged to this Court in the complaint the identity of the
3 plaintiff because he was attempting to represent the Bank without being the Bank's attorney.
4 "I drafted (and Nationstar approved) the Complaint listing the Bank of New York Mellon (a
5 Delaware corporation), rather than its wholly owned subsidiary, the Bank of New York
6 Mellon (a New York corporation)." Dkt. 38, ¶,
7
8 Why should we believe Burnside has got it right now? See Dkt 29 Perhaps if Burnside
9 had a real client to which he could go to check out the adequacy and accuracy of his latest
10 research Stafne and this Court could be more assured that DWT actually represents someone
11 who has standing; and Stafne has an entity against whom he can obtain the quiet title relief he
12 seeks pursuant to RCW 7.28.300
13
14 In summary, DWT's motion to substitute parties (together with Burnside's
15 declaration) demonstrate that these attorneys at law who actually represented only Nationstar
16 had no contact with BONY or BNYM or any of their affiliates or related entities before suing
17 Stafne and signing the complaint which represented: "Davis Wright Tremaine LLP [as]
18 Attorneys for Bank of New York Mellon." Dkt. 1, p. 9.
19
20 **D. DWT, Burnside, Bugaighis, and Nationstar have presented no evidence that they had the authority to bring this lawsuit against Stafne**
21 The Power of Attorney attached to the complaint as Attachment E (presumably the one
22 claimed to have authorized the filing of the complaint against Stafne) was purportedly signed
23 on behalf of Bank on August 29, 2014. *See* Dkt. 1-6, Attachment E, p. 4 of 7. This same
24 Power of Attorney was countersigned by Nationstar on September 4, 2014. *Id.* p. 5 of 7. By
25 its own terms this limited power of Attorney expired one year later, i.e. On September 14,
26 2015.

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This lawsuit was filed on January 19, 2016 by DWT, Burnside, and Bugaighis based on their legal representation of Nationstar. But Attachment E to the complaint clearly indicates Nationstar no longer had authority to sue Stafne on behalf of the Bank and/or hire DWT to prepare and file a complaint on behalf of the Bank at this time. The power of attorney is limited and makes very clear it only provides authority for Nationstar to do those acts set forth in the agreement. Accordingly, Nationstar and DWT had no authority/standing to sue Stafne in federal court.

E. The POA does not provide a basis for Nationstar and its attorneys to invoke this Court's diversity jurisdiction without the express approval of the trustee.

As previously noted, the POA in this case provides "[t]his agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to the conflicts of laws principles."

The courts of New York consider that a trustee's decision to obtain legal counsel for advice on legal issues related to the trust is probative with regard to the question of whether the trustee has acted prudently. For example, the Court noted in a recent case involving securitized Countrywide asset trusts that:

> … "if a trustee has selected trust counsel prudently and in good faith, and has relied on plausible advice on a matter within counsel's expertise, the trustee's conduct is significantly probative of prudence" (Restatement [Third] of Trusts § 77, Comment b[2]). While reliance on the advice of counsel may not always be the end of the analysis regarding a claimed breach of trust—it is possible for a trustee to specifically seek out legal advice that would support the trustee's desired course of conduct, or there may be other circumstances establishing that it was unreasonable to follow the legal advice (*id.*)—a party challenging the decisions of a trustee who followed the advice of a highly-regarded specialist in the relevant area of law can prevail only upon a showing that, based on the particular circumstances, the reliance on such counsel's assessment was unreasonable and in bad faith. Court approval of the settlement does not require that the court agree with counsel's judgment or assessment; all that is required is a determination that it was reasonable for the Trustee to rely on counsel's expert judgment.

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1 *In re Bank of New York Mellon*, 127 A.D.3d 120, 126, 4 N.Y.S.3d 204, 208 (N.Y. App. Div.
2 2015).

3 The POA in this case states that the relationship between the Bank and Nationstar "is
4 intended by the parties to be that of an independent contractor and not that of a joint ncoura,
5 partner, or agent." This is significant because courts have ncourage that there are inherent
6 conflicts of interests between servicers, like Nationstar, and the beneficiaries of securitized
7 trusts and the trustees of such trusts. *See e.g. Bain v. Metro. Mortgage Grp., Inc.*, 175 Wash.
8 2d 83, 97-98, note 7, 285 P.3d 34, 41 (2012); *Culhane v. Aurora Loan Servs. Of Nebraska*,
9 826 F. Supp. 2d 352, 375 n. 15 (D. Mass. 2011), *aff'd,* 708 F.3d 282 (1st Cir. 2013). This
10 concerns Stafne here because of his interests as a citizen in the operation of the Separation of
11 Powers (which restrict the authority of this Court to adjudicate this case) and the federal
12 structure of our constitutional republic (which generally provides state courts with the
13 authority to dispossess land within its borders.) *See e.g. Bond v. United States*, 131 S. Ct.
14 2355, 2363-4 (2011).

15 If Nationstar is not the agent of the trust then it has no basis by which to retain DWT,
16 Burnside, and Bugaighis as the attorney for the Bank, as trustee for the beneficiaries' interest
17 in the trust, for purposes of invoking the diversity jurisdiction of this Court. The limited POA
18 only gives Nationstar, an independent contractor arguably having divergent interests from the
19 trust beneficiaries, the power to foreclose; not the power to invoke this Court's diversity
20 jurisdiction pursuant to 28 USC 1332.

21 Foreclosure of real property generally refers to state court proceedings to dispossess
22 the title to land within the boundaries of a specific state.

> "It is an established principle of law, everywhere recognized; arising from the necessity of this case, that the disposition of immovable property ... is exclusively subject to the government within whose jurisdiction the property is

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> situated." *United States v. Fox*, 94 U.S. 315, 320-21, 24 L. Ed. 192 (1877) (citing *McCormick v. Sullivant*, 23 U.S. 192, 6 L. Ed. 300, 14 S. Ct. 616 (1825)). Unless Congress enacts a law in furtherance of an enumerated power, the Supreme Court continues to hold that State's core sovereignty includes enacting laws related to the dispossession of property within its own borders. *See United States v. Burnison,* 339 U.S. 87,91-92 (1950) (Declining to overrule *United States v. Fox,* supra.) *See also Oneida Indian Nation v. Oneida County,* 414 U.S. 661, 676–77, 94 S.Ct. 772, 39 L.Ed.2d 73 (1974) ("[o]nce the patent issues, the *incidents of ownership are, for the most part, matters of local property law to be vindicated in local courts*"). This is so because each state has the power "to provide for and protect individual rights to the soil within its confines" in furtherance of the general welfare of society based on the security of title to real estate. *Am. Land Co. v. Zeiss,* 219 U.S. 47, 60, 31 S.Ct. 200, 55 L.Ed. 82 (1911); *see also United States v. Fox,* 94 U.S. at 320 (means of acquiring and transferring real property is the exclusive domain of "the government within whose jurisdiction the property is situated"); *Arndt v. Griggs,* 134 U.S. 316, 320–21, 10 S.Ct. 557, 33 L.Ed. 918 (1890) (same).

Dkt. 11, p. 11:1 – 20. See also *Phillips v. Tompson,* 73 Wn. 78, 85, 131 P. 461 (1913).

Granting an independent contractor the limited power to affirmatively non-judicially or judicially foreclose a deed of trust in state proceedings as part of routine servicing rights, is not the same thing as granting Nationstar the Banks/Trustee/Trust's citizenship and right to invoke diversity jurisdiction. The reason the two powers are different is made obvious by this case and the Robertson case. Dkt. 29. The Robertson case involved similar pleading errors by DWT and Burnside with regard to the citizenship of The Bank of New York Mellon Trust Company National Association. *Id.*

In order to invoke diversity of citizenship jurisdiction pursuant to a limited POA an entity having Article III standing should be required to consent, cooperate, and participate in filing an action in federal court based on 28 USC 1332. This is because if an actual party with standing to bring suit is not involved in this process, the other parties and the Court run the risk that attorneys for the independent contractor will attempt to manipulate this Court's jurisdiction to become involved in cases which are primarily of local concern.

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1 Concerns that members of the federal defense bar will attempt to manipulate facts in
2 order to bring cases (especially those involving novel issues of state law before federal courts
3 for an initial construction of state law) is not a new concern. For example, in *Caterpillar Inc.*
4 *v. Lewis* the United States Supreme Court held that a District Court's error in failing to
5 remand an improperly removed case was not fatal to the ensuing adjudication, if federal
6 jurisdictional requirements are met at the time judgment is entered. 519 U.S. at 64. In that
7 case, the Supreme Court homed in on the question as to whether a district court's initial
8 misjudgment regarding the existence of removal jurisdiction burdened the case forever, or
9 was overcome by the eventual dismissal of the non-diverse defendant. *Id.* at 70.
10
11 The plaintiff in *Caterpillar* argued that allowing lack of removal and diversity
12 jurisdiction to be cured would incentivize attorneys and litigants to be less than vigilant about
13 their compliance with those statutes establishing removal and diversity jurisdiction. Justice
14 Ginsburg (writing for a then unanimous court on this issue) discussed those concerns. *See Id.*
15 at 475-76, 136 L.Ed. 2d 437 (1996). The upshot of that discussion was that where defects in
16 removal jurisdiction lingered, but were cured before a trial which actually occurred,
17 "considerations of finality, efficiency, and economy become overwhelming." 519 U.S. at 77-
18 78.
19
20 In response to plaintiffs concerns that "all of the various procedural requirements for
21 removal will become unenforceable"; and "defendants will have an enormous incentive to
22 attempt wrongful removals" *Id.* at 77, Justice Ginsburg responded the federal bar could police
23 itself. "We do not anticipate … dire consequences …" *Id.*
24
25 > The procedural requirements for removal remain enforceable by the federal trial court judges to whom those requirements are directly addressed. Lewis' prediction that rejection of his petition will "ncourage[e] state court defendants to remove cases improperly," id., at 19, rests on an assumption we do not indulge—that district courts generally will not comprehend, or will
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> balk at applying, the rules on removal Congress has prescribed. The prediction furthermore assumes defendant's readiness to gamble that any jurisdictional defect, for example, the absence of complete diversity, will first escape detection, then disappear prior to judgment. The well-advised defendant, we are satisfied, will foresee the likely outcome of an unwarranted removal—a swift and non-reviewable remand order, see 28 U.S.C. §§ 1447(c), (d), attended by the displeasure of a district court whose authority has been improperly invoked. The odds against any gain from a wrongful removal, in sum, render improbable Lewis' projection of increased resort to the maneuver.

Id. at 77-78.

In 2004 a five to four majority of the Supreme Court refused to follow *Caterpillar* in *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567 (2004). *Grupo* was a case which had been improperly brought in federal court. Years later and after a jury had reached a verdict it became obvious the parties were not diverse when the case was filed. Justice Scalia writing for the majority held considerations of finality, efficiency, and economy notwithstanding, the lack of diversity jurisdiction at the outset of the case could not be cured by a change in the parties which occurred throughout the litigation. *Id.* at 573-74.

> While recognizing that *Caterpillar* is "technically" distinguishable because the defect was cured by the dismissal of a diversity-destroying party, the Fifth Circuit reasoned that "this factor was not at the heart of the Supreme Court's analysis …." 312 F.3d, at 172–173. The crux of the analysis, according to the Fifth Circuit, was *Caterpillar's* statement that "[o]nce a diversity case has been tried in federal court … considerations of finality, efficiency, and economy become overwhelming." 519 U.S., at 75, 117 S.Ct. 467. This was indeed the crux of analysis in *Caterpillar,* but analysis of a different issue. It related not to cure of the *jurisdictional* defect, but to cure of a *statutory* defect, namely, failure to comply with the requirement of the removal statute, 28 U.S.C. § 1441(a), that there be complete **1926 diversity at the time of removal.[4] The argument to which the statement was directed took as its *starting point* that subject-matter jurisdiction had been satisfied: "ultimate satisfaction of the subject-matter jurisdiction requirement ought not swallow up antecedent *statutory* violations." 519 U.S., at 74, 117 S.Ct. 467 (emphasis added). The resulting holding of *Caterpillar,* therefore, is only that a statutory defect—"Caterpillar's failure to meet the § 1441(a) requirement that the case be fit for federal adjudication at the time the removal petition is filed," *id.,* at 73, 117 S.Ct. 467—did not require dismissal once there was no longer any jurisdictional defect.

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1 *Id.* at 573-74.

2 Justice Ginsburg, now writing for the minority in dissent in *Grupo*, contended that in
3 the absence of evidence of jurisdictional manipulation the holding of *Caterpillar* should be
4 applied. In this regard, Justice Ginsburg noted that as of 2004 there had been no showing of
5 parties or attorneys attempting to manipulate jurisdiction.
6

7 > Nor would affirmance of the Fifth Circuit judgment entail a significant risk of manipulation in other cases. Rarely, if ever, will a plaintiff bring suit in federal district court, invoking diversity jurisdiction under § 1332(a), with the knowledge that complete diversity does not exist, but in the hope of a postfiling jurisdiction-perfecting event. Such a plaintiff's anticipation is likely to be thwarted by the court's or the defendant's swift detection of the jurisdictional impediment. Furthermore, a plaintiff who ignores threshold jurisdictional requirements risks sanctions and "the displeasure of a district court whose authority has been improperly invoked." *Caterpillar,* 519 U.S., at 77–78, 117 S.Ct. 467. The Court's fears about the "litigation-fostering effect" of exceptions to the time-of-filing rule, *ante,* at 1930, thus appear more imaginary than real. No wave of new jurisdictional litigation is likely, as the federal courts' experience after *Caterpillar* and *Newman–Green* shows.

8 9 10 11 12 13 14

15 *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. at 597.

16 Justice Ginsburg's observations that the federal bar had not attempted to manipulate
17 diversity jurisdiction in such a way as to avoid its constitutional and statutory purposes was
18 authored before the Great recession. This economic downturn caused a wave of litigation in
19 which the federal bar sought to manipulate federal courts, including this Court, into taking
20 jurisdiction over cases involving the dispossession of land, which involved state law issues of
21 first impression. *See e.g. Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wash. 2d 820, 832-34, & 12
22 (2015) (rejecting most federal courts' holdings that alternative beneficiary declarations
23 complied with Washington's Deeds of Trust Act, RCW Ch. 61.24; *Bain v. Metro. Mortgage*
24 *Grp., Inc.*, 175 Wash. 2d 83, 109 (2012)(also rejecting federal courts first impression statutory
25
26

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1 constructions of Washington deeds of trust act in favor of lenders, their nominees and
2 successors.)

3 Here, Stafne's allegations of Nationstar and Nationstar's attorneys attempting to
4 manipulate this Court into invoking its diversity jurisdiction for improper purposes could not
5 be clearer. Indeed, See Dkt 26-1, ¶ 8, Ex. 4.

6
7 Recently (after this Court issued its "minute order" declaring it has jurisdiction over
8 this case) the Supreme Court issued a new decision emphasizing that it construes
9 jurisdictional laws "to respect the traditional role of state courts in our federal system…"
10 *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 136 S. Ct. 1562, 1567-68 (2016).
11 The Court reminded us all that:

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> Out of respect for state courts, this Court has time and again declined to construe federal jurisdictional statutes more expansively than their language, most fairly read, requires. We have reiterated the need to give "[d]ue regard [to] the rightful independence of state governments"—and more particularly, to the power of the States "to provide for the determination of controversies in their courts." *Romero,* 358 U.S., at 380, 79 S.Ct. 468 (quoting *Healy v. Ratta,* 292 U.S. 263, 270, 54 S.Ct. 700, 78 L.Ed. 1248 (1934); *Shamrock Oil & Gas Corp. v. Sheets,* 313 U.S. 100, 109, 61 S.Ct. 868, 85 L.Ed. 1214 (1941)). Our decisions, as we once put the point, reflect a "deeply felt and traditional reluctance … to expand the jurisdiction of federal courts through a broad reading of jurisdictional statutes." *Romero,* 358 U.S., at 379, 79 S.Ct. 468.[6] That interpretive stance serves, among other things, to keep state-law actions like Manning's in state court, and thus to help maintain the constitutional balance between state and federal judiciaries.
> 7 Nor does this Court's concern for state court prerogatives disappear, as Merrill Lynch suggests it should, in the face of a statute granting exclusive federal jurisdiction. See Brief for Petitioners 23–27. To the contrary, when a statute mandates, rather than permits, federal jurisdiction—thus depriving state courts of all ability to adjudicate certain claims—our reluctance to endorse "broad reading[s]," *Romero,* 358 U.S., at 379, 79 S.Ct. 468 if anything, grows stronger. And that is especially so when, as here, the construction offered would place in federal court actions bringing only claims created by state law—even if those claims might raise federal issues. To be sure, a grant of exclusive federal jurisdiction, as Merrill Lynch reminds us, indicates that Congress wanted "greater uniformity of construction and more effective and expert application" of federal law than usual. Brief for Petitioners 24 (quoting *Matsushita,* 516 U.S., at 383, 116 S.Ct. 873). But "greater" and "more" do not

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> mean "total," and the critical question remains how far such a grant extends. In resolving that issue, we will not lightly read the statute to alter the usual constitutional balance, as it would by sending actions with all state-law claims to federal court just because a complaint references a federal duty.

*Id.*136 S. Ct. at 1573-74 (2016).

If Nationstar is not an agent for the Bank/Trustee/Trust and/or has interests adverse to them then it cannot appoint DWT, Burnside, and Bugaighis (Nationstar's own attorneys) as the trust's attorneys for purposes of invoking this Court's jurisdiction. This is because (1) the Limited POA does not grant Nationstar such power; and (2) 28 USC 1332 contemplates that an injured party will determine whether to invoke this Court's diversity jurisdiction.

Giving attorneys-in-fact and their attorneys at law the power to create and/or manipulate facts without access to the party with standing to bring suit is a recipe for disaster which will eventually call into question the integrity of the federal judicial department because (1) it diminishes the "case or controversy" and standing restrictions on this Court's exercise of power; (2) ignores Congressional mandate that stale and other debt collection not be made in the names of entities which don't exist; (3) intrudes on the time honored prerogative of the States to establish its own procedures for the dispossession of land; and (4) rewards attorneys for making false jurisdictional and standing allegations to this Court.

When the circumstances of this case are carefully evaluated it appears that the only reason Nationstar, DWT, Burnside, and Bugaighis have attempted to bring this action against Stafne in a federal foreclosure action is because Burnside's feelings are hurt. See Stafne declaration. Unfortunately, for him debt collectors must follow the law when they attempt to bully people based on debt.

VI. *Conclusion*

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For all the foregoing reasons, as well as those stated previously, this Court should dismiss the complaint filed by DWT, Burnside, and Bugaighis on behalf of Nationstar falsely naming Bank of New York Mellon, a Delaware corporation, as its client for purposes of invoking this Court's diversity jurisdiction.

Dated this 30th day of June, 2016 at Arlington, Washington.

s/ *Scott E. Stafne*

SCOTT E. STAFNE WSBA#6964

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The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2,

Plaintiff,

v.

SCOTT STAFNE, an individual; Todd Stafne, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation,

Defendants.

No. 2:16-cv-00077 TSZ

BANK OF NEW YORK MELLON'S MOTION TO SUBSTITUTE REAL PARTY IN INTEREST PURSUANT TO FED. R. CIV. P. 17(a)(3)

Noted for Consideration: July 15, 2016

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TABLE OF CONTENTS

Page(s)

I. INTRODUCTION AND SUMMARY OF RELIEF REQUESTED 1

II. STATEMENT OF FACTS 2

A. BNYM and BONY are Both Corporations Named The Bank of New York Mellon. 2

B. Stafne's Claims Regarding the Real Party in Interest. 4

C. Investigation Regarding BONY As Trustee. 6

III. AUTHORITY AND ARGUMENT 7

A. Rule 17(a) Provides A Liberal Standard For Substitution Upon Challenge to Real-Party-in-Interest Status. 7

B. This Court Should Allow Substitution of BONY. 8

C. In the Alternative, This Court Should Allow Ratification. 9

D. Defendants Will Not Suffer Prejudice Due to Substitution. 9

IV. CONCLUSION 10

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TABLE OF AUTHORITIES

Page(s)

Federal Cases

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888 F. Supp. 2d 478 (S.D.N.Y. 2012) 8, 9

Beaudu v. Starwood Hotels and Resorts Worldwide, Inc.,
2005 WL 1877344 (W.D. Wash. 2005) 7

Choi v. Kim,
50 F.3d 244 (3d Cir. 1995) 8

Dorroh v. Deerbrook Ins. Co.,
612 Fed. Appx. 424 (9th Cir. 2015) 8

Dunmore v. United States,
358 F.3d 1107 (9th Cir. 2004) 8

FDIC v. Isham,
777 F. Supp.828 (D. Colo. 1991) 9

Nat'l Ins. Underwriters, by Nat. Aviation Underwriters v. Mark,
704 F. Supp. 1033 (D. Colo. 1989) 8

United States for Use & Benefit of Wulff v. CMA, Inc.,
890 F.2d 1070 (9th Cir. 1989) 8

Rules

Fed. R. Civ. P. 17(a)(3) .... *passim*

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I. INTRODUCTION AND SUMMARY OF RELIEF REQUESTED

Defendant Scott Stafne has filed multiple briefs quibbling not over the obvious fact that he defaulted on the loan for which he pledged his home as collateral, but rather over the corporate structure and entities affiliated with Plaintiff Bank of New York Mellon (BNYM). Stafne originally moved to dismiss for lack of jurisdiction based in part on the theory that the Complaint failed to identify the citizenship of non-party subsidiary of Plaintiff, the Bank of New York Mellon Trust Company, NA. *See* Dkt. 10. (Stafne has also objected that BNYM was not a valid Plaintiff because, according to him, BNYM would not accept service of process in a separate matter unless it was identified with the definite article "***The***" before Bank of New York Mellon. *See* Dkt. 21.) The Court denied that motion. *See* Dkt. 22. Stafne disagrees with the Court's ruling, *see* Dkt. 27 ¶ 12, and testified in deposition that he intends to continue litigation over jurisdiction because he does not believe the Court's Order was a "reasoned" decision. *See* Declaration of Fred Burnside, Ex. E (Stafne Dep.) at 6:19-7:3. More recently, Stafne has changed tack, suggesting that the proper Plaintiff in this case is a different Bank of New York Mellon corporation. Stafne contends in his June 2, 2016, declaration that the proper Plaintiff is BNYM's wholly-owned subsidiary, the New York state-chartered bank, The Bank of New York Mellon, a New York state-chartered banking corporation ("BONY"), with a main office in New York, New York. *See* Dk. 29 ¶ 4.

Upon objection to the status of Plaintiff as real-party in interest, the Federal Rules of Civil Procedure expressly permit one corporate entity to ratify prior proceedings of another entity (or to join or substitute in as a party) within a reasonable time, and BONY, as the wholly owned-subsidiary of BNYM, could do just that, to assuage Stafne's concerns. *See* Fed. R. Civ. P. 17(a)(3). But past experience with Mr. Stafne suggests that ratification (or joinder) may not satisfy Stafne and may result in even more litigation.

Thus, to avoid further motions practice, BNYM now seeks to substitute BONY as Plaintiff under Rule 17(a)(3), because although BONY is wholly owned by BNYM, further investigation into the statements in Stafne's June 2, 2016, declaration confirms that it is the

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New York, rather than Delaware, corporation that is the Bank of New York corporation that acts as Trustee for the Trust owning Stafne's loan (the Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2 ("SAMI Trust")).

This proposed substitution does ***not*** affect the merits of this action—all other allegations and causes of action in the Complaint remain the same, and this Court retains diversity jurisdiction because BONY is both incorporated and has its principal place of business in New York, which is diverse from all Defendants. In an effort to assuage Stafne's concerns, and to avoid further time and expense on issues unrelated to the merits of the claims, BNYM asks that the Court permit substitution of BONY into this action as Plaintiff. In the alternative, BNYM requests leave to allow BONY to ratify BNYM's commencement of the action on its behalf, as Rule 17(a)(3) also permits.

II. STATEMENT OF FACTS

A. BNYM and BONY are Both Corporations Named The Bank of New York Mellon.

Nationstar Mortgage LLC serves as attorney in fact for BONY with respect to certain securitized trusts, pursuant to a series of identical (annual) Limited Powers of Attorney. Declaration of Fay Janati ("Janati Decl.") ¶ 4 & Ex. A. The Limited Power of Attorney in this case is executed by "The Bank of New York Mellon F/K/A The Bank of New York as successor in interest to JP Morgan Chase Bank, N.A.," and references the securitized trusts for which Nationstar may take action (including foreclosure). *Id.* Stafne's promissory Note was indorsed to "The Bank of New York Mellon F/K/A The Bank of New York, Successor Trustee, To JP Morgan Chase Bank, As Trustee." *Id.* ¶ 6 & Ex. B. Somewhat ambiguously, none of these documents identifies the corporate designation of "The Bank of New York Mellon."

In seeking to verify the correct Bank of New York entity that acts as Trustee for the SAMI Trust owning Mr. Stafne's loan, Nationstar—as servicer and attorney in fact for BONY, authorized and required to prosecute foreclosures on defaulted loans within the Trust—and undersigned counsel examined the records reflecting the corporate history and mergers for the Bank of New York of Mellon Corporation (founded by Alexander Hamilton). *See* Burnside

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Decl. ¶ 2. Betty Johnson, a paralegal for Nationstar, consulted Nationstar's "Investor Matrix," which identifies the investor for securitized trusts for which Nationstar acts as servicer. Betty Johnson Declaration ("Johnson Decl.") ¶ 4. Ms. Johnson determined the correct trustee of the SAMI Trust was "Bank of New York Mellon Corporation" based on the Investor Matrix's listing of "The Bank of New York, Mellon Corporation" as trustee. *Id.* & Ex. A.

Inv	Inv Name	Inv Legal Name	InvSetupDt	Boarding Date	Cutoff	Portfolio Type	Deal Type	GNMAType
BWX	SAMI 2005-AR2	Structured Asset Mortgage Investments II Trust 2005-AR2	06/05/2013	07/05/2013	31	Private - Lewisville	Private - Lewisville	

GNMAType	MSR Pool ID	MSR Ind	REO Ind	SUBsvcg Ind	SPECIALsvcg Ind	WholeLn Ind	Inventory Ind	Special Type	MSR Owner	Remit Type	Manager	LenderNbr
	M-PLS1a	MSR				RMBS		MSR	Nationstar	S/S	Ryan Kuether	222222222

LenderNbr	Company	3rd Party Surveillance	Reg AB / USAP	SCRA Subsidy Required	Advance Facility	Mon Id	Master Servicer
222222222	MOS	NA	USAP	N	MS NRZART 2014-1	6	Wells Fargo Bank, N.A

Master Servicer	Trustee	Custodian	Claims Approval Required	Contra Account
Wells Fargo Bank, N.A.	The Bank of New York, Mellon Corporation	NA	E	N

Indeed, BNYM's Annual Report to shareholders, uses BNY Mellon as a short-form for Plaintiff the Bank of New York Mellon Corporation, and explains:

> In this Annual Report, references to "our," "we," "us," "BNY Mellon," the "Company" and similar terms refer to The Bank of New York Mellon Corporation and its consolidated subsidiaries. The term "Parent" refers to The Bank of New York Mellon Corporation but not its subsidiaries.

See Burnside Decl., ¶ 3 & Ex. A at 4 BNY Mellon. The Report confirms that "BNY Mellon" acts as Trustee of securitized trusts like the one owning Stafne's loan:

> BNY Mellon acts as trustee and document custodian for certain mortgage-backed security ("MBS") securitization trusts. […] BNY Mellon is indemnified by the servicers or directly from trust assets under the governing agreements. ***BNY Mellon may appear as the named plaintiff in legal actions brought by***

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1 ***servicers in foreclosure and other related proceedings because the trustee is the nominee owner of the mortgage loans within the trusts***.

2 *Id.* at BNY Mellon 29 (emphasis added).

3 Likewise, the Corporate Trust Investor Reporting website for BNYM also provided a
4 reasonable basis to believe Plaintiff was the Trustee, because for the SAMI Trust, the
5 "contacts" tab lists the Trustee as "The Bank of New York," with a hyperlink that takes the user
6 to the Bank of New York Mellon Corporation's website, www.bnymellon.com. *See* Burnside
7 Decl., ¶ 4 & Ex. B. The website further explains that the information is provided by "The Bank
8 of New York Mellon Corporation." *Id.* Finally a search of New York Corporations entitled
9 "The Bank of New York Mellon" discloses BNYM, a Delaware Corporation. Burnside Decl., ¶
10 5 & Ex. C. BONY is recognized is "a corporation organized by Special Act of the New York
11 State Legislature, Chapter 616 of the Laws of 1871," regulated by the State of New York
12 Banking Department (renamed the New York Department of Financial Services in 2011). *See*
13 Janati Decl., Ex. E.[1]

14 Thus, undersigned counsel drafted (and Nationstar, as attorney in fact) approved the
15 Complaint listing as Plaintiff the Bank of New York Mellon (a Delaware corporation), rather
16 than its wholly owned subsidiary, The Bank of New York Mellon (a New York corporation).
17 *See* Burnside Decl. ¶ 6.

18 **B. Stafne's Claims Regarding the Real Party in Interest.**

19 On February 29, 2016, Scott Stafne filed a Motion to Dismiss for Lack of Subject
20 Matter Jurisdiction. Dkt. 10. In his Motion, Stafne contested jurisdiction because he alleged
21 the Plaintiff was Bank of New York Mellon Trust Company, N.A., a federally chartered
22 national banking association. *Id.* at 8-9. Counsel for BNYM investigated Stafne's allegation
23 but saw nothing suggesting that the trustee of the SAMI Trust (as opposed to other, irrelevant
24 trusts) was a national banking association. Burnside Decl., ¶ 7. As BNYM explained earlier,

25

26 [1] The government website for the Department of Financial Services explains that in New York, banks are also corporations: "Banks, also known as commercial banks, are community, regional or national for-profit ***business***
27 ***corporations*** owned by private investors and governed by a board of directors chosen by stockholders." *See* http://www.dfs.ny.gov/about/whowesupervise.htm#banks (emphasis added).

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1 "the Complaint explains that Bank of New York Mellon Corporation ("BNYM"), a Delaware
2 corporation, is the Plaintiff, not a national association or trust company." Dkt. 12 at 1, 4-5.
3 On Reply, Stafne continued to allege "Bank of New York Mellon, is not a corporation,
4 but rather is (as it consistently describes itself) a bank." Dkt. #14 at 8; *see also* Dkt. 16 ¶ 30
5 ("The power of attorney is to represent Bank of New York Mellon, not Bank of New York
6 Mellon, a Delaware corporation."). Of course, nothing prevents a banking institution from also
7 being a corporate entity, making this distinction irrelevant. In any event, Stafne supplemented
8 his Motion with multiple declarations, including an April 21, 2016 declaration that alleged the
9 Plaintiff was incorrect because it should have been "**The** Bank of New York Mellon" instead of
10 "Bank of New York Mellon." *See* Dkt. 21 ¶ 11 ("the complaint establishes that the plaintiff in
11 this action is not The Bank of New York Mellon" (emphasis in original)); *id.* ¶ 22 ("Because
12 the complaint in this case does not properly name any proper Bank of New York entity, i.e. one
13 which includes the word "The" before "Bank", the purported plaintiff does not have any
14 interest in the deed of trust, even though an entity with a similar sounding name may be
15 claiming an interest in the stale deed of trust at issue in this case."). Stafne also again alleged
16 that "JP Morgan Chase [sold its] trustee business to Bank of New York, N.A." *Id.* ¶ 14.
17 Counsel for BNYM determined the use of the definite article "the" was not a material
18 distinction and did not change the identity (let alone eliminate the existence) of Plaintiff.
19 Burnside Decl., ¶ 8. Counsel had already determined the Plaintiff (as real party in interest)
20 was neither The Bank of New York Mellon Trust Company, N.A., nor Bank of New York, N.A.
21 *Id.*, as Stafne suggests. [2]
22
23 [2] Stafne's confusion appears to stem from the fact that he has been reviewing the wrong agreements. There was an April 7, 2006, Purchase and Assumption agreement between the Bank of New York, Inc. and J.P. Morgan Chase &
24 Co. (the corporate parent to JPMorgan Chase Bank N.A.) to transfer all of the relevant assets; next there was an October 1, 2006 Assignment and Assumption Agreement, under which certain "Corporate Trust Contracts" where
25 transferred to the Bank of New York, the New York State chartered bank). At the same time, other agreements were executed in October 2006 for "Resignation and Assumption," under which various Bank of New York, Inc.,
26 subsidiaries took over the role of Trustee for specific securitized trusts. Although the Bank of New York Trust Co., N.A. took over as Trustee for ***other*** securitized trusts—including apparently the trust at issue in the *Robertson*
27 litigation Stafne focuses on—the Bank of New York (the New York corporation and state chartered bank) took over as Trustee of the SAMI Trust. *See* Janati Decl., Exs. D-G. The evidence shows that in October 2006, Chase resigned and BONY assumed Trustee responsibilities. Janati Dec. Ex. F.

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1 On June 2, 2016, Stafne filed a "Motion to Prove Authority to Bring Lawsuit." Dkt. 28.
2 Stafne challenged counsel's ability to act on behalf of multiple entities, most of which are not
3 affiliated with the Complaint. *See id.* at 1-2. Stafne's June 2, 2016 Declaration alleged for the
4 first time that JPMorgan Chase's "securitized trust portfolio" was "transferred to Bank of New
5 York in 2006. […] The Bank of New York to which this business was transferred was a state,
6 i.e. New York, chartered bank in 2006." Dkt. 29 ¶ 4.

7 **C. Investigation Regarding BONY As Trustee.**

8 **Transfer of Assets from Chase to the Bank of New York.** Following Stafne's June 2,
9 2016 Declaration, counsel for BNYM renewed investigation into the identity of The Bank of
10 New York, as trustee of the SAMI Trust. Burnside Decl., ¶ 9. On June 14, 2016, counsel
11 obtained from the Bank of New York Mellon a copy of an "Assignment and Assumption
12 Agreement" effectuating the transfer of "Acquired Corporate Trust Contracts"—including the
13 SAMI Trust, as identified in Annex A, Schedule 2.1(a)(3) (REDACTED)—to "The Bank of
14 New York, a wholly owned subsidiary of BNY." Janati Decl., Ex. D.[3]

15 **The Bank of New York Becomes the Bank of New York Mellon.** In assessing
16 Stafne's arguments, counsel also reviewed documents reflecting the merger between the Bank
17 of New York and Mellon Financial Corporation. Specifically, counsel reviewed a certification
18 of name change from the State of New York Banking Department that identified a July 1, 2008,
19 Certificate of Effectiveness providing for the Merger of BNY Mellon Interim Institutional
20 National Bank, with and into The Bank of New York, under the name The Bank of New York
21 Mellon with a principal office located at "One Wall Street, New York, New York." Burnside
22 Decl. ¶ 10; Janati Decl., Ex. E. That document further explains that BONY Mellon is a New
23 York Corporation. *Id.* at F at 1 ("The Bank of New York Mellon is a corporation organized by
24 Special Act of the New York State Legislature, Chapter 616 of the Laws of 171 ….")

25

26 [3] There is no dispute that Mr. Stafne's loan was deposited into the SAMI Trust by, at the latest, May 31, 2005. *See*
27 Janati Decl. ¶ 11 & Ex. G (May 2005 Assignment, Assumption, and Recognition Agreement, with redacted loan list showing Stafne loan deposited into trust).

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1 BONY is a wholly owned subsidiary of BNYM. *See* Burnside Decl. ¶ 11 & Ex. D.
2 BNYM's subsidiary entities are reported by the FDIC, as follows:

FDIC-Insured Subsidiaries of Bank Holding Companies -- Detail
BANK OF NEW YORK MELLON CORPORATION, THE
New York, NY

4 records were found matching your selection criteria
Multibank and One Bank HCs, Having BHC ID #3587146
Sorted by Holding Company Name, Institution Name
Information as of March 31, 2016

Note: Important Information About This Data 1

BHC ID	Bank Holding Company Name	City	State	Class	Combined Total Domestic Deposits of Insured Subsidiaries ($000)[1]	Combined Total Assets of Insured Subsidiaries ($000)[1]
3587146	BANK OF NEW YORK MELLON CORPORATION, THE	New York	NY	HC	144,401,706	324,382,710

Bank and thrift subsidiaries of the bank holding company:

Cert	Institution Name	City	County	State	Class	Total Domestic Deposits ($000)	Total Assets ($000)
24867	BNY Mellon Trust of Delaware	Wilmington	New Castle	DE	NM	46,681	141,822
7946	BNY Mellon, National Association	Pittsburgh	Allegheny	PA	N	18,515,516	22,367,100
639	The Bank of New York Mellon	New York	New York	NY	SM	125,839,000	299,816,000
23472	The Bank of New York Mellon Trust Company, National Association	Los Angeles	Los Angeles	CA	N	509	2,057,788

12 *Id.*

13 In sum, there are two Bank of New York Mellon corporations, but one is from Delaware
14 and one is from New York. This misidentification is immaterial to Stafne's jurisdictional
15 attacks (let alone the merits), as both corporations are completely diverse from Defendants.

16 **III. AUTHORITY AND ARGUMENT**

17 **A. Rule 17(a) Provides A Liberal Standard For Substitution Upon Challenge to Real-Party-in-Interest Status.**

18 Federal Rule Civil Procedure 17(a)(3) permits substitution of a plaintiff upon a challenge
19 to the status of the plaintiff: "[t]he court may not dismiss an action for failure to prosecute in the
20 name of the real party in interest until, after an objection, a reasonable time has been allowed for
21 the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder,
22 or substitution, the action proceeds ***as if it had been originally commenced by the real party in***
23 ***interest***." (emphasis added). This Court has recognized "Fed.R.Civ.P. 17(a) provides a liberal
24 standard for the substitution of the real party in interest, and for relation back to the date of
25 filing." *Beaudu v. Starwood Hotels and Resorts Worldwide, Inc.*, 2005 WL 1877344, *1 (W.D.
26 Wash. 2005) (Zilly, J.). The purpose the rule "is to prevent forfeiture of an action" when a
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1 reasonable mistake has been made. *United States for Use & Benefit of Wulff v. CMA, Inc.*, 890
2 F.2d 1070, 1074 (9th Cir. 1989).
3 Likewise, BONY may ratify the action and permit its parent to proceed (so long as it
4 agrees to be bound by the result), and so long as the decision to sue in Plaintiff's name
5 represented "an understandable mistake and not a strategic decision." *See, e.g., Dunmore v.*
6 *United States*, 358 F.3d 1107, 1112 (9th Cir. 2004); *Dorroh v. Deerbrook Ins. Co.*, 612 Fed.
7 Appx. 424, 427 (9th Cir. 2015); *Abu Dhabi Commercial Bank v. Morgan Stanley & Co. Inc.*, 888
8 F. Supp. 2d 478, 490 (S.D.N.Y. 2012).
9 **B. This Court Should Allow Substitution of BONY.**
10 The Court should allow substitution here because Plaintiff has sought cure any defects
11 in its role as Plaintiff by substituting its subsidiary within a "reasonable time" after Stafne's
12 June 2, 2016 Declaration. The facts detailed above show that an understandable (and
13 immaterial) mistake has been made in that currently-named Plaintiff's wholly-owned
14 subsidiary with a substantially identical name is the Trustee of the SAMI Trust instead of the
15 parent entity. Thus, BNYM seeks to substitute its wholly owned subsidiary (also a corporate
16 entity named The Bank of New York Mellon) for itself.
17 Nationstar operates pursuant to a Power of Attorney that simply references "The Bank
18 of New York Mellon." Attach A. Nationstar and its counsel examined corporate records as
19 detailed above and came to the conclusion that the Bank of New York Mellon, a Delaware
20 corporation, was the Trustee of the SAMI Trust, rather than its wholly owned subsidiary, The
21 Bank of New York Mellon, a New York corporation. Counsel for Nationstar attempted to
22 confirm the identity of the Trustee and believed the correct entity had been named. Burnside
23 Decl. ¶¶ 2-6.[4] Stafne's June 2, 2016 Declaration provided notice that a different Bank of New
24 York Mellon corporation (BONY) might in fact be the correct Trustee of the SAMI Trust.
25
26
27

[4] Contrary to Stafne's arguments in prior motions, Nationstar is not the real party in interest, because case law explains that an entity acting as attorney-in-fact cannot be the real party in interest and must bring the action in the name of its principal. *See Choi v. Kim*, 50 F.3d 244, 247 (3d Cir. 1995); *Nat'l Ins. Underwriters, by Nat. Aviation Underwriters v. Mark*, 704 F. Supp. 1033, 1035 (D. Colo. 1989).

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1 Counsel immediately began investigation of this possibility and together with Nationstar was
2 able to determine that Plaintiff's wholly owned subsidiary, BONY, is in fact the correct Trustee
3 of the SAMI Trust. Burnside Decl. ¶¶ 9-11; Johnson Decl. ¶ 4.

4 Determining which Bank of New York entity should appear as Plaintiff in this action
5 was difficult because both corporations have the same name and several operative documents
6 simply refer to the "Bank of New York Mellon," without indication of a specific distinction
7 between the two entities. Thus, Nationstar and its counsel made a reasonable mistake in
8 identifying BNYM as Trustee rather than BONY. The identity of the SAMI Trust, in which
9 Stafne's Note was securitized, has never been questioned and remains the same.

10 **C. In the Alternative, This Court Should Allow Ratification.**

11 If the Court finds substitution is not appropriate, BONY is willing and able to ratify
12 BNYM's act of filing the Complaint on behalf of the SAMI Trust by submitting a declaration
13 stating as much, and agreeing to be bound by the result of this case. Janati Decl. ¶ 12. *Abu*
14 *Dhabi Commercial Bank*, 888 F. Supp. 2d at 490 ("the timely ratification confirms that
15 Butterfield stands in the shoes of BMMF; if BMMF suffered a loss, Butterfield is the 'real party
16 in interest' and may assert those claims").

17 **D. Defendants Will Not Suffer Prejudice Due to Substitution.**

18 In assessing a Motion to Substitute under Rule 17(a)(3), the Court looks "to whether
19 defendant had fair notice of the action and whether the substitution will alter the claim to the
20 prejudice of defendant." *FDIC v. Isham*, 777 F. Supp.828, 830 (D. Colo. 1991)(permitting
21 substitution of one FDIC entity for another as Plaintiff). Here, as in *Isham*, "Defendants
22 clearly had notice of [BONY's] claims against them when the original complaint was served,"
23 and the "mere change of plaintiff from [BNYM] to [BONY] does not change the nature of
24 those claims, nor does it inject any new elements into this action," such that defendants will not
25 be prejudiced." *Id.* Again, in this case, Defendants will not suffer prejudice from any
26 substitution, as all of the substantive allegations in the Complaint remain exactly the same—
27 Plaintiff is prepared to offer a redlined version of the Complaint should the Court desire—and

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there are no new claims, theories, or facts being added to the action. Further, because substitution of a New York entity with a principal place of business in New York does not affect diversity jurisdiction, this Court retains jurisdiction over the matter. Thus, substitution will not make any substantive difference to Defendants. To the extent Defendants wish to add additional time to the case schedule in light of these facts, neither BONY nor BNYM would oppose an extension of deadlines.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court substitute BONY for BNYM pursuant to Rule 17(a)(3), or in the alternative, allow BONY to ratify BNYM as the real party in interest.

DATED this 24th day of June, 2016.

Davis Wright Tremaine LLP
Attorneys for Bank of New York Mellon

By *s/ Fred B. Burnside*
Fred B. Burnside, WSBA #32491
Zana Z. Bugaighis, WSBA #43614
E-mail: fredburnside@dwt.com
E-mail: zanabugaighis@dwt.com

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2,

Plaintiff,

v.

SCOTT STAFNE, an individual; Todd Stafne, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation,

Defendants.

No. 2:16-cv-00077 TSZ

BETTY JOHNSON DECLARATION IN SUPPORT OF BANK OF NEW YORK MELLON'S MOTION TO SUBSTITUTE REAL PARTY IN INTEREST PURSUANT TO FED. R. CIV. P. 17(a)(3)

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1 I, Betty Johnson, declare:

2 1. ***Identity of Declarant.*** I, Betty Johnson, am employed as a contract paralegal with
3 Nationstar Mortgage LLC ("Nationstar"). In my position and as part of my employment, I work
4 on issues that give me familiarity with and access to trustee materials in Nationstar's possession.
5 Except as otherwise indicated, all facts set forth in this declaration are based on my personal
6 knowledge, which is based on my experience, my review of relevant documents, including
7 Nationstar's loan servicing records for Scott Stafne, and my discussions with appropriate
8 personnel. The facts and documents set forth below are maintained in the ordinary course of
9 business, and if called upon to testify regarding such matters, I could competently do so.

10 2. ***Declarant's Authority.*** I am duly authorized by Nationstar to make this
11 declaration.

12 3. ***Basis for Declaration.*** I am familiar with the manner and procedure by which the
13 records of Nationstar are obtained, prepared, and maintained on behalf of BONY and the SAMI
14 Trust. Those records are obtained, prepared, and maintained by employees or agents of Nationstar
15 in the performance of their regular business duties at or near the time, act, conditions, or events
16 recorded thereon. The records are made either by persons with knowledge of the matters they
17 record or from information obtained by persons with such knowledge. I have knowledge of and
18 access to the business records. I personally reviewed those records when making this declaration.

19 4. Prior to filing the Complaint in this action, I consulted a resource tool at my
20 disposal known as the "Investor Matrix"—which identifies the investor for securitized trusts for
21 which Nationstar acts as servicer—and determined the correct trustee of the SAMI Trust was
22 Bank of New York Mellon Corporation. A true and correct screenshot of Nationstar's Investor
23 Matrix for the SAMI Trust is attached hereto as Exhibit A. After further review of records and
24 information provided by BONY, I confirmed in June 2016 that the Bank of New York Mellon (a
25 Delaware Corporation), is not the Trustee of the SAMI Trust; instead, the Trustee of the SAMI
26

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1 Trust is BONY (a New York Corporation), which is a wholly owned subsidiary of the current
2 Plaintiff, the Bank of New York Mellon Corporation.
3 I declare under penalty of perjury of the laws of the United States of America that the
4 foregoing is true and correct.
5 EXECUTED at San Francisco CA this 24th day of June, 2016
6
7
Betty Johnson
8 Title: Contract Paralegal
Nationstar Mortgage LLC
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APPENDIX 38
A 237

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2,

Plaintiff,

v.

SCOTT STAFNE, an individual; Todd Stafne, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation,

Defendants.

No. 2:16-cv-00077 TSZ

BURNSIDE DECLARATION IN SUPPORT OF BANK OF NEW YORK MELLON'S MOTION TO SUBSTITUTE REAL PARTY IN INTEREST PURSUANT TO FED. R. CIV. P. 17(a)(3)

Note on Motion Calendar:
July 15, 2016

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I, Fred Burnside, declare as follows:

1. I am an attorney with Davis Wright Tremaine, LLP and counsel of record for Plaintiff Bank of New York Mellon ("BNYM") in this matter.

2. In seeking to verify the correct Bank of New York entity that acts as Trustee for the SAMI Trust owning Mr. Stafne's loan, Nationstar—as servicer and attorney in fact for BONY, authorized and required to prosecute foreclosures on defaulted loans within the Trust—and I examined the records reflecting the corporate history and mergers for the Bank of New York of Mellon Corporation (founded by Alexander Hamilton, *see, e.g.,* https://www.bnymellon.com/us/en/timeline.jsp).

3. BNYM's Annual Report to shareholders, uses BNY Mellon as a short-form for Plaintiff the Bank of New York Mellon Corporation, and explains at 4 BNY Mellon:

> In this Annual Report, references to "our," "we," "us," "BNY Mellon," the "Company" and similar terms refer to The Bank of New York Mellon Corporation and its consolidated subsidiaries. The term "Parent" refers to The Bank of New York Mellon Corporation but not its subsidiaries.

The Report confirms at BNY Mellon 29 that "BNY Mellon" acts as Trustee of securitized trusts like the one owning Stafne's loan:

> BNY Mellon acts as trustee and document custodian for certain mortgage-backed security ("MBS") securitization trusts. […] BNY Mellon is indemnified by the servicers or directly from trust assets under the governing agreements. ***BNY Mellon may appear as the named plaintiff in legal actions brought by servicers in foreclosure and other related proceedings because the trustee is the nominee owner of the mortgage loans within the trusts***.

A true and correct copy of BNYM's 2014 Annual Report (issued in February 2015), obtained from here: https://www.bnymellon.com/_global-assets/pdf/investor-relations/annual-report-2014.pdf is attached hereto as **Exhibit A**.

4. Likewise, the Corporate Trust Investor Reporting website for BNYM also provided a reasonable basis to believe Plaintiff was the Trustee, because for the SAMI Trust, the "contacts" tab lists the Trustee as "The Bank of New York," with a hyperlink that takes the user to the Bank

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of New York Mellon Corporation's website, www.bnymellon.com. The website further explains that the information is provided by "The Bank of New York Mellon Corporation." A true and correct copy of a Corporate Trust Investor Reporting website screenshot for the SAMI Trust is attached hereto as **Exhibit B**.

5. A search of New York Corporations entitled "The Bank of New York Mellon" discloses BNYM, a Delaware Corporation. A true and correct copy of a screenshot of the New York corporations search is attached hereto as **Exhibit C**.

6. I drafted (and Nationstar approved) the Complaint listing as Plaintiff the Bank of New York Mellon (a Delaware corporation), rather than its wholly owned subsidiary, The Bank of New York Mellon (a New York corporation).

7. I investigated Stafne's allegation that the Plaintiff in this action should be the Bank of New York Mellon Trust Company, N.A., a federally chartered national banking association but saw nothing suggesting that the trustee of the SAMI Trust was a national banking association.

8. In response to Stafne's challenge that the Plaintiff was incorrect because it should have been "**The** Bank of New York Mellon" instead of "Bank of New York Mellon," I reviewed various cases and SEC filings referencing the Bank of New York Mellon, and determined the use of the definite article "the" was not a material distinction, was frequently omitted, and did not change the identity (let alone eliminate the existence) of Plaintiff.

9. Following Stafne's June 2, 2016 Declaration, I renewed investigation into the identity of The Bank of New York, as trustee of the SAMI Trust. On June 14, 2016, I obtained from the Bank of New York Mellon's legal department a copy of an "Assignment and Assumption Agreement" effectuating the transfer of "Acquired Corporate Trust Contracts"—including the SAMI Trust, as identified in Annex A, Schedule 2.1(a)(3) (REDACTED)—to "The Bank of New York, a wholly owned subsidiary of BNY." A true and correct copy of the Assignment and Assumption Agreement with Annex A is attached to the Janati Declaration filed herewith.

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10. My investigation also included reviewing documents reflecting the merger between the Bank of New York and Mellon Financial Corporation. Specifically, I reviewed a certification of name change from the State of New York Banking Department that identified a July 1, 2008, Certificate of Effectiveness providing for the Merger of BNY Mellon Interim Institutional National Bank, with and into The Bank of New York, under the name The Bank of New York Mellon with a principal office located at "One Wall Street, New York, New York." A true and correct copy of the certification of name change is attached to the Janati Declaration filed herewith. That document explains that he Bank of New York Mellon is "a corporation organized by Special Act of the New York State Legislature, Chapter 616 of the Laws of 1871," and remains a New York Corporation.

11. BONY is a wholly owned subsidiary of BNYM. A true and correct copy of an FDIC Fact Sheet is attached hereto as **Exhibit D**.

12. The primary reason for seeking to substitute the Bank of New York Mellon for the Bank of New York Mellon Corporation (rather than merely to seek ratification by the Bank of New York) is that Mr. Stafne testified in deposition that he intends to continue litigation over jurisdiction tied to the corporate structure of the Bank of New York Mellon, and because he does not believe the Court's Order was a "reasoned" decision. True and correct excerpts of the Deposition of Scott Stafne are attached hereto as **Exhibit E**.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed on June 23, 2016, at Seattle, Washington.

/s/ Fred B. Burnside
Fred B. Burnside, WSBA #3249

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APPENDIX 39

A 241

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2,

Plaintiff,

v.

SCOTT STAFNE, an individual; Todd Stafne, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation,

Defendants.

No. 2:16-cv-00077 TSZ

FAY JANATI DECLARATION IN SUPPORT OF BANK OF NEW YORK MELLON'S MOTION TO SUBSTITUTE REAL PARTY IN INTEREST PURSUANT TO FED. R. CIV. P. 17(a)(3)

Note on Motion Calendar:

July 15, 2016

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1 I, Fay Janati, declare:

2 1. ***Identity of Declarant.*** I, Fay Janati, am employed as a Litigation Resolution
3 Analyst with Nationstar Mortgage LLC ("Nationstar"). In my position and as part of my
4 employment, I work on issues that give me familiarity with and access to trustee materials in
5 Nationstar's possession. Except as otherwise indicated, all facts set forth in this declaration are
6 based on my personal knowledge, which is based on my experience, my review of relevant
7 documents, including Nationstar's loan servicing records for Scott Stafne, and my discussions
8 with appropriate personnel. The facts and documents set forth below are maintained in the
9 ordinary course of business, and if called upon to testify regarding such matters, I could
10 competently do so.

11 2. ***Declarant's Authority.*** I am duly authorized to make this declaration on behalf of
12 Nationstar and BONY, as successor trustee of the SAMI Trust.

13 3. ***Basis for Declaration.*** I am familiar with the manner and procedure by which the
14 records of Nationstar are obtained, prepared, and maintained on behalf of BONY and the SAMI
15 Trust. Those records are obtained, prepared, and maintained by employees or agents of Nationstar
16 in the performance of their regular business duties at or near the time, act, conditions, or events
17 recorded thereon. The records are made either by persons with knowledge of the matters they
18 record or from information obtained by persons with such knowledge. I have knowledge of and
19 access to the business records. I personally reviewed those records when making this declaration.

20 4. ***USBTE Power of Attorney.*** Nationstar operates as loan servicer for BONY under
21 a Limited Power of Attorney. Nationstar is authorized and obligated to act on behalf of BONY.
22 Nationstar maintains the financial information for BONY such as payment history, escrow
23 accounts, tax payment and accounting, and property insurance information under the Note and
24 Deed of Trust. Nationstar collects and tracks payments from Scott Stafne and distributes the
25 payments received to BONY as part of its duties. Attached hereto as **Exhibit A** is a copy of
26 BONY's operative Limited Power of Attorney appointing Nationstar as Attorney-In-Fact.

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1 5. ***Countrywide Mortgage Deposits the Adjustable Rate Note into the SAMI Trust.***
2 Nationstar's business records (including those obtained as servicer) reflect that Scott Stafne's
3 Adjustable Rate Note was deposited into the SAMI Trust no later than May 31, 2005 Nationstar's
4 business records reflect that on May 21, 2015, the original Note and Deed of Trust were sent to
5 the law offices of Davis Wright Tremaine LLP.

6 6. ***Adjustable Rate Note.*** Attached as **Exhibit B** is a true and correct copy of
7 Plaintiffs' Adjustable Rate Note, indorsed to JPMorgan Chase Bank, as Trustee, and then to The
8 Bank of New York Mellon F/K/A The Bank of New York, Successor Trustee, to JPMorgan Chase
9 Bank, as Trustee.

10 7. ***Deed of Trust.*** Attached as **Exhibit C** is a true and correct copy of the Deed of
11 Trust that secures Scott Stafne's Adjustable Rate Note. The debt was evidenced by the Note.

12 8. ***Assignment and Assumption Agreement.*** Attached as **Exhibit D** is a copy of an
13 Assignment and Assumption Agreement dated October 1, 2006 with a redacted portion of
14 Schedule 2.1(a)(3).

15 9. ***Corporate Name Change Documentation.*** Attached as **Exhibit E** is a copy of a
16 State of New York Banking Department document noting the merger of BNY Mellon Interim
17 Institutional National Bank, with and into The Bank of New York, under the name The Bank of
18 New York Mellon.

19 10. ***Agreement of Resignation and Assumption.*** Attached as **Exhibit F** is a copy of
20 an Agreement of Resignation and Assumption dated October 1, 2006.

21 11. ***Assignment, Assumption and Recognition Agreement.*** Attached as **Exhibit G** is a
22 copy of an Assignment, Assumption and Recognition Agreement dated May 31, 2005 with a
23 redacted list of the Assigned Loans as Attachment 1.

24 12. ***Ratification of The Bank of New York Mellon Corporation as Plaintiff.***
25 Nationstar, as Attorney in Fact for BONY, hereby ratifies The Bank of New York Mellon
26 Corporation's ("BNYM") act of filing the Complaint in the above captioned action on behalf of

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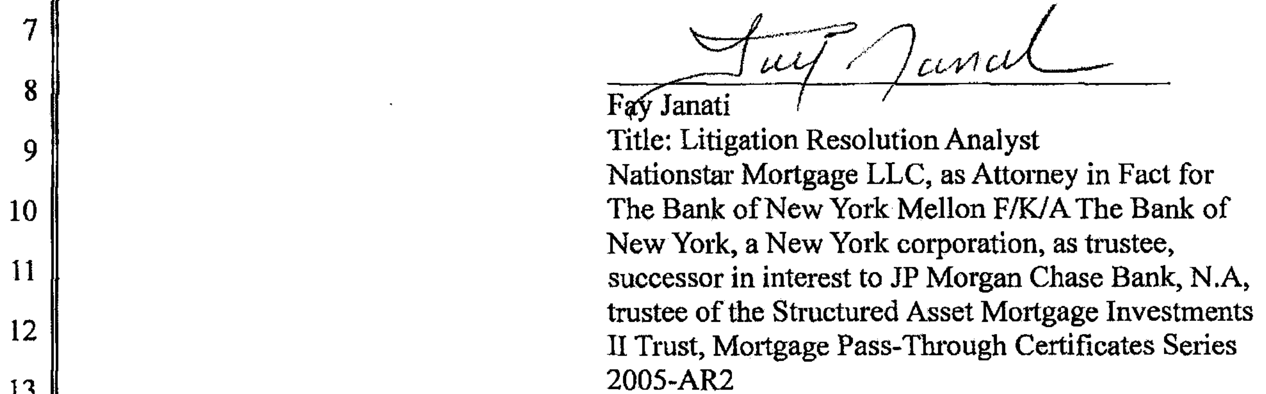
1 the SAMI Trust. BONY, as successor trustee of the SAMI Trust, agrees to be bound to by all
2 Court orders and decisions, as well as final judgment, in this action, to the extent the Court does
3 not permit BONY to be substituted as Plaintiff in this action.

4 I declare under penalty of perjury of the laws of the United States of America that the
5 foregoing is true and correct.



6 EXECUTED at Lewisville TX this 24 day of June, 2016

7

8 Fay Janati
9 Title: Litigation Resolution Analyst
10 Nationstar Mortgage LLC, as Attorney in Fact for The Bank of New York Mellon F/K/A The Bank of
11 New York, a New York corporation, as trustee, successor in interest to JP Morgan Chase Bank, N.A,
12 trustee of the Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series
13 2005-AR2

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1 **THE HONORABLE THOMAS S. ZILLY**
2
3
4 **UNITED STATES DISTRICT COURT**
5 **FOR THE WESTERN DISTRICT OF WASHINGTON**
AT SEATTLE
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8

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-AR2, PLAINTIFF, v. SCOTT STAFNE, an individual; TODD STAFNE, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation, DEFENDANTS.	CASE NO. 2:16-cv-00077-TSZ SCOTT STAFNE'S REPLY TO BANK OF NEW YORK MELLON CORPORATION'S OPPOSITION TO MOTION TO PROVE AUTHORITY TO BRING LAWSUIT NOTE ON MOTION CALENDAR: June 17, 2016

9 10 11 12 13 14 15 16 17 18 19 20

21 At the outset, Stafne objects to Frederick Burnside's assertion in the Response that he
22 represents Bank of New York Mellon entities. The very purpose of the motion at issue is to
23 require Burnside to produce or provide that authority by which he and his law firm, Davis
24 Wright Tremaine LLP (DWT) claim to represent parties having a case or controversy with
25 Stafne.
26

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1 As this Court knows from the declarations filed by Stafne in support of this motion,
2 and the complaint signed by Mr. Burnside in this case (which includes extensive exhibits), the
3 Pooling and Servicing Agreement (PSA) identifies JPMorgan Chase (Chase Bank) as the
4 Trustee for the "Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through
5 Certificates Series 2005-AR 2 (SAMI II Trust)". See Complaint, Dkt 1, Attachment F, p. 2.
6 This same document identifies Wells Fargo, National Association (Wells Fargo) as the Master
7 Servicer. *Id.* This information is consistent with all the documents filed with the Securities
8 and Exchange Commission (SEC) regarding this particular SAMI II Trust. Copies of these
9 documents can be found at the government links to SEC filings identified in Stafne's
10 declaration in support of this reply. Stafne asks this Court judicially notice these documents.
11
12 The Pooling and Servicing Agreement (attached to the complaint) and the applicable
13 prospectus to the SAMI II Trust identified in Stafne's reply declaration each set forth the
14 manner in which the trustee can be changed or a successor trustee can be appointed. See Id.,
15 Dkt 1-7, p. 123. Section 8.02. None of the filings with the SEC indicate that Chase Bank is
16 no longer the trustee for the SAMI II Trust in question. This is consistent with what
17 Nationstar reported to Stafne in 2014, *i.e.* that Chase Bank was still the trustee of the SAMI II
18 Trust. See Stafne Reply declaration, Exhibit 1.
19
20 Paragraph 3.4 of the Burnside/DWT complaint alleges some Bank of New
21 York Mellon entity[1] acquired Chase's status as trustee of the SAMI II Trust as part of
22 business "swap" between Chase Bank and the Bank of New York. While Chase may
23 claim to have swapped its trust business with Bank of New York, a state chartered
24 bank in 2006, which is not the same thing as saying Chase Bank transferred any
25
26

[1] Burnside argues it does not matter which BNYM entity, if any. See Burnside/DWT Response, p. 2, note 1.

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purported interest in this SAMI II Trust to Bank of New York. Indeed, the Trust itself is its own business entity which must follow its own internal rules, including those set forth in the prospectus and Pooling and Service Agreement (PSA) regarding changing trustees or appointing successor trustees.

The allegation in paragraph 3.4 of the Burnside/DWT complaint against Stafne that "Bank of New York Mellon" somehow "assumed the role of the trustee of SAMI Trust Id., Dkt 1, is puzzling because the SAMI II Trust is a separate entity from Chase Bank. Accordingly, the first question which arises is how can any BNYM claim to have assumed the role of trustee in the absence of it being properly appointed through the procedures established in the SAMI II Trust documents, the prospectus, and the PSA.

That part of the allegations made in paragraph 3.4 of the complaint that Nationstar (as the attorney in fact for the SAMI II Trust) indorsed the Note to "Bank of New York Mellon" (a name without an entity) pursuant to a power of attorney that did not go into effect until September 4, 2014, *see* Dkt 1-6, pp 42-48, seems inappropriate for the "asset swap" between Chase Bank and Bank of New York because 1.) the alleged swap between Chase Bank and Bank of New York, a different bank from any BNYM entity, occurred in 2006; 2.) No SEC records exist which reflect a change of trustee status from Chase to any BNYM entity (or anyone else) for this SAMI II Trust; and 3.) the language of the Power of Attorney produced as Exhibit E to the complaint indicates the "Bank" acquired numerous trusts from Chase Bank directly, but not from Chase Bank "as trustee."

If the Power of Attorney is to be believed on August 29, 2014 the "Bank of New York Mellon" (not "The Bank of New York Mellon Corporation") executed a Limited Power of Attorney appointing Nationstar its independent contractor to perform certain functions for one year. The first paragraph of this *independent contractor* Power of Attorney states:

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> The Bank of New York Mellon as successor in interest to JPMorgan Chase N.A having an office 101 Barclay Street, MC, NY 10286 (the "Bank") appoints Nationstar to be the Bank's true and lawful attorney to act in the name, and on behalf of the Bank with the power to do only the following in connection with the trust included in Schedule A, on behalf of the Bank.

This language is notable because it does not identify Chase Bank in its capacity "as trustee." This calls into question whether the trusts identified on Schedule 1 have been unlawfully "swapped" in 2014 because Chase Bank had no economic interest in that trust which it could transfer to anyone. At least with regard to the SAMI II Trust at issue here Chase Bank was only the trustee. It could not sell this status. Any change in trustee was required to have been accomplished pursuant to the terms of the Trust's governing documents; not by Chase Bank assigning its trustee status in order to derive an economic benefit for itself.

The above language of the Power of Attorney is also notable in this case because Burnside and DWT continue to insist that the entity which owns the note is "The Bank of New York Mellon Corporation." But the language of the Power of Attorney clearly indicates that the BNY entity purporting to grant Nationstar its authority is a bank (not a corporation).

Finally, the language of the Power of Attorney is notable because it refers to "the trust included in schedule A", but the Schedule A attached to POA includes 50 securitized trusts.

The complaint also does not square up with documents recorded in Washington's public land records. For as stated in Stafne's opening motion to prove authority Bank of America recorded an assignment with the Snohomish County Auditor's office on July 31, 2013 evidencing it (Bank of America) was transferring all its interest in the mortgage loan (deed of trust and note) to Nationstar. (This assignment is attached as Exhibit 2 to Stafne's declaration filed in support of this reply.) So as of July 31, 2013 Snohomish County's public records reflected that Nationstar owned Stafne's loan.

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On February 23, 2015 Nationstar recorded a corporate assignment of the deed of trust to "The Bank of New York Mellon", as trustee for the SAMI II Trust. This recorded assignment indicates the Trust's address is in Texas. (Exhibit 3 attached to Stafne's declaration). Why would Nationstar have done this if SAMI II Trust had owned the loan since 2005?

Notwithstanding all this confusion DWT and Burnside continue to assert "Bank of New York Mellon, a Delaware Corporation" (which they claim is really "The Bank of New York Mellon Corporation") is the correct plaintiff. This likely is not true because The Bank of New York Mellon Corporation is a bank holding company, which owns subsidiary banks, not notes and deeds of trust, which are likely to be held by one of its subsidiaries. The attorney's insistence of ownership of the note by the holding company, instead of one of its subsidiaries, becomes even more questionable because there is no record which indicates The Bank of New York Mellon Corporation acquired any interest in this trust or its assets. Further, the indorsement in question is to a bank, not a corporation.

Another factual (evidentiary) problem is that nowhere in their response do Burnside and DWT submit an affidavit or declaration or any type of proof supporting their arguments. Given the abundance of evidence Stafne has produced, the unverified arguments set forth in Burnside's response are somewhat underwhelming following on the heels of his admissions to Judge Pechman that he and his law firm made "mistakes" with regard to alleging jurisdictional facts about another BNY entity, which the district court then erroneously found to be true. See Stafne declaration.

Reply to Argument that Local General Rule 2(h) allows attorneys to represent whomever they identify as clients.

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Mr. Burnside and his law firm DWT argue that Local General Rule 2(h) allows them to represent whoever they claim to represent in a pleading. The rule states:

> An attorney eligible to appear may enter an appearance in a civil case by signing any pleading or other paper described in Rule 5(a), Federal Rules of Civil Procedure, filed by or on behalf of the party the attorney represents, or by filing a Notice of Appearance.

This language states an attorney can make an appearance on behalf of "the party the attorney represents." It does not say that an attorney can file pleadings on behalf of a party the attorney does not represent. Moreover, to the extent this Court intended its Local Rule be given interpretation advanced by Mr. Burnside and DWT, the rule would be invalid because 1.) it is not consistent with "the principles of right and justice", *see Frazier v. Heebe*, 482 U.S. 641, 645-46, 107 S. Ct. 2607, 2611, 96 L. Ed. 2d 557 (1987); and 2.) it is inconsistent with controlling precedent which was discussed in Stafne's opening brief and is further discussed below.

Reply to Argument Stafne is Not Asserting Burnside and DWT have Violated Any Rules of Professional Conduct.

Burnside is wrong when he states "Stafne does not (and cannot) suggest counsel violated the Rules of Professional Conduct, the Federal Rules of Civil Procedure, or this Court's Local Rules." Response, p. 2:3-6. Stafne is saying Burnside and DWT are committing fraud upon this Court in the same manner they did in the Robertson case. Stafne is saying that Burnside is attempting to manipulate this Court's jurisdiction by claiming to represent entities he has no authority to represent and not identifying the citizenship of Nationstar, one of the real parties in interest with regard to this litigation. *See* Stafne declaration in support of this Reply

Reply to Argument that Providing Proof of his Authority to Represent the Parties Suing Stafne Would Violate Attorney-client privilege.

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1 Burnside and DWT argue that Stafne's motion to require them to prove they represent
2 these clients would violate attorney-client privilege. But this argument presumes the very
3 existence of what is being challenged; namely, that any attorney-client relationship exists for
4 any entity other than Nationstar and specifically for those entities identified in the complaint.
5 This Court cannot constitutionally ignore the issue as to whether there is a case or controversy
6 presented by the parties to this action as opposed only to attorneys claiming to represent them.
7 Had Burnside and/or DWT presented any evidence, i.e. like a declaration or affidavit
8 or something admissible in support of their unverified argument that attorney-client privilege
9 may be implicated, then it might have been appropriate for this Court to allow them to present
10 evidence under seal. But at this point given the arrogance of their response, it would seem
11 inappropriate for these attorneys to conceal from Stafne that evidence they rely upon to
12 demonstrate their authority to represent the purported parties they have identified in paragraph
13 1.1 of the complaint.
14 If this Court does allow Burnside and DTW to present sealed evidence Stafne requires
15 that it remains in the record so that it can be reviewed by an appellate court.
16 *Reply to Attempt to Distinguish Authority Supporting Stafne's Motion to Prove Authority*
17 Burnside and DWT appear to argue that there is something unusual about Stafne's
18 request that attorneys be required to prove they have authority to represent those parties on
19 whose behalf they claim to appear. Mr. Burnside and DWT are wrong in this regard. Indeed,
20 as has been stated previously Art. III requires that ***parties*** having a case or controversy appear
21 before the Court. Just an attorney claiming to be representing an adverse party is not good
22 enough if the attorney cannot prove he actually represents that party.
23 The Supreme Court has consistently treated a judgment based upon an
24 unauthorized appearance for a defendant by an attorney as a nullity. Shelton v.
25 Tiffin, 6 How. 163,at page 186, 12 L.Ed. 387; Hatfield v. King, 184 U.S. 162,
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A 252

22 S.Ct. 477, 46 L.Ed. 481; cf. Hill v. Mendenhall, 21 Wall. 453, 22 L.Ed. 616. See, also, Mills v. Scott (C.C.) 43 F. 452; Lucas v. Vulcan Iron Works (D.C.) 233 F. 823. In Southern Pine Lumber Co. v. Ward, 208 U.S. 126,at page 143, 28 S.Ct. 239, 52 L.Ed. 420, the Supreme Court affirmed a decision of the Supreme Court of Oklahoma (16 Okl. 131, 85 P. 459) holding that a judgment recovered by a plaintiff whose attorney had no authority to institute the action was void. See, also, Pueblo of Santa Rosa v. Fall, 273 U.S. 315, 47 S.Ct. 361, 71 L.Ed. 658. A party to a suit may by timely motion dispute the authority of the opposing attorney to act for the party in whose name he is proceeding, and, if the authority is not shown, the court will dismiss the action for want of parties before it. Pueblo of Santa Rose v. Fall, 273 U.S. 315, 47 S.Ct. 361, 71 L.Ed. 658; Sutherland v. International Ins. Co. of New York (C.C.A.) 43 F.(2d) 969; King of Spain v. Oliver, Fed. Cas. No. 7,814; Bonnifield v. Thorp (D.C.) 71 F. 924; Chesapeake & O. Ry. Co. v. Commonwealth, 189 Ky. 465, 225 S.W. 145; Cf. Gaston & Co. v. All Russian Zemsky Union, 221 App.Div. 732, 224 N.Y.S. 522; Orr & Co. v. Fireman's Fund Insurance Co., 141 Misc. 330, 253 N.Y.S. 2, reversed 235 App.Div. 1, 256 N.Y.S. 79; Institute of Educational Travel v. Binkerd, 90 Misc 325, 153 N.Y.S. 427; Cockran v. Leister, 2 Root (Conn.) 348.

It is true that in some states the rule obtains that, where jurisdiction rests upon a voluntary appearance by the defendant, the court is not deprived of jurisdiction by showing that the appearance was entered by an attorney who acted without authority from the defendant. Denton v. Noyes, 6 Johns. 296, 5 Am.Dec. 237; Munnikuyson's Adm'x v. Dorsett's Adm'x, 2 Har. & G. (Md.) 374; Schirling v. Scites, 41 Miss. 644; Everett v. Warner Bank, 58 N.H. 340; Hemphill Lumber Co. v. Arcadia Timber Co. (Mo. App.) 52 S.W.(2D) 750. Apparently such is the rule in Connecticut. Butler v. Butler, 1 Root (Conn.) 275, decided in 1791. But even in those jurisdictions the rule has been held not to apply to cases where the person for whom the unauthorized appearance was entered was not a resident of the jurisdiction in which the proceedings were being had (Vilas V.P. & M.R.R., 123 N.Y. 440, 25 N.E. 941, 9 L.R.A. 844, 20 Am.St.Rep. 771; Fambrosis Society v. Royal Benefit Society, 166 App.Div. 593, 152 N.Y.S. 84; Boylan v. Witney, 3 Ind. 140); and the rule so far as we can discover has never been held to prevent a party from contesting the right of an attorney to appear and act for the party in opposition. It would be a strange result if a defendant were precluded from showing that the party in whose name the action is brought had not authorized the institution of the proceedings.

In re Retail Chemists Corp., 66 F.2d 605, 608 (2d Cir. 1933).

Washington law allows motions to "require the attorney for the adverse party, or for any one of several adverse parties, to produce and prove the authority under which he appears…".

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See RCW RCW 2.44.030.[2] The Fifth Circuit has intimated that such state statutes may be considered where applicable in diversity proceedings. *Maiz v. Virani*, 311 F.3d 334, 341 (5th Cir. 2002) Stafne's primary purpose in bringing this Washington statute to the Court's attention is simply show that motions for attorneys to provide authority proving they represent the parties they appear on behalf of is also contemplated by statute in Washington, a state which does not require a "case or controversy" to establish jurisdiction.

Reply to Argument based on Robertson v GMAC

In *Robertson* Mr. Burnside signed a removal petition on behalf of Chase which alleged Bank of New York Mellon Trust Company's *principal place of business was in Miami Florida*. Mr. Burnside had filed a notice of appearance claiming to represent Bank of New York Mellon Trust Company National Association in place of appearing on behalf of the Bank of New York Trust Company (which had been the name of the party being sued in Robertson's complaint.).

While Mr. Burnside continued to claim he was representing this BNYM entity another party, LSI Title Company, also filed a removal petition claiming that the principal place of business for the Bank of New York Mellon Trust Company was in *Miami Florida*.

Robertson, then pro se, objected to this allegation and filed an email from the Office of Comptroller of the Currency that established its articles of association stated the Bank of New York Mellon Trust Company, National Association's main office was in California. Judge Pechman adopted Mr. Burnside's false statement in the Removal petition that Bank of New

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[2] RCW 2.44.030 provides:

> The court, or a judge, may, on motion of either party, and on showing reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove the authority under which he appears, and until he does so, may stay all proceedings by him on behalf of the party for whom he assumes to appear.

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York Mellon Trust Company National Association's principal place of business in Miami, Florida as a finding of fact; notwithstanding this wasn't true.

On remand from the Ninth Circuit a different attorney purportedly representing Bank of New York Mellon Trust Company tried to force Robertson to stipulate that the parties were diverse because any reasonable person would know that the Bank of New York Mellon Trust Company was a citizen of California at the time the removal petitions were filed. (Of course, Mr. Robertson did know this and pointed it out to the Court.)

So the question arises why (if any reasonable person would know that Bank of New York Mellon Trust Company's principal of business was not in Miami, Florida) did Burnside and DWT continue to insist it was when faced with an email from the OCC stating otherwise? Why didn't these counsels change their allegation regarding the Banks's citizenship when it was both legally insufficient and factually wrong?

At the end of the remand hearing Mr. Burnside admitted he and his firm had made mistakes regarding these jurisdictional allegations. But the question still remains would the attorney for an actual party, indeed one of the same entities involved in this case, have made such an obvious error?

That question also exists here. Why would an attorney for a holding company that owns banks insist that that corporation also owns in its own name notes when it is much more likely that if any notes were owned the most likely owner would be a subsidiary bank?

As is explained in Stafne's reply declaration the most obvious reason is because Burnside and DWT do not have an actual attorney-client relationship with the BNY entities identified in this complaint because 1.) they are not identified by the correct name; and 2.) because whatever authority these attorneys have to represent the BNY entities is pursuant to their agreements with Nationstar. See Stafne's reply declaration.

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A 255

CONCLUSION

1
2 Stafne's motion to require proof of authority should be granted.
3
4 Dated this 17th day of June, 2016 at Arlington, Washington.
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6
7 s/ *Scott E. Stafne*
8 SCOTT E. STAFNE WSBA#6964
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1 The Honorable Thomas S. Zilly
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8 UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE
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BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2, Plaintiff, v. SCOTT STAFNE, an individual; Todd Stafne, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation, Defendants.	No. 2:16-cv-00077 TSZ BANK OF NEW YORK MELLON CORPORATION'S OPPOSITION TO SCOTT STAFNE'S MOTION TO PROVE AUTHORITY

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19
20 Defendant Scott Stafne filed a "Motion to Prove Authority" which challenges the
21 authority of the attorneys and firm who have appeared in this action. Stafne asks the Court to
22 enter an order requiring, among other things, that counsel for Bank of New York Mellon
23 Corporation ("BNYM") provide "proof of authority" to represent their clients. Stafne oddly
24 also requests "proof" of these attorneys' right to act on behalf of non-party entities that have not
25 appeared in this action. The Court should deny these requests for the following reasons:
26 ***First***, "[a]n attorney eligible to appear may enter an appearance in a civil case by
27 signing any pleading or other paper described in Rule 5(a)…or by filing a Notice of

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1 Appearance." Local General Rule 2(h). Nothing further is required to show authority to
2 represent a client.

3 ***Second***, Stafne fails to identify any valid basis to challenge counsel chosen by BNYM
4 to represent its interests in this lawsuit. Stafne does not (and cannot) suggest counsel violated
5 the Rules of Professional Conduct, the Federal Rules of Civil Procedure, or this Court's Local
6 Rules. Rather, he blindly asserts that counsel should have to prove they have authority to
7 represent their clients. There is no basis for this request and the Court should deny it.

8 ***Third***, Stafne's request would force BNYM to reveal communications protected by the
9 attorney-client privilege and work product doctrine. The only way for BNYM's counsel to
10 "prove" they are authorized to act on behalf of their clients would be to reveal communications
11 between counsel and their clients that discuss representation. Given that these communications
12 occurred in preparation for filing this lawsuit, the communications are protected by both the
13 attorney-client privilege and work product doctrine. The Court should not require BNYM to
14 disclose privileged communications simply because Stafne believes he should have more
15 information about the manner in which BNYM chose counsel.[1]

16 ***Fourth***, Stafne's purported authority for this request relies on cases where there were
17 clear facts demonstrating the attorneys did not have authority in court, generally where the
18 purported ***client*** challenged the attorneys' authority. *See Pueblo of Santa Rosa v. Fall*, 273 U.S.
19 315, 319 (1927) ("To justify the conclusion that there was no authority to bring or maintain the
20

21 [1] Mr. Stafne's assertion that there is no entity called Bank of New York Mellon is absurd on its face and attempts to elevate form over substance. Pl. Mot. at 2. Mr. Stafne's assertion that the
22 failure to consistently use the definite article "the" before "Bank of New York Mellon" means "Bank of New York Mellon" does not exist is simply bizarre. Nor is there any requirement that
23 a party be exclusively described in a certain way. Plaintiff has been identified as "Bank of New York Mellon, a Delaware Corporation." Compl. ¶ 1.1. If this description, as opposed to "The
24 Bank of New York Mellon Corporation," has caused Mr. Stafne some confusion, that confusion lies solely with him and does not suggest that Bank of New York Mellon, a Delaware
25 Corporation, does not exist. Indeed, the Bank of New York Mellon Corporation's 10Q explains that it customarily uses a short form of BNY Mellon for The bank of New York Mellon
26 Corporation, such that use of a short-form descriptor is routine. *See, e.g.*, https://www.bnymellon.com/_global-assets/pdf/investor-relations/bny-mellon-form-10-q-
27 1q16.pdf, at 4.

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suit really needs nothing beyond the foregoing short recital of the facts. That Luis was without power to execute the papers in question, for lack of authority from the Indian council, in our opinion is well established. Indeed, there is no evidence to the contrary worthy of serious consideration."); *Shelton v. Tiffin*, 47 U.S. 163, 186, 12 L. Ed. 387 (1848) (one against whom judgment is rendered may show that the attorney entering his appearance was not authorized to do so); *In re Retail Chemists Corp.*, 66 F.2d 605, 606 (2d Cir. 1933) (creditor submitted petition stating he had not authorized anyone to use his claim).

Stafne's declaration also relies heavily on *Robertson v. GMAC Mortgage, LLC*, 2016 WL 145827 (9th Cir. 2016), involving an entirely different Bank of New York Mellon entity (non-party Bank of New York Mellon Trust Co., NA, "BNYMTC"). Stafne wrongly states that the Ninth Circuit remanded to a different judge than Judge Pechman. *Id.* at *2. Stafne also does not acknowledge that the defendant, BNYMTC, was diverse from Plaintiff whether it was a citizen of Florida or California and thus for purposes of diversity jurisdiction, inconsequential (and a removal petition filed by a different lawyer in a different case has no bearing on Stafne's current motion). Thus, non-party BNYMTC's representations had no bearing on the existence of diversity, and therefore, did not prejudice the plaintiff.

***Fifth*,** the Court should follow Judge Pechman's lead and reject this motion for the same reasons Judge Pechman did in the *Robertson* matter where Mr. Stafne filed the same motion. Judge Pechman ruled:

> Plaintiff moves for "proof of authority," to clarify the "attorney-client relationships in this matter, and as to whether all necessary defendants have been joined." (Pl. Br. at 3, Dkt. No. 16.) In essence, Plaintiff seeks to pierce the attorney-client relationship and disclose communications between Defendants and their counsel. ***This motion is wholly without merit, unnecessary and is frivolous***. Counsel for each Defendant is licensed to practice law in Washington and admitted to practice law in this Court. Defense counsels' representations to this Court are sufficient to show they have been authorized to represent their clients. The motion is DENIED.

Robertson v. GMAC Mortgage LLC, et al., Case No. 12-cv-2017, Dkt. # 82, at *3 (W.D. Wash. 2013) (emphasis added). So too, here.

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I. CONCLUSION

In short, Stafne does not identify—and BNYM's counsel has been unable to locate—any legal authority supporting Stafne's contention that counsel should have to offer evidence "proving" it is authorized to appear on behalf of Plaintiff. The Court should therefore deny Plaintiff's Motion.

DATED this 13th day of June, 2016.

Davis Wright Tremaine LLP
Attorneys for Bank of New York Mellon

By: *s/ Fred B. Burnside*
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THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-AR2, PLAINTIFF, v. SCOTT STAFNE, an individual; TODD STAFNE, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation, DEFENDANTS.	CASE NO. 2:16-cv-00077-TSZ MOTION TO PROVE AUTHORITY TO BRING LAWSUIT NOTE ON MOTION CALENDAR: June 17, 2016

RELIEF REQUESTED

Plaintiff Scott Stafne respectfully requests Frederick Benjamin Burnside, Zana Zarha Bugaighis, and Davis Wright Tremaine PLLC (DWT) provide proof of their authority to act as attorneys, pursuant to an attorney-client relationship, with regard to "Bank of New York Mellon", "Bank of New York Mellon, a Delaware corporation", "Bank of New York Mellon

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1 Trust Company, N.A.", "Nationstar Mortgage, LLC", and/or "Structured Asset Mortgage
2 Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR 2 (SAMI Trust)."

3 ***ISSUE***

4 Should this Court require the attorneys in this case to produce or provide the authority, if any,
5 by which they represent any parties bringing this diversity case against Stafne?

6 ***FACTS***

7 There are no entities known as "Bank of New York Mellon", "Bank of New York Mellon, a
8 Delaware corporation" and/or "Bank of New York Mellon Trust Company, N.A." Indeed,
9 entities with similar sounding names rejected service of process by both Scott and Todd
10 Stafne because there was no Bank of New York Mellon. See Dkt. 21.

11 Nationstar has indicated to Stafne it represents Bank of New York Mellon the trustee of
12 the SAMI trust and that Bugaighis and DWT represent its (Nationstar's) interests against
13 Stafne. See Stafne declaration (Dkt.21, including Exhibit 1), attached as Exhibit 4 to Stafne's
14 declaration in support of this motion.

15 However, it is not clear by what authority, if any, Nationstar represents any actual entity.
16 For example, Exhibit 6 to Stafne's *Burnside* complaint (Dkt 21, Ex. 2, Ex 6) is an assignment
17 recorded on July 31, 2013 evidencing Bank of America transferring all its interest in the
18 mortgage loan (deed of trust and note) to Nationstar. (For the Court's convenience a copy of
19 this assignment is also attached as Exhibit 5 to Stafne's declaration in support of this motion.)

20 On February 23, 2015 Nationstar recorded a corporate assignment of the deed of trust
21 to "The Bank of New York Mellon", as trustee for the SAMI Trust. The recorded assignment
22 indicates the Trust's address is in Texas. (Dkt. 21, Ex. 2, Ex 7) For the Court's convenience a
23 copy of this corporate assignment is also attached as Exhibit 5 to Stafne's declaration in
24 support of this motion.

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1 . This recorded history of the loan is different from that set forth in Bank of New York
2 Mellon's complaint in that it suggests that Nationstar owned the loan outright in 2015, but
3 then transferred the loan to "THE BANK OF NEW YORK MELLON, AS TRUSTEE" for the
4 SAMI Trust. In any event, it is not clear from Nationstar's communications with Stafne, the
5 publicly recorded assignments, and complaint how Nationstar now represents any actually
6 existing BNY entity and what the scope of its authority, if any, may be in this Court.
7
8 There is evidence to suggest the attorneys involved in prosecuting this case *do not*
9 actually represent any trustee entity or the trust except to the extent Nationstar may actually
10 represent their interests and that this may have caused them to make inaccurate allegations
11 regarding jurisdictional facts in other proceedings. See Stafne declaration in support of this
12 motion, exhibits 1-3.
13
14 *Evidence Relied Upon:* Stafne relies upon his simultaneously filed declaration in support
15 of this motion. Stafne also relies on his declaration previously filed as Dkt 21 and the
16 supporting exhibits attached thereto. Stafne also relies upon his declaration filed in support of
17 his motion to change this Court's scheduling order (Dkt 27) and the exhibits attached thereto.
18 Stafne requests this Court take judicial notice of the publicly recorded assignments
19 referred to in the Statements of Facts, which are attached as Exhibits 4 and 5 to Stafne's
20 declaration.
21

ARGUMENT

22 Nearly 100 years of federal authority – including multiple rulings of the U.S. Supreme
23 Court permit defendants, like Stafne, to challenge an attorney's authority to represent
24 purported litigants in federal courts. *See Pueblo of Santa Rosa v. Fall*, 273 U.S. 315 (1927);
25 *Southern Pine Lumber Co. v. Ward*, 208 U.S. 126 (1908) affirming 16 Okl. 131, 85 P. 459
26 (1905); *Shelton v. Tiffin*, 47 U.S. 163, 186, 12 L. Ed. 387 (1848). Indeed, this same

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1 controlling precedent also requires if such authority is lacking, all of the attorney's acts
2 (including any case they file or defend without proper authority) are void. *Id.*
3 Accordingly, "[a] party to a suit may by timely motion dispute the authority of the
4 opposing attorney to act for the party in whose name he is proceeding . . ." *In re Retail*
5 *Chemists Corp.,* 66 F.2d 605, 608 (2nd Cir. 1933) and cases cited therein. Indeed, "[I]t is
6 hornbook law that no person has the right to appear as attorney for another without first
7 receiving authority from the purported client." *Developmental Disabilities Advocacy Ctr.,*
8 *Inc. v. Melton*, 521 F. Supp. 365, 372 (D.N.H. 1981).
9
10 All three Supreme Court cases cited above deal with an attorney who appeared to
11 represent legal interests involving the transfer of land.
12 *Pueblo of Santa Rosa v. Fall*, like this case, involved the power of a trustee to sell land
13 based on the authority granted by a power of attorney. In that case deeds were drawn and
14 acknowledged by a number of Indians in the late 1800s, conveying land to Hunter, as trustee,
15 an interest in the lands, grants, and privileges of certain named villages. Among these deeds
16 was one which purported to be made by 'Luis, captain of the village or pueblo of Santa Rosa,'
17 for himself and inhabitants of that village and others, and to convey an undivided half interest
18 in 720 square miles of land. At the same time, powers of attorney were executed by the
19 various grantors.
20
21 For purposes of the issue before it, the Supreme Court assumed the power of attorney
22 document "was sufficient to authorize Hunter to bring and maintain a suit like the present. It
23 granted to Hunter powers of delegation, substitution, and revocation, and recited that, as it
24 was 'accompanied with an interest, ... it is hereby made irrevocable." The Court further stated
25 that it appeared "Hunter was authorized to render services in establishing the claim of the
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Indians to the lands, [but] it does not appear that he agreed to do so unless by implication merely; nor does it appear that there was any other consideration for the conveyance."

In 1911, Hunter entered into contracts with one Martin, by which the latter was to undertake to establish the Indian title and make certain cash payments. The same year, and long after the death of Luis, Hunter executed a delegation of his powers to one Cates. Hunter died in 1912, and this suit was brought in 1914 by a firm of lawyers of which Cates was a member. Cates died in 1920, several years before the motion to dismiss was filed.

The Luis deed was not recorded in the counties where the lands were situated until 34 years after its execution and 2 years after the death of Hunter, the grantee. The delay is not explained. According to the Supreme Court "[c]areful and comprehensive inquiries, conducted among the Indians over a period of several years, failed to disclose any one who knew of any authority from the Indians to bring or maintain the suit." 273 U.S. 315, 317-18. Further, "that no suit properly could have been brought without the prior consent of the Indians in council, and that no council for that purpose was ever assembled." *Id.*

The trial court assumed, without deciding, that the plaintiff was a pueblo as set forth in the complaint and owned the lands in question, held that it had never authorized the bringing or maintenance of the suit, and that it did not have, under any law or by any custom, usage, or tradition, the power to make the conveyance or power of attorney in question, and entered a decree dismissing the case. The Court of Appeals reversed because it believed the authority of counsel to litigate the action was a preliminary matter to be disposed of before proceeding to the merits, but nonetheless affirmed the order of dismissal upon the merits. 12 F.(2d) 332. The Supreme Court reversed the Court of Appeals.

In doing so, Justice Sutherland, writing for the Court stated:

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> We agree with the conclusions of the court of first instance, but are of opinion that the dismissal should have been, not upon the merits, but without prejudice to a suit, if properly brought. The decrees of both courts, therefore, are erroneous, and the cause must be remanded to the court of first instance, with directions to dismiss the bill, on the ground that the suit was brought by counsel without authority, but without prejudice to the bringing of any other suit hereafter, by and with the authority of the alleged pueblo of Santa Rosa. Other grounds appearing from the record, which would lead to the same result, we pass without consideration.

273 U.S. at 321. Here, Stafne is challenging DWT's authority to and moving this Court to require Nationstar and its attorneys to produce authority and/or provide evidence of their authority to bring this action against Stafne in light of, among other things, the fact that undisputed public records filed by defendants indicate Nationstar became the owner of mortgage loan in 2013.

S. Pine Lumber Co. v. Ward, 208 U.S. 126 (1908), another Supreme Court case, is factually similar to this case as it involves litigation over a deed of trust by entities which all have virtually identical names[1] and the Court found that a trustee sale purportedly conducted by American Exchange Bank was void because persons acting without authority for this bank never brought the action[2]. The Supreme Court was deferential to the findings of the trial court and the appellate court's rulings based thereon.

A significant distinguishing factor between *S. Pine Lumber* and this case is that Stafne claims the note and deed of trust are not enforceable. See RCW 4.16.040(1); (3);62A.3-118(a); 7.28.300. In *S. Pine* the enforceability of the note was conceded. The important facts for purposes of this motion is the Supreme Court held that a judicially approved sale of

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[1] The Court's discussion about this aspect of the case, the attempt to benefit from the use of similar sounding names, can be found at 208 U.S. 134- 136 and 141-43

[2] The factual findings and legal conclusions in this regard are discussed at 208 U.S. 127-233 and 134 - 136

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1 property was found void because it was brought by those (apparently attorneys) who had no
2 authority to represent the foreclosing bank.

3 A Court of Appeals case which involves facts analytically similar to those here is
4 *Meredith v. The Ionian Trader*, 279 F.2d 471, 472-73 (2d Cir. 1960.) This admiralty action
5 arose in the district court as the result of water damage suffered to cargo belonging to the
6 Government of Pakistan, shipped from Tacoma, Washington, to Karachi, Pakistan, on the
7 vessel Ionian Trader. Six days prior to the expiration of the one year statute of limitations, the
8 libel was filed in the name of the Government of Pakistan against the Ionian Trader by the
9 attorneys for the insurance underwriters of the cargo. The libel alleged that the damage to the
10 cargo was a breach of the Ionian Trader's duty as a common carrier by sea and sought
11 damages. Subsequent to the running of the statute of limitations the underwriters settled with
12 the Government of Pakistan its claim under the insurance policy and later made payment.
13
14 Alan Meredith, as an assignee of the underwriters, thereupon moved to substitute
15 himself in place of the Government of Pakistan, claiming that he was subrogated to all of the
16 Pakistan's rights against the Ionian Trader. The court permitted the substitution, but also
17 allowed the defendant vessel to amend its answer to assert two new defenses, lack of authority
18 by the underwriters or their attorneys to bring the original libel on behalf of Pakistan, and to
19 allow the vessel to assert the statute of limitations as a bar to suit by the underwriters or their
20 assignee.
21
22 After trial the court held that but for the validity of the affirmative defenses in the
23 amended answer the libellant would be entitled to judgment. The court ruled, however, that
24 the original libel filed in the name of the Government of Pakistan was a nullity because the
25 insurance policy did not give the underwriters authority to bring suit in the name of the
26 insured. Further the district court held that, since the underwriters had no interest in the

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insured's claim against the Ionian Trader prior to their payment to the insured, appellant was not entitled to have his substitution relate back to the time of filing of the original libel and was therefore barred by the statute of limitations.

The Second Circuit affirmed:

> A suit initiated without authority from the party named as plaintiff is a nullity and any judgment obtained in such a suit is void. *Pueblo of Santa Rosa v. Fall,* 1927, 273 U.S. 315, 47 S.Ct. 361, 71 L.Ed. 658; *Southern Pine Lumber Co. v. Ward,* 1908, 208 U.S. 126, 28 S.Ct. 239, 52 L.Ed. 520, affirming 1905, 16 Okl. 131, 85 P. 459; *In re Retail Chemists Corp.,* 2 Cir., 1933, 66 F.2d 605, 608, and cases there cited. A party to such a suit may by motion or pleading dispute the authority of the opposing party 'to act for the party in whose name he is proceeding, and, if the authority is not shown, the court will dismiss the action for want of parties before it.' *In re Retail Chemists Corp., supra* at page 608. Because of their lack of authority to sue on behalf of the Government of Pakistan, the filing of the libel by the proctors for the underwriters was of no effect and cannot be the foundation of any rights of the underwriters or the appellant.

Meredith v. The Ionian Trader, 279 F.2d at 473-74.

Here, we have similar issues. The purported plaintiffs agree that Countrywide accelerated Stafne's loan well before the six year statutes of limitation ran. They are now asserting that Nationstar and its attorneys have the right to decelerate Countrywide's acceleration after the statute for doing so has run. Under the above cited case law, the plaintiffs and their attorneys must produce proof that they have the appropriate authority to seek such relief from this Court, as well as to make jurisdictional allegations in the context of invoking this Court's diversity jurisdiction.

CONCLUSION

This Court should grant Stafne's motion requiring the purported plaintiffs and their attorneys to provide proof of their authority to act as agents and attorneys, pursuant to an attorney-client relationship on behalf of "Bank of New York Mellon",

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1 "Bank of New York Mellon, a Delaware corporation", "Bank of New York Mellon
2 Trust Company, N.A.", "Nationstar Mortgage, LLC", and/or "Structured Asset
3 Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR
4 2" with regard to the claims made against Stafne in this federal lawsuit.
5
6
7 Dated this 2nd day of June, 2016 at Arlington, Washington.
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11 /s/ *Scott E. Stafne*
12 SCOTT E. STAFNE WSBA#6964
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APPENDIX 43
A 269

1 **THE HONORABLE THOMAS S. ZILLY**

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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE WESTERN DISTRICT OF WASHINGTON**
AT SEATTLE

9
10

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-AR2, PLAINTIFF, v. SCOTT STAFNE, an individual; TODD STAFNE, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation, DEFENDANTS.	CASE NO. 2:16-cv-00077-TSZ DECLARATION OF SCOTT STAFNE IN SUPPORT OF MOTION TO PROVE AUTHORITY TO BRING LAWSUIT

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23 1. My name is Scott Stafne. I am over the age of eighteen (18) and I have personal
24 knowledge of the facts stated herein. I also have knowledge regarding these matters which I
25 have gained as an attorney involved in representing other plaintiffs against the plaintiffs in
26 this lawsuit. I am competent to testify to the matters described herein.

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2. I have previously filed other declarations with this Court which include testimony and evidence applicable to this motion. These declarations can be found at Dkt 21 and 27. Accordingly, am incorporating these declarations, including the exhibits attached to them, by reference as a part of this declaration.

3. As this Court knows from my previous declaration, Dkt. 21, I am counsel for Duncan Robertson in the case of Robertson v GMAC Mortgage, LLC, et al. As previously indicated the Ninth Circuit determined in Robertson's appeal that defendants, including a Bank of New York Mellon entity, had not adequately plead diversity of citizenship and ordered a different judge of this Court to conduct an evidentiary hearing to determine whether the parties were diverse for purposes of 28 USC 1332.

4. Both Robertson and my case involve notes which were alleged to have been transferred to JPMorgan Chase Bank N.A. (Chase) trustee operations. JPMorgan Chase claims in both cases that these loans became part of its securitized trust portfolio which was transferred to Bank of New York in 2006. See Dkt 1, § 3.4. The Bank of New York to which this business was transferred was a state, i.e. New York, chartered bank in 2006. Id.

5. My experience in the Robertson case indicates that no attorney in that case had a fiduciary attorney-client relationship with any Bank of New York Mellon (or subsidiary or related) entity. The facts upon which I base this conclusion include without limitation: 1.) two attorneys appeared on behalf of Bank of New York Mellon Trust Company, N.A.; 2.) Two removal petitions were filed which falsely stated that Bank of New York Mellon Trust Company's principal place of business was in Miami, Florida, when this in fact was not true; 3.) one of the attorneys appearing on behalf of Bank of New York Mellon Trust Company which twice made these false representations to the Court and which this Court erroneously found to be true was Frederick Burnside, an attorney with Davis Wright Tremaine PLLC (DWT); and 4.) a declaration filed by attorney Kathy Priore, who represented

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1 ResCap Liquidating Trust with the GMAC bankruptcy court[1] indicated that the wrong attorney (and
2 hired by GMAC Mortgage, LLC) was working on Robertson's case. Id.

3 6. Attached hereto as Exhibit 1 are copies of the notices of appearance filed in the Robertson
4 case.

5 7. Attached hereto as Exhibit 2 is copy of the removal pleadings authored by DWT falsely
6 stating the BNYMTC's principal place of business is in Miami Florida. The false declaration about
7 BNYMTC's principal place of business is on page 3 and is underlined.

8 8. Similarly false allegations about BNYMT's principal place of business were repeated in
9 LSI's removal petition and such statement, although challenged by Robertson, was not disputed by
10 any attorney for BNYMTC.

11 9. Counsel representing BNYMTC at the Ninth Circuit mandated evidentiary hearing has
12 admitted in judicial pleadings that these statements were false, but claims he did not make them,
13 implying that Burnside and DWT made the false allegations about BNYMTC. I have attached a copy
14 of that pleading as Exhibit 3 and highlighted those portions which include such accusations.

15 10. As this Court knows I have previously filed a declaration which includes my complaint
16 against plaintiffs and their attorneys for violations of the Fair Debt Collection Act. A copy of that
17 complaint can be found at Dkt 21, Exhibit 2. Exhibit 1 to that complaint is a communication from
18 Nationstar that was posted on my gate and identifies DWT as its attorney. For this Court's
19 convenience I have attached that communication hereto as Exhibit 4.

20 11. Exhibits 5 and 6 hereto are publicly recorded documents which were retrieved from the
21 Snohomish County Auditor's Office. This Court is entitled to take judicial notice of these documents
22 and I hereby request it do so.

23 12. I have attached hereto the relevant portions of Kathy Priore's declaration in the ResCap
24 bankruptcy proceedings as Exhibit 7, underlying the most pertinent parts thereof. This declaration
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26

[1] *In Re Residential Capital, LLC,* No. 12-12020-mg, Doc. No. 8072-24 at 23 (Bnkr. SD NY, 02-05-2015). This and all public filings in this case are viewable at http://www.kccllc.net/rescap.

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tends to prove that the RESCAP bankruptcy liquidating trust believed its attorney was representing BNYMTC in the Robertson diversity action as its servicing records indicate the wrong attorney was hired in the then ongoing Robertson litigation in this Court.

13. I personally am aware that there was a problem with BNYMTC's attorney-client relationship, if any, in the Robertson case. Just prior to the deadline for doing so, DWT on behalf of JPMorgan Chase filed a motion for summary judgment. As a result all the defendants had obtained dispositive motions in their favor except for BNYMTC. Because of this oversight the case schedule had to be modified in order to allow BNYMTC to obtain dispositive motion ruling. I was informed at the time by the counsel who subsequently represented BNYMTC that there was confusion regarding who represented BNYTMC and that's why no timely dispositive motion was filed.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Dated this 2nd day of June, 2016 at Arlington, Washington.

/s/ *Scott E. Stafne*

SCOTT E. STAFNE WSBA#6964

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APPENDIX 44
A 273

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WSAHINGTON AT SEATTLE

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-AR2 Plaintiff, v. SCOTT STAFNE, an individual; TODD STAFNE, an individual; and REAL TIME RESOLUTIONS, INC., a Texas corporation Defendant(s).	CASE NO. 2:16-CV-00077 SCOTT E. STAFNE'S ANSWER TO COMPLAINT; AFFIRMATIVE DEFENSES AND COUNTER CLAIMS

Scott E. Stafne by and through the Stafne Law Firm hereby answers the complaint filed in the above captioned action as follows:

1.1. Stafne denies the allegations of paragraph 1.1.

1.2. Stafne admits that he is a resident of Washington. Stafne denies all other inferences and allegations set forth therein.

1.3. Stafne admits Todd Stafne is a resident of Washington.

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1.4. Stafne does not have sufficient information and belief to admit or deny the allegations of paragraph 1.4.

1.5. Stafne admits the allegations of paragraph 1.5.

II. JURISDICTION

2.1. Stafne admits the amount in controversy exceeds $75,000. Stafne denies the remainder of the allegations and inferences which may flow from the allegations in this paragraph.

2.2. Stafne denies paragraph 2.2.

2.3. Stafne denies paragraph 2.3.

III. FACTS

3.1. Stafne denies the allegations of paragraph 3.1. Stafne denies signing these instruments and notifies plaintiff that in light of this denial, it bears the burden of proving Stafne's signature. Stafne denies plaintiffs alleged characterizations of the Note and Deed of Trust which are attached to the complaint as exhibits as those documents speak for themselves.

3.2. Stafne denies the allegations of paragraph 3.2. The document speaks for itself.

3.3. Stafne denies the allegations of paragraph 3.3.

3.4. Stafne denies the allegations of paragraph 3.4.

3.5. Stafne does not dispute the existence of the forbearance agreement, which is attached as Exhibit C to the complaint. Stafne denies all other allegations made in this paragraph.

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3.6. Stafne denies the allegations of paragraph 3.6. He was in default prior to the time the purported note and deed of trust were securitized and transferred to J.P. Morgan Bank N.A.

3.7. Stafne denies paragraph 3.7. The Acceleration Notice speaks for itself.

3.8. Stafne denies paragraph 3.8.

3.9. Stafne denies paragraph 3.9.

3.10. Stafne denies the allegations of paragraph 3.10.

3.11. Stafne denies the allegations of paragraph 3.11.

3.12. Stafne denies the allegations of paragraph 3.12. The Acceleration Notice speak for itself.

3.13. Stafne denies the allegations of paragraph 3.13.

3.14. Stafne denies the allegations of paragraph 3.14.

3.15. Stafne denies that Bank of New York Mellon has any right based on its complaint or other document or agreement to accelerate any debt related to the note or deed of trust attached as to the exhibits to its complaint. See affirmative defenses.

3.16. Stafne denies the allegations contained in paragraph 3.16.

3.17. Stafne is without information and belief to admit or deny the allegations contained in paragraph 3.17 and therefore denies.

3.18. Stafne denies paragraph 3.18.

IV. CAUSES OF ACTION

4.1. Stafne denies the allegations of paragraph 4.1. Stafne asserts that enforcement of the Note is barred. See affirmative defenses.

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4.2 Stafne denies the allegations of paragraph 4.2. Stafne asserts the deed of trust is outlawed pursuant to RCW 7.28.300 as well as unenforceable. See affirmative defenses.

4.3. Stafne admits that he has breached the Note and Deed of Trust by not making any payments since November, 2007. Further, Stafne breached the note and deed of trust, specifically ¶¶ 5, 7, 9, and 11 of the deed of trust, more than six years ago by not keeping the property insured; by not restoring the property; by not applying the funds received from litigation with Stafne's homeowners insurance company to repairing the property; and by not paying lender miscellaneous proceeds related to the diminution of the value of the house. Stafne also asserts the lender breached the contract more than six years ago by requiring Stafne to pay premiums for forced placed insurance based on the amount of the loan or an inflated amount over and above Stafne's insurable interest in the property. See affirmative defenses and counterclaims.

4.4. Stafne denies that relief under RCW 7.60.025 is available to plaintiff.

STAFNE'S AFFIRMATIVE DEFENSES

Stafne asserts the following affirmative defenses against plaintiffs:

A. This Court lacks diversity jurisdiction over this action.

B. Bank of New York Mellon Corporation has no standing to bring this action.

C. Bank of New York Mellon and Bank of New York Mellon N.A. are not the real parties in interest.

D. Accord and Satisfaction

E. Estoppel

F. Failure of Consideration

G. Fraud

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H. Illegality

I. Laches

J. Non claim statute - RCW 7.28.300

K. Statute of frauds

L. Statute of Limitations

M. Anticipatory breach of contract in 2007 resulting in Stafne making no payments thereafter and Plaintiff allowing the Statute of Limitations to run on Stafne's breaches of contract outlined above and which were not subject to any installment payments.

N. Violations of Fair Debt Credit Reporting Act by plaintiff and its attorneys, which are demonstrated in a related action to be filed with this Court

4.5 Stafne reserves the right to amend these affirmative defenses as warranted by continuing investigation and discovery.

STAFNE'S QUIET TITLE CLAIMS

1.1. Stafne asserts this court has no subject matter jurisdiction to hear this claim for the reasons stated in Stafne's motion to dismiss pursuant to Fed. R. Civ. Pro 12(b)(1) and for such other reasons as appear on the face of the complaint.

1.2. If this Court continues to find that it has jurisdiction based on the allegations of plaintiff's complaint, Stafne hereby provides notice to this Court that he may seek a writ or mandamus or prohibition to prevent this Court from acting outside the bounds of its subject matter jurisdiction. *Cf. All Coast Fishermen's Marketing Association v Confederated Tribes,* United States Supreme Court, A-129 (1970) ORDER by Justice Rehnquist.

1.3. Stafne anticipates filing a related action against the alleged plaintiffs and their counsel in this action for violations of the Fair Debt Collection Practices Act, which will

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further substantiate this Court's lack of statutory diversity jurisdiction under the circumstances of this case.

1.4. If this Court proceeds and/or is permitted to proceed with regard to this matter, Stafne asks this Court quiet title and declare as outlawed the deed of trust filed with the Snohomish County Auditor as Instrument No. 200503150879 because it is outlawed under RCW 7.28.300 which Stafne assets is a non-claims statute. Alternatively, Stafne alleges even if RCW 7.28.300 is not t anon-claims statute that various statutes of limitation bar and the doctrine of laches bar enforcement of any debt owed under any note and/or deed of trust which exist and have not been forged.

1.5 The form deed of trust Plaintiff Bank of New York Mellon claims is [are] applicable to this case requires the party secured thereby to give notice of default and intent to accelerate 30 days prior to acceleration after which no further communication or demand need be made to accelerate those payments due.

1.6 Shortly after Stafne moved into his home he observed construction defects in his home which he later learned made it unsaleable, uninsurable, and arguably not habitable. Stafne notified the servicer about these damages and kept servicer advised of litigation related to these construction defects and later negligence by, among others, his insurance company's negligent attempts to investigate the cause of the damages.

1.7 The servicer on behalf of Lender initially accelerated the debt prior to June 2007.

1.8 On or about June 12, 2007 the servicer on behalf of lender entered into a Suspended Payment Agreement with Stafne which stated in pertinent part:

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A 279

> If you fail to comply with each and all of the terms of and conditions of this Agreement, this Agreement at Countrywide's option shall terminate immediately and automatically without further notice to you and, except as otherwise provided herein, shall be of no further force and effect. In such case, all amounts that are owing under your loan shall become immediately due and payable, and Countrywide shall commence or continue, as the case may be, foreclosure proceedings, or take such other action as permitted by law.
>
> If we previously notified you that your loan is (or will be) accelerated and/or due in full, although you may be entitled by law to cure your default by bringing your loan current rather than paying it off. Countrywide's acceptance of any payments from you which, individually or collectively, are less than the total amount due on your loan shall in no way de-accelerate your loan or require Countrywide to re-notify you of your default, re-accelerate your loan, or re-commence any notice or process prior to countywide proceeding with foreclosure action.

1.9 More than six years has passed since the note and deed of trust were mutually breached by Stafne and various successor servicers and lenders. Notwithstanding various servicers acceleration of those amounts due and owing and those other breaches of contract set forth herein Stafne has not made any payments related to the note or deed of trust for more than 8 years.

V. Causes of Action

Quiet Title

2.1. Chapter 7.28 RCW permits "[a]ny person having a valid subsisting interest in real property, and a right to the possession thereof" to recover the same in the superior court wherein the property is situated. RCW 7.28.010.

2.2. In such actions, "the superior title, whether legal or equitable" prevails. RCW 7.28.120.

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2.3. A mortgagee is merely a lienor and may not "recover possession of the real property, without a foreclosure and sale according to law". RCW 7.28.230.

2.4. As the fee simple owner of the property Scott Stafne presumptively has title superior to all other claimants. In fact, the form deed of trust is a lien that relies on the superiority of the Stafne's title. Form Deed of Trust Language at 3 ("Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property".).

2.5. Plaintiff's purported property interest in the Subject Property is merely a lien. RCW 7.28.230. In order to acquire a good and valid title the lien must be (1) based upon a valid and enforceable debt secured by an enforceable security agreement; (2) foreclosed; (3) sold for the payment of the lien; (4) properly conveyed to valid lien holder as a result of the sale; and (5) potentially, held during a lapse of the statutory period of time before which their title remains inchoate. RCW 7.28.230 (mortgagee acquiring title); RCW 7.28.300 (cannot acquire title when enforcement of mortgage barred); *generally* Chs. 61.12 and 61.24 RCW (foreclosure, sale and conveyance upon sale); and Ch. 6.23 RCW (redemption).

2.6. The owner of real property may quiet title against such a lien and have a lien outlawed "where an action to foreclose such [a lien] would be barred by the statute of limitations" converting a borrower's defeasible fee simple title to fee simple absolute by operation of law. RCW 7.28.300.

Relevant Statutes Of Limitation

RCW 4.16.040(1)

2.7. RCW 4.16.040(1) provides an "action upon a contract in writing" must be commenced within six years.

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2.8 Stafne breached the note and deed of trust, specifically ¶¶ 5, 7, 9, and 11 of the deed of trust, more than six years ago by not keeping the property insured; by not restoring the property to the value it would have had but/oir the construction defects and negligence of the entities investigating the cause of these defects; by not applying the funds received from litigation with Stafne's homeowners insurance company to repairing the property or turning such funds over to the servicer on behalf of the lender; and by not paying lender miscellaneous proceeds related to the diminution of the value, if any, of the house.

2.9 Stafne also asserts the lender breached the contract more than six years ago by requiring Stafne to pay premiums for forced placed insurance based on the amount of the loan rather than on Stafne's insurable interest in the property. The Lender continued to charge Stafne unlawful premiums based on insurable amount which was far more than the value of the house and Stafne refused to make any further payments under the note or deed of trust because of these breaches.

2.10 The first acceleration of the monies owed on the note and deed of trust in 2007 was valid and could not be "de-accelerated[1]" under the terms of the agreements between the servicer and Stafne and as a matter of Washington law.

RCW 62A.3-118(a)

2.11 RCW 62A.3-118(a) provides an action to enforce payment obligations undertaken in a negotiable instrument "must be commenced within six years after the due date or dates stated in the note" or "within six years after [an] accelerated due date".

---

[1] See ¶ 1.8 of this section which refers to June 12, 2007 Suspended Payment Agreement between servicer and Stafne which stated, among other things:

> Countrywide's acceptance of any payments from you which, individually or collectively, are less than the total amount due on your loan shall in no way ***de-accelerate*** your loan or require Countrywide to re-notify you of

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A 282

1 2.12 The Note was accelerated more than 6 years ago in order to allow defendants
2 to bring an action to obtain relief, which included obtaining the entire amount due and owing
3 on the accelerated debt.
4 2.13 The first acceleration of the monies owed on the note in 2007 was valid and
5 could not be "de-accelerated[2]" and/or decelerated and/or waived under the terms of the
6 agreements between the servicer and Stafne and as a matter of Washington law.
7
8 2.14 Even the February 17, 2009 acceleration notice stated: "[i]f the default is not
9 cured...the mortgage payments ***will be*** accelerated" (emphasis added). This language is not
10 equivocal but conditional; an if-then statement: If payment of the sum demanded is not made
11 (and it was not) then the mortgage payments ***will be*** accelerated.
12 2.15. After servicer issued its first *Notice of Intent to Accelerate* there was no
13 further condition precedent to filing a suit to foreclose, either judicially or non-judicially,
14 under the applicable agreements and/or Washington law. *see also* RCWs 61.12.040 and
15 61.24.030(3) (foreclosure available remedy upon default).
16
17 2.16. After Servicer accelerated the payments there remained no condition
18 precedent for servicer and lender to perform prior to filing a suit to collect all unpaid principal
19 and accrued interest due on the loan all applicable statutes of limitation began to run. *See*
20 RCW 62A.3-118(a) (acceleration establishes a new maturity date from which the limitations
21 period is calculated).
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your default, re-accelerate your loan, or re-commence any notice or process prior to countywide proceeding with foreclosure action.

[2] See note 1, *supra*

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A 283
RCW 4.16.040(3)

2.17. A cause of action accrues when the plaintiff has a right to seek relief in the courts. *E.g. Tyson v. Tyson*, 107 Wn. 2d 72, 75, 727 P.2d 226 (1986). A cause of action for foreclosure accrues upon default. *E.g.* RCW 61.12.040; *see also* RCW 61.24.030(3).

2.18. A foreclosure sale results in either (1) the beneficiary receiving the <u>profits</u> of the sale sufficient to pay the balance of the loan secured by the deed of trust; or (2) if the beneficiary purchases the property at the sale, the beneficiary becoming the record owner of the property entitled to the <u>use and possession</u> of that property. Generally Ch. 61.24 RCW.

2.19. An action for "the rents and profits or for the use and occupation of real estate" is barred upon the elapse of six years after the cause of action accrues. RCW 4.16.040(3).

2.20. Any action to foreclose based upon the *Deed of Trust* encumbering the Subject Property must have been commenced on or prior to 6 years from the last payment under the deed of trust. RCW 4.16.040(3).

CERTIFICATION REQUEST

3.1. The Supreme Court of Washington has not published any controlling authority regarding the limitations and laches issues raised in this case. Congress has indicated an intention that to prohibit debt collectors from threatening to collect and collecting stale debts pursuant to State laws. This Congressional purpose can best be achieved under the Constitution's federal framework and the Tenth Amendment by allowing Washington's Supreme Court to construe those Washington statute of limitations and laches issues which are more a matter of State concern than federal concern, especially when they arise in the context of the dispossession of lands within the boundaries of Washington State.

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3.2. The Washington State legislature has enacted statutes regarding the certification of such issues by this Court to Washington's Supreme Court. Ch. 2.60 RCW. The Supreme Court of Washington has also adopted rules regarding certification of such issues to the Supreme Court of Washington. See RAP 16.16.

JURY DEMAND

Stafne demands that all triable issues, including without limitation, those related limitations, be tried before a jury.

PRAYER FOR RELIEF

WHEREFORE, having answered Plaintiff's Complaint, Stafne seeks judgment against Plaintiffs granting the following relief:

1. The dismissal of all Plaintiff's claims with prejudice;
2. For the recovery of all attorney fees and costs incurred by Stafne in the defense of Plaintiff's claims under applicable contractual, legal or equitable grounds; and
3. For such other and further relief as the Court may deem just and equitable.

DATED this 9th day of May, 2016 at Arlington, Washington.

/s/ Scott E. Stafne
Scott E. Stafne, WSBA # 6964

STAFNE LAW FIRM

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APPENDIX 45

A 285

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGGE PASS-THROUGH CERTIFICATES SERIES 2005-AR2, PLAINTIFF, v. SCOTT STAFNE, an individual; TODD STAFNE, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation, DEFENDANTS.	CASE NO. 2:16-cv-00077 SUPPLEMNTAL DECLARATION OF SCOTT E. STAFNE RE: SUBJECT MATTER JURISDICTION

1. My name is Scott E. Stafne. I am one of the defendants in this judicial foreclosure purportedly brought by Bank of New York Mellon as trustee against real property which I have owned in the State of Washington since 2004. I am also an attorney licensed to practice law in the courts of the state of Washington, including the United States District Courts for the Western and Eastern Districts of Washington.
2. I am over the age of majority and competent to makes this declaration. I make this declaration on the basis of such personal knowledge as appears more fully herein.

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3. Given this Court has its own independent duty to determine the existence of its subject matter jurisdiction to decide this action, I believe the best way to bring the issues raised herein to this Court's attention is by way of this declaration; rather than by filing a specific motion at this time.

4. As this Court can see from the caption of this action, it reflects that Bank of New York Mellon, et al, is the plaintiff in this action.

5. The summons, which was served on me and filed with this Court, also identifies the plaintiff as Bank of New York Mellon, et al.

6. The Civil Cover Sheet also identifies the plaintiff as Bank of New York Mellon et. al.

7. The "instructions" to the Civil Cover Sheet instruct that the full names of parties should be stated.

8. The caption identifies the plaintiff as "BANK OF NEW YORK MELLON, a Delaware corporation as trustee for STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-AR2."

9. Paragraph 1.1 of the complaint states:

> Bank of New York Mellon, a Delaware corporation, serves as trustee for Structured Asset Mortgage Trust II, Mortgage Pass-Through Certificates Series 2005-AR2, and in that capacity owns and holds Defendant Scott Stafne's note. Bank of New York Mellon's *affiliate entities* include Bank of New York Mellon Trust Company, N.A., which has its main offices and headquarters in California. Bank of New York Mellon is acting in foreclosure proceedings in this case through its attorney in fact, Nationstar Mortgage LLC.

(Emphasis Supplied)

10. The Corporate Disclosure Statement filed with this Court in this action states:

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> Pursuant to Fed. R. Civ. P. 7.1, Plaintiff Bank of New York Mellon, Co., as trustee for Structured Asset Mortgage Investments II Trust, Mortgage pass-through Certificates Series 2005-AR 2, makes this Corporate Disclosure State.
>
> The Bank of New York Mellon Corporation, a Delaware corporation, is a publicly held company. No corporation owns 10% or more of its stock.

11. The complaint alleges, and provides an exhibit in support thereof, that Nationstar (the servicer) has executed a power of attorney authorizing Bank of New York Mellon to perform several of its debt collection activities as servicer pursuant to the PSA against Stafne, including apparently bringing this in rem foreclosure action against Stafne.

12. As this Court knows from my previous and still pending challenges to its subject matter jurisdiction pursuant to Fed. R. Civ. Pro. 12(b)(1), there is another prior filed in rem action involving my property res and other properties in the overall Twin Falls community property res currently pending in the Superior Court of Snohomish County, Washington in the case *Abrams v Twin Falls, Inc., et al*, Snohomish County Superior Court Cause No. 15-2-04710-6..

13. My third-party complaint and intervention complaint in that Washington State court action name the plaintiff as identified in the caption of this federal complaint herein i.e. Bank of New York Mellon, as a defendant in that ongoing quiet title action. The relief I seek in that action related to Bank of New York Mellon is to quiet title and declare as outlawed any interest in the deed in the deed of trust recorded as Snohomish County Instrument number 200503150879 claimed by Bank of New York Mellon or any other entities pursuant to RCW 7.28.300.

14. In order to serve my state court complaint on Bank of New York Mellon in the Washington action I retained Delaware Attorney Services LLC. I chose that process servicer because it advertises that it serves banking entities, like Bank of New York Mellon.

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15. Delaware Attorney Services, LLC notified me that Bank of New York Mellon refused service of my complaint. The process servicer explained in a letter:

> Service rejected by Amy McClaren of The Corporation Trust Company, as they are not the registered agent for this entity, as named on the summons and the complaint. The correct name is The Bank of New York Mellon Corporation. In order for them to accept the name must be noted in full as The Bank of New York Mellon Corporation, as is listed with the DE Secretary of state. In addition the complete name must be listed on all the documents being served. The Bank of New York Mellon Corporation has given very specific instruction to Corporation Trust Company with regard to accepting documents on their behalf.

10. A copy of a document entitled "Affidavit of Attempted Service" and the bill my office has received and I have paid for such service, is attached as Exhibit 1.

11. If the plaintiff refuses to be served in essentially the same matter, i.e. a case involving the interest of the purported plaintiff herein in my land pursuant to that stale deed of trust recorded as Snohomish County Instrument No. 200503150879, because I have not sued The Bank of New York Mellon, the complaint establishes that the plaintiff in this action is not The Bank of New York Mellon.

12. In paragraph 3.4 of the complaint filed in this action Bank of New York Mellon alleges with regard to the way it acquired its interest in my stale deed:

> After closing [on Stafne's loan in 2005], Countrywide transferred the Note to JP Morgan Chase Bank, N.A. ("JP Morgan"), as then trustee for Structured Asset Mortgage Investments II Trust 2005-AR2 ("SAMI Trust) See Attach A at 4 (indorsement to JP Morgan, as Trustee), Attach F (Pooling and Servicing Agreement.) On September 15, 2006, the Office of the Comptroller of the Currency approved Chase's sale of its trustee operations for securitized trust to Bank of New York. After October 1, 2006 Chase was no longer trustee (and thus no longer holder of Borrower's Note.) See, e.g., http://www.occ.gov/static/interpretations-and-

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> precedents/octt06/crad136.pdf (OCC approval letter); JP Morgan Chase & Co. 10-Q, at 5 (November 8, 2006) *available at,* http://www.sec.gov/Archives/edgar/data/19617/000095012306013738/y26732e10vq.htm ("On October 1, 2006, the Firm completed the exchange of selected corporate trust businesses, including trustee … services, for the consumer, small business and middle-marketing banking businesses of the Bank of New York."). Bank of New York Mellon assumed the role of trustee of the SAMI Trust and Nationstar, as its attorney in fact, indorsed the Note to Bank of New York Mellon as successor to JP Morgan as Trustee for the SAMI Trust. Attach. A at 4 (indorsement to Bank of New York Mellon, successor trustee.)

13. Notwithstanding these allegations that JP Morgan Trust was not the trustee after 2006, Nationstar (the servicer) has sent me communications which assert that JP Morgan remained the trustee of the trust long after 2006. I have included an example of one such communication as Exhibit 2.

14. I also have personal knowledge regarding Bank of New York Mellon claiming to operate as a trustee pursuant to the sale of JP Morgan Chase trustee business to Bank of New York, N.A. based on my litigation of other cases involving property interests which were also purportedly transferred pursuant to this same 2006 transaction.

15. I have attached hereto as Exhibit 3 a copy of the Ninth Circuit's Memorandum ruling in *Robertson v GMAC Mortgage, LLC,* No. 14-35672 (9th Cir. 01-05-2016).

16. As this Court can see, Exhibit 3 requires another judge of this District Court to hold an evidentiary hearing with regard to determining the citizenship of several of the parties in that case, including Bank of New York Mellon Trust Company. NA (referred to by the Ninth Circuit Memorandum simply as "BNY").

17. That case also involves a deed of trust purportedly obtained by Bank of New York's acquisition of JP Morgan trust business in 2006. This is the same transaction which is

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1 described in paragraph 12 above by reference to specific allegations of the complaint filed
2 in this action.
3 18. I represented plaintiff/appellant Robertson in much of the district court action and in
4 several related appellate court proceedings pertaining to, among other things, whether the
5 district court appropriately found that it had diversity subject matter jurisdiction of that
6 case.
7
8 19. In preparation for that evidentiary hearing recently ordered by the Ninth Circuit The
9 Bank of New York Mellon Trust Company, N.A. has made certain disclosures through its
10 counsel for purposes of establishing its citizenship. These disclosures are attached hereto
11 as Exhibit 4.
12 20. Counsel for The Bank of New York Mellon Trust Company, N.A., in that case has
13 suggested that my client Mr. Robertson, has no good faith basis not to stipulate that his
14 client is diverse. I have attached a copy of the emails between counsel for Bank of The
15 New York Mellon Trust Company N.A. and myself in this regard as Exhibit 5. As the
16 Court can see the last email from the Bank of New York Mellon's counsel acknowledges
17 that The Bank of New York Mellon Trust Company N.A. is a separate entity from The
18 Bank of New York Mellon Corporation.
19
20 21. Exhibit 5 indicates the entity which appears in the caption and body of the complaint
21 in this case, as well as in the Civil Cover Sheet and Corporate Disclosure Statement as
22 being the plaintiff, is not The Bank of New York Mellon Corporation. Its affiliate is also
23 not identified as The Bank of New York Mellon Trust Company N.A. This is significant
24 because it casts doubt on whether an actual trustee has been named. *See* Exhibit 4, which
25 contains corporate documents suggesting that the word "The" preceding the term Bank is
26

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1 considered an essential part of their formal names. Exhibit 1 also demonstrates this, *i.e.*
2 that the plaintiff named in this complaint Bank of New York Mellon, et. al, and/or Bank
3 of New York Mellon Corporation refuses to accept service of any process which does not
4 include the name "The Bank of New York Mellon."

5 22. Because the complaint in this case does not properly name any proper Bank of New
6 York entity, i.e. one which includes the word "The" before "Bank", the purported plaintiff
7 does not have any interest in the deed of trust, even though an entity with a similar
8 sounding name may be claiming an interest in the stale deed of trust at issue in this case.

9
10 23. The strategic misrepresentation of Bank of New York Mellon (if that is what is
11 happening here) as being something different than The Bank of New York Mellon
12 entities, is, in my opinion, deceptive and problematic. Further, it is my judgment this
13 deceptive practice, which appears to be perpetuated by federal courts failure to accurately
14 identify BNY entities in their decisions undermines the purposes of diversity jurisdiction
15 statutes contemplated by 28 USC 1332 and may rise to the level of constitutional affronts
16
17 to individuals' rights pursuant to the federal nature of our government, U.S. Const. Art.
18 IV, § 4, U.S. Const. Amend. IX, and U.S. Const. Amend. X.

19 24. An example of New York Mellon entities misuse and abuse of its various names in
20 order to allege diversity jurisdiction is the case of *Diunugala v JP Morgan Chase Bank,*
21 *N.A. et al,* Case No. Case No. 12cv2106-WQH-KSC (SD Cal.)(attached as Exhibit 6.) In
22 that case The Bank of New York Mellon Trust Company N.A. asserted diversity
23
24 jurisdiction in California by claiming it was actually Bank of New York Mellon
25 Corporation, which it claimed was, incorporated Delaware. Had The Bank of New York
26 Mellon Trust Company acknowledged that it was the trustee and a California corporation

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there would have been no diversity jurisdiction because both the plaintiff and Bank of New York Mellon Trust Company were California citizens.

25. The removal petition filed in *Diunugala* is attached as Exhibit 7. The removal petition asserts, as does the complaint in this case, that Bank of New York Mellon Corporation is a Delaware corporation is the trustee notwithstanding the complaint appears to have alleged The Bank of New York Mellon Trustee Company N.A. was the trustee. Accordingly, the claim made in the removal petition that this defendant was a Delaware corporation does not appear to be tethered to the facts.

26. Similarly in the Robertson case Bank of New York Mellon Trust Company, N.A. asserted as the basis for diversity and removal jurisdiction that it was a citizen of Florida. Curiously, there were two law firms which appeared on behalf of Bank of New York Mellon Trust Company, N.A. in the Robertson case. One of those firms represents Bank of New York Mellon in this case. The portion of that law firm's removal petition which asserted that Bank of New York Mellon Trust Company is a citizen of Florida is attached as Exhibit 8, hereto.

24. What is significant in that case is that Bank of New York Mellon Trust Company, N.A., after repeatedly pleading Florida as their citizenship (and the district Court subsequently so ruling) is now claiming it is *not* a Florida citizen for purposes of diversity. Moreover, Bank of new York Mellon Trustee Company is now claiming that Robertson may not be acting in good faith if he does not stipulate to Bank of New York Trustee Company's citizenship as being in California even though that is the citizenship he pleaded for this entity in his initial complaint .

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1 25. Mr. Robertson is now investigating whether an argument can be made whether Bank
2 of New York entities can forfeit their right to invoke diversity jurisdiction if it can be
3 established they systematically misrepresent their actual identity and citizenship to federal
4 courts.
5 25. Accordingly, If this Court decides that the denial of federal jurisdiction is not
6 appropriate for those other reasons previously stated in my Rule 12(b)(1) motion, I believe
7 it should pursuant to its own jurisdictional responsibilities determine hold an evidentiary
8 hearing to determine whether the Bank of New York Mellon entities by purporting to act
9 as an entity which they are not is engaging in systemic conduct inimical with the letter and
10 spirit of RCW 28 USC 1332 in order to prevent state courts from having the initial
11 opportunity to determine the meaning of state laws dealing with the dispossession of land
12 with their own boundaries.
13
14
15 DATED this 21st day of April, 2016 in Arlington, Washington.
16
17
18 I declare under the penalty of perjury that the foregoing statements are true and
19 correct to the best of my information and belief.

s/Scott E. Stafne

20
21 Scott E. Stafne WSBA#6964
Stafne Law Firm
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Exhibit - 1

A 295

AFFIDAVIT OF ATTEMPTED SERVICE

In The Superior Court of the State of Washington in and for the County of Snohomish

Jeffrey R. Abrams, a married person
Plaintiff(s)
v
Twin Fall, Inc., a Washington corporation
Defendant(s)

Case No: 15-2-04710-6

Twin Fall, Inc., a Washington corporation
Third-Party Plaintiff
v
Scott E. Stafne, a single man, and Bank of New York Mellon
Third-Party Defendants

I declare that I am a citizen of the United States, over the age of eighteen and not a party to this action. And that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I attempted service on Bank of New York Mellon

With the (documents)Third-Party Plaintiff Scott Stafne's Answer and Quiet Title and Other Claims Agaings Jeffrey R. Abrams and BNYM

Attempted At: Corporation Trust Company, 1209 Orange St., Wilmington, DE 19801

Date Attempted: April 12, 2016 Time Attempted: 3:10 p.m.

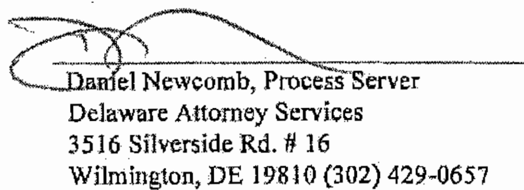
Manner of Service: () By personally delivering copies to the person/authorized agent of entity being served.
() By leaving, during office hours, copies at the office of the person/entity being served, leaving same with the person apparently in charge thereof
() By leaving copies at the dwelling house or usual place of abode of the person being served, with a member of the household 18 or older and explaining the general nature of the papers.
( ) By posting copies in a conspicuous manner to the address of the person/entity being served.

XXXX Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):
() Unknown at address () Evading () Moved, left no forwarding () Address does not exist () Service canceled by Litigant

(X) Other - Service rejected by Amy McLaren of The Corporation Trust Company, as they are not registered agent for this entity, as named on the summons and the complaint. The correct name is The Bank of New York Mellon Corporation. In order for them to accept the name must be noted in full as The Bank of New York Mellon Corporation, as it is listed with DE Secretary of state,. In addition the complete name must be listed on all of the documents being served. The Bank of New York Mellon Corporation has given very specific instructions to Corporation Trust Company with respect to accepting documents on their behalf.

I declare under penalty of perjury that the information contained herein is true and correct and this affidavit was executed on:

April 12, 2016	at	Wilmington,	Delaware
Date		City	State

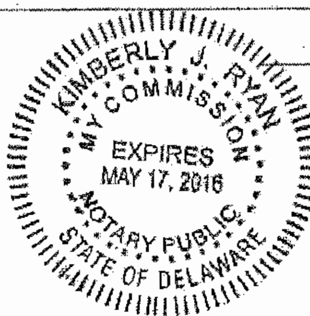


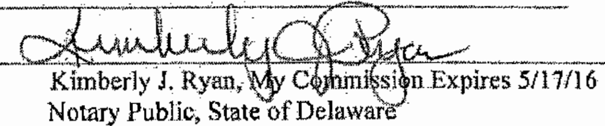
Daniel Newcomb, Process Server
Delaware Attorney Services
3516 Silverside Rd. # 16
Wilmington, DE 19810 (302) 429-0657

State of Delaware
County of New Castle

Subscribed and sworn before me, a Notary Public of the State of Delaware on April 12, 2016

Witness My Hand and Official Seal To

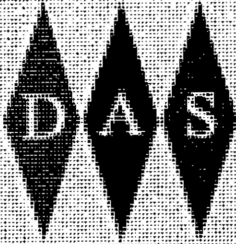




Kimberly J. Ryan, My Commission Expires 5/17/16
Notary Public, State of Delaware

Delaware Attorney Services LLC

A296



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delattyg@comcast.net
http://www.theprocessservers.com

Invoice

Date	Invoice #
04/12/2016	A12148
	Terms
	Due on receipt

Bill To

Pam Miller, Legal Assistant
Stabile Law Firm
239 N. Olympic Avenue
Arlington, WA 98223

Amount Due	Enclosed
$67.70	

[illegible]

Case Caption	Case #	Reference #
Abrams v Twin Falls, Inc.	15-2-04710-6	None Provided

Activity	Amount
• Bank of New York Mellon - Jeffrey Abrams v Twin Falls, Inc.	65.00
• PRINT FEE (27 pg @ .10)	2.70

The greatest compliment we can receive is a referral from our happy customers.

Total	$67.70

Exhibit - 2

350 Highland Drive
Lewisville, TX 75067

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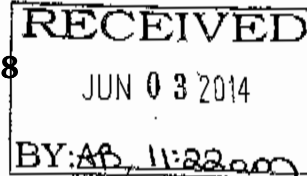

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May 21, 2014

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JOSHUA TRUMBULL
STAFNE TRUMBULL, LLC
239 N OLYMPIC AVE
ARLINGTON WA 98223

Re: Nationstar Reference Number: NSM-05-14-57856
Property Address: 17207 155TH AVE NE
ARLINGTON WA 98223

Account Name(s): SCOTT STAFNE

Dear Joshua Trumbull:

Nationstar Mortgage LLC (Nationstar) received your correspondence dated May 15, 2014, regarding concerns with the above referenced account.

Thank you for bringing this matter to our attention. We take all matters seriously and are in the process of reviewing your concerns.

A response will be provided no later than June 9, 2014. However, responses are generally provided in less than ten days from receipt of the correspondence.

Our records indicate that JPMorgan Chase Bank as Trustee for SAMI 2005-AR2, is the current owner of the loan. As requested, we have provided the address and phone number below:

JPMorgan Chase Bank, N.A
1111 Fannin Street, Fl 06
Houston, TX 77030

(713)427-6400

Please note that Nationstar is the servicer of the loan; and therefore, will be responsible for responding to any concerns regarding the servicing of the loan. Servicing matters include, but are not limited to the following:

- Payment assistance and modifications
- Payment posting
- Validation of the debt
- Foreclosure proceedings
- Payment adjustments

Please direct any communication related to these matters to Nationstar.

This is an attempt to collect a debt and any information obtained will be used for that purpose. However, if this debt is involved in a bankruptcy or has been discharged in a bankruptcy proceeding, this communication is not an attempt to collect a debt against you and any information obtained or given will be for informational purposes only.

Nationstar is focused on customer satisfaction and appreciates the opportunity to review and respond to customer concerns. Should you have any questions or need any further information regarding this issue please contact us.

Sincerely,

Cusha Peterson
Customer Relations Specialist
Nationstar Mortgage LLC
phone: 1(877)783-7480 ext: 467-0499
fax: (972)353-6755
email: cusha.peterson@nationstarmail.com

This is an attempt to collect a debt and any information obtained will be used for that purpose. However, if this debt is involved in a bankruptcy or has been discharged in a bankruptcy proceeding, this communication is not an attempt to collect a debt against you and any information obtained or given will be for informational purposes only.

1 The Honorable Thomas S. Zilly

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8 UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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10 BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2,

13 Plaintiff,

14 v.

15 SCOTT STAFNE, an individual; Todd Stafne, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation,

17 Defendants.

No. 2:16-cv-00077 TSZ

BANK OF NEW YORK MELLON'S OPPOSITION TO MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION

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TABLE OF CONTENTS

Page(s)

I. INTRODUCTION AND SUMMARY OF ARGUMENT 1

II. BRIEF STATEMENT OF UNDISPUTED FACTS 2

III. ARGUMENT 3

A. Standard of Review 3

B. BNYM Properly Plead Diversity Jurisdiction. 4

1. BNYM's Principal Place of Business is New York. 4

2. BNYM is the Real Party in Interest Entitled to Foreclose. 5

C. Washington State Courts Do Not Have Exclusive Jurisdiction of In Rem Actions. 6

D. The "Prior Exclusive Jurisdiction" Doctrine is Inapplicable. 8

E. Neither Comity Nor Abstention Are Warranted. 11

IV. CONCLUSION 13

Davis Wright Tremaine LLP
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1
2 **TABLE OF AUTHORITIES**

3 **Page(s)**

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11 424 U.S. 800 (1976)....................11

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545 U.S. 546 (2005)....................6

13 *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*,
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559 U.S. 77 (2010)....................4

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Navarro Savings Association v. Lee,
446 U.S. 458 (1980) 5, 6

Orsay v. United States Dep't of Justice,
289 F.3d 1125 (9th Cir. 2002) 3

Princess Lida of Thurn & Taxis v. Thompson,
305 U.S. 456 (1939) 8

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517 U.S. 706 (1996) 11, 12

Savage v. Glendale Union High Sch., Dist. No. 205, Maricopa Cty.,
343 F.3d 1036 (9th Cir. 2003) 3, 4

Sexton v. NDEX W., LLC,
713 F.3d 533 (9th Cir.2013) 8

White v. Lee,
227 F.3d 1214 (9th Cir. 2000) 3

State Cases

Fluke Capital & Mgmt. Servs. Co. v. Richmond,
106 Wn.2d 614 (1986) 13

Jackson v. Quality Loan Serv. Corp.,
186 Wn. App. 838, *review denied*, 184 Wn.2d 1011 (2015) 7

Phillips v. Tompson,
73 Wn.78, 85 (1913) 7

University State Bank v. Steeves,
85 Wash. 55, 147 P. 645 (1915) 13

Federal Statutes

28 U.S.C.
§ 1332 ....1, 6, 7
§ 1332(a) 6

State Statutes

RCW
61.24.005(2) 3, 5
65.08.070 13

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Rules

Wash. Civ. R. 14(a) 1, 10

Fed. R. Civ. P. 12(b)(1) 3

Constitutional Provisions

U.S. Const. art. III, § 2 ....1, 6

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Defendant Scott Stafne's Motion to Dismiss for Lack of Subject Matter Jurisdiction attempts to complicate the simple fact that Bank of New York Mellon seeks to foreclose on a valid deed of trust, encumbering real property. The Court should deny Stafne's Motion for the following reasons:

First, Plaintiff's argument over diversity jurisdiction centers entirely on a non-party to this case: Bank of New York Mellon Trust Company, N.A. ("BONY Trust"). But the Complaint explains that Bank of New York Mellon Corporation ("BNYM"), a Delaware corporation, is the Plaintiff, not a national association or trust company. Thus, for jurisdiction purposes, it need only disclose its main office and headquarters are located in New York—which it did in the first paragraph of the Complaint. Plaintiff, as a corporation, commenced this action in its capacity as the trustee of a trust, but to avoid potential confusion between Plaintiff's role and the title of an affiliated entity Mr. Stafne has previously sued, Plaintiff further alleged facts explaining that non-party Bank of New York Mellon Trust Company, N.A., is merely affiliated with Bank of New York Mellon; it is not a party to this lawsuit.

Second, there is no "in rem exception" to diversity jurisdiction. Article III, § 2 of the United States Constitution and 28 U.S.C. § 1332 vest this Court with jurisdiction to decide in issues concerning real property by applying Washington law.

Third, the "prior exclusive jurisdiction doctrine" does not bar this action because it was filed first. *Abrams v. Twin Falls*, Snohomish County Case No. 15-2-04710-6, does not implicate Lot 11 (at issue here), nor any of the property rights BNYM asserts in its Complaint. Instead, ***after*** this Complaint was filed and all defendants served, Defendants in this action filed (but have not served) cross-complaints against BNYM attempting to implicate it in the prior action. Plaintiff in that unrelated case, Mr. Abrams, has moved to dismiss the cross-complaints because BNYM cannot be liable for any of his claims. *See* CR 14(a).

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1 ***Fourth***, no basis exists to dismiss the Complaint based on abstention or comity. No
2 friction with state law exists. BNYM asks the Court to apply Washington law in enforcing its
3 rights under the Promissory Note and Deed of Trust encumbering specific land identified in the
4 Deed of Trust, which is undisputedly the senior lien.

5 **II. BRIEF STATEMENT OF UNDISPUTED FACTS**

6 On March 9, 2005, Defendant Scott Stafne executed a promissory note and deed of trust
7 in exchange for $800,000 from Countrywide Home Loans, Inc., a loan he used to purchase
8 residential property in Arlington, Washington. Compl. ¶ 3.1 & Attach. A ("Note") & B ("Deed
9 of Trust"). After closing, Countrywide transferred the Note to JPMorgan Chase Bank, N.A.
10 ("JPMorgan"), as then-trustee for Structured Asset Mortgage Investments II Trust 2005-AR2
11 ("SAMI Trust"). *Id.* ¶ 3.4 & Attach. A at 4 (indorsement to JPMorgan, as trustee), Attach. F
12 (Pooling and Servicing Agreement).

13 On September 15, 2006, the Office of the Comptroller of the Currency approved
14 Chase's sale of its trustee operations for securitized trusts to Bank of New York, a wholly
15 owned subsidiary of Bank of New York Mellon Corporation. After October 1, 2006, Chase was
16 no longer trustee or the holder of Stafne's Note. Compl. ¶ 3.4. Bank of New York Mellon
17 Corporation—Plaintiff here—then assumed the role of trustee of the SAMI Trust and
18 Nationstar, as its attorney-in-fact, indorsed the Note to Bank of New York Mellon as successor
19 to JPMorgan in its capacity as trustee for the SAMI Trust. *See* Compl. ¶ 3.4 & Attach. A at 4
20 (indorsement to Bank of New York Mellon, as successor trustee, but not as BONY Trust).
21 BNMY's main office, headquarters, and principal place of business are in New York. *Id.* ¶ 1.1.

22 On January 1, 2009, Borrower defaulted on the loan by failing to make timely payments
23 as required by the Note and Deed of Trust. Compl. ¶ 3.6. Since default, Mr. Stafne has made
24 no payments on his debt. *Id.* BNYM, as trustee of the SAMI Trust, holds and owns
25 Borrower's Note, which is in possession of Bank of New York Mellon's agents and attorneys.
26 Compl. ¶ 3.10. Because BNYM holds Borrower's Note, it is the beneficiary of the Deed of
27

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Trust and entitled to all rights listed therein. RCW 61.24.005(2). BNYM does not rely on any Deed of Trust assignment from any party as a basis to foreclose.

BNYM sues for money judgment on a promissory note, foreclosure on the deed of trust, breach of contract, and receivership. Compl. ¶¶ 4.1-4.4.

III. ARGUMENT

A. Standard of Review

Under a Rule 12(b)(1) motion to dismiss, the Court assumes the material facts alleged in the complaint are true. *Savage v. Glendale Union High Sch., Dist. No. 205, Maricopa Cty.*, 343 F.3d 1036, 1039 n.1 (9th Cir. 2003); *Orsay v. United States Dep't of Justice*, 289 F.3d 1125, 1127 (9th Cir. 2002); *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) ("the plaintiff's factual allegations will ordinarily be accepted as true unless challenged by the defendant" (citing 5C Charles Alan Wright & Arthur R. Miller, *Federal Prac. & Procedure* § 1363, at 107 (3d ed. 2004))). The plaintiff bears the burden of proving by a preponderance of the evidence that each of the requirements for subject-matter jurisdiction has been met. *Leite*, 749 F.3d at 1121.

Rule 12(b)(1) attacks on jurisdiction can be either facial, confining the inquiry to allegations in the complaint, or factual, permitting the court to look beyond the complaint. *White v. Lee*, 227 F.3d 1214, 1242 & n.2 (9th Cir. 2000). In the event a plaintiff comes forth with affidavits in support of subject matter jurisdiction and the court does not hold an evidentiary hearing, the factual allegations of the complaint are accepted as true. *McLachlan v. Bell*, 261 F.3d 908, 909 (9th Cir. 2001) (citing *GATX/Airlog Co. v. United States*, 234 F.3d 1089, 1093 (9th Cir. 2000)).

Here, Stafne disputes a limited number of BNYM's legal (not factual) allegations regarding Bank of New York Mellon Trust Company, N.A.'s citizenship and fails to introduce any evidence regarding his allegations. Thus, he makes a facial challenge. *See Leite*, 749 F.3d at 1121 ("[a] 'factual' attack … contests the truth of the plaintiff's factual allegations, usually

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1 by introducing evidence outside the pleadings."); *Savage v. Glendale Union High Sch.*, 343
2 F.3d 1036, 1039 n. 2 (9th Cir. 2003) (same). Stafne also submits a single declaration attaching
3 a limited number of pleadings from an unrelated state court action. *See* Dkt. 11-2. None of
4 these allegations serves to divest this Court of jurisdiction.

5 **B. BNYM Properly Plead Diversity Jurisdiction.**

6 **1. BNYM's Principal Place of Business is New York.**

7 The nerve-center test determines the principle place of business for a corporation when
8 analyzing a federal court's diversity jurisdiction. *Hertz Corp. v. Friend*, 559 U.S. 77, 93-95
9 (2010)). In *Hertz*, the Supreme Court explained the meaning of "principal place of business":

10 > "principal place of business" is best read as referring to the place
11 > where a corporation's officers direct, control, and coordinate the
> corporation's activities. It is the place that Courts of Appeals have
12 > called the corporation's "nerve center." ***And in practice it should***
> ***normally be the place where the corporation maintains its***
13 > ***headquarters***—provided that the headquarters is the actual center
> of direction, control, and coordination, i.e., the "nerve center,"
14 > and not simply an office where the corporation holds its board
> meetings (for example, attended by directors and officers who
15 > have traveled there for the occasion)).

16 *Id.* at 93-95 (emphasis added).

17 Plaintiff BNYM is a Delaware ***corporation*** (not national association) with its "main
18 office, headquarters, and principal place of business [] in New York." Compl. ¶ 1.1.
19 Defendants Scott and Todd Stafne are Washington residents, *id.* ¶¶ 1.2-1.3, and Defendant Real
20 Time Resolutions is "a Texas corporation, with a principal place of business in Dallas, Texas"
21 *id.* ¶ 1.4. Stafne fails to contest that BNYM's main office, headquarters, and principal place of
22 business are in New York. Thus, these allegations are uncontroverted and must be taken as
23 true. *See Leite*, 749 F.3d at 1121. Complete diversity exists.

24 Stafne's argument that BNYM has not adequately pleaded diversity jurisdiction is based
25 on his misreading of the Complaint.[1] Despite the fact that the caption and first paragraph of the

26 ---

27 [11] Stafne misquotes paragraph 1.1. of the Complaint in support of his argument. *See* Mot. at 7.
He omits BNYM's statement that "Bank of New York Mellon's main office, headquarters, and

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1 complaint identify BNYM as the Plaintiff and Bank of New York Melon Trust Company, N.A.
2 ("BONY Trust") as merely an affiliated entity of BNYM—designed to avoid precisely this
3 confusion—Stafne purports to require non-party BNYM Trust Co. to plead its citizenship.
4 BONY Trust was noted as an affiliated entity, but is not party, is not involved in this action, and
5 does not affect citizenship.

6 **2. BNYM is the Real Party in Interest Entitled to Foreclose.**

7 BNYM "serves as trustee for Structured Asset Mortgage Investments II Trust, Mortgage
8 Pass-Through Certificates Series 2005-AR2, and in that capacity owns and holds Defendant
9 Scott Stafne's Note."[2] Compl. ¶¶ 1.1, 3.10. Thus, BNYM is the beneficiary of the deed
10 because it holds Stafne's note. Under Washington law, a beneficiary is ***by definition*** the party
11 holding the note: "'Beneficiary' means the holder of the instrument or document evidencing
12 obligations secured by the deed of trust.' RCW 61.24.005(2)." *Lynott* v. *Mortgage Elec. Reg.*
13 *Sys., Inc.*, 2012 WL 5995053, at *2 (W.D. Wash. 2012) (emphasis in original). Thus, because
14 BNYM "is the proper beneficiary, it is empowered to initiate foreclosure following Plaintiff's
15 default." *Id.* Stafne does not contest that he is in default and has been for ***years***. Compl. ¶ 3.6.

16 Instead, Stafne argues that BONY Trust (again, ***not*** a party to this litigation) is not the
17 real party-in-interest. BNYM agrees. Instead, BNYM is the "real party in interest." The real-
18 party-in-interest test set forth in *Navarro Savings Association v. Lee*, 446 U.S. 458, 464-66
19 (1980), is not to the contrary. In *Navarro*, the Supreme Court confirmed longstanding
20 jurisprudence that a trustee of an express trust is entitled to bring diversity actions in its own
21 name and upon the basis of its own citizenship without regard to the citizenship of the trust's
22 beneficiaries. *Id.* at 462-63, 66 (citing *Chappedelaine v. Dechenaux*, 4 Cranch 306, 8 U.S. 306,
23 308 (1808)).
24

25 principal place of business are in New York." *Compare* Mot. at 7 *with* Compl. ¶ 1.1.

26 [2] Stafne does not contest that BYNM holds the note, nor that it does so as trustee for Structured
Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2.
27 Thus, these facts are uncontroverted. *Leite*, 749 F.3d at 1121.

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1 Again, Plaintiff BNYM "serves as trustee for Structured Asset Mortgage Investments II
2 Trust, Mortgage Pass-Through Certificates Series 2005-AR2, and in that capacity owns and
3 holds Defendant Scott Stafne's Note." Compl. ¶¶ 1.1, 3.10. At all relevant times, BNYM
4 operated as trustee of an express trust pursuant to a Pooling and Servicing Agreement that
5 authorized it to take legal title to trust assets, to invest those assets for the benefit of the
6 certificate-holders, and to sue and be sued in its capacity as trustee. *See* Compl., Attach. F §§
7 2.01, 3.01, 3.03, 3.05, 4.01, and 5.01. *Navarro*, 446 U.S. at 464 ("a trustee is a real party to the
8 controversy for purposes of diversity jurisdiction when he possesses certain customary powers
9 to hold, manage, and dispose of assets for the benefit of others") (citing *Bullard v. Cisco*, 290
10 U.S. 179, 189 (1933)); *id.* at 466 ("They have legal title; they manage the assets; they control
11 the litigation. In short, they are real parties to the controversy."). Thus, BNYM is properly
12 suing in its own right, based on its own diversity.

13 **C. Washington State Courts Do Not Have Exclusive Jurisdiction of In Rem**
14 **Actions.**

Article III, § 2 of the United States Constitution and 28 U.S.C. § 1332 vest this Court
15 with jurisdiction to decide in issues of real property in accordance with Washington law.
16 *Navarro*, 446 U.S. at 460. "In order to provide a neutral forum for what have come to be
17 known as diversity cases, Congress also has granted district courts original jurisdiction in civil
18 actions between citizens of different States, between U.S. citizens and foreign citizens, or by
19 foreign states against U.S. citizens. [28 U.S.C.] § 1332. To ensure that diversity jurisdiction
20 does not flood the federal courts with minor disputes, § 1332(a) requires that the matter in
21 controversy in a diversity case exceed a specified amount, currently $75,000." *Exxon Mobil*
22 *Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005). Article III, § 2 "delineates the
23 absolute limits on the federal courts' jurisdiction" as requiring "Cases, in Law and Equity,"
24 "Cases," and "Controversies." *Ankenbrandt v. Richards*, 504 U.S. 689, 695 (1992). The
25 Constitution does not provide any subject-matter limitations to diversity jurisdiction. *Id.* at
26 695-696
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1 Congress may impose limitations on jurisdiction by statute. *Id.* at 698. Limited
2 exceptions to diversity jurisdiction exist, none of which is pertinent here. *See In re Burrus*, 136
3 U.S. 586, 593-594 (1890) (excluding domestic relations from diversity jurisdiction and
4 invoking abstention principles) (citing *Younger v. Harris*, 401 U.S. 37 (1971)); *Ankenbrandt*,
5 504 U.S. at 700 (noting the domestic-relations exception arose from "Congress' apparent
6 acceptance of this construction of the diversity jurisdiction provisions in the years prior to
7 1948, when the statute limited jurisdiction to "suits of a civil nature at common law or in
8 equity."). Abstention, addressed below, is another ground for declining jurisdiction.
9 Otherwise, federal courts have jurisdiction of "all civil actions" with complete diversity and
10 where the matter in controversy exceeds the sum or value of $75,000. 28 U.S.C. § 1332.
11 Stafne argues "the federal nature of our government" and the "tenth amendment" to the
12 United States Constitution divest this Court of jurisdiction over this action. Mot. at 10-12. In
13 support, he cites *Phillips v. Tompson*, 73 Wn.78, 85 (1913). But *Philips* does not vest
14 Washington state courts with exclusive jurisdiction over in rem actions. *Id.* at 85. Instead, the
15 *Philips* court held that quiet-title actions were in rem, and thus notice by publication was
16 allowable. *Id.* at 83, 88. As to federal-court adjudication, the court merely ***quoted*** the Supreme
17 Court in stating that federal courts must follow substantive state law with respect to state-law
18 issues. *Id.* at 84-85 (quoting *Arndt v. Griggs*, 134 U.S. 316 (1890)). This is not a novel
19 concept.
20 In arguing for exclusive state jurisdiction, Stafne also invokes his "rights as a citizen to
21 the protections afforded by the federal nature of our government and the Tenth Amendment to
22 the United States Constitution." Mot. at 12 (citing *Bond v. United States*, 564 U.S. 211, 131 S.
23 Ct. 2355, 2363-4 (2011) (discussing federalism). In doing so (without further explanation or
24 authority), Stafne attempts to recast his previous argument for one of his clients, which was
25 expressly rejected in *Jackson v. Quality Loan Serv. Corp.*, 186 Wn. App. 838, 846, *review*
26 *denied*, 184 Wn.2d 1011 (2015). In *Jackson*, the Washington Court of Appeals rejected
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1 Stafne's argument (made in his capacity as counsel for Jackson) that the Washington legislature
2 does not have the power to legislate regarding title and possession of real property and that the
3 Washington constitution granted exclusive jurisdiction to the Washington state courts for all
4 property concerns. *Id.* at 492-493. The Court should do the same with Stafne's constitutional
5 arguments here.

6 **D. The "Prior Exclusive Jurisdiction" Doctrine is Inapplicable.**

7 Under the prior-exclusive-jurisdiction doctrine, "when one court is exercising in rem
8 jurisdiction over a res, a second court will not assume in rem jurisdiction over the same res."
9 *Chapman v. Deutsche Bank Nat'l Trust Co.*, 651 F.3d 1039, 1043 (9th Cir. 2011) (quoting
10 *Marshall v. Marshall*, 547 U.S. 293, 311 (2006)). The rule provides "that the court first
11 assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion
12 of the other." *Princess Lida of Thurn & Taxis v. Thompson*, 305 U.S. 456, 466 (1939). In rem
13 jurisdiction attaches when a complaint is filed, process issued, and process duly served.
14 *Farmers' Loan & Trust Co. v. Lake St. Elevated R.R. Co.*, 177 U.S. 51, 61 (1900). A defendant
15 cannot "defeat jurisdiction thus acquired." *Id.*; *see also Sexton v. NDEX W., LLC*, 713 F.3d 533,
16 537 (9th Cir.2013) ("The doctrine of prior exclusive jurisdiction applies to a federal court's
17 jurisdiction over property only if a state court has previously exercised jurisdiction over that
18 same property and retains that jurisdiction in a separate, concurrent proceeding.").

19 The Property encumbered by the Deed of Trust—the only property at issue here—is ***not***
20 at issue in a previous state law action, captioned *Abrams v. Twin Falls, Inc.*, Snohomish County
21 Case No. 15-2-04710-6. In this action, BNYM seeks a judgment on the Note and a decree of
22 foreclosure under the Deed of Trust. Compl. ¶ 4.2. The Deed of Trust encumbers the Property,
23 described in the Deed of Trust as Lot 11, and providing the precise metes-and-bounds
24 description of the land securing the loan. *See* Compl. ¶ 3.3 & Attach B (Deed of Trust) at 2-3;
25 Bugaighis Decl., Ex. A (supporting 2001 Twin Falls survey). Stafne appears to allege that due
26 to a subsequent 2009 Twin Falls Survey and a 2010 Boundary Agreement (neither of which
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1 BNYM approved or was a party to), the Property BNYM seeks to foreclose on now also
2 encompasses a portion of Lot 12. *See* Mot. at 4 ("Both Abrams and BNYM claim real property
3 rights in Twin Falls Lot 12."); *id.* at 5 ("BNYM has alleged that under the legal description set forth
4 in the deed of trust it has a lien on property which is within the boundaries of Lot 12, apparently
5 notwithstanding that it encumbered Stafne's property pursuant based on an invalid and outdated
6 survey done in 2001."). Thus, at most, this action concerns Lots 11 and 12.[3]

7 On June 29, 2015, Jeffery Abrams filed a lawsuit against Twin Falls, Inc., to obtain
8 rights to timber as described in a Timber Deed issued to him on November 19, 1998, recorded
9 in Snohomish County under auditor's number 201210080482. *See* Dkt. # 11-5 ¶ 2.18 & Ex. B
10 (Abrams Complaint); Bugaighis Decl., Ex. B (Abrams Timber Deed). The Timber Deed
11 identifies the property-tax parcels affected by the Timber Deed, which correspond with Lots 5,
12 13 and 14. *Compare* Bugaighis Decl., Ex. B (Abrams Timber Deed) *with id.*, Ex. C (2009 Twin
13 Falls Survey noting tax parcel numbers) and *with id.*, Ex. A (2001 Twin Falls Survey). Lot 5
14 belongs to Mr. Abrams. *See* Dkt. 11-5 at ¶ 1.2 & Ex. A (describing Mr. Abrams property as
15 Snohomish County Tax Parcel No. 31062700100200). However, Mr. Abrams complaint ***only***
16 ***claims timber rights on Twin Falls' property, Lot 14***—which is why he sued only that entity.
17 *See* Dkt. 11-5 at ¶ 2.18; *id.* at ¶ 1.3 & Ex. B (describing the "Twin Falls Parcel" as Snohomish
18 County Tax Parcel No- 31062700100800); *see also id.* ¶ 4.2 ("As a result of [Todd] Stafne's
19 claims that he has the right to cut and remove timber in and upon ***Twin Falls Parcel***, and based
20 upon earlier claims made by [Todd] Stafne, as the agent for Twin Falls, as to Abrams lack of
21 view rights, the Court should declare and decree that the right, title, and ownership of the ***Twin***
22 ***Falls Parcel*** is subject to the view rights, herein-above alleged, for the benefit of the Abrams
23 Parcel.") (emphasis added); *id.* at § VI (1) ("To quiet title in Abrams as against Twin Falls to all
24 of the timber situated in and upon the ***Twin Falls Parcel*** which Abrams purchased from
25
26
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[3] BNYM disputes the 2009 Twin Falls Survey and/or the 2010 Boundary Agreement affect its foreclosure on the Property as described in the Deed of Trust.

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A.L.R.T.) (emphasis added). Defendant Stafne's representations to the contrary are apparently incorrect. *See* Mot. at 4 (claiming Mr. Abrams lawsuit claims rights on Lot 12).

Defendant Stafne alleges Mr. Abrams' other claims relate to "the 2010 Boundary Line Agreement executed by all the owners of parcels in the rural settlement at that time [...] so as to readjust the boundary lines between his property, Lot 5, and Lots 4 and 14." Mot. at 4; Bugaighis Decl., Ex. C (2010 Boundary Line Agreement and 2009 Twin Falls Survey). Thus, neither Lots 11 or 12 (the only lots potentially affected by BNYM's lawsuit) are involved in Mr. Abrams original suit. The Complaint here was filed January 19, 2016. *See* Dkt. #1. All summons were served and filed by January 26, 2016. *See* Dkt. ## 4-6.

On February 10, 2016, Twin Falls, Inc. (as represented by Defendant Todd Stafne), filed its Answer, Counterclaim, and Third Party Complaint in the *Abrams* case naming BNYM and claiming property rights to Lot 12. *See* Bugaighis Decl., Ex. D (Twin Falls, Inc. Answer, Counterclaim, and Third Party Complaint). On February 25, 2016, Defendant Scott Stafne filed his Answer, Counterclaim, and Third Party Complaint in the *Abrams* case, also naming BNYM and seeking to quiet title to Lot 11. *See* Dkt. 11-7 (Scott Stafne Answer, Counterclaim, and Third Party Complaint). BNYM has yet to be served and no summons has been filed. In response, Mr. Abrams filed a Motion to Dismiss Twin Falls' Third Party Complaint (and third-parties BNYM and Scott Stafne), arguing the Third Party Complaint fails to comply with the requirements of CR 14 (a) (requiring third party defendants to be "liable to the defending party for all or part of the plaintiff's claim against the defending party."). Bugaighis Decl., Ex. E (Abrams Motion to Dismiss).

Thus, the prior exclusive doctrine does not apply to divest the Court of subject-matter jurisdiction to adjudicate BNYM's foreclosure action because, at the time BNYM filed the federal complaint, the property was not in the custody of a state court. *See Montgomery v. Nat'l City Mortgage*, 2012 WL 1965601, at *3 (N.D. Cal. 2012). The federal complaint was

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filed, and all process served, first. *See Farmers' Loan & Trust Co.*, 177 U.S. at 61. Thus, as the Court first assuming jurisdiction, the action is proper in this forum.

E. Neither Comity Nor Abstention Are Warranted.

"Abstention from the exercise of federal jurisdiction is the exception, not the rule." *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976). Abstention rarely should be invoked, because the federal courts have a "virtually unflagging obligation ... to exercise the jurisdiction given them." *Ankenbrandt*, 504 U.S. at 705 (citing *Colorado River*, 424 U.S. at 817); *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996) ("[F]ederal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress.").

Ordinarily, "'the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction.'" *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 292 (2005) (quoting *McClellan v. Carland*, 217 U.S. 268, 282 (1910)). However, "[c]omity or abstention doctrines may, in various circumstances, permit or require the federal court to stay or dismiss the federal action in favor of the state-court litigation." *Id.* These circumstances include considerations of "proper constitutional adjudication," "regard for federal-state relations," or "wise judicial administration." *Colorado River*, 424 U.S. at 817. None of these circumstances exists here.

Stafne (incorrectly) asserts this Court may decline jurisdiction pursuant to *Quackenbush*. Mot. at 13. The Supreme Court in *Quackenbush* held that, "in cases where the relief being sought is equitable in nature or otherwise discretionary, federal courts not only have the power to stay the action based on abstention principles, but can also, in otherwise appropriate circumstances, decline to exercise jurisdiction altogether by either dismissing the suit or remanding it to state court." *Quackenbush*, 517 U.S. at 721. The principle underlying abstention doctrines exercised by federal courts "sitting in equity" is based on avoiding "needless friction with state policies, whether the policy relates to the enforcement of the

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criminal law, or the administration of a specialized scheme for liquidating embarrassed business enterprises, or the final authority of a state court to interpret doubtful regulatory laws of the state." *Quackenbush*, 517 U.S. at 718 (citing *Railroad Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 500-01 (1941)).

No friction with state law exists. BNYM asks the Court to apply Washington law in enforcing its rights under the Note and Deed of Trust encumbering specific land identified in the Deed of Trust, which is undisputedly the senior lien. Thus, nothing in the state-court action can affect the rights of BNYM, because regardless the outcome, the lien remains on the property. Additionally, even assuming that *Quackenbush* is applicable where the relief sought is only primarily equitable in nature, BNYM's requested relief cannot be characterized primarily equitable. *See Chapin v. Aguirre*, 2006 U.S. Dist. LEXIS 91773, at *8–10 (S.D. Cal. 2006) (plaintiffs' equitable claims "merely incidental" to their damages claims). BNYM primarily requests monetary damages, and requests in the event that defendant fails to pay the judgment, that the property be sold in accordance with Washington law. Compl. ¶ 5.2-5.3.

Stafne also attempts to unnecessarily complicate the issues in this lawsuit, asking for "discovery and an evidentiary hearing with regard to weighing the local interests involved in having a Washington Court resolving the land disputes involved herein."[4] Mot. at 12. BNYM seeks a judgment and a decree of foreclosure under the Deed of Trust where the borrower has been in ***default for years***. The Deed of Trust describes the land encumbered by BNYM's security interest. It is irrelevant that Stafne entered into an agreement whereby he unilaterally (and in contravention of the Deed of Trust) chose to quit-claim part of the property to others. *See* Bugaighis Decl., Ex. C (2010 Boundary Line Agreement and 2009 Twin Falls Survey); Compl., Attach. B (Deed of Trust) at 3 ("Borrower warrants and will defend generally the title to the Property against all claims and demands"); *id.* ¶ 4 ("Borrower shall promptly discharge

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[4] Stafne cites a number of cases which he lost. *See* Mot. at 11-12. The Court is not assuming "jurisdiction over these disputes." They are not ongoing matters and have already been decided against Stafne.

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1 any lien which has priority over this Security Instrument"); *id.* ¶ 18. This is because an existing
2 senior lien attaches to the property, regardless of who owns it. RCW 65.08.070; *see Fluke*
3 *Capital & Mgmt. Servs. Co. v. Richmond*, 106 Wn.2d 614, 621 (1986); *University State Bank v.*
4 *Steeves*, 85 Wash. 55, 147 P. 645, 648 (1915). Any transfer of property was subject to the Deed
5 of Trust. *Id.*

6 **IV. CONCLUSION**

7 For the foregoing reasons, the Court should deny Stafne's Motion to Dismiss for Lack
8 of Subject Matter Jurisdiction.
9
10 DATED this 21st day of March, 2016.

11 Davis Wright Tremaine LLP
12 Attorneys for Bank of New York Mellon
Corporation
13

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1
2 **THE HONORABLE THOMAS S. ZILLY**
3
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5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE
8

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGGE PASS-THROUGH CERTIFICATES SERIES 2005-AR2, PLAINTIFF, v. SCOTT STAFNE, an individual; TODD STAFNE, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation, DEFENDANTS.	CASE NO. 2:16-cv-00077 MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

9 10 11 12 13 14 15 16 17 18 19

20 ***Relief Requested:***

21 Defendant Scott E. Stafne requests this Court dismiss this action by Bank of New
22 York Mellon (BNYM) because 1.) BNYM has not adequately plead the existence of diversity
23 jurisdiction because it does not allege the name of the State in which its main office, *as set*
24 *forth in its articles of association*, is located ; 2.) BNYM, as trustee , has not adequately pled
25 its citizenship for purposes of diversity jurisdiction because it has not pleaded facts to
26

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1 establish that it is an express trust within the meaning of *Navarro Sav. Ass'n v. Lee*, 446 U.S.
2 458, 464-66, 100 S. Ct. 1779, 1783-84, 64 L. Ed. 2d 425 (1980) and to the extent it is an
3 artificial entity has not alleged the citizenship of its beneficiaries; 3.) Washington courts have
4 primary sovereignty to resolve the *in rem* and *quasi in rem* land title, possession, and use
5 issues related to the Twin Falls' rural settlement[1]; and 4.) this Court is barred from asserting
6 jurisdiction of this in rem foreclosure action pursuant to the Exclusive Jurisdiction Doctrine.

7 ***Issues:***

8

9 1. Has BNYM adequately alleged its own citizenship where it has not alleged the
10 location of its main office, as set forth in articles of association? (Short Answer: NO)
11 2. Has BNYM, as trustee, adequately alleged its citizenship as a trustee where it has not
12 alleged facts indicating that the trust complies with the *Navarro* factors and/or
13 identified the citizenship of all of its affiliated entities and/or identified the citizenship
14 of the trust's beneficiaries and investors? (Short Answer: NO)
15
16 3. Does the ongoing *in rem* action, *Abrams v Twin Falls*, Snohomish County Cause No.
17 15-2-04710-6, relating to the location of boundaries, easements, and timber rights on
18 specific parcels in Twin Falls rural settlement, including land which BNYM, as
19 trustee, seeks to judicially foreclose upon, involve local issues which are within that
20 core state sovereignty to which this Court is required to constitutionally defer? (Short
21 Answer: YES)
22
23 4. Alternatively, should this Court abstain from deciding this case as a matter of comity?
24 (Short Answer: Yes)
25
26

[1] See RCW 36.70A.030(8) referencing "rural settlements."

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5. Is this Court barred from asserting jurisdiction over this *in rem* foreclosure action pursuant to the Exclusive Jurisdiction Doctrine? (Short answer: YES)

FACTS:

Scott Stafne, who is the current owner of the *res* involved in this federal judicial foreclosure lawsuit, has sued BNYM in a previously filed Washington State court action seeking to quiet title to the same lien which BNYM seeks to enforce in this Court. Stafne alleges the lien now purportedly owned by BNYM should be quieted because 1.) the lien does not contain a correct legal description of Stafne's property and therefore does not describe the property purportedly encumbered; and 2.) pursuant to RCW 7.28.300 the lien is an outlawed and unenforceable. In this regard, Stafne's third party action against BYNT alleges the deed has become unenforceable because of the expiration of several applicable Washington state law limitations periods and/or application of the doctrine of laches. Copies of the pertinent pleadings in the State Court action, *Abrams v Twin Falls*, Snohomish County Superior Court No.15-2-04710-6 are attached to Stafne's declaration in support of this motion. These pleadings establish the nature of the various title, possession, and land use issues which are currently being litigated within the jurisdiction of the Washington court. Among all these *in rem* disputes relating to Twin Falls rural settlement, is the one BNYM has asked this Court to resolve.

Stafne's parcel is one of 14 which presently make up the rural settlement known as Twin Falls. Twin Falls and the property owners of its various parcels have seen their fair share of litigation regarding this land. As a result many of the salient facts regarding the properties at various times since 1991 are described in reported decisions. These cases document to some extent the claims in Scott Stafne's third party claims against Abrams and

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BNYM regarding the nature of Twin Falls evolution in a mountainous, difficult to survey, terrain. These decisions give context to the ongoing *in rem* litigation both with regard to Twin Falls rural settlement generally and Stafne's lot specifically within that settlement. See e.g. *Stafne v. Snohomish Cty.*, 156 Wash. App. 667, 671-81, 234 P.3d 225, 226-32 (2010) *aff'd,* 174 Wash. 2d 24, 271 P.3d 868 (2012). *Cf. Twin Falls, Inc. v. Snohomish County, CPSGMHB Case No. 93-3-0003*, See also decision at 1993 WL 839715 (1993)

On June 29, 2015, Jeffrey Abrams, a single man, filed suit against Twin Falls, Inc. to, among other things quiet title 1.) with regard to timber rights he claimed he had acquired from Twin Falls, Inc., specifically those parcels described as Lots 12, 13, and 14 in the 2010 Boundary Line Agreement executed by all the owners of parcels in the rural settlement at that time; and 2.) so as to readjust the boundary lines between his property, Lot 5, and Lots 4 and 14.

Twin Falls unsuccessfully moved to dismiss Abram's action. Thereafter, Twin Falls countersued Abrams and brought third party quiet title and other claims against Scott Stafne and BNYM, claiming neither had any interest in Lot 12. Both Abrams and BNYM claim real property rights in Twin Falls Lot 12. Abrams claims timber rights in all of Twin Falls parcels, i.e. Lots 12, 13, and 14. If BNYM is correct that part of parcel 12 really belongs to Lot 11, then Abram's claims to timber rights on Lot 12 will also affect title, possession, and use of Lot 11, which is owned by Stafne.

At the heart of most of the claims by all the parties relating to Lot 11 is the validity of a 2010 boundary line agreement, which was signed by Stafne, Twin Falls, Abrams, and all the other property owners at that time. Judicial resolution of these boundary line issues, which have been a source of controversy since the late 1800s, will also be essential with regard to

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determining what property must be quieted in Twin Falls rural settlement in favor of which lot and this determination will impact the resolution of all the parties interests in the total rural settlement land *res* as well as the boundaries of their own properties.

Because Abrams alleges he was misled about the boundaries agreed to by way of the 2010 boundary line agreement, his claims will require the Court handling this matter to consider the boundary lines established pursuant to that agreement. Further, BNYM has alleged that under the legal description set forth in the deed of trust it has a lien on property which is within the boundaries of Lot 12, apparently notwithstanding that it encumbered Stafne's property pursuant based on an invalid and outdated survey done in 2001.

The ongoing litigation in State Court also involves quiet title and specific performance issues regarding easement access to Twin Fall's amenities. Twin Falls and Scott Stafne allege that Abrams has violated access easements to and surrounding King Lake. Scott Stafne prays those access easement be specifically enforced or the easements be rescinded, including that easement which allows Abrams to access and use King Lake. Further Scott Stafne seeks to quiet title to a pedestrian easement on his property which was supposed to have been memorialized by way of a legal description prepared in the late nineties establishing this easement. Stafne claims the rural settlement's failure to timely prepare a legal description for this easement for over 20 years or more makes it unenforceable now.

Because most of the claims made in this litigation may be subject to limitations and laches issues under Washington law, some of which have not been yet been authoritatively construed by the Washington Supreme Court in the context of RCW 7.28.300, it is respectfully submitted that the State Court, which first obtained in rem jurisdiction over the

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1 Twin Falls *res*, is the most appropriate forum to resolve all the varied and complex title and
2 possession related to the property within the Twin Falls rural settlement.

3 **1. Legal Standards Applicable to motions premised on Fed. R. Civ. Pro. 12(b)(1)**

4 To invoke a federal court's subject-matter jurisdiction, a plaintiff needs to provide only
5 "a short and plain statement of the grounds for the court's jurisdiction." Fed.R.Civ.P. 8(a)(1).
6 The plaintiff must allege facts, not mere legal conclusions, in compliance with the pleading
7 standards established by *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 127 S.Ct. 1955, 167
8 L.Ed.2d 929 (2007), and *Ashcroft v. Iqbal,* 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868
9 (2009). *See Harris v. Rand,* 682 F.3d 846, 850–51 (9th Cir.2012). Assuming compliance with
10 those standards, the plaintiff's factual allegations will ordinarily be accepted as true unless
11 challenged by the defendant. *See* 5C Charles Alan Wright & Arthur R. Miller, *Federal*
12 *Practice and Procedure* § 1363, at 107 (3d ed.2004).

13 Under Rule 12(b)(1), a defendant may challenge the plaintiff's jurisdictional
14 allegations in one of two ways. A "facial" attack accepts the truth of the plaintiff's allegations
15 but asserts that they "are insufficient on their face to invoke federal jurisdiction." *Safe Air for*
16 *Everyone v. Meyer,* 373 F.3d 1035, 1039 (9th Cir.2004). The district court resolves a facial
17 attack as it would a motion to dismiss under Rule 12(b)(6): Accepting the plaintiff's
18 allegations as true and drawing all reasonable inferences in the plaintiff's favor, the court
19 determines whether the allegations are sufficient as a legal matter to invoke the court's
20 jurisdiction. *Harris v. Rand,* 682 F.3d at 850–51.

21 A "factual" attack, by contrast, contests the truth of the plaintiff's factual allegations,
22 usually by introducing evidence outside the pleadings. *Safe Air for Everyone*, 373 F.3d at
23 1039; *Thornhill Publ'g Co. v. Gen. Tel. & Elec. Corp.*, 594 F.2d 730, 733 (9th Cir.1979).

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1 When the defendant raises a factual attack, the plaintiff must support her jurisdictional
2 allegations with "competent proof," *Hertz Corp. v. Friend*, 559 U.S. 77, 96–97, 130 S.Ct.
3 1181, 175 L.Ed.2d 1029 (2010), under the same evidentiary standard that governs in the
4 summary judgment context. See *Norse v. City of Santa Cruz*, 629 F.3d 966, 973 (9th
5 Cir.2010) (en banc); *Trentacosta v. Frontier Pac. Aircraft Indus., Inc.*, 813 F.2d 1553, 1559
6 (9th Cir.1987); Fed.R.Civ.P. 56(c). The plaintiff bears the burden of proving by a
7 preponderance of the evidence that each of the requirements for subject-matter jurisdiction
8 has been met. *Harris*, 682 F.3d at 851. With one caveat, if the existence of jurisdiction turns
9 on disputed factual issues, the district court may resolve those factual disputes itself. *Safe Air*
10 *for Everyone*, 373 F.3d at 1039–40; *Augustine v. United States*, 704 F.2d 1074, 1077 (9th
11 Cir.1983); *Thornhill*, 594 F.2d at 733[2].
12
13 **2. BNYM Has Not Adequately alleged its own Citizenship so as to Establish the**
14 **Existence of Diversity Jurisdiction**
15
16 Although BNYT alleges at ¶ 2.2 that: " [a]s stated in paragraphs 1.2 - 1.5 complete
17 diversity exists between the Parties" it never adequately alleges facts establishing its own
18 citizenship. ¶ 1.1 states only:
19
20 > Bank of New York Mellon, a Delaware corporation, serves as trustee for Structured Asset Mortgage Trust Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2, and in that capacity owns and holds Defendant Scott Stafne's note. Bank of New York Mellon's affiliate entities include Bank of New York Mellon Trust company, N.A., which has its main office, headquarters, and principal place of business in California. Bank of New York Mellon is acting in foreclosure proceedings in this case through its attorney-in-fact, Nationstar Mortgage, LLC.
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[2]The caveat is that a court must leave the resolution of material factual disputes to the trier of fact when the issue of subject-matter jurisdiction is intertwined with an element of the merits of the plaintiff's claim. *See, e.g., Safe Air for Everyone,* 373 F.3d at 1039–40; *Augustine,* 704 F.2d at 1077.

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1 A national banking association is a citizen only "of the State in which its main office,
2 as set forth in its articles of association, is located ." *Wachovia Bank, N.A. v. Schmidt,* 546
3 U.S. 303, 307 (2006); *see also Rouse v. Wachovia Mortg., FSB,* 747 F.3d 707, 715 (9th
4 Cir.2014). In order to properly allege its citizenship BMYM is required to allege that specific
5 state in which its main office, *as set forth in articles of association*, is located. As BNYM was
6 informed of this recently by the Ninth Circuit it is difficult to understand why it would not
7 include such an allegation in its complaint as it is necessary to invoke this Court's
8 diversity jurisdiction. *Id.*, *See also Robertson v. GMAC Mortgage, LLC*, No. 14-35672, 2016
9 WL 145827, at *1 (9th Cir. Jan. 5, 2016) and authority cited therein.
10
11 Because BNYM has not alleged its citizenship by reference to its articles of
12 association it has not stated enough facts to invoke this Court's diversity jurisdiction.
13 **3. BNYM, as trustee, Has Not Adequately alleged its Citizenship so as to Establish the Existence**
14 **of Diversity Jurisdiction**
15
16 Paragraph 1.1 of BNYM's complaint alleges it has affiliate entities, but
17 identifies only one: Bank of New York Mellon Trust Company. No explanation is
18 given as to why the citizenship of its other affiliates is not alleged. Further, the
19 allegations in the complaint regarding BNYM Trust Company suffer from the same
20 deficiency as do the allegations related to BNYM; namely, there is no allegation"of
21 the State in which its[BNYM Trust Company] main office, *as set forth in its articles*
22 *of association,* is located ." See *Wachovia Bank, N.A. v. Schmidt,* 546 U.S. at 307;
23 *Rouse v. Wachovia Mortg., FSB,* 747 F.3d at 715; *Robertson v. GMAC Mortgage,*
24 *LLC*, No. 14-35672, 2016 WL 145827, at *1 .
25
26

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1 BNYM allegations regarding its trustee status are not sufficient either. BNYM alleges
2 only that it is the trustee of a trust, but does not make any allegations that satisfy the real party
3 in interest tests set forth in *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 464-66, 100 S. Ct. 1779,
4 1783-84, 64 L. Ed. 2d 425 (1980) sufficient to establish that its citizenship alone is sufficient
5 for invoking this Court's diversity jurisdiction. .
6
7 BNYM has the burden of alleging facts, not conclusions, establishing that it has met
8 these criteria and therefore is attempting to appropriately invoke this Court's diversity
9 jurisdiction. *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544 (2007); *Ashcroft v. Iqbal,* 556
10 U.S. 662 (2009). *See also Harris v. Rand,* 682 F.3d at 850–51.Without such allegations a suit
11 by a trustee must be considered for purposes of diversity jurisdiction a suit by an artificial
12 entity, which for purposes of diversity jurisdiction includes the citizenship of its members.
13 *Carden v. Arkoma Associates*, 494 U.S. 185, 192-96, 110 S. Ct. 1015, 1019-21, 108 L. Ed. 2d
14 157 (1990)
15
16 In the case of trusts which do not allege compliance with *Navarro* criteria, its
17 citizenship for purposes of diversity jurisdiction should be determined by reference to the
18 citizenship of its beneficiaries and/or the citizenship of both the trustee (which for the reasons
19 previously stated has not been adequately alleged here) and the trust's beneficiaries. *See*
20 *e.g. Conagra Foods, Inc. v. Americold Logistics, LLC*, 776 F.3d 1175, 1181-82 (10th Cir.), *as*
21 *amended* (Jan. 27, 2015), *cert. granted,* 136 S. Ct. 27, 192 L. Ed. 2d 997 (2015)
22 citing *Emerald Inv'rs Trust v. Gaunt Parsippany Partners*, 492 F.3d 192, 203-05 (3d Cir.
23 2007) and *Riley v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 292 F.3d 1334, 1337-40 (11th
24 Cir. 2002). Indeed, the complaint does not even suggest what an "affiliate" is or identify all of
25 the affiliates or adequately state their citizenship.
26

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Stafne suspects BNYM has attached the voluminous exhibits to the complaint so that it can argue that it meets the *Navarro* criteria. But this is not acceptable pleading practice. Under Fed. R. Civ. Pro. 8 (a) BNYM is required to allege facts establishing citizenship. Simply attaching 400 pages of exhibits does not meet this pleading requirement.

3. The Issues Involved in the ongoing *in rem* actions affecting the Twin Falls rural settlement are Local in Character and Should be Resolved in a Washington Court pursuant to Federalism principles and the Tenth Amendment to the United States Constitution.

In *Phillips v. Tompson* the Washington Supreme Court stated:

> The well-being of every community requires that the title of real estate therein shall be secure, and that there be convenient and certain methods of determining any unsettled questions respecting it. *The duty of accomplishing this is local in its nature; it is not a matter of national concern or vested in the general government; it remains with the state; and as this duty is one of the state, the manner of discharging it must be determined by the state, and no proceeding which it provides can be declared invalid, unless in conflict with some special inhibitions of the Constitution, or against natural justice. So it has been held repeatedly that the procedure established by the state, in this respect, is binding upon the federal courts.'*

Phillips v. Tompson, 73 Wn. 78, 85, 131 P. 461 (1913). (emphasis supplied).

Although old, Phillips has not been overruled or distinguished. Moreover, it is based on controlling and valid United States Supreme Court precedent respecting the notion that the security of real property within a State's borders is a matter of core sovereignty. *See Phillips*, 73 Wn. at 85 citing *Arndt v. Griggs*, 134 U.S. 316,320-21 (1890) for the proposition that a State has control over those procedures necessary to establish the security of land within its borders.

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1 Of course, this is hardly a novel concept even in today's world of rampant federal
2 control. "It is an established principle of law, everywhere recognized; arising from the
3 necessity of this case, that the disposition of immovable property … is exclusively subject to
4 the government within whose jurisdiction the property is situated." *United States v. Fox*, 94
5 U.S. 315, 320-21, 24 L. Ed. 192 (1877) (citing *McCormick v. Sullivant*, 23 U.S. 192, 6 L. Ed.
6 300, 14 S. Ct. 616 (1825)). Unless Congress enacts a law in furtherance of an enumerated
7 power, the Supreme Court continues to hold that State's core sovereignty includes enacting
8 laws related to the dispossession of property with its own borders. *See United States v.*
9 *Burnison,* 339 U.S. 87,91-92 (1950) (Declining to overrule *United States v. Fox,* supra.) *See*
10 *also Oneida Indian Nation v. Oneida County,* 414 U.S. 661, 676–77, 94 S.Ct. 772, 39 L.Ed.2d
11 73 (1974) ("[o]nce patent issues, the *incidents of ownership are, for the most part, matters of*
12 *local property law to be vindicated in local courts*"). This is so because each state has the
13 power "to provide for and protect individual rights to the soil within its confines" in
14 furtherance of the general welfare of society based on the security of title to real estate. *Am.*
15 *Land Co. v. Zeiss,* 219 U.S. 47, 60, 31 S.Ct. 200, 55 L.Ed. 82 (1911); *see also United States v.*
16 *Fox,* 94 U.S. at 320 (means of acquiring and transferring real property is the exclusive domain
17 of "the government within whose jurisdiction the property is situated"); *Arndt v. Griggs,* 134
18 U.S. 316, 320–21, 10 S.Ct. 557, 33 L.Ed. 918 (1890) (same).

19 As the Court can see the disputes involved in the overall *in rem* dispute which is
20 currently being litigated in the Snohomish County Superior Court involving the Twin Falls
21 rural settlement *res* are not garden variety quiet title actions. They involve litigation of issues
22 which are primarily local in nature, and involve some acres of lands which remain designated
23 as natural resource lands pursuant to Washington's Growth Management Act. See e.g. *Stafne*
24
25
26

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v. Snohomish 174 Wash. 2d 24, 271 P.3d 868 (2012). *Cf. Twin Falls, Inc. v. Snohomish County, CPSGMHB Case No. 93-3-0003*, *See also* decision at 1993 WL 839715 (1993). Stafne does not accept that diversity jurisdiction statutes provide an adequate basis for this Court to assume jurisdiction over these disputes, absent a compelling federal interest therein. Stafne asserts the in rem and quasi in rem litigation which is ongoing in a Washington state court related to the Twin Falls rural settlement involves issues of core sovereignty of Washington State and should be decided by its courts.

Stafne presents this challenge as a factual attack on this Court's diversity jurisdiction premised on the local nature of the ongoing *in rem* litigation regarding the Twin Falls rural settlement and his personal standing to invoke his rights as a citizen to the protections afforded by the federal nature of our government and the Tenth Amendment to the United States Constitution. See e.g. *Bond v. United States*, __ U.S. __, 131 S. Ct. 2355, 2363-4,180 L. Ed. 2d 269 (2011).

Stafne requests discovery and an evidentiary hearing with regard to weighing the local interests involved in having a Washington Court resolving the land disputes involved herein against the federal interests which will be promoted by having this Court asserting federal jurisdiction to decide local issues relating to the title, possession, and use of land of in a rural settlement. *See Sunderland v. United States*, 266 U.S. 226, 232-33 (1924) for the proposition that where the authority of a State to decide issues involving the core sovereignty of a state is raised against an opposing federal interest an issue of supremacy is raised. *See Leite v. Crane Co.,* 749 F.3d 1117, 1121-22 (9th Cir.) cert. denied, 135 S. Ct. 361, 190 L. Ed. 2d 252 (2014) and *Robertson v. GMAC Mortgage, LLC*, No. 14-35672, 2016 WL 145827, at *1 (indicating this Court may hold an evidentiary hearing to resolve jurisdictional issues).

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A 330

1 Alternatively, Stafne requests this Court abstain from deciding this case brought by
2 plaintiff entities to foreclose on a small *res* which is part of a larger *res* involved in an
3 ongoing litigation in state court involving local issues related to land within the State's
4 borders based on principles of comity between dual sovereigns. *La. Power & Light Co. v.*
5 *City of Thibodaux,* 360 U.S. 25 (1959); *Burford v. Sun Oil Co.,* 319 U.S. 315, 63 S.Ct. 1098,
6 87 L.Ed. 1424 (1943)
7
8 Federal courts may use abstention as a means to adhere to the federal structure of the
9 Constitution on which the United States is premised. *See Exxon Mobil Corp. v. Saudi Basic*
10 *Indus. Corp.,* 544 U.S. 280, 292, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005); *Quackenbush v.*
11 *Allstate Ins. Co.,* 517 U.S. 706, 723, 116 S.Ct. 1712, 135 L.Ed.2d 1 (1996). It furthers
12 federalism by allowing federal courts to give the proper scope and necessary recognition to
13 the role and authority of the states. *Quackenbush,* 517 U.S. at 733, 116 S.Ct. 1712 (Kennedy,
14 J., concurring). Deciding to abstain as it has been developed by case law entails balancing the
15 independence of state action, sovereignty, against the federal interest of retaining jurisdiction
16 by determining which interest is paramount. *Id.* at 733–34, 116 S.Ct. 1712.) *aff'd,* No. BR 11-
17 05736-TBB, 2012 WL 3775758 (N.D. Ala. Aug. 28, 2012).
18
19 **4. This Court Should Dismiss this in rem Foreclosure Action Pursuant to the Exclusive**
20 **Jurisdiction Doctrine.**
21 Under the Exclusive Jurisdiction Doctrine where both a state and federal court have
22 jurisdiction of an in rem or quasi-in-rem cause of action, the jurisdiction of the Court first
23 acquiring jurisdiction is exclusive. *See Chapman v. Deutsche Bank Nat. Trust Co*., 651 F.3d
24 1039, 1043-44 (9th Cir. 2011) certified question answered sub nom. *Chapman v. Deutsche*
25 *Bank*
26

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1 *Nat'l Trust Co.*, 129 Nev. Adv. Op. 34, 302 P.3d 1103 (2013). *See also Laghaei v. Fed. Home*
2 *Loan Mortgage Corp.*, No. 12-17572, 2015 WL 8947463, at *1 (9th Cir. Dec. 16, 2015).

3 In *Chapman* the Ninth Circuit suggested that application of this doctrine is mandatory.
4 In this regard, the Chapman Court states:

5 > Relying on the "prior exclusive jurisdiction" doctrine, the Chapmans contend
6 > that the federal District Court should have remanded the Quiet Title Action
> to state court. The prior exclusive jurisdiction doctrine holds that "when one
7 > court is exercising *in rem* jurisdiction over a *res,* a second court will not
> assume *in rem* jurisdiction over the same *res.*" *Marshall v. Marshall,* 547
8 > U.S. 293, 311, 126 S.Ct. 1735, 164 L.Ed.2d 480 (2006); *see also Princess*
> *Lida of Thurn & Taxis v. Thompson,* 305 U.S. 456, 466–67, 59 S.Ct. 275, 83
9 > L.Ed. 285 (1939). "Although the doctrine is based at least in part on
10 > considerations of comity and prudential policies of avoiding piecemeal
> litigation, it is no mere discretionary abstention rule. Rather, it is a
11 > mandatory jurisdictional limitation." *State Eng'r v. S. Fork Band of Te–Moak*
> *Tribe of W. Shoshone Indians,* 339 F.3d 804, 810 (9th Cir.2003) (citations
12 > and internal quotation marks omitted). As summarized by the Supreme
13 > Court:
>
> > Where the action is in rem the effect is to draw to the federal court the
14 > > possession or control, actual or potential, of the res, and the exercise by
> > the state court of jurisdiction over the same res necessarily impairs, and
15 > > may defeat, the jurisdiction of the federal court already attached. *1044
> > The converse of the rule is equally true, that where the jurisdiction of
16 > > the state court has first attached, the federal court is precluded from
17 > > exercising its jurisdiction over the same res to defeat or impair the state
> > court's jurisdiction.
>
18 > *Kline v. Burke Constr. Co.,* 260 U.S. 226, 229, 43 S.Ct. 79, 67 L.Ed. 226 (1922).
> … If the action is not " '*strictly* in personam' "—that is, if the action is *in rem* or
19 > *quasi in rem*—then the doctrine ordinarily applies. *Id.* at 811 (quoting *Penn. Gen. Cas.*
20 > *Co. v. Pennsylvania ex rel. Schnader,* 294 U.S. 189, 195, 55 S.Ct. 386, 79 L.Ed. 850
> (1935)). Accordingly, where parallel state and federal proceedings seek to " 'determine
21 > interests in specific property as against the whole world' " (*in rem*), or where " 'the
> parties' interests in the property ... serve as the basis of the jurisdiction' " for the
22 > parallel proceedings (*quasi in rem*), then "the doctrine of prior exclusive jurisdiction
> fully applies." *Id.* (alterations omitted) (quoting *Black's Law Dictionary* 1245 (6th
23 > ed.1990)).
>
24 > Whether the doctrine is described as a rule of comity or subject matter
> jurisdiction, *see id.* at 810 (subject matter jurisdiction); *Metro. Finance Corp. of Cal. v.*
25 > *Wood,* 175 F.2d 209, 210 & n. 3 (9th Cir.1949) (comity); *see generally* 13F Charles
> Alan Wright et al., *Federal Practice & Procedure* § 3631 (3d ed. Supp.2010) (noting
26 > conflicting views), ***courts in this circuit are bound to treat the doctrine as a***

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A 332

mandatory rule, not a matter of judicial discretion, State Eng'r, 339 F.3d at 810; United States v. One 1985 Cadillac Seville, 866 F.2d 1142, 1145 (9th Cir.1989). If the doctrine applies, federal courts may not exercise jurisdiction.

Chapman v. Deutsche Bank Nat. Trust Co., 651 F.3d 1039, 1043-44 (9th Cir. 2011) (emphasis supplied)

CONCLUSION

This Court should dismiss Plaintiff entities complaint as plaintiff entities have not adequately alleged their citizenship for purposes of diversity jurisdiction; have not established a sufficient federal interest to overcome the interest of Washington State courts have in its own courts decide in rem and quasi in rem issues relating to title and possession of land within Twin Falls rural settlement; and it is precluded from asserting jurisdiction pursuant to the Exclusive Jurisdiction Doctrine.

Respectfully submitted this 29th day of February, 2016, at Arlington, Washington.

s/ Scott E. Stafne
Scott E. Stafne, WSBA# 6964
Stafne Law firm
239 N. Olympic Ave
Arlington, WA 98223
Phone: 360-403-8700

Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-AR2,

Plaintiff,

v.

SCOTT STAFNE, an individual; TODD STAFNE, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation,

Defendants.

No. 2:16-cv-00077-TSZ

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. Civ. P. 7.1, Plaintiff Bank of New York Mellon Co., as trustee for Structured Asset Mortgage Investments II Trust, Mortgage pass-through Certificates Series 2005-AR2, makes this Corporate Disclosure Statement.

The Bank of New York Mellon Corporation, a Delaware corporation, is a publicly held company. No corporation owns 10% or more of its stock.

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1
2 DATED this 26th day of January, 2016.
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Davis Wright Tremaine LLP
Attorneys for Bank of New York Mellon

By *s/ Fred B. Burnside*
Fred B. Burnside, WSBA #32491
Zana Z. Bugaighis, WSBA #43614
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-AR2,

Plaintiff,

v.

SCOTT STAFNE, an individual; TODD STAFNE, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation,

Defendants.

No. 2:16-cv-00077

COMPLAINT

Bank of New York Mellon alleges as follows:

I. PARTIES

1.1. Bank of New York Mellon, a Delaware corporation, serves as trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2, and in that capacity owns and holds Defendant Scott Stafne's Note. Bank of New York Mellon's affiliate entities include Bank of New York Melon Trust Company, N.A., which has its main office and headquarters in California. Bank of New York Mellon's main office, headquarters, and principal place of business are in New York. Bank of New York Mellon is acting in foreclosure proceedings in this case through its attorney-in-fact, Nationstar Mortgage LLC.

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1.2. Defendant Scott Stafne ("Borrower") is a resident of Washington.

1.3. On information and belief, Defendant Todd Stafne is a resident of Washington.

1.4. On information and belief, Defendant Real Time Resolutions, Inc., is a Texas corporation, with a principal place of business in Dallas, Texas.

1.5. On information and belief, none of the Defendants is active duty military or a service member as defined and protected under the Service Members Civil Relief Act.

II. JURISDICTION

2.1. The amount-in-controversy requirement is met because Bank of New York Mellon seeks to foreclose on a Deed of Trust securing a promissory note in the original principal amount of $800,000. Due to his failure to make payments, Borrower owes in excess of the principal amount.

2.2. As stated in paragraphs 1.1-1.5, complete diversity exists between the parties.

2.3. The Court has jurisdiction because complete diversity exists between the parties, and the amount in controversy exceeds $75,000, exclusive of interest and costs. 28 U.S.C. § 1332.

III. FACTS

A. Borrower's Promissory Note and Deed of Trust.

3.1. On March 9, 2005, Borrower executed a promissory note and deed of trust in exchange for $800,000 from Countrywide Home Loans, Inc., a loan he used to purchase residential property in Arlington, Washington. *See* Attach. A ("Note") & B ("Deed of Trust"). Under the terms of the Note, Borrower promised to repay the principal and pay annual interest at one percent for a stated period, after which the rate would adjust with the LIBOR-index, not to exceed 9.950 percent. Attach. A ¶ 2.

3.2. The Note states that if Borrower does "not pay the full amount of each monthly payment on the date it is due," he "will be in default," and the note-holder "may require [the borrower] to pay immediately the full amount of Principal that has not been paid and all the interest" owed. Attach. A ¶ 7.

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3.3. Borrower executed the Deed of Trust to "secure[] 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." Attach. B at 2. To secure repayment, Borrower granted the "power of sale" to the property located at 17207 155th Ave. N.E., Arlington Washington ("Property"), described as:

> LOT 11, SURVEY FOR TWIN FALLS, INC., AS RECORDED UNDER RECORDING NO. 200110105002, RE-RECORDED TO CORRECT SURVEY RECORDED UNDER RECORDING NO. 200111275007, RECORDS OF SNOHOMISH COUNTY, BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 22 AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 27 ALL IN TOWNSHIP 31 NORTH, RANGE 6 EAST, W.M.; (ALSO KNOWNS AS LOT 11, THE PLAT OF TWIN FALLS), TOGETHER WITH A NON EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES AS ESTABLISHED BY INSTRUMENT RECORDED UNDER RECORDING NO. 9212160154; SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

See Attach. B at 2-3. Stafne agreed that the Property is not used principally for agricultural purposes. *Id.* at 10 ¶ 25.

B. Possession of Borrower's Note.

3.4. After closing, Countrywide transferred the Note to JPMorgan Chase Bank, N.A. ("JPMorgan"), as then-trustee for Structured Asset Mortgage Investments II Trust 2005-AR2 ("SAMI Trust"). *See* Attach. A at 4 (indorsement to JPMorgan, as trustee), Attach. F (Pooling and Servicing Agreement). On September 15, 2006, the Office of the Comptroller of the Currency approved Chase's sale of its trustee operations for securitized trusts to Bank of New York. After October 1, 2006, Chase was no longer trustee (and thus no longer holder of Borrower's Note). *See, e.g.*, http://www.occ.gov/static/interpretations-and-precedents/oct06/crad136.pdf (OCC approval letter); JPMorgan Chase & Co. 10-Q, at 5 (Nov. 8, 2006), *available at*, http://www.sec.gov/Archives/edgar/data/19617/000095012306013738/y26732e10vq.htm ("On October 1, 2006, the Firm completed the exchange of selected corporate trust businesses, including trustee…services, for the consumer, small-business and middle-market banking

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1 businesses of The Bank of New York."). Bank of New York Mellon assumed the role of
2 trustee of the SAMI Trust and Nationstar, as its attorney in fact, indorsed the Note to Bank of
3 New York Mellon as successor to JPMorgan as Trustee for the SAMI Trust. Attach. A at 4
4 (indorsement to Bank of New York Mellon, successor trustee).

5 **C. 2007 Forbearance Agreement.**

6 3.5 In August 2007, Borrower and Countrywide entered into a Forbearance
7 Agreement whereby Countrywide agreed to suspend Borrower's payments for September 2007
8 – October 2007, with payments to resume November 2007. *See* Attach. C (2007 Forbearance
9 Agreement). In November 2007, Borrower made a payment in the amount of $18,053.86.

10 **D. Borrower Defaulted January 1, 2009.**

11 3.6 On January 1, 2009, Borrower defaulted on the loan by failing to make timely
12 payments as required by the Note and Deed of Trust. Since default, Mr. Stafne has made no
13 payments on his debt.

14 **E. Servicer's Communications Regarding Borrower's Default**

15 3.7 On or about February 17, 2009, Countrywide sent Borrower a "Notice of Intent
16 to Accelerate," which notified Borrower of his default, the amount required to cure, and stated
17 "[i]f the default is not cured on or before March 19, 2009, the mortgage payments **will be**
18 **accelerated** with the full amount remaining accelerated and becoming due and payable in full
19 and foreclosure proceedings will be initiated at that time." *See* Attach. D (Notice of Intent to
20 Accelerate) (emphasis in original). However, Countrywide chose to give Borrower more time
21 to cure his default, opted not to accelerate Borrower's debt (and not to foreclose), and instead
22 on or about March 17, 2009, sent Borrower an "Adjustable Rate Mortgage (ARM) Payment
23 Adjustment Notice," which stated "[e]ffective May 1, 2009, your new Minimum Payment will
24 be $3,436.32." *See* Attach. E (ARM Payment Adjustment Notice).

25 3.8 On or about December 29, 2009, BAC Home Loans Servicing, LP ("BAC"),
26 sent Borrower a notice that his monthly mortgage payment would "significantly increase" again
27

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due to delinquent property taxes. On February 16, 2010, BAC notified Borrower it had paid his delinquent taxes and would be increasing his "monthly mortgage payment."

3.9 From March 17, 2009, to March 18, 2015, Borrower received approximately 120 communications regarding the status of his loan and loan mitigation options, including multiple communications regarding his monthly mortgage payment, the amount required to cure and reinstate his loan, and the outstanding principal balance. Borrower was also sent multiple notices of default, including on February 17, 2009, October 12, 2012, December 16, 2012, May 9, 2013, August 17, 2015, and September 28, 2015. These notices informed Borrower that if he did not reinstate, his Loan "may be accelerated." Borrower's loan was not accelerated prior to this Complaint.

F. Bank of New York Mellon Holds Borrower's Note.

3.10 Bank of New York Mellon as trustee, holds and owns Borrower's Note, which is in possession of Bank of New York Mellon's agents and attorneys. Because Bank of New York Mellon holds Borrower's Note, it is the beneficiary of the Deed of Trust and entitled to all rights listed therein. RCW 61.24.005(2). Bank of New York Mellon does not rely on any Deed of Trust assignment from any party as a basis to foreclose.

3.11 Bank of New York Mellon contracted with Nationstar as its attorney-in-fact to conduct certain foreclosure-related activities on its behalf. *See* Attach. E (Limited Power of Attorney permitting Nationstar to act on behalf of Bank of New York Mellon).

G. September 2015 Notice of Default.

3.12 On September 28, 2015, Nationstar, as attorney-in-fact for Bank of New York Mellon, sent Borrower a Notice of Default and Intent to Accelerate. *See* Attach. (Notice of Default and Intent to Accelerate). The Notice informed Borrower that he had 30 days to pay the arrearage, or his debt would be subject to acceleration and he could be sued in a judicial foreclosure. Borrower did not pay the arrearage.

3.13 As of October 30, 2015, Borrower owed an unpaid balance of $344,571.81 and is accruing additional monthly payments. Borrower's unpaid principal balance was

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1 $823,229.05. Additionally, Bank of New York Mellon is entitled to recover its attorneys' fees,
2 costs, and other expenses incurred in recovering on the Note and enforcing the Deed of Trust,
3 as well as other amounts provided for in the loan documents.

4 3.14 Before entry of judgment, Bank of New York Mellon may be required to
5 advance sums for the payment of taxes, assessments, or utilities; additional sums for the
6 protection, preservation, and/or care for the Property, and additional sums required to comply
7 with municipal ordinances regarding the maintenance, ownership, and condition of the
8 Property, together with other charges constituting prior liens on the Property. In the event any
9 such advances are made, they are secured by the Deed of Trust, and Bank of New York Mellon
10 is entitled to and will add them to the amount of the judgment and decree of foreclosure to be
11 entered.

12 **H. Election to Accelerate.**

13 3.15 Bank of New York Mellon, through this Complaint, has elected to declare the
14 entire principal sum and all accrued interest on the Note due and payable. Under the Note, all
15 past due installments of interest, late charges, attorneys' fees and expenses incurred by Bank of
16 New York Mellon in connection with the default shall be added to the principal balance, and
17 the principal balance shall bear interest at the Note rate, or as required by law, on all amounts
18 due.

19 3.16 Because Borrower has breached the terms of the Note and the Deed of Trust,
20 and because Bank of New York Mellon holds the first-position lien against the Property, Bank
21 of New York Mellon is entitled to immediate payment of the entire loan balance, including all
22 principal and interest, any taxes, assessments, municipal charges, and any other expenses, costs,
23 or fees provided under the Note and Deed of Trust.

24 **I. Other Proceedings.**

25 3.17 Bank of New York Mellon has not commenced any other proceedings for the
26 collection of the debt evidenced by the Promissory Note and Deed of Trust.

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J. Parties with Potential Interest in the Property.

3.18 ***Todd Stafne.*** On information and belief, Defendant Todd Stafne may claim some right, title, or interest in and to the Property. To the extent his claims exist, they arose subsequent to and are inferior to Bank of New York Mellon's rights in the Property.

3.19 ***Real Time Resolutions, Inc.*** On information and belief, Defendant Real Time Resolutions may claim some right, title, or interest in and to the Property. To the extent its claims exist, they arose subsequent to and are inferior to Bank of New York Mellon's rights in the Property.

IV. CAUSES OF ACTION

A. Money Judgment on Promissory Note.

4.1. Borrower has defaulted on the Promissory Note by failing to pay sums due, and Bank of New York Mellon is therefore entitled to a money judgment against Borrower in an amount to be established as of the judgment date. Bank of New York Mellon does not seek to collect payments more than six years past due.

B. Foreclosure on Deed of Trust.

4.2. Bank of New York Mellon's Deed of Trust is senior to all other interests, claims, liens, and encumbrances against the Property, and Bank of New York Mellon is entitled to judgment and a decree of foreclosure under the Deed of Trust against the Property, and to proceed with the sale of the Property to recover the loan proceeds and to obtain any deficiency judgment for the remaining balance due on the loan.

C. Breach of Contract.

4.3. Borrower has failed to abide by the terms of the Note and Deed of Trust as outlined above, and Borrower has breached his contracts. Bank of New York Mellon is therefore entitled to recover for all sums due under the Note and Deed of Trust.

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D. Receivership.

4.4 To protect the Property and preserve its value, Bank of New York Mellon requests appointment of a receiver pursuant to RCW 7.60.025 that may lease the property or otherwise recover value.

V. PRAYER FOR RELIEF

5.1. Bank of New York Mellon respectfully requests the Court grant the following relief:

5.2. That Bank of New York Mellon has judgment for monies due against Borrower for the principal and interest due under the Note and Deed of Trust as of the judgment date, as well as attorneys' fees and costs; any sums advanced or costs incurred to protect Bank of New York Mellon's interest in the Property until the date of a sheriff's sale; any taxes, assessments, municipal charges, and any other expenses, costs, or fees provided under the Note and Deed of Trust;

5.3. That judgment interest accrue at the statutory rate of 12 per cent annually, as allowed by RCW 4.56.110 and RCW 19.52.020;

5.4. That in the event Borrower fails to pay the judgment, the Deed of Trust shall be judicially foreclosed and the Property be sold at a sheriff's foreclosure sale with proceeds applied toward satisfaction of the judgment, and that any remaining deficiency be reduced to a judgment against Borrower;

5.5. That Bank of New York Mellon's Deed of Trust be declared a valid first lien on the Property subject only to those associations with a limited six-month lien assessment priority pursuant to RCW 64.34.364(3), and that the rights of each Defendant in the Property, if any, be declared inferior to Bank of New York Mellon's rights;

5.6. That the Court establish an eight-month redemption period from the date of the sheriff's foreclosure sale, and the sheriff should be ordered to issue a sheriff's deed to the successful bidder at the termination of the redemption period;

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1 5.7. That Bank of New York Mellon be permitted to bid (or credit bid) and purchase
2 the Property at the foreclosure sale;
3 5.8. That if the Property is not vacated upon expiration of the applicable redemption
4 period so that purchaser may take possession, the Court should issue a writ of assistance
5 ordering the sheriff to deliver possession of the Property to the purchaser;
6 5.9. That if the Property is occupied by a tenant holding under an unexpired lease,
7 the purchaser is entitled to receive from such tenant the rents or the value of the use and
8 occupation of the Property during the period of redemption pursuant to RCW 6.23.110; and
9 5.10. That the Court grant such other relief as is just and equitable.
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11 DATED this 19th day of January, 2016.
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Davis Wright Tremaine LLP
Attorneys for Bank of New York Mellon

By *s/ Fred B. Burnside*
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ATTACHMENT E

After Recording return to:
Name
Address

A 345

After Recording Return To:
Nationstar Mortgage LLC
ATTN: POA's
2617 College Park Drive
Scottsbluff, NE 69361

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that the undersigned**, THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK as successor in interest to JP Morgan Chase Bank, N.A.** having an office at 101 Barclay Street, NYC, NY 10286 (the "Bank"), hereby appoint **Nationstar Mortgage LLC**, to be the Bank's true and lawful Attorneys-in-Fact (the "Attorneys") to act in the name, and on behalf, of the Bank with power to do only the following in connection with the trust included on **Schedule A**, on behalf of the Bank:

1. The modification or re-recording of a Mortgage or Deed of Trust, where said modification or re-recordings is for the purpose of correcting the Mortgage or Deed of Trust to conform same to the original intent of the parties thereto or to correct title errors discovered after such title insurance was issued and said modification or re-recording, in either instance, does not adversely affect the lien of the Mortgage or Deed of Trust as insured.

2. The subordination of the lien of a Mortgage or Deed of Trust to an easement in favor of a public utility company of a government agency or unit with powers of eminent domain; this section shall include, without limitation, the execution of partial satisfactions/releases, partial reconveyances or the execution or requests to trustees to accomplish same.

3. The conveyance of the properties to the mortgage insurer, or the closing of the title to the property to be acquired as real estate owned, or conveyance of title to real estate owned.

4. The completion of loan assumption agreements and modification agreements.

5. The full or partial satisfaction/release of a Mortgage or Deed of Trust or full conveyance upon payment and discharge of all sums secured thereby, including, without limitation, cancellation of the related Mortgage Note.

6. The assignment of any Mortgage or Deed of Trust and the related Mortgage Note, in connection with the repurchase of the mortgage loan secured and evidenced thereby.

7. The full assignment of a Mortgage or Deed of Trust upon payment and discharge of all sums secured thereby in conjunction with the refinancing thereof, including, without limitation, the assignment of the related Mortgage Note.

8. With respect to a Mortgage or Deed of Trust, the foreclosure, the taking of a deed in lieu of foreclosure, or the completion of judicial or non-judicial foreclosure or termination, cancellation or recession of
termination, cancellation or rescission of any such foreclosure, including, without limitation, any and all of the following acts:

   a. the substitution of trustee(s) serving under a Deed of Trust, in accordance with state law and the Deed of Trust;

   b. the preparation and issuance of statements of breach or non-performance;

   c. the preparation and filing of notices of default and/or notices of sale;

   d. the cancellation/rescission of notices of default and/or notices of sale;

e. the taking of a deed in lieu of foreclosure; and

f. the preparation and execution of such other documents and performance of such other actions as may be necessary under the terms of the Mortgage, Deed of Trust or state law to expeditiously complete said transactions in paragraphs 8.a. through 8.e., above; and

9. to execute any other documents referred to in the above-mentioned documents or that are ancillary or related thereto or contemplated by the provisions thereof; and

to do all things necessary or expedient to give effect to the aforesaid documents including, but not limited to, completing any blanks therein, making any amendments, alterations and additions thereto, to endorse which may be considered necessary by the Attorney, to endorse on behalf of the Trustee all checks, drafts and/or negotiable instruments made payable to the Trustee in respect of the documents, and executing such other documents as may be considered by the Attorney necessary for such purposes.

The relationship of the Bank and the Attorney under this Power of Attorney is intended by the parties to be that of an independent contractor and not that of a joint venturer, partner, or agent.

This Power of Attorney is effective for one (1) year from the date hereof or the earlier of (i) revocation by the Bank, (ii) the Attorney shall no longer be retained on behalf of the Bank or an affiliate of the Bank; or (iii) the expiration of one year from the date of execution.

The authority granted to the Attorney by the Power of Attorney is not transferable to any other party or entity.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to its conflicts of law principles.

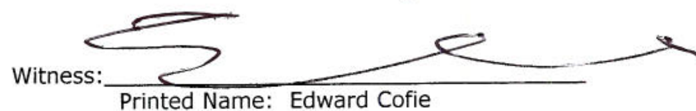
All actions heretofore taken by said Attorney, which the Attorney could properly have taken pursuant to this Power of Attorney, be, and hereby are, ratified and affirmed.

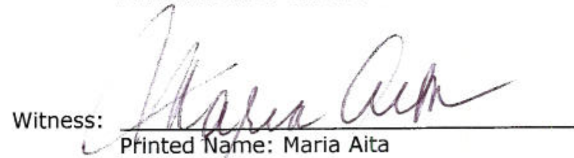
IN WITNESS WHEREOF, The Bank of New York Mellon f/k/a The Bank of New York successor in interest to JPMorgan Chase Bank, National Association as Trustee pursuant to the Trust Agreements listed on Schedule A hereto attached and these present to be signed and acknowledged in its name and behalf by Gerard F. Facendola and Gavin Tsang its duly elected and authorized Managing Director and Vice President this 29th day of August, 2014.

The Bank of New York Mellon, f/k/a The Bank of New York, successor in interest to JPMorgan Chase Bank, N.A. as Trustee for the securitization listed on Schedule A

By:
Name: Gerard F. Facendola
Title: Managing Director

By:
Name: Gavin Tsang
Title: Vice President

Witness: 
Printed Name: Edward Cofie

Witness: 
Printed Name: Maria Aita

ACKNOWLEDGEMENT

STATE OF NEW YORK §

COUNTY OF KINGS §

On the 29th day of August in the year 2014 before me, the undersigned, personally appeared Gerard F. Facendola and Gavin Tsang, known to be or proved to me on the basis of satisfactory evidence to be the Managing Director and Vice President, respectively of The Bank of New York Mellon, as Trustee and acknowledged that they executed the same as their free act and deed and the free act and deed of the Trustee.

Subscribed and sworn before me this 29th day of August, 2014

NOTARY PUBLIC
My Commission expires

TSILYA ZUBATAYA
NOTARY PUBLIC, State of New York
No. 01ZU6233191
Qualified in Kings County
Commission Expires Dec. 27, 2014

Acknowledged and Agreed
NATIONSTAR MORTGAGE LLC
as Servicer

By: ______________________
Name: Jennifer Kinsey
Title: Assistant Secretary

Witness: ______________________
Name: Julie Martinez

Witness: ______________________
Name: Kerri Weinmaster

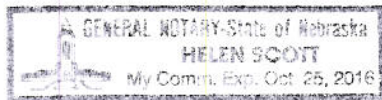
ACKNOWLEDGEMENT

STATE OF **NEBRASKA**

COUNTY OF **SCOTTS BLUFF**

On 09/4/2014, before me a Notary Public in and for said State, personally appeared **Jennifer Kinsey**, known to me to be a **Assistant Secretary** of **Nationstar Mortgage LLC** that executed the within instrument, and also known to me to be the person who executed said instrument on behalf of such corporation and acknowledged to me that such limited liability company executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



____
Helen Scott
NOTARY PUBLIC
My Commission expires: Oct. 25, 2016

Nationstar MORTGAGE

SCHEDULE A

BALTA 2004-10	Structured Asset Mortgage Investments II Inc. Bear Steams ALT-A Trust 2004-10
BALTA 2004-11	Structured Asset Mortgage Investments II Inc. Bear Steams ALT-A Trust 2004-11
BALTA 2004-12	Structured Asset Mortgage Investments II Inc. Bear Steams ALT-A Trust 2004-12
BALTA 2004-2	Structured Asset Mortgage Investments II Inc. Bear Steams ALT-A Trust 2004-2
BALTA 2004-4	Structured Asset Mortgage Investments II Inc. Bear Steams ALT-A Trust 2004-4
BALTA 2004-5	Structured Asset Mortgage Investments II Inc. Bear Steams ALT-A Trust 2004-5
BALTA 2004-7	Structured Asset Mortgage Investments II Inc. Bear Steams ALT-A Trust 2004-7
BALTA 2004-8	Structured Asset Mortgage Investments II Inc. Bear Steams ALT-A Trust 2004-8
BALTA 2004-9	Structured Asset Mortgage Investments II Inc. Bear Steams ALT-A Trust 2004-9
BALTA 2005-7	Structured Asset Mortgage Investments II Inc. Bear Steams ALT-A Trust 2005-7
BALTA 2005-9	Structured Asset Mortgage Investments II Inc. Bear Steams ALT-A Trust 2005-9
BALTA 2006-1	Structured Asset Mortgage Investments II Inc. Bear Steams ALT-A Trust 2006-1
BALTA 2006-2	Structured Asset Mortgage Investments II Inc. Bear Steams ALT-A Trust 2006-2
BSABS 2003-SD2	BEAR STEARNS ASSET BACKED SECURITIES TRUST, ASSET-BACKED CERTIFICATES, SERIES 2003-SD2
BSABS 2003-SD3	BEAR STEARNS ASSET BACKED SECURITIES TRUST, ASSET-BACKED CERTIFICATES, SERIES 2003-SD3
BSABS 2004-SD1	BEAR STEARNS ASSET BACKED SECURITIES TRUST, ASSET-BACKED CERTIFICATES, SERIES 2004-SD1
BSABS 2004-SD2	BEAR STEARNS ASSET BACKED SECURITIES TRUST, ASSET-BACKED CERTIFICATES, SERIES 2004-SD2
BSABS 2005-SD3	BEAR STEARNS ASSET BACKED SECURITIES TRUST, ASSET-BACKED CERTIFICATES, SERIES 2005-SD3
BSABS 2006-SD1	BEAR STEARNS ASSET BACKED SECURITIES TRUST, ASSET-BACKED CERTIFICATES, SERIES 2006-SD1
BSARM 2002-11	Structured Asset Mortgage Investments Inc. Bear Stearns ARM Trust, Mortgage Pass-Through Certificates Series 2002-11
BSARM 2003-04	Structured Asset Mortgage Investments Inc. Bear Stearns ARM Trust, Mortgage Pass-Through Certificates Series 2003-4
BSARM 2003-1	Structured Asset Mortgage Investments Inc. Bear Stearns ARM Trust, Mortgage Pass-Through Certificates Series 2003-1
BSARM 2003-3	Structured Asset Mortgage Investments Inc. Bear Stearns ARM Trust, Mortgage Pass-Through Certificates Series 2003-3
BSARM 2003-5	Structured Asset Mortgage Investments Inc. Bear Stearns ARM Trust, Mortgage Pass-Through Certificates Series 2003-5
BSARM 2003-6	Structured Asset Mortgage Investments Inc. Bear Stearns ARM Trust, Mortgage Pass-Through Certificates Series 2003-6
BSARM 2003-8	Structured Asset Mortgage Investments Inc. Bear Stearns ARM Trust, Mortgage Pass-Through Certificates Series 2003-8

SAMI 2003-AR1	Structured Asset Mortgage Investments II Trust 2003-AR1
SAMI 2003-AR4	Structured Asset Mortgage Investments II Trust 2003-AR4
SAMI 2004-AR2	Structured Asset Mortgage Investments II Trust 2004-AR2
SAMI 2004-AR3	Structured Asset Mortgage Investments II Trust 2004-AR3
SAMI 2004-AR4	Structured Asset Mortgage Investments II Trust 2004-AR4
SAMI 2004-AR5	Structured Asset Mortgage Investments II Trust 2004-AR5
SAMI 2004-AR6	Structured Asset Mortgage Investments II Trust 2004-AR6
SAMI 2004-AR7	Structured Asset Mortgage Investments II Trust 2004-AR7
SAMI 2004-AR8	Structured Asset Mortgage Investments II Trust 2004-AR8
SAMI 2005-AR1	Structured Asset Mortgage Investments II Trust 2005-AR1
SAMI 2005-AR2	Structured Asset Mortgage Investments II Trust 2005-AR2
SAMI 2005-AR4	Structured Asset Mortgage Investments II Trust 2005-AR4
SAMI 2005-AR6	Structured Asset Mortgage Investments II Trust 2005-AR6
SAMI 2005-AR7	Structured Asset Mortgage Investments II Trust 2005-AR7
SAMI 2005-AR8	Structured Asset Mortgage Investments II Trust 2005-AR8
SAMI 2006-AR1	Structured Asset Mortgage Investments II Trust 2006-AR1
SAMI 2006-AR2	Structured Asset Mortgage Investments II Trust 2006-AR2
SAMI 2006-AR3	Structured Asset Mortgage Investments II Trust 2006-AR3
SAMI 2006-AR4	Structured Asset Mortgage Investments II Trust 2006-AR4
SAMI 2006-AR6	Structured Asset Mortgage Investments II Trust 2006-AR6
SAMI 2006-AR7	Structured Asset Mortgage Investments II Trust 2006-AR7
SAMI 2006-AR8	Structured Asset Mortgage Investments II Trust 2006-AR8

ATTACHMENT F

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A 352

STRUCTURED ASSET MORTGAGE INVESTMENTS II INC.,

DEPOSITOR,

JPMORGAN CHASE BANK, N.A.

TRUSTEE,

WELLS FARGO BANK, NATIONAL ASSOCIATION,

MASTER SERVICER,

WELLS FARGO BANK, NATIONAL ASSOCIATION,

SECURITIES ADMINISTRATOR,

and

EMC MORTGAGE CORPORATION

POOLING AND SERVICING AGREEMENT

Dated as of May 1, 2005

Structured Asset Mortgage Investments II Trust 2005-AR2
Mortgage Pass-Through Certificates

Series 2005-AR2

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A 353

TABLE OF CONTENTS

Page

ARTICLE I Definitions 1

Section 1.01 Definitions....................1

Section 1.02 Calculation of LIBOR....................44

ARTICLE II Conveyance of Mortgage Loans; Original Issuance of Certificates....................45

Section 2.01 Conveyance of Mortgage Loans to Trustee....................45

Section 2.02 Acceptance of Trust Fund by Trustee....................47

Section 2.03 Assignment of Interest in the Mortgage Loan Purchase Agreement....................50

Section 2.04 Substitution of Mortgage Loans....................51

Section 2.05 Issuance of Certificates....................52

Section 2.06 Representations and Warranties Concerning the Depositor....................52

ARTICLE III Administration and Servicing of Mortgage Loans....................54

Section 3.01 Master Servicer....................54

Section 3.02 REMIC-Related Covenants....................55

Section 3.03 Monitoring of Servicers....................55

Section 3.04 Fidelity Bond....................56

Section 3.05 Power to Act; Procedures....................57

Section 3.06 Due-on-Sale Clauses; Assumption Agreements....................58

Section 3.07 Release of Mortgage Files....................58

Section 3.08 Documents, Records and Funds in Possession of Master Servicer To Be Held for Trustee....................59

Section 3.09 Standard Hazard Insurance and Flood Insurance Policies....................60

Section 3.10 Presentment of Claims and Collection of Proceeds....................60

Section 3.11 Maintenance of the Primary Mortgage Insurance Policies....................60

confidential

confidential

A 354

Section 3.12 Trustee to Retain Possession of Certain Insurance Policies and Documents....61

Section 3.13 Realization Upon Defaulted Mortgage Loans 61

Section 3.14 Compensation for the Servicers and the Master Servicer. 61

Section 3.15 REO Property. 62

Section 3.16 Annual Officer's Certificate as to Compliance. 62

Section 3.17 Annual Independent Accountant's Servicing Report 63

Section 3.18 Reports Filed with Securities and Exchange Commission 63

Section 3.19 EMC 64

Section 3.20 UCC 64

Section 3.21 Optional Purchase of Defaulted Mortgage Loans....65

ARTICLE IV Accounts 65

Section 4.01 Protected Accounts. 65

Section 4.02 Distribution Account....67

Section 4.03 Permitted Withdrawals and Transfers from the Distribution Account....67

Section 4.04 Distribution of Group I Carryover Shortfall Amount; Group I Carryover Shortfall Reserve Fund. 69

Section 4.05 Distribution of Group II Carryover Shortfall Amount; Group II Carryover Shortfall Reserve Fund 70

Section 4.07 Distribution of Subordinate Carryover Shortfall Amount; Subordinate Carryover Shortfall Reserve Fund 72

Section 4.09 Yield Maintenance Account and Yield Maintenance Agreement. 73

ARTICLE V Certificates 74

Section 5.01 Certificates 74

Section 5.02 Registration of Transfer and Exchange of Certificates....88

Section 5.03 Mutilated, Destroyed, Lost or Stolen Certificates 92

confidential

confidential

Section 5.04 Persons Deemed Owners 92

Section 5.05 Transfer Restrictions on Residual Certificates 92

Section 5.06 Restrictions on Transferability of Certificates 93

Section 5.07 ERISA Restrictions 94

Section 5.08 Rule 144A Information 95

Section 5.09 Appointment of Paying Agent and Certificate Registrar 96

ARTICLE VI Payments to Certificateholders 96

Section 6.01 Distributions on the Certificates 96

Section 6.02 Allocation of Losses and Subsequent Recoveries 102

Section 6.03 *first*, to the Class B-6 Certificates until the Current Principal Amount thereof has been reduced to zero; 102

Section 6.04 Payments 105

Section 6.05 Statements to Certificateholders 106

Section 6.06 Monthly Advances 108

Section 6.07 Compensating Interest Payments 109

ARTICLE VII The Master Servicer 109

Section 7.01 Liabilities of the Master Servicer 109

Section 7.02 Merger or Consolidation of the Master Servicer. 109

Section 7.03 Indemnification of the Trustee, the Custodian and the Securities Administrator 110

Section 7.05 Limitations on Liability of the Master Servicer and Others 110

Section 7.06 Master Servicer Not to Resign 112

Section 7.07 Successor Master Servicer 112

Section 7.08 Sale and Assignment of Master Servicing 112

ARTICLE VIII Default 113

Section 8.01 "Event of Default" 113

confidential

confidential

Section 8.02 Trustee to Act; Appointment of Successor 115

Section 8.03 Notification to Certificateholders 116

Section 8.04 Waiver of Defaults 116

Section 8.05 List of Certificateholders 116

ARTICLE IX Concerning the Trustee and the Securities Administrator 116

Section 9.01 Duties of Trustee 116

Section 9.02 Certain Matters Affecting the Trustee and the Securities Administrator 118

Section 9.03 Trustee and Securities Administrator Not Liable for Certificates or Mortgage Loans 120

Section 9.04 Trustee and Securities Administrator May Own Certificates 121

Section 9.05 Trustee's and Securities Administrator's Fees and Expenses....121

Section 9.06 Eligibility Requirements for Trustee, Paying Agent and Securities Administrator 121

Section 9.07 Insurance 122

Section 9.08 Resignation and Removal of the Trustee and Securities Administrator 122

Section 9.09 Successor Trustee, Paying Agent and Successor Securities Administrator 123

Section 9.10 Merger or Consolidation of Trustee, Paying Agent or Securities Administrator 124

Section 9.12 Appointment of Co-Trustee or Separate Trustee 124

Section 9.13 Federal Information Returns and Reports to Certificateholders; REMIC Administration....125

Section 9.14 Federal Information Returns and Reports to Certificateholders; REMIC Administration....125

ARTICLE X Termination 127

Section 10.01 Termination Upon Repurchase by the Depositor or its Designee or Liquidation of the Mortgage Loans 127

confidential

confidential

Section 10.03 Additional Termination Requirements 130

ARTICLE XI Miscellaneous Provisions 130

Section 11.01 Intent of Parties 130

Section 11.02 Amendment 131

Section 11.03 Recordation of Agreement 132

Section 11.04 Limitation on Rights of Certificateholders 132

Section 11.05 Acts of Certificateholders 133

Section 11.06 GOVERNING LAW 134

Section 11.07 Notices 134

Section 11.08 Severability of Provisions 135

Section 11.09 Successors and Assigns 135

Section 11.10 Article and Section Headings 135

Section 11.11 Counterparts 135

Section 11.12 Notice to Rating Agencies 135

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EXHIBITS

Exhibit A-1	–	Form of Class A and Class X Certificates
Exhibit A-2	–	Form of Class M Certificates
Exhibit A-3	–	Form of Class B Certificates
Exhibit A-4	–	Form of Class R Certificates
Exhibit B	–	Mortgage Loan Schedule
Exhibit C	–	[Reserved]
Exhibit D	–	Request for Release of Documents
Exhibit E	–	Form of Affidavit pursuant to Section 860E(e)(4)
Exhibit F-1	–	Form of Investment Letter
Exhibit F-2	–	Form of Rule 144A and Related Matters Certificate
Exhibit G	–	Form of Custodial Agreement
Exhibit H-1	–	EverHome Subservicing Agreement
Exhibit H-2	–	Countrywide Servicing Agreement
Exhibit H-3	–	Washington Mutual Servicing Agreement
Exhibit H-4	–	EMC Servicing Agreement
Exhibit I	–	Assignment Agreements
Exhibit J	–	Mortgage Loan Purchase Agreement
Exhibit K	–	Form of Trustee Limited Power of Attorney

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POOLING AND SERVICING AGREEMENT

Pooling and Servicing Agreement, dated as of May 1, 2005, among Structured Asset Mortgage Investments II Inc., a Delaware corporation, as depositor (the "Depositor"), JPMorgan Chase Bank, N.A., a banking association organized under the laws of the United States of America, not in its individual capacity but solely as trustee (the "Trustee"), Wells Fargo Bank, National Association, as master servicer (in such capacity, the "Master Servicer") and as securities administrator (in such capacity, the "Securities Administrator"), and EMC Mortgage Corporation ("EMC").

PRELIMINARY STATEMENT

On or prior to the Closing Date, the Depositor has acquired the Mortgage Loans from EMC. On the Closing Date, the Depositor will sell the Mortgage Loans and certain other property to the Trust Fund and receive in consideration therefor Certificates evidencing the entire beneficial ownership interest in the Trust Fund.

The Trustee on behalf of the Trust shall make an election for the assets constituting REMIC I to be treated for federal income tax purposes as a REMIC. On the Startup Day, the REMIC I Regular Interests will be designated "regular interests" in such REMIC and the Class R-I Certificate will be designated the "residual interests" in such REMIC.

The Trustee on behalf of the Trust shall make an election for the assets constituting REMIC II to be treated for federal income tax purposes as a REMIC. On the Startup Day, the REMIC II Regular Certificates will be designated "regular interests" in such REMIC and the Class R-II Certificate will be designated the "residual interests" in such REMIC.

The Trustee on behalf of the Trust shall make an election for the assets constituting REMIC III to be treated for federal income tax purposes as a REMIC. On the Startup Day, the REMIC III Regular Certificates will be designated "regular interests" in such REMIC and the Class R-III Certificate will be designated the "residual interests" in such REMIC.

The Mortgage Loans will have an Outstanding Principal Balance as of the Cut-off Date, after deducting all Scheduled Principal due on or before the Cut-off Date, of $817,715,039.

In consideration of the mutual agreements herein contained, the Depositor, the Master Servicer, the Securities Administrator, EMC and the Trustee agree as follows:

ARTICLE I
Definitions

Section 1.01 Definitions. Whenever used in this Agreement, the following words and phrases, unless otherwise expressly provided or unless the context otherwise requires, shall have the meanings specified in this Article.

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Accepted Master Servicing Practices: With respect to any Mortgage Loan, as applicable, those customary mortgage master servicing practices of prudent institutions that master service mortgage loans of the same type and quality as such mortgage loan in the jurisdiction where the related Mortgaged Property is located, to the extent applicable to the Trustee or the Master Servicer (except in its capacity as successor to a Servicer).

Account: The Distribution Account, the Group I Carryover Shortfall Reserve Fund, the Group II Carryover Shortfall Reserve Fund, the Yield Maintenance Account and the related Protected Account, as the context may require.

Accrued Certificate Interest: For any Certificate (other than a Residual Certificate) on any Distribution Date, the amount of interest accrued during the related Interest Accrual Period at the applicable Pass-Through Rate on the Current Principal Amount (or Notional Amount, with respect to the Class I-X Certificates, the Class II-X Certificates and the Class M-X Certificates) of such Certificate immediately prior to such Distribution Date, less (i) in the case of a Senior Certificate (other than a Residual Certificate), such Certificate's share of (a) any Net Interest Shortfall from the Mortgage Loans in the related Loan Group, (b) any interest shortfall on the Mortgage Loans in the related Loan Group resulting from the application of the Relief Act or similar state law, (c) any shortfalls resulting from Net Deferred Interest and (d) after the Cross-Over Date, the interest portion of any Realized Losses on the related Mortgage Loans in the related Loan Group to the extent allocated thereto in accordance with Section 6.02(g), and (ii) in the case of a Subordinate Certificate, such Certificate's share of (a) any Net Interest Shortfall from the Mortgage Loans, (b) any interest shortfall on the Mortgage Loans in the related Loan Group resulting from the application of the Relief Act or similar state law, and (c) shortfalls resulting from Net Deferred Interest and the interest portion of any Realized Losses on the Mortgage Loans allocated to that Class of Certificates, to the extent allocated thereto in accordance with Section 6.02(g). The Accrued Certificate Interest on the Class I-X Certificates, the Class II-X Certificates and the Class M-X Certificates on any Distribution Date will be reduced by any amounts necessary to fund the Group I Carryover Shortfall Reserve Fund, the Group II Carryover Shortfall Reserve Fund and the Subordinate Carryover Reserve Fund, respectively, on the related Distribution Date with respect to the payment of any Group I Carryover Shortfall Amount, any Group II Carryover Shortfall Amount and any Subordination Carryover Shortfall Amount, as the case may be. The applicable Senior Percentage of Prepayment Interest Shortfalls and interest shortfalls resulting from the application of the Relief Act or similar state law will be allocated among the related Senior Certificates (other than the Residual Certificates) in proportion to the amount of Accrued Certificate Interest that would have been allocated thereto in the absence of such shortfalls. The applicable Subordinate Percentage of Prepayment Interest Shortfalls and interest shortfalls resulting from the application of the Relief Act and similar state law will be allocated among the Subordinate Certificates in proportion to the amount of Accrued Certificate Interest that would have been allocated thereto in the absence of such shortfalls. The interest portion of Realized Losses for the Mortgage Loans will be allocated sequentially, in the following order, to the Class B-6, Class B-5, Class B-4, Class B-3, Class B-2, Class B-1 , Class M-7, Class M-6, Class M-5, Class M-4, Class M-3, Class M-2, Class M-1 and Class M-X Certificates and, following the Cross-Over Date, (A) the interest portion of Realized Losses on the Group I Mortgage Loans will be allocated on a pro rata basis to the Class I-A-1 Certificates, the Class I-A-2 Certificates and the Class I-X Certificates, (B) the interest portion of Realized Losses on the Group II Mortgage Loans will be allocated on a pro

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rata basis to the Class II-A-1 Certificates, the Class II-A-2 Certificates, the Class II-A-3 Certificates and the Class II-X Certificates, and (C) the interest portion of Realized Losses on the Group III Mortgage Loans will be allocated on a pro rata basis to the Class III-A-1 Certificates and the Class III-A-2 Certificates. Accrued Certificate Interest on the Certificates (other than the Group III Senior Certificates, the Interest Only Certificates and the Residual Certificates) shall be calculated on the basis of a 360-day year and the actual number of days elapsed in the related Interest Accrual Period. Accrued Certificate Interest on the Interest Only Certificates and the Group III Senior Certificates is calculated on the basis of a 360-day year consisting of twelve 30 day months. The Residual Certificates do not have a Pass-Through Rate and will not bear interest. No Accrued Certificate Interest will be payable with respect to any Class or Classes of Certificates that bear interest after the Distribution Date on which the outstanding Current Principal Amount or Notional Amount of such Certificate or Certificates has been reduced to zero.

Adjustable Rate Certificates: The Class I-A-1 Certificates, Class I-A-2 Certificates, Class II-A-1 Certificates, Class II-A-2 Certificates, Class II-A-3 Certificates, Class M-1 Certificates, Class M-2 Certificates, Class M-3 Certificates, Class M-4 Certificates, Class M-5 Certificates, Class M-6 Certificates, Class M-7 Certificates, Class B-1 Certificates, Class B-2 Certificates, Class B-3 Certificates, Class B-4 Certificates, Class B-5 Certificates and Class B-6 Certificates.

Affiliate: As to any Person, any other Person controlling, controlled by or under common control with such Person. "Control" means the power to direct the management and policies of a Person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise. "Controlled" and "Controlling" have meanings correlative to the foregoing. The Trustee may conclusively presume that a Person is not an Affiliate of another Person unless a Responsible Officer of the Trustee has actual knowledge to the contrary.

Agreement: This Pooling and Servicing Agreement and all amendments hereof and supplements hereto made in accordance with the terms herein.

Allocable Share: With respect to any Class of Subordinate Certificates:

(a) as to any Distribution Date and amounts distributable pursuant to clauses (1) and (4) of the definition of Subordinate Optimal Principal Amount, the fraction, expressed as a percentage, the numerator of which is the Current Principal Amount of such Class of Certificates and the denominator of which is the aggregate Current Principal Amount of all Classes of the Subordinate Certificates; and

(b) as to any Distribution Date and amounts distributable pursuant to clauses (2), (3), (5) and (6) of the definition of Subordinate Optimal Principal Amount, after giving effect to the reduction of the Current Principal Amount of the Class M-X Certificates on such Distribution Date,

(1) for any Distribution Date on which the Loss and Delinquency Test has been satisfied, as to each Class of Subordinate Certificates for which (x) the related Class Prepayment Distribution Trigger has been satisfied on such Distribution Date, the fraction,

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expressed as a percentage, the numerator of which is the Current Principal Amount of such Class of Certificates and the denominator of which is the aggregate Current Principal Amount of all such Classes of Subordinate Certificates for which the related Class Prepayment Distribution Trigger has been satisfied and (y) the related Class Prepayment Distribution Trigger has not been satisfied on such Distribution Date, 0%; provided that if on a Distribution Date, the Current Principal Amount of any Class of Subordinate Certificates for which the related Class Prepayment Distribution Trigger was satisfied on such Distribution Date is reduced to zero, any amounts distributed pursuant to this clause (b)(1), to the extent of such Class's remaining Allocable Share, shall be distributed to the Class of Subordinate Certificates having the lowest numerical designation and to the Subordinate Certificates which satisfy the related Class Prepayment Distribution Trigger in reduction of their respective Current Principal Amounts, in the order of their numerical Class designations; and

(2) for any Distribution Date on which the Loss and Delinquency Test has not been satisfied, as to the Subordinate Certificates, 0%; provided that if on a Distribution Date, any remaining amounts distributed pursuant to this clause (b)(2) shall be distributed to the Classes of Subordinate Certificates which satisfy the related Class Prepayment Distribution Trigger and to the Class of Subordinate Certificates having the lowest numerical designation in reduction of their respective Current Principal Amounts in the order of their numerical Class designations.

Applicable Credit Rating: For any long-term deposit or security, a credit rating of AAA in the case of S&P and Aaa in the case of Moody's (or with respect to investments in money market funds, a credit rating of "AAAm" or "AAAm-G", in the case of S&P, and the highest rating given by Moody's for money market funds, in the case of Moody's). For any short-term deposit or security, a rating of A-l+ in the case of S&P and P-1 in the case of Moody's.

Applicable State Law: For purposes of Section 9.12(d), the Applicable State Law shall be (a) the law of the State of New York and (b) such other state law whose applicability shall have been brought to the attention of the Securities Administrator and the Trustee by either (i) an Opinion of Counsel reasonably acceptable to the Securities Administrator and the Trustee delivered to it by the Master Servicer or the Depositor, or (ii) written notice from the appropriate taxing authority as to the applicability of such state law.

Appraised Value: With respect to any Mortgage Loan originated in connection with a refinancing, the appraised value of the related Mortgaged Property based upon the appraisal made at the time of such refinancing or, with respect to any other Mortgage Loan, the amount set forth as the appraised value of the related Mortgaged Property in an appraisal made for the mortgage originator in connection with its origination of the related Mortgage Loan.

Assignment Agreements: The agreements attached hereto as Exhibit I, whereby the Assigned Loans (as defined therein) and the related Servicing Agreements were assigned to the Trustee for the benefit of the Certificateholders.

Assumed Final Distribution Date: May 25, 2045, or if such day is not a Business Day, the next succeeding Business Day.

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Available Funds: With respect to any Distribution Date, the sum of the Group I Available Funds, the Group II Available Funds and the Group III Available Funds for such Distribution Date.

Average Loss Severity Percentage: With respect to any Distribution Date and each Loan Group, the percentage equivalent of a fraction, the numerator of which is the sum of the Loss Severity Percentages for each Mortgage Loan in such Loan Group which had a Realized Loss and the denominator of which is the number of Mortgage Loans in the related Loan Group which had Realized Losses.

Bankruptcy Code: The United States Bankruptcy Code, as amended, as codified in 11 U.S.C. §§101-1330.

Bankruptcy Loss: With respect to any Mortgage Loan, any Deficient Valuation or Debt Service Reduction related to such Mortgage Loan as reported by the applicable Servicer to the Master Servicer.

Book-Entry Certificates: Initially, all Classes of Certificates other than the Private Certificates and the Residual Certificates.

Business Day: Any day other than (i) a Saturday or a Sunday, or (ii) a day on which the New York Stock Exchange or the Federal Reserve is closed or on which banking institutions in New York City or in any of the jurisdictions in which the Trustee, the Master Servicer, any Servicer or the Securities Administrator is located are authorized or obligated by law or executive order to be closed.

Carryover Shortfall: A Group I Carryover Shortfall, Group II Carryover Shortfall or Subordinate Carryover Shortfall, as applicable.

Carryover Shortfall Amount: A Group I Carryover Shortfall Amount, a Group II Carryover Shortfall Amount or a Subordinate Carryover Shortfall Amount, as applicable.

Century Lending: Century Mortgage Company doing business as Century Lending and its successor in interest.

Certificate: Any mortgage pass-through certificate evidencing a beneficial ownership interest in the Trust Fund signed by the Trustee and countersigned by the Certificate Registrar in substantially the forms annexed hereto as Exhibits A-1, A-2, A-3 and A-4 with the blanks therein appropriately completed.

Certificate Group: The Group I Senior Certificates, the Group II Senior Certificates and the Group III Senior Certificates, as applicable.

Certificate Owner: Any Person who is the beneficial owner of a Certificate registered in the name of the Depository or its nominee.

Certificate Register: The register maintained pursuant to Section 5.02.

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Certificate Registrar: The Securities Administrator or any successor certificate registrar appointed hereunder.

Certificate Registrar Office: The office of the Certificate Registrar located at Sixth Street and Marquette Avenue, Minneapolis, Minnesota 44579, Attention: SAMI II Series 2005-AR2.

Certificateholder: A Holder of a Certificate.

Class: With respect to the Certificates, I-A-1, I-A-2, I-X, II-A-1, II-A-2, II-A-3, II-X, III-A-1, III-A-2, M-X, M-1, M-2, M-3, M-4, M-5, M-6, M-7, R-I, R-II, R-III, B-1, B-2, B-3, B-4, B-5 and B-6.

Class Prepayment Distribution Trigger: For a Class of Subordinate Certificates (other than the Class M-X Certificates) for any Distribution Date, the Class Prepayment Distribution Trigger is satisfied if the fraction (expressed as a percentage), the numerator of which is the aggregate Current Principal Amount of such Class of Certificates and each Class of Certificates subordinate thereto, if any, and the denominator of which is the aggregate Scheduled Principal Balance of all of the Mortgage Loans as of the related Due Date, equals or exceeds such percentage calculated as of the Closing Date. If on any Distribution Date the Current Principal Amount of any Class of Subordinate Certificates (other than the Class M-X Certificates) for which the related Class Prepayment Distribution Trigger was satisfied on such Distribution Date is reduced to zero, any amounts distributable to such Class of Certificates pursuant to clauses (2), (3), (5) and (6) of the definition of "Subordinate Optimal Principal Amount," to the extent of such Class' remaining Allocable Share, shall be distributed to the remaining Class or Classes of Subordinate Certificates in reduction of their respective Current Principal Amounts, sequentially, in the order of their numerical Class designations.

Class R Certificates: The Class R-I, Class R-II and Class R-III Certificates.

Class R-I Certificate: Any one of the Class R-I Certificates executed by the Trustee and authenticated by the Certificate Registrar substantially in the form annexed hereto as Exhibit A-4 and evidencing an interest designated as a "residual interest" in REMIC I for purposes of the REMIC Provisions.

Class R-II Certificate: Any one of the Class R-II Certificates executed by the Trustee and authenticated by the Certificate Registrar substantially in the form annexed hereto as Exhibit A-4 and evidencing an interest designated as a "residual interest" in REMIC II for purposes of the REMIC Provisions.

Class R-III Certificate: Any one of the Class R-III Certificates executed by the Trustee and authenticated by the Certificate Registrar substantially in the form annexed hereto as Exhibit A-4 and evidencing an interest designated as a "residual interest" in REMIC III for purposes of the REMIC Provisions.

Closing Date: May 31, 2005.

Code: The Internal Revenue Code of 1986, as amended.

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Combined Loan-to-Value Ratio: The fraction, expressed as a percentage, the numerator of which is the sum of the original principal balance of the related Mortgage Loan at the date of origination and the principal balance of the related secondary financing and the denominator of which is the lesser of the selling price of the Mortgaged Property and its Appraised Value.

Commission: The United States Securities and Exchange Commission.

Compensating Interest Payment: As defined in Section 6.06.

Corporate Trust Office: The office of the Trustee at which at any particular time its corporate trust business is administered, which office, at the date of the execution of this Agreement, is located at 4 New York Plaza, 6th Floor, New York, New York 10004, Attention: Worldwide Securities Services-Global Debt, SAMI Series II 2005-AR2. With respect to the Certificate Registrar and the presentment of Certificates for registration of transfer, exchange or final payment, Wells Fargo Bank, National Association, Sixth Street and Marquette Avenue, Minneapolis, Minnesota 55479, Attention: Corporate Trust, SAMI II Series 2005-AR2, and for all other purposes, P.O. Box 98, Columbia, Maryland 21046 (or for overnight deliveries, 9062 Old Annapolis Road, Columbia, Maryland 21045), Attention: Corporate Trust, SAMI II Series 2005-AR2.

Corresponding Certificate: With respect to (i) REMIC II Regular Interest I-A-1, (ii) REMIC II Regular Interest I-A-2, (iii) REMIC II Regular Interest II-A-1, (iv) REMIC II Regular Interest II-A-2, (v) REMIC II Regular Interest II-A-3, (vi) REMIC II Regular Interest III-A-1, (vii) REMIC II Regular Interest III-A-2, (viii) REMIC II Regular Interest M-1, (ix) REMIC II Regular Interest M-2, (x) REMIC II Regular Interest M-3, (xi) REMIC II Regular Interest M-4, (xii) REMIC II Regular Interest M-5, (xiii) REMIC II Regular Interest M-6, (xiv) REMIC II Regular Interest M-7, (xv) REMIC II Regular Interest B-1, (xvi) REMIC II Regular Interest B-2, (xvii) REMIC II Regular Interest B-3, (xviii) REMIC II Regular Interest B-4, (xix) REMIC II Regular Interest B-5, (xx) REMIC II Regular Interest B-6, and (xxi) REMIC II Regular Interest MT-R, (i) the Class I-A-1 Certificates, (ii) the Class I-A-2 Certificates, (iii) the Class II-A-1 Certificates, (iv) the Class II-A-2 Certificates, (v) the Class II-A-3 Certificates, (vi) the Class III-A-1 Certificates, (vii) the Class III-A-2 Certificates, (viii) the Class M-1 Certificates, (ix) the Class M-2 Certificates, (x) the Class M-3 Certificates, (xi) the Class M-4 Certificates, (xii) the Class M-5 Certificates, (xiii) the Class M-6 Certificates, (xiv) the Class M-7 Certificates, (xv) the Class B-1 Certificates, (xvi) the Class B-2 Certificates, (xvii) the Class B-3 Certificates, (xviii) the Class B-4 Certificates, (xix) the Class B-5 Certificates, (xx) the Class B-6 Certificates and (xxi) the Class R-III Certificates, respectively. With respect to (i) REMIC I Regular Interests 1A, 1B and ZZZ, (ii) REMIC I Regular Interest 2A, 2B and ZZZ, (iii) REMIC I Regular Interest 3A, 3B and ZZZ, and (iv) REMIC I Regular Interest ZZZ, (i) REMIC II Regular Interest A-1, (ii) REMIC II Regular Interests A-2, (iii) REMIC II Regular Interest A-3, and (iv) REMIC II Regular Interests B-1, B-2, B-3, B-4, B-5 and B-6.

Countrywide: Countrywide Home Loans, Inc.

Countrywide AAR: That certain Assignment, Assumption and Recognition Agreement, made and entered into as of May 31, 2005, among EMC, the Trustee and Countrywide Servicing.

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Countrywide Servicing: Countrywide Home Loans Servicing LP.

Countrywide Servicing Agreement: That certain Seller's Warranties and Servicing Agreement, dated as of September 1, 2002, as amended on January 1, 2003 and September 1, 2004, by and between Countrywide and EMC, as attached hereto as Exhibit H-2, as modified pursuant to the Countrywide AAR.

Cross-Over Date: The first Distribution Date on which the aggregate Current Principal Amount of the Subordinate Certificates has been reduced to zero (after giving effect to all related distributions on such Distribution Date).

Current Principal Amount: With respect to any Certificate as of any Distribution Date, an amount equal to the initial principal amount of such Certificate on the Closing Date, plus the amount of any Net Deferred Interest allocated thereto on such Distribution Date and on previous Distribution Dates, plus, in the case of a Subordinate Certificate, any Subsequent Recoveries on the Mortgage Loans added to the Current Principal Amount of such Certificate pursuant to Section 6.02(h) hereof, as reduced by (i) all amounts distributed on previous Distribution Dates on such Certificate with respect to principal, (ii) the principal portion of all Realized Losses on the Mortgage Loans (other than Realized Losses on the Mortgage Loans resulting from Debt Service Reductions) allocated (as applicable) prior to such Distribution Date to such Certificate, taking account of its applicable Loss Allocation Limitation, and (iii) in the case of a Subordinate Certificate, such Certificate's pro rata share, if any, of the applicable Subordinate Certificate Writedown Amount for previous Distribution Dates. With respect to any Class of Certificates, the Current Principal Amount thereof will equal the sum of the Current Principal Amounts of all Certificates in such Class. Notwithstanding the foregoing, solely for purposes of giving consents, directions, waivers, approvals, requests and notices, the Class R-I, Class R-II and Class R-III Certificates after the Distribution Date on which they each receive the distribution of the last dollar of their respective original principal amount shall be deemed to have Current Principal Amounts equal to their respective Current Principal Amounts on the day immediately preceding such Distribution Date.

Custodial Agreement: An agreement, dated as of the Closing Date, among the Depositor, the Master Servicer, the Trustee and the Custodian, in substantially the form of Exhibit G hereto.

Custodian: Wells Fargo Bank, National Association, or any successor custodian appointed pursuant to the provisions hereof and of the Custodial Agreement.

Cut-off Date: May 1, 2005.

Cut-off Date Balance: $817,715,039.

Debt Service Reduction: Any reduction of the Scheduled Payments which a Mortgagor is obligated to pay with respect to a Mortgage Loan as a result of any proceeding under the Bankruptcy Code or any other similar state law or other proceeding.

Deferred Interest: The amount of interest which is deferred and added to the Outstanding Principal Balance of a Mortgage Loan due to negative amortization on such Mortgage Loan, as described in the Prospectus Supplement.

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Deficient Valuation: With respect to any Mortgage Loan, a valuation of the Mortgaged Property by a court of competent jurisdiction in an amount less than the then-outstanding indebtedness under such Mortgage Loan secured by such Mortgage Property, which valuation results from a proceeding initiated under the Bankruptcy Code or any other similar state law or other proceeding.

Deposit Amount: The amount of $150.00 deposited by the Depositor on the Closing Date into the Distribution Account.

Depositor: Structured Asset Mortgage Investments II Inc., a Delaware corporation, or its successors in interest.

Depository: The Depository Trust Company, the nominee of which is Cede & Co., and any successor thereto.

Depository Agreement: The meaning specified in Subsection 5.01(a) hereof.

Depository Participant: A broker, dealer, bank or other financial institution or other Person for whom from time to time the Depository effects book-entry transfers and pledges of securities deposited with the Depository.

Designated Depository Institution: A depository institution (commercial bank, federal savings bank, mutual savings bank or savings and loan association) or trust company (which may include the Trustee), the deposits of which are fully insured by the FDIC to the extent provided by law.

Determination Date: With respect to any Distribution Date and each Mortgage Loan, the Determination Date as defined in the related Servicing Agreement.

Disqualified Organization: Any of the following: (i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing (other than an instrumentality which is a corporation if all of its activities are subject to tax and, except for Freddie Mac or any successor thereto, a majority of its board of directors is not selected by such governmental unit), (ii) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, (iii) any organization (other than certain farmers' cooperatives described in Section 521 of the Code) which is exempt from the tax imposed by Chapter 1 of the Code (including the tax imposed by Section 511 of the Code on unrelated business taxable income), (iv) rural electric and telephone cooperatives described in Section 1381(a)(2)(C) of the Code, (v) any Person with respect to which income on any Residual Certificate is attributable to a foreign permanent establishment or fixed base, within the meaning of an applicable income tax treaty, of such Person or any other Person, (vi) any Person that does not satisfy the requirements of United States Treasury Department Regulation Section 1.860E-1(c) with respect to a transfer of a noneconomic residual interest, as defined therein, or (vii) any other Person so designated by the Trustee and the Certificate Registrar based upon an Opinion of Counsel that the holding of an ownership interest in a Residual Certificate by such Person may cause any REMIC contained in the Trust or any Person having an ownership interest in the Residual Certificate (other than such Person) to incur a liability for any federal tax imposed under the Code that would not otherwise be imposed but

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for the transfer of an ownership interest in a Residual Certificate to such Person. The terms "United States," "State" and "international organization" shall have the meanings set forth in Section 7701 of the Code or successor provisions.

Distribution Account: The trust account or accounts created and maintained pursuant to Section 4.02, which shall be denominated "Wells Fargo Bank, National Association, as Paying Agent, for the benefit of the registered holders of Structured Asset Mortgage Investments II Trust 2005-AR2, Mortgage Pass-Through Certificates, Series 2005-AR2 - Distribution Account," and which shall be an Eligible Account.

Distribution Account Deposit Date: The Business Day prior to each Distribution Date.

Distribution Date: The 25th day of any month, beginning in the month immediately following the month of the Closing Date, or, if such 25th day is not a Business Day, the Business Day immediately following.

DTC Custodian: The Securities Administrator, and its successors in interest as custodian for the Depository.

Due Date: With respect to each Mortgage Loan, the date in each month on which its Scheduled Payment is due, if such due date is the first day of a month, and otherwise is deemed to be the first day of the following month or such other date specified in the related Servicing Agreement. For purposes of calculating the Net Rates of the Mortgage Loans for the first Distribution Date, the second preceding Due Date with respect to the first Distribution Date will be the Cut-off Date.

Due Period: With respect to any Distribution Date and each Mortgage Loan, the period commencing on the second day of the month immediately preceding the month in which such Distribution Date occurs and ending at the close of business on the first day of the month in which such Distribution Date occurs.

Eligible Account: Any of (i) a segregated account maintained with a federal or state chartered depository institution (A) the short-term obligations of which are rated A-1+ or better by S&P and P-1 by Moody's at the time of any deposit therein or (B) insured by the FDIC (to the limits established by such Corporation), the uninsured deposits in which account are otherwise secured such that, as evidenced by an Opinion of Counsel (obtained by the Person requesting that the account be held pursuant to this clause (i)(B)) delivered to the Trustee prior to the establishment of such account, the Certificateholders will have a claim with respect to the funds in such account and a perfected first priority security interest against any collateral (which shall be limited to Permitted Investments, each of which shall mature not later than the Business Day immediately preceding the Distribution Date next following the date of investment in such collateral, or the Distribution Date (if such Permitted Investment is an obligation of the institution that maintains the Distribution Account)) securing such funds that is superior to claims of any other depositors or general creditors of the depository institution with which such account is maintained, (ii) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company with trust powers acting in its fiduciary capacity or (iii) a segregated account or accounts of a depository institution acceptable to the

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Rating Agencies (as evidenced in writing by the Rating Agencies that use of any such account as the Distribution Account will not have an adverse effect on the then-current ratings assigned to the Classes of the Certificates then rated by the respective Rating Agencies). Eligible Accounts may bear interest.

EMC: EMC Mortgage Corporation and its successor in interest.

EMC AAR: That certain Assignment, Assumption and Recognition Agreement, made and entered into as of May 31, 2005, among EMC, the Trustee and the Depositor.

EMC Mortgage Loans: The Mortgage Loans listed on the Mortgage Loan Schedule as being serviced by the EMC Servicer.

EMC Servicer: EMC, in its capacity as servicer hereunder, and its successors and assigns.

EMC Servicing Agreement: That certain Servicing Agreement, dated as of May 31, 2005, by and between EMC and the Depositor, as attached hereto as Exhibit H-4, as modified pursuant to the EMC AAR.

ERISA: The Employee Retirement Income Security Act of 1974, as amended.

Event of Default: An event of default described in Section 8.01.

EverHome: EverHome Mortgage Company (formerly known as Alliance Mortgage Company), and its successor in interest.

EverHome AAR: That certain Assignment, Assumption and Recognition Agreement, made and entered into as of May 31, 2005, among EMC, the Trustee and EverHome.

EverHome Subservicing Agreement: That certain Subservicing Agreement, dated as of August 1, 2002, and attached hereto as Exhibit H-1, between EverHome as servicer and EMC as owner, as modified pursuant to the EverHome AAR.

Excess Liquidation Proceeds: To the extent that such amount is not required by law to be paid to the related Mortgagor, the amount, if any, by which the sum of any Liquidation Proceeds with respect to a Liquidated Mortgage Loan received in the calendar month in which such Mortgage Loan became a Liquidated Mortgage Loan exceeds the sum of (i) the Scheduled Principal Balance of such Liquidated Mortgage Loan plus (ii) accrued interest at the Mortgage Interest Rate from the Due Date as to which interest was last paid or advanced (and not reimbursed) to the related Certificateholders up to the Due Date applicable to the Distribution Date immediately following the calendar month during which such liquidation occurred plus (iii) related Liquidation Expenses.

Exchange Act: As defined in Section 3.18.

Fannie Mae: Fannie Mae (also known as Federal National Mortgage Association) or any successor thereto.

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FDIC: Federal Deposit Insurance Corporation or any successor thereto.

F&M: F&M Mortgage Company, Inc. and its successor in interest.

Final Certification: The certification substantially in the form of Exhibit Three to the Custodial Agreement.

First Horizon: First Horizon Home Loan Corporation and its successor in interest.

Fiscal Quarter: December 1 through the last day of February, March 1 through May 31, June 1 through August 31, or September 1 through November 30, as applicable.

Fractional Undivided Interest: With respect to any Class of Certificates, the fractional undivided interest evidenced by any Certificate of such Class of Certificates the numerator of which is the Current Principal Amount, or Notional Amount in the case of the Interest Only Certificates, of such Certificate and the denominator of which is the Current Principal Amount, or Notional Amount in the case of the Interest Only Certificates, of such Class of Certificates. With respect to the Certificates in the aggregate, the fractional undivided interest evidenced by (i) each Class of Residual Certificates will be deemed to equal 0.25%, (ii) each Class of Interest Only Certificates will be deemed to equal 1.0% multiplied by a fraction, the numerator of which is the Notional Amount of such Certificate and the denominator of which is the aggregate Notional Amount of such respective Class of Certificates and (iii) a Certificate of any other Class will be deemed to equal 96.25% multiplied by a fraction, the numerator of which is the Current Principal Amount of such Certificate and the denominator of which is the aggregate Current Principal Amount of all the Certificates; provided, however, the percentage in clause (iii) above shall be increased by 1% upon the retirement of each Class of Interest Only Certificates.

Freddie Mac: Freddie Mac (also known as Federal Home Loan Mortgage Corporation), or any successor thereto.

Global Certificate: Any Private Certificate registered in the name of the Depository or its nominee, beneficial interests in which are reflected on the books of the Depository or on the books of a Person maintaining an account with such Depository (directly or as an indirect participant in accordance with the rules of such depository).

GreenPoint: GreenPoint Mortgage Funding, Inc., and its successor in interest.

Gross Margin: As to each Mortgage Loan, the fixed percentage set forth in the related Mortgage Note and indicated on the Mortgage Loan Schedule, which percentage is added to the related Index on each Interest Adjustment Date to determine (subject to rounding, the Minimum Lifetime Mortgage Rate, the Maximum Lifetime Mortgage Rate and the Periodic Rate Cap) the Mortgage Interest Rate from such Interest Adjustment Date until the next Interest Adjustment Date.

Group I Allocation Fraction: With respect to a Distribution Date, a fraction equal to (x) the Group I Available Funds for such Distribution Date over (ii) the aggregate amount of the Group I, Group II and Group III Available Funds for such Distribution Date.

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Group I Available Funds, Group II Available Funds and Group III Available Funds: With respect to any Distribution Date, an amount equal to the aggregate of the following amounts with respect to the Mortgage Loans in the related Loan Group: (a) all previously undistributed payments on account of principal collections on the Mortgage Loans (including the principal portion of Scheduled Payments, Principal Prepayments and the principal amount of Net Liquidation Proceeds and Subsequent Recoveries on the Mortgage Loans) and all previously undistributed payments on account of interest collections on the Mortgage Loans received after the Cut-off Date and on or prior to the related Determination Date, in each case from the Mortgage Loans in the related Loan Group, (b) any Monthly Advances and Compensating Interest Payments by a Servicer or the Master Servicer (or by the Trustee, as successor master servicer) with respect to such Distribution Date, in each case, in respect of the Mortgage Loans in the related Loan Group, (c) any other miscellaneous amounts remitted by the Master Servicer or a Servicer pursuant to the related Servicing Agreement, and (d) any amount reimbursed by the Master Servicer for such Distribution Date in connection with losses on certain eligible investments, except:

(i) all payments that were due on or before the Cut-off Date with respect to the Mortgage Loans in the related Loan Group;

(ii) all Principal Prepayments and Liquidation Proceeds received after the applicable Prepayment Period;

(iii) all payments, other than Principal Prepayments, that represent early receipt of Scheduled Payments due on a date or dates subsequent to the related Due Date;

(iv) amounts received on particular Mortgage Loans as late payments of principal or interest and respecting which, and to the extent that, there are any unreimbursed Monthly Advances;

(v) amounts representing Monthly Advances determined to be Nonrecoverable Advances; and

(vi) any investment earnings on amounts on deposit in the Distribution Account, the Group I Carryover Shortfall Reserve Fund, the Group II Carryover Shortfall Reserve Fund and the Subordinate Carryover Shortfall Reserve Fund, and amounts permitted to be withdrawn (other than as a distribution of principal, interest or Carryover Shortfall Amounts on the related Certificates) from the Distribution Account, the Group I Carryover Shortfall Reserve Fund, the Group II Carryover Shortfall Reserve Fund and the Subordinate Carryover Shortfall Reserve Fund, and amounts to pay the Servicing Fees or to reimburse any Servicer, the Securities Administrator, the Trustee, the Custodian or the Master Servicer for fees and the related Loan Group's pro rata share of reimbursable expenses as are due under the applicable Servicing Agreement, this Agreement or the Custodial Agreement and that have not been retained by or paid to such Servicer, the Trustee, the Custodian or the Master Servicer.

Group I Carryover Shortfall: With respect to the Class I-A-1 and Class I-A-2 Certificates and any Distribution Date for which the respective Pass-Through Rate for such Certificates is

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equal to the weighted average of the Net Rates on the Group I Mortgage Loans, the excess, if any, of (x) Accrued Certificate Interest on the Class I-A-1 and Class I-A-2 Certificates for such Distribution Date, using the lesser of (a) One-Month LIBOR plus the related Margin, as calculated for such Distribution Date, and (b) 10.50% per annum, over (y) Accrued Certificate Interest on the Class I-A-1 and Class I-A-2 Certificates, as applicable, for such Distribution Date at the weighted average of the Net Rates on the Group I Mortgage Loans.

Group I Carryover Shortfall Amount: With respect to the Class I-A-1 and Class I-A-2 Certificates and each Distribution Date, the sum of (a) the aggregate amount of Group I Carryover Shortfall for such Classes of Certificates on such Distribution Date which is not covered on such Distribution Date by interest distributions otherwise payable to the Class I-X Certificates, plus (b) any Group I Carryover Shortfall Amount for such Classes of Certificates remaining unpaid from the preceding Distribution Date, plus (c) one month's interest on the amount in clause (b) (based on the number of days in the preceding Interest Accrual Period) at a rate equal to the lesser of (i) One-Month LIBOR plus the related Margin for such Distribution Date and (ii) 10.50% per annum.

Group I Carryover Shortfall Reserve Fund: An "outside reserve fund" within the meaning of Treasury Regulation Section 1.860G-2(h), which is not an asset of any REMIC, ownership of which is evidenced by the Class I-X Certificates, and which is established and maintained pursuant to Section 4.04.

Group I Mortgage Loans: The Mortgage Loans identified as such on the Mortgage Loan Schedule.

Group I Senior Certificates: The Class I-A-1 Certificates, the Class I-A-2 Certificates, the Class I-X Certificates, the Class R-I Certificates, the Class R-II Certificates and the Class R-III Certificates.

Group II Allocation Fraction: With respect to a Distribution Date, a fraction equal to (x) the Group II Available Funds for such Distribution Date over (ii) the aggregate amount of the Group I Available Funds, Group II Available Funds and Group III Available Funds for such Distribution Date.

Group II Carryover Shortfall: With respect to the Class II-A-1, Class II-A-2 and Class II-A-3 Certificates and any Distribution Date for which the respective Pass-Through Rate for such Certificates is equal to the weighted average of the Net Rates on the Group II Mortgage Loans, the excess, if any, of (x) Accrued Certificate Interest on the Class II-A-1, Class II-A-2 and Class II-A-3 Certificates for such Distribution Date, using the lesser of (a) One-Month LIBOR plus the related Margin, as calculated for such Distribution Date, and (b) 10.50% per annum, over (y) Accrued Certificate Interest on the Class II-A-1, Class II-A-2 and Class II-A-3 Certificates for such Distribution Date at the weighted average of the Net Rates on the Group II Mortgage Loans.

Group II Carryover Shortfall Amount: With respect to the Class II-A-1, Class II-A-2, and Class II-A-3 Certificates and each Distribution Date, the sum of (a) the aggregate amount of Group II Carryover Shortfall for such Classes of Certificates on such Distribution Date which is

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not covered on such Distribution Date by interest distributions otherwise payable to the Class II-X Certificates, plus (b) any Group II Carryover Shortfall Amount for such Classes of Certificates remaining unpaid from the preceding Distribution Date, plus (c) one month's interest on the amount in clause (b) (based on the number of days in the preceding Interest Accrual Period) at a rate equal to the lesser of (i) One-Month LIBOR plus the related Margin for such Distribution Date and (ii) 10.50% per annum.

Group II Carryover Shortfall Reserve Fund: An "outside reserve fund" within the meaning of Treasury Regulation Section 1.860G-2(h), which is not an asset of any REMIC, ownership of which is evidenced by the Class II-X Certificates, and which is established and maintained pursuant to Section 4.05.

Group II Mortgage Loans: The Mortgage Loans identified as such on the Mortgage Loan Schedule.

Group II Senior Certificates: The Class II-A-1 Certificates, the Class II-A-2 Certificates, the Class II-A-3 Certificates and the Class II-X Certificates.

Group III Allocation Fraction: With respect to a Distribution Date, a fraction equal to (x) the Group III Available Funds for such Distribution Date over (ii) the aggregate amount of the Group I Available Funds, Group II Available Funds and Group III Available Funds for such Distribution Date.

Group III Mortgage Loans: The Mortgage Loans identified as such on the Mortgage Loan Schedule.

Group III Senior Certificates: The Class III-A-1 Certificates and the Class III-A-2 Certificates.

Group I Senior Optimal Principal Amount, Group II Senior Optimal Principal Amount and Group III Senior Optimal Principal Amount: With respect to each Distribution Date and the Group I Senior Certificates (other than the Residual Certificates), the Group II Senior Certificates and the Group III Senior Certificates, respectively, an amount equal to the sum, without duplication, of the following (after giving effect to the application of such amounts to cover Deferred Interest on the Group I Mortgage Loans, the Group II Mortgage Loans and the Group III Mortgage Loans, respectively, but in no event greater than the aggregate Current Principal Amount of the Group I Senior Certificates (other than the Residual Certificates), the Group II Senior Certificates and the Group III Senior Certificates, as applicable, immediately prior to such Distribution Date):

(1) the applicable Senior Percentage of all scheduled payments of principal allocated to the Scheduled Principal Balance due on each Outstanding Mortgage Loan in the related Loan Group on the related Due Date as specified in the amortization schedule at the time applicable thereto (after adjustments for previous Principal Prepayments but before any adjustment to such amortization schedule by reason of any bankruptcy or similar proceeding or any moratorium or similar waiver or grace period, if the Distribution Date occurs prior to the Cross-over Date);

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(2) the applicable Senior Prepayment Percentage of the Scheduled Principal Balance of each Mortgage Loan in the related Loan Group which was the subject of a Principal Prepayment in full received by the Master Servicer during the related Prepayment Period;

(3) the applicable Senior Prepayment Percentage of all Principal Prepayments in part received by the Master Servicer during the related Prepayment Period with respect to each Mortgage Loan in the related Loan Group;

(4) the lesser of (a) the applicable Senior Prepayment Percentage of the sum of (i) all Net Liquidation Proceeds allocable to principal received in respect of each Mortgage Loan in the related Loan Group which became a Liquidated Mortgage Loan during the related Prepayment Period (other than Mortgage Loans described in the immediately following clause (ii)) and all Subsequent Recoveries received in respect of each Liquidated Mortgage Loan in the related Loan Group during the related Due Period and (ii) the Scheduled Principal Balance of each such Mortgage Loan in the related Loan Group purchased by an insurer from the Trustee during the related Prepayment Period pursuant to the related Primary Mortgage Insurance Policy, if any, or otherwise; and (b) the applicable Senior Percentage of the sum of (i) the Scheduled Principal Balance of each Mortgage Loan in the related Loan Group which became a Liquidated Mortgage Loan during the related Prepayment Period (other than the Mortgage Loans described in the immediately following clause (ii)) and all Subsequent Recoveries received in respect of each Liquidated Mortgage Loan in the related Loan Group during the related Due Period and (ii) the Scheduled Principal Balance of each such Mortgage Loan in the related Loan Group that was purchased by an insurer from the Trustee during the related Prepayment Period pursuant to the related Primary Mortgage Insurance Policy, if any or otherwise; and

(5) the applicable Senior Prepayment Percentage of the sum of (a) the Scheduled Principal Balance of each Mortgage Loan in the related Loan Group which was repurchased by the Seller in connection with such Distribution Date and (b) the excess, if any, of the Scheduled Principal Balance of a Mortgage Loan in the related Loan Group that has been replaced by the Seller with a Substitute Mortgage Loan pursuant to the Agreement or the Mortgage Loan Purchase Agreement in connection with such Distribution Date over the Scheduled Principal Balance of such Substitute Mortgage Loan.

Group I Senior Percentage: Initially, 92.20%. On any Distribution Date, the lesser of (i) 100% and (ii) the percentage (carried to six places rounded up) obtained by dividing the aggregate Current Principal Amount of the Group I Senior Certificates (other than the Residual Certificates) immediately preceding such Distribution Date by the sum of the aggregate Scheduled Principal Balance of the Group I Mortgage Loans as of the beginning of the related Due Period.

Group II Senior Percentage: Initially, 92.20%. On any Distribution Date, the lesser of (i) 100% and (ii) the percentage (carried to six places rounded up) obtained by dividing the aggregate Current Principal Amount of the Group II Senior Certificates immediately preceding such Distribution Date by the sum of the aggregate Scheduled Principal Balance of the Group II Mortgage Loans as of the beginning of the related Due Period.

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Group III Senior Percentage: Initially, 92.20%. On any Distribution Date, the lesser of (i) 100% and (ii) the percentage (carried to six places rounded up) obtained by dividing the aggregate Current Principal Amount of the Group III Senior Certificates immediately preceding such Distribution Date by the sum of the aggregate Scheduled Principal Balance of the Group III Mortgage Loans as of the beginning of the related Due Period.

Group I Senior Prepayment Percentage: The Senior Prepayment Percentage for Group I Senior Certificates (other than the Residual Certificates) on any Distribution Date occurring during the periods set forth below will be as follows:

Period (dates inclusive)	Group I Senior Prepayment Percentage
June 25, 2005 – May 25, 2015	100%
June 25, 2015 – May 25, 2016	Group I Senior Percentage plus 70% of the Group I Subordinate Percentage
June 25, 2016 – May 25, 2017	Group I Senior Percentage plus 60% of the Group I Subordinate Percentage
June 25, 2017 – May 25, 2018	Group I Senior Percentage plus 40% of the Group I Subordinate Percentage
June 25, 2018 – May 25, 2019	Group I Senior Percentage plus 20% of the Group I Subordinate Percentage
June 25, 2019 and thereafter	Group I Senior Percentage

In addition, no reduction of the Group I Senior Prepayment Percentage shall occur on any Distribution Date unless, as of the last day of the month preceding such Distribution Date, (A) the aggregate Scheduled Principal Balance of the Mortgage Loans delinquent 60 days or more (including for this purpose any such Mortgage Loans in foreclosure and Mortgage Loans with respect to which the related Mortgaged Property has been acquired by the Trust), averaged over the last six months, as a percentage of the sum of the aggregate Current Principal Amount of the Subordinate Certificates, does not exceed 50%; and (B) cumulative Realized Losses on the Mortgage Loans do not exceed (a) 30% of the Original Subordinate Principal Balance if such Distribution Date occurs between and including June 2015 and May 2016, (b) 35% of the Original Subordinate Principal Balance if such Distribution Date occurs between and including June 2016 and May 2017, (c) 40% of the Original Subordinate Principal Balance if such Distribution Date occurs between and including June 2017 and May 2018, (d) 45% of the Original Subordinate Principal Balance if such Distribution Date occurs between and including June 2018 and May 2019, and (e) 50% of the Original Subordinate Principal Balance if such Distribution Date occurs during or after June 2019.

In addition, if on any Distribution Date after the Distribution Date occurring in May 2008 the current weighted average of the Subordinate Percentages is equal to or greater than two times the initial weighted average of the Subordinate Percentages and (a) the aggregate Scheduled Principal Balances of the Mortgage Loans delinquent 60 days or more (including for this purpose any such Mortgage Loans in foreclosure and such Mortgage Loans with respect to which the related Mortgaged Property has been acquired by the Trust), averaged over the last six months, as a percentage of the sum of the aggregate Current Principal Amount of the Subordinate

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Certificates, does not exceed 50% and (b)(i) on or prior to the Distribution Date in May 2008, cumulative Realized Losses on the Mortgage Loans as of the end of the related Prepayment Period do not exceed 20% of the Original Subordinate Principal Balance and (ii) after the Distribution Date in May 2008, cumulative Realized Losses on the Mortgage Loans as of the end of the related Prepayment Period do not exceed 30% of the Original Subordinate Principal Balance, then, in each case, the Group I Senior Prepayment Percentage for such Distribution Date will equal the Group I Senior Percentage; provided, however, if on a Distribution Date prior to the Distribution Date in May 2008 the current Subordinate Percentage is equal to or greater than two times the initial Subordinate Percentage for the Group I Senior Certificates and the above delinquency and loss tests are met, then the Group I Senior Prepayment Percentage for such Distribution Date will equal the Group I Senior Percentage plus 50% of the Group I Subordinate Percentage.

Notwithstanding the foregoing, if on any Distribution Date, the percentage, the numerator of which is the aggregate Current Principal Amount of the Group I Senior Certificates (other than the Residual Certificates) immediately preceding such Distribution Date, and the denominator of which is the sum of the aggregate Scheduled Principal Balance of the Group I Mortgage Loans as of the beginning of the related Due Period, exceeds such percentage as of the Cut-off Date, then the Senior Prepayment Percentage with respect to the Group I Senior Certificates (other than the Residual Certificates) for such Distribution Date will equal 100%.

Group II Senior Prepayment Percentage: The Senior Prepayment Percentage for the Group II Senior Certificates on any Distribution Date occurring during the periods set forth below will be as follows:

Period (dates inclusive)	Group II Senior Prepayment Percentage
June 25, 2005 – May 25, 2015	100%
June 25, 2015 – May 25, 2016	Group II Senior Percentage plus 70% of the Group II Subordinate Percentage
June 25, 2016 – May 25, 2017	Group II Senior Percentage plus 60% of the Group II Subordinate Percentage
June 25, 2017 – May 25, 2018	Group II Senior Percentage plus 40% of the Group II Subordinate Percentage
June 25, 2018 – May 25, 2019	Group II Senior Percentage plus 20% of the Group II Subordinate Percentage
June 25, 2019 and thereafter	Group II Senior Percentage

In addition, no reduction of the Group II Senior Prepayment Percentage shall occur on any Distribution Date unless, as of the last day of the month preceding such Distribution Date, (A) the aggregate Scheduled Principal Balance of the Mortgage Loans delinquent 60 days or more (including for this purpose any such Mortgage Loans in foreclosure and Mortgage Loans with respect to which the related Mortgaged Property has been acquired by the Trust), averaged over the last six months, as a percentage of the sum of the aggregate Current Principal Amount of the Subordinate Certificates, does not exceed 50%; and (B) cumulative Realized Losses on the Mortgage Loans do not exceed (a) 30% of the Original Subordinate Principal Balance if such

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Distribution Date occurs between and including June 2015 and May 2016, (b) 35% of the Original Subordinate Principal Balance if such Distribution Date occurs between and including June 2016 and May 2017, (c) 40% of the Original Subordinate Principal Balance if such Distribution Date occurs between and including June 2017 and May 2018, (d) 45% of the Original Subordinate Principal Balance if such Distribution Date occurs between and including June 2018 and May 2019, and (e) 50% of the Original Subordinate Principal Balance if such Distribution Date occurs during or after June 2019.

In addition, if on any Distribution Date after the Distribution Date occurring in May 2008 the current weighted average of the Subordinate Percentages is equal to or greater than two times the initial weighted average of the Subordinate Percentages, and (a) the aggregate Scheduled Principal Balance of the Mortgage Loans delinquent 60 days or more (including for this purpose any such Mortgage Loans in foreclosure and such Mortgage Loans with respect to which the related Mortgaged Property has been acquired by the Trust), averaged over the last six months, as a percentage of the sum of the aggregate Current Principal Amount of the Subordinate Certificates, does not exceed 50% and (b)(i) on or prior to the Distribution Date in May 2008, cumulative Realized Losses on the Mortgage Loans as of the end of the related Prepayment Period do not exceed 20% of the Original Subordinate Principal Balance and (ii) after the Distribution Date in May 2008, cumulative Realized Losses on the Mortgage Loans as of the end of the related Prepayment Period do not exceed 30% of the Original Subordinate Principal Balance, then, in each case, the Group II Senior Prepayment Percentage for such Distribution Date will equal the Group II Senior Percentage; provided, however, if on a Distribution Date prior to the Distribution Date in May 2008 the current Subordinate Percentage is equal to or greater than two times the initial Subordinate Percentage for the Group II Senior Certificates and the above delinquency and loss tests are met, then the Group II Senior Prepayment Percentage for such Distribution Date will equal the Group II Senior Percentage plus 50% of the Group II Subordinate Percentage.

Notwithstanding the foregoing, if on any Distribution Date, the percentage, the numerator of which is the aggregate Current Principal Amount of the Group II Senior Certificates immediately preceding such Distribution Date, and the denominator of which is the sum of the aggregate Scheduled Principal Balance of the Group II Mortgage Loans as of the beginning of the related Due Period, exceeds such percentage as of the Cut-off Date, then the Senior Prepayment Percentage with respect to the Group II Senior Certificates for such Distribution Date will equal 100%.

Group III Senior Prepayment Percentage: The Senior Prepayment Percentage for the Group III Senior Certificates on any Distribution Date occurring during the periods set forth below will be as follows:

Period (dates inclusive)	Group II Senior Prepayment Percentage
June 25, 2005 – May 25, 2015	100%
June 25, 2015 – May 25, 2016	Group III Senior Percentage plus 70% of the Group III Subordinate Percentage
June 25, 2016 – May 25, 2017	Group III Senior Percentage plus 60% of the Group III Subordinate Percentage

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June 25, 2017 – May 25, 2018	Group III Senior Percentage plus 40% of the Group III Subordinate Percentage
June 25, 2018 – May 25, 2019	Group III Senior Percentage plus 20% of the Group III Subordinate Percentage
June 25, 2019 and thereafter	Group III Senior Percentage

In addition, no reduction of the Group III Senior Prepayment Percentage shall occur on any Distribution Date unless, as of the last day of the month preceding such Distribution Date, (A) the aggregate Scheduled Principal Balance of the Mortgage Loans delinquent 60 days or more (including for this purpose any such Mortgage Loans in foreclosure and Mortgage Loans with respect to which the related Mortgaged Property has been acquired by the Trust), averaged over the last six months, as a percentage of the sum of the aggregate Current Principal Amount of the Subordinate Certificates, does not exceed 50%; and (B) cumulative Realized Losses on the Mortgage Loans do not exceed (a) 30% of the Original Subordinate Principal Balance if such Distribution Date occurs between and including June 2015 and May 2016, (b) 35% of the Original Subordinate Principal Balance if such Distribution Date occurs between and including June 2016 and May 2017, (c) 40% of the Original Subordinate Principal Balance if such Distribution Date occurs between and including June 2017 and May 2018, (d) 45% of the Original Subordinate Principal Balance if such Distribution Date occurs between and including June 2018 and May 2019, and (e) 50% of the Original Subordinate Principal Balance if such Distribution Date occurs during or after June 2019.

In addition, if on any Distribution Date after the Distribution Date occurring in May 2008 the current weighted average of the Subordinate Percentages is equal to or greater than two times the initial weighted average of the Subordinate Percentages, and (a) the aggregate Scheduled Principal Balance of the Mortgage Loans delinquent 60 days or more (including for this purpose any such Mortgage Loans in foreclosure and such Mortgage Loans with respect to which the related Mortgaged Property has been acquired by the Trust), averaged over the last six months, as a percentage of the sum of the aggregate Current Principal Amount of the Subordinate Certificates, does not exceed 50% and (b)(i) on or prior to the Distribution Date in May 2008, cumulative Realized Losses on the Mortgage Loans as of the end of the related Prepayment Period do not exceed 20% of the Original Subordinate Principal Balance and (ii) after the Distribution Date in May 2008, cumulative Realized Losses on the Mortgage Loans as of the end of the related Prepayment Period do not exceed 30% of the Original Subordinate Principal Balance, then, in each case, the Group III Senior Prepayment Percentage for such Distribution Date will equal the Group III Senior Percentage; provided, however, if on a Distribution Date prior to the Distribution Date in May 2008 the current Subordinate Percentage is equal to or greater than two times the initial Subordinate Percentage for the Group III Senior Certificates and the above delinquency and loss tests are met, then the Group III Senior Prepayment Percentage for such Distribution Date will equal the Group III Senior Percentage plus 50% of the Group III Subordinate Percentage.

Notwithstanding the foregoing, if on any Distribution Date, the percentage, the numerator of which is the aggregate Current Principal Amount of the Group III Senior Certificates immediately preceding such Distribution Date, and the denominator of which is the aggregate Scheduled Principal Balance of the Group III Mortgage Loans as of the beginning of the related

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Due Period, exceeds such percentage as of the Cut-off Date, then the Senior Prepayment Percentage with respect to the Group III Senior Certificates for such Distribution Date will equal 100%.

Group I Subordinate Optimal Principal Amount: With respect to the Group I Subordinate Certificates and each Distribution Date will be an amount equal to the sum of the following from Loan Group I (after giving effect to the application of such amounts to cover Deferred Interest on the Mortgage Loans, but in no event greater than the aggregate Current Principal Amount of the Group I Subordinate Certificates immediately prior to such Distribution Date):

(1) the Group I Subordinate Percentage of the principal portion of all Monthly Payments due on each Mortgage Loan in Loan Group I on the related Due Date, as specified in the amortization schedule at the time applicable thereto (after adjustment for previous Principal Prepayments but before any adjustment to such amortization schedule by reason of any bankruptcy or similar proceeding or any moratorium or similar waiver or grace period);

(2) the Group I Subordinate Prepayment Percentage of the Scheduled Principal Balance of each Mortgage Loan in Loan Group I which was the subject of a prepayment in full received by the Master Servicer during the applicable Prepayment Period;

(3) the Group I Subordinate Prepayment Percentage of all partial prepayments of principal received by the Master Servicer during the applicable Prepayment Period for each Mortgage Loan in Loan Group I;

(4) the excess, if any, of (a) the Net Liquidation Proceeds allocable to principal received in respect of each Mortgage Loan in Loan Group I that became a Liquidated Mortgage Loan in Loan Group I during the related Prepayment Period and all Subsequent Recoveries received in respect of each Liquidated Mortgage Loan in Loan Group I during the related Due Period over (b) the sum of the amounts distributable to the holders of the Group I Senior Certificates on such Distribution Date pursuant to clause (4) of the definition of "Senior Optimal Principal Amount";

(5) the Group I Subordinate Prepayment Percentage of the sum of (a) the Scheduled Principal Balance of each Mortgage Loan or related REO Property in Loan Group I which was repurchased by the Seller in connection with such Distribution Date and (b) the amount, if any, by which the Scheduled Principal Balance of a Mortgage Loan in Loan Group I that has been replaced by the Seller with a substitute Mortgage Loan pursuant to the Agreement or the Mortgage Loan Purchase Agreement in connection with such Distribution Date exceeds the Scheduled Principal Balance of such substitute Mortgage Loan; and

(6) on the Distribution Date on which the Current Principal Amounts of the Group I Senior Certificates (other than the Residual Certificates) have all been reduced to zero, 100% of any applicable Senior Optimal Principal Amount.

After the aggregate Current Principal Amount of the Group I Subordinate Certificates has been reduced to zero, the Group I Subordinate Optimal Principal Amount will be zero.

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A 380

Group II Subordinate Optimal Principal Amount: With respect to the Group II Subordinate Certificates and each Distribution Date will be an amount equal to the sum of the following from Loan Group II (after giving effect to the application of such amounts to cover Deferred Interest on the Mortgage Loans, but in no event greater than the aggregate Current Principal Amount of the Group II Subordinate Certificates immediately prior to such Distribution Date):

(1) the Group II Subordinate Percentage of the principal portion of all Monthly Payments due on each Mortgage Loan in Loan Group II on the related Due Date, as specified in the amortization schedule at the time applicable thereto (after adjustment for previous Principal Prepayments but before any adjustment to such amortization schedule by reason of any bankruptcy or similar proceeding or any moratorium or similar waiver or grace period);

(2) the Group II Subordinate Prepayment Percentage of the Scheduled Principal Balance of each Mortgage Loan in Loan Group II which was the subject of a prepayment in full received by the Master Servicer during the applicable Prepayment Period;

(3) the Group II Subordinate Prepayment Percentage of all partial prepayments of principal received by the Master Servicer during the applicable Prepayment Period for each Mortgage Loan in Loan Group II;

(4) the excess, if any, of (a) the Net Liquidation Proceeds allocable to principal received in respect of each Mortgage Loan in Loan Group II that became a Liquidated Mortgage Loan in Loan Group II during the related Prepayment Period and all Subsequent Recoveries received in respect of each Liquidated Mortgage Loan in Loan Group II during the related Due Period over (b) the sum of the amounts distributable to the holders of the Group II Senior Certificates on such Distribution Date pursuant to clause (4) of the definition of "Senior Optimal Principal Amount";

(5) the Group II Subordinate Prepayment Percentage of the sum of (a) the Scheduled Principal Balance of each Mortgage Loan or related REO Property in Loan Group II which was repurchased by the Seller in connection with such Distribution Date and (b) the amount, if any, by which the Scheduled Principal Balance of a Mortgage Loan in Loan Group II that has been replaced by the Seller with a substitute Mortgage Loan pursuant to the Agreement or the Mortgage Loan Purchase Agreement in connection with such Distribution Date exceeds the Scheduled Principal Balance of such substitute Mortgage Loan; and

(6) on the Distribution Date on which the Current Principal Amounts of the Group II Senior Certificates (other than the Residual Certificates) have all been reduced to zero, 100% of any applicable Senior Optimal Principal Amount.

After the aggregate Current Principal Amount of the Group II Subordinate Certificates has been reduced to zero, the Group II Subordinate Optimal Principal Amount will be zero.

Group III Subordinate Optimal Principal Amount: With respect to the Group III Subordinate Certificates and each Distribution Date will be an amount equal to the sum of the following from Loan Group III (after giving effect to the application of such amounts to cover

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Deferred Interest on the Mortgage Loans, but in no event greater than the aggregate Current Principal Amount of the Group III Subordinate Certificates immediately prior to such Distribution Date):

(1) the Group III Subordinate Percentage of the principal portion of all Monthly Payments due on each Mortgage Loan in Loan Group III on the related Due Date, as specified in the amortization schedule at the time applicable thereto (after adjustment for previous Principal Prepayments but before any adjustment to such amortization schedule by reason of any bankruptcy or similar proceeding or any moratorium or similar waiver or grace period);

(2) the Group III Subordinate Prepayment Percentage of the Scheduled Principal Balance of each Mortgage Loan in Loan Group III which was the subject of a prepayment in full received by the Master Servicer during the applicable Prepayment Period;

(3) the Group III Subordinate Prepayment Percentage of all partial prepayments of principal received by the Master Servicer during the applicable Prepayment Period for each Mortgage Loan in Loan Group III;

(4) the excess, if any, of (a) the Net Liquidation Proceeds allocable to principal received in respect of each Mortgage Loan in Loan Group III that became a Liquidated Mortgage Loan in Loan Group III during the related Prepayment Period and all Subsequent Recoveries received in respect of each Liquidated Mortgage Loan in Loan Group III during the related Due Period over (b) the sum of the amounts distributable to the holders of the Group III Senior Certificates on such Distribution Date pursuant to clause (4) of the definition of "Senior Optimal Principal Amount";

(5) the Group III Subordinate Prepayment Percentage of the sum of (a) the Scheduled Principal Balance of each Mortgage Loan or related REO Property in Loan Group III which was repurchased by the Seller in connection with such Distribution Date and (b) the amount, if any, by which the Scheduled Principal Balance of a Mortgage Loan in Loan Group III that has been replaced by the Seller with a substitute Mortgage Loan pursuant to the Agreement or the Mortgage Loan Purchase Agreement in connection with such Distribution Date exceeds the Scheduled Principal Balance of such substitute Mortgage Loan; and

(6) on the Distribution Date on which the Current Principal Amounts of the Group III Senior Certificates (other than the Residual Certificates) have all been reduced to zero, 100% of any applicable Senior Optimal Principal Amount.

After the aggregate Current Principal Amount of the Group III Subordinate Certificates has been reduced to zero, the Group III Subordinate Optimal Principal Amount will be zero.

Group I Subordinate Percentage: With respect to the Group I Mortgage Loans, on any Distribution Date, 100% minus the Group I Senior Percentage.

Group II Subordinate Percentage: With respect to the Group II Mortgage Loans, on any Distribution Date, 100% minus the Group II Senior Percentage.

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Group III Subordinate Percentage: With respect to the Group III Mortgage Loans, on any Distribution Date, 100% minus the Group III Senior Percentage.

Group I Subordinate Prepayment Percentage: For the Subordinate Certificates and with respect to Loan Group I, on any Distribution Date, 100% minus the Group I Senior Prepayment Percentage, except that on any Distribution Date after the aggregate Current Principal Amount of the Group I Senior Certificates (other than the Residual Certificates) has been reduced to zero, the Group I Subordinate Prepayment Percentage for the Subordinate Certificates with respect to Loan Group I will equal 100%.

Group II Subordinate Prepayment Percentage: For the Subordinate Certificates and with respect to Loan Group II, on any Distribution Date, 100% minus the Group II Senior Prepayment Percentage, except that on any Distribution Date after the aggregate Current Principal Amount of the Group II Senior Certificates has been reduced to zero, the Group II Subordinate Prepayment Percentage for the Subordinate Certificates with respect to Loan Group II will equal 100%.

Group III Subordinate Prepayment Percentage: For the Subordinate Certificates and with respect to Loan Group III, on any Distribution Date, 100% minus the Group III Senior Prepayment Percentage, except that on any Distribution Date after the aggregate Current Principal Amount of the Group III Senior Certificates has been reduced to zero, the Group III Subordinate Prepayment Percentage for the Subordinate Certificates with respect to Loan Group III will equal 100%.

Holder: The Person in whose name a Certificate is registered in the Certificate Register, except that, subject to Subsections 11.02(b) and 11.05(e), solely for the purpose of giving any consent pursuant to this Agreement, any Certificate registered in the name of the Depositor, the Master Servicer or the Trustee or any Affiliate thereof shall be deemed not to be outstanding and the Fractional Undivided Interest evidenced thereby shall not be taken into account in determining whether the requisite percentage of Fractional Undivided Interests necessary to effect any such consent has been obtained.

Indemnified Persons: The Trustee, the Master Servicer, the Custodian and the Securities Administrator and their respective officers, directors, agents and employees and, with respect to the Trustee, any separate co-trustee and its officers, directors, agents and employees.

Independent: When used with respect to any specified Person, this term means that such Person (a) is in fact independent of the Depositor or the Master Servicer and of any Affiliate of the Depositor or the Master Servicer, (b) does not have any direct financial interest or any material indirect financial interest in the Depositor or the Master Servicer or any Affiliate of the Depositor or the Master Servicer and (c) is not connected with the Depositor or the Master Servicer or any Affiliate of the Depositor or the Master Servicer as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

Index: The index, if any, specified in a Mortgage Note by reference to which the related Mortgage Interest Rate will be adjusted from time to time.

Individual Certificate: Any Private Certificate registered in the name of the Holder other than the Depository or its nominee.

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Initial Certification: The certification substantially in the form of Exhibit One to the Custodial Agreement.

Institutional Accredited Investor: Any Person meeting the requirements of Rule 501(a)(l), (2), (3) or (7) of Regulation D under the Securities Act or any entity all of the equity holders in which come within such paragraphs.

Insurance Policy: With respect to any Mortgage Loan, any standard hazard insurance policy, flood insurance policy or title insurance policy.

Insurance Proceeds: Amounts paid by the insurer under any Insurance Policy covering any Mortgage Loan or Mortgaged Property, other than amounts required to be paid over to the Mortgagor pursuant to law or the related Mortgage Note or Security Instrument, and other than amounts used to repair or restore the Mortgaged Property or to reimburse insured expenses, including the related Servicer's costs and expenses incurred in connection with presenting claims under the related Insurance Policies.

Interest Accrual Period: With respect to each Distribution Date, for each Class of Certificates (other than the Residual Certificates and the Adjustable Rate Certificates), the calendar month preceding the month in which such Distribution Date occurs. With respect to each Distribution Date and the Adjustable Rate Certificates, the period commencing on the 25th day of the preceding calendar month (or in the case of the first Distribution Date, the Closing Date), to the 24th day of the month of that Distribution Date. The Residual Certificates shall not bear interest.

Interest Adjustment Date: With respect to a Mortgage Loan, the date, if any, specified in the related Mortgage Note on which the Mortgage Interest Rate is subject to adjustment.

Interest Determination Date: With respect to each Distribution Date and the Adjustable Rate Certificates, the second LIBOR Business Day immediately preceding the commencement of the related Interest Accrual Period.

Interest Only Certificates: The Class I-X Certificates, the Class II-X Certificates and the Class M-X Certificates.

Interest Shortfall: With respect to any Distribution Date and each Mortgage Loan that during the related Prepayment Period was the subject of a Principal Prepayment or constitutes a Relief Act Mortgage Loan, an amount determined as follows:

(a) Partial Principal Prepayments received during the relevant Prepayment Period: The difference between (i) one month's interest at the applicable Net Rate on the amount of such prepayment and (ii) the amount of interest for the calendar month of such prepayment (adjusted to the applicable Net Rate) received at the time of such prepayment;

(b) Principal Prepayments in full received during the relevant Prepayment Period: The difference between (i) one month's interest at the applicable Net Rate on the Scheduled Principal Balance of such Mortgage Loan immediately prior to such prepayment and (ii) the

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amount of interest for the calendar month of such prepayment (adjusted to the applicable Net Rate) received at the time of such prepayment; and

(c) Relief Act Mortgage Loans: As to any Relief Act Mortgage Loan, the excess of (i) 30 days' interest (or, in the case of a Principal Prepayment in full, interest to the date of prepayment) on the Scheduled Principal Balance thereof (or, in the case of a Principal Prepayment in part, on the amount so prepaid) at the related Net Rate over (ii) 30 days' interest (or, in the case of a Principal Prepayment in full, interest to the date of prepayment) on such Scheduled Principal Balance (or, in the case of a Principal Prepayment in part, on the amount so prepaid) at the Net Rate required to be paid by the Mortgagor as limited by application of the Relief Act or similar state laws.

Interim Certification: The certification substantially in the form of Exhibit Two to the Custodial Agreement.

Investment Letter: The letter to be furnished by each Institutional Accredited Investor which purchases any of the Private Certificates in connection with such purchase, substantially in the form set forth as Exhibit F-1 hereto.

Lender-Paid PMI Rate: With respect to any Mortgage Loan covered by a lender-paid Primary Mortgage Insurance Policy, the premium to be paid by the applicable Servicer out of interest collections on the related Mortgage Loan, as stated in the Mortgage Loan Schedule.

LIBOR: With respect to any Distribution Date, the arithmetic mean of the London interbank offered rate quotations for one-month U.S. dollar deposits, expressed on a per annum basis, determined in accordance with Section 1.02.

LIBOR Business Day: A day on which banks are open for dealing in foreign currency and exchange in London, England and New York City.

Liquidated Mortgage Loan: With respect to any Distribution Date, a defaulted Mortgage Loan that has been liquidated through deed-in-lieu of foreclosure, foreclosure sale, trustee's sale or other realization as provided by applicable law governing the real property subject to the related Mortgage and any security agreements and as to which the related Servicer has certified (in accordance with Section 3.07) in the related Prepayment Period that it has received all amounts it expects to receive in connection with such liquidation.

Liquidation Date: With respect to any Liquidated Mortgage Loan, the date on which the related Servicer has certified that such Mortgage Loan has become a Liquidated Mortgage Loan.

Liquidation Expenses: With respect to a Mortgage Loan in liquidation, unreimbursed expenses paid or incurred by or for the account of the related Servicer or the Master Servicer in connection with the liquidation of such Mortgage Loan and the related Mortgaged Property, such expenses including (a) property protection expenses, (b) property sales expenses, (c) foreclosure and sale costs, including court costs and reasonable attorneys' fees, and (d) similar expenses reasonably paid or incurred in connection with the liquidation of a Mortgage Loan.

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Liquidation Proceeds: Amounts received by the related Servicer in connection with the liquidation of a defaulted Mortgage Loan, whether through trustee's sale, foreclosure sale, Insurance Proceeds, condemnation proceeds or otherwise.

Loan Group: Loan Group I, Loan Group II or Loan Group III, as applicable.

Loan Group I: The group of Mortgage Loans designated as belonging to Loan Group I on the Mortgage Loan Schedule.

Loan Group II: The group of Mortgage Loans designated as belonging to Loan Group II on the Mortgage Loan Schedule.

Loan Group III: The group of Mortgage Loans designated as belonging to Loan Group III on the Mortgage Loan Schedule.

Loan-to-Value Ratio: With respect to any Mortgage Loan, the fraction, expressed as a percentage, the numerator of which is the principal balance of the related Mortgage Loan at origination and the denominator of which is the Original Value of the related Mortgaged Property.

Loss Allocation Limitation: The meaning specified in Section 6.02(c) hereof.

Loss and Delinquency Test: On any Distribution Date, the Loss and Delinquency Test is satisfied if, as of the last day of the month preceding such Distribution Date, (A) the aggregate Scheduled Principal Balance of the Mortgage Loans delinquent 60 days or more (including for this purpose any such Mortgage Loans in foreclosure and Mortgage Loans with respect to which the related Mortgaged Property has been acquired by the Trust), averaged over the last six months, as a percentage of the aggregate Current Principal Amount of the Subordinate Certificates, does not exceed 50%; and (B) cumulative Realized Losses on the Mortgage Loans do not exceed (a) 30% of the Original Subordinate Principal Balance if such Distribution Date occurs between and including June 2015 and May 2016, (b) 35% of the Original Subordinate Principal Balance if such Distribution Date occurs between and including June 2016 and May 2017, (c) 40% of the Original Subordinate Principal Balance if such Distribution Date occurs between and including June 2017 and May 2018, (d) 45% of the Original Subordinate Principal Balance if such Distribution Date occurs between and including June 2018 and May 2019, and (e) 50% of the Original Subordinate Principal Balance if such Distribution Date occurs on or after June 25, 2019.

Loss Severity Percentage: With respect to any Distribution Date, the percentage equivalent of a fraction, the numerator of which is the amount of Realized Losses incurred on a Mortgage Loan and the denominator of which is the Scheduled Principal Balance of such Mortgage Loan immediately prior to the liquidation of such Mortgage Loan.

Lost Notes: The original Mortgage Notes that have been lost, as indicated on the Mortgage Loan Schedule.

Margin: With respect to the Class I-A-1, Class I-A-2, Class II-A-1, Class II-A-2, Class II-A-3, Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7,

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Class B-1, Class B-2, Class B-3, Class B-4, Class B-5 and Class B-6 Certificates, initially 0.230%, 0.300%, 0.230%, 0.280%, 0.320%, 0.450%, 0.480%, 0.500%, 0.680%, 0.740%, 0.760%, 1.250%, 1.350%, 1.700%, 1.750%, 1.800%, 1.800% and 1.800%, respectively, per annum, and starting on the first Distribution Date after the first possible Optional Termination Date and on each Distribution Date thereafter, 0.460%, 0.600%, 0.460%, 0.560%, 0.640%, 0.675%, 0.720%, 0.750%, 1.020%, 1.110%, 1.140%, 1.875%, 2.025%, 2.550%, 2.625%, 2.700%, 2.700% and 2.700%, respectively, per annum.

Master Servicer: As of the Closing Date, Wells Fargo Bank, National Association and, thereafter, its respective successors in interest who meet the qualifications of a successor Master Servicer as set forth in this Agreement.

Master Servicer Certification: A written certification covering servicing of the Mortgage Loans by all Servicers and signed by an officer of the Master Servicer that complies with (i) the Sarbanes-Oxley Act of 2002, as amended from time to time, and (ii) the February 21, 2003 Statement by the Staff of the Division of Corporation Finance of the Securities and Exchange Commission Regarding Compliance by Asset-Backed Issuers with Exchange Act Rules 13a-14 and 15d-14, as in effect from time to time, provided that if after the Closing Date (a) the Sarbanes-Oxley Act of 2002 is amended, (b) the Statement referred to in clause (ii) is modified or superceded by any subsequent statement, rule or regulation of the Commission or any statement of a division thereof, or (c) any future releases, rules and regulations are published by the Commission from time to time pursuant to the Sarbanes-Oxley Act of 2002, which in any such case affects the form or substance of the required certification and results in the required certification being, in the reasonable judgment of the Master Servicer, materially more onerous than the form of the required certification as of the Closing Date, the Master Servicer Certification shall be as agreed to by the Master Servicer and the Depositor following a negotiation in good faith to determine how to comply with any such new requirements.

Master Servicing Compensation: The meaning specified in Section 3.14.

Maximum Lifetime Mortgage Rate: As to each Mortgage Loan, the rate, if any, set forth in the related Mortgage Note and indicated on the Mortgage Loan Schedule, that is the maximum level to which a Mortgage Interest Rate can adjust in accordance with its terms, regardless of changes in the applicable Index.

Metrocities: Metrocities Mortgage LLC and its successor in interest.

MERS: Mortgage Electronic Registration Systems, Inc., a corporation organized and existing under the laws of the State of Delaware, and any successor thereto.

MERS® System: The system of recording transfers of Mortgages electronically maintained by MERS.

MIN: The Mortgage Identification Number for Mortgage Loans registered with MERS on the MERS® System.

Minimum Lifetime Mortgage Rate: As to each Mortgage Loan, the rate, if any, set forth in the related Mortgage Note and indicated on the Mortgage Loan Schedule, that is the minimum

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level to which a Mortgage Interest Rate can adjust in accordance with its terms, regardless of changes in the applicable Index.

MOM Loan: With respect to any Mortgage Loan, MERS acting as the mortgagee of such Mortgage Loan, solely as nominee for the originator of such Mortgage Loan and its successors and assigns, at the origination thereof, or as nominee for any subsequent assignee of the originator pursuant to an assignment of mortgage to MERS.

Monthly Advance: An advance of principal or interest required to be made by a Servicer pursuant to the related Servicing Agreement or the Master Servicer pursuant to Section 6.05.

Monthly Payment: With respect to any Mortgage Loan and any month, the scheduled payment or payments of principal and interest due during such month on such Mortgage Loan which either is payable by a Mortgagor in such month under the related Mortgage Note, or in the case of an REO Property, would otherwise have been payable under the related Mortgage Note.

Moody's: Moody's Investors Service, Inc. and its successor in interest.

Mortgage File: The mortgage documents listed in Section 2.01(b) pertaining to a particular Mortgage Loan and any additional documents required to be added to the Mortgage File pursuant to this Agreement or the Mortgage Loan Purchase Agreement.

Mortgage Interest Rate: The annual rate at which interest accrues from time to time on any Mortgage Loan pursuant to the related Mortgage Note, which rate is equal to the "Mortgage Interest Rate" set forth with respect thereto on the Mortgage Loan Schedule.

Mortgage Loan: A mortgage loan transferred and assigned to the Trustee pursuant to Section 2.01 or Section 2.04 and held as a part of the Trust Fund, as identified in the Mortgage Loan Schedule, including a mortgage loan the property securing which has become an REO Property. Any Mortgage Loan that was intended by the parties hereto to be transferred to the Trust Fund as indicated by the Mortgage Loan Schedule which is in fact not so transferred for any reason including, without limitation, a breach of a representation or warranty with respect thereto, shall continue to be a Mortgage Loan hereunder until the Repurchase Price with respect thereto has been paid to the Trust Fund.

Mortgage Loan Purchase Agreement: The Mortgage Loan Purchase Agreement, dated as of May 31, 2005, between EMC, as seller, and Structured Asset Mortgage Investments II Inc., as purchaser, and all amendments thereof and supplements thereto, attached hereto as Exhibit J.

Mortgage Loan Schedule: The schedule attached hereto as Exhibit B with respect to the Mortgage Loans, as amended from time to time to reflect the repurchase or substitution of Mortgage Loans pursuant to this Agreement or the Mortgage Loan Purchase Agreement.

Mortgage Note: The originally executed note or other evidence of the indebtedness of a Mortgagor under the related Mortgage Loan.

Mortgage Store: The Mortgage Store Financial, Inc. and its successor in interest.

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Mortgaged Property: Land and improvements securing the indebtedness of a Mortgagor under the related Mortgage Loan or, in the case of REO Property, such REO Property.

Mortgagor: The obligor on a Mortgage Note.

Net Deferred Interest: On any Distribution Date, Deferred Interest on the Mortgage Loans during the related Due Period net of Principal Prepayments in full, partial Principal Prepayments, Net Liquidation Proceeds, Repurchase Proceeds and Scheduled Principal, in that order, included in the related Available Funds for such Distribution Date and available to be distributed on the related Certificates on that Distribution Date.

Net Interest Shortfall: With respect to any Distribution Date, Prepayment Interest Shortfalls, if any, for such Distribution Date net of Compensating Interest Payments made with respect to such Distribution Date.

Net Liquidation Proceeds: As to any Liquidated Mortgage Loan, Liquidation Proceeds net of (i) Liquidation Expenses which are payable therefrom to the related Servicer in accordance with the related Servicing Agreement or this Agreement, (ii) unreimbursed advances by the related Servicer and Monthly Advances made with respect to such Mortgage Loan and the related Mortgaged Property, and (iii) any other amounts payable to the related Servicer under the related Servicing Agreement.

Net Rate: With respect to each Mortgage Loan, the Mortgage Interest Rate less the related Servicing Fee Rate and less the Lender-Paid PMI Rate, if any, attributable thereto, in each case expressed as per annum rate.

Net Rate Cap: The weighted average of the Net Rates of the related Mortgage Loans, as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis.

Nonrecoverable Advance: Any advance or Monthly Advance (i) which was previously made or is proposed to be made by the Master Servicer, the Trustee (as successor Master Servicer) or the related Servicer and (ii) which, in the good faith judgment of the Master Servicer, the Trustee or the related Servicer, as the case may be, will not or, in the case of a proposed advance or Monthly Advance, would not, be ultimately recoverable by the Master Servicer, the Trustee (as successor Master Servicer) or the related Servicer from Liquidation Proceeds, Insurance Proceeds or future payments on the Mortgage Loan for which such advance or Monthly Advance was made or is proposed to be made.

Notional Amount: On any Distribution Date, the Notional Amount of the Class I-X Certificates is equal to the aggregate Current Principal Amount of the Class I-A-1 Certificates, the Class I-A-2 Certificates and the Class I-X Certificates (before taking into account the payment of principal on such Classes of Certificates on such Distribution Date). On any Distribution Date, the Notional Amount of the Class II-X Certificates is equal to the aggregate Current Principal Amount of the Class II-A-1 Certificates, the Class II-A-2 Certificates, the Class II-A-3 Certificates and the Class II-X Certificates (in each case before taking into account the payment of principal on such Classes of Certificates on such Distribution Date). On any Distribution Date, the Notional Amount of the Class M-X Certificates is equal to the aggregate

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Current Principal Amount of the Subordinate Certificates (before taking into account the payment of principal on such Certificates on such Distribution Date).

Offered Certificate: Any Senior Certificate or any Offered Subordinate Certificate.

Offered Subordinate Certificates: The Class M-X, Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class B-1, Class B-2 and Class B-3 Certificates.

Officer's Certificate: A certificate signed by the Chairman of the Board, the Vice Chairman of the Board, the President or a Vice President or Assistant Vice President or other authorized officer of the Master Servicer or the Depositor, as applicable, and delivered to the Trustee, as required by this Agreement.

One-Month LIBOR: A per annum rate equal to the average of interbank offered rates for one-month U.S. dollar-denominated deposits in the London market based on quotations of major banks as published in The Wall Street Journal and most recently available as of the time specified in the related Mortgage Note.

Opinion of Counsel: A written opinion of counsel who is or are acceptable to each addressee of such opinion and who, unless required to be Independent (an "Opinion of Independent Counsel"), may be internal counsel for EMC, the Master Servicer or the Depositor.

Optional Termination Date: Any Distribution Date on or after which the Scheduled Principal Balance (before giving effect to distributions to be made on such Distribution Date) of the Mortgage Loans is less than or equal to 10% of the Cut-off Date Balance.

Original Subordinate Principal Balance: The aggregate Current Principal Amount of the Subordinate Certificates as of the Closing Date.

Original Value: The lesser of (i) the Appraised Value or (ii) the sales price of a Mortgaged Property at the time of origination of a Mortgage Loan, except if either clause (i) or clause (ii) is unavailable, then the other may be used to determine the Original Value, or if both clauses (i) and (ii) are unavailable, then Original Value may be determined from other sources reasonably acceptable to the Depositor.

Outstanding Mortgage Loan: With respect to any Due Date, a Mortgage Loan with a Scheduled Principal Balance greater than zero which, prior to such Due Date, was not the subject of a Principal Prepayment in full, did not become a Liquidated Mortgage Loan and was not purchased or replaced.

Outstanding Principal Balance: As of the time of any determination, the principal balance of a Mortgage Loan remaining to be paid by the Mortgagor, or, in the case of an REO Property, the principal balance of the related Mortgage Loan remaining to be paid by the Mortgagor at the time such property was acquired by the Trust Fund less any Net Liquidation Proceeds with respect thereto to the extent applied to principal.

PMC: PMC Bancorp and its successor in interest.

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Pass-Through Rate: As to each Class of Certificates (other than the Residual Certificates) and the REMIC I Regular Interests and the REMIC II Regular Interests, the rate of interest determined as provided with respect thereto, in Section 5.01(c). The Residual Certificates do not have a Pass-Through Rate and shall not bear interest.

Paying Agent: The Securities Administrator or any successor paying agent appointed hereunder.

Periodic Rate Cap: As to each Mortgage Loan, the rate, if any, set forth in the related Mortgage Note and indicated on the Mortgage Loan Schedule, that is the maximum adjustment that can be made to the Mortgage Interest Rate on each Interest Adjustment Date in accordance with its terms, regardless of changes in the applicable Index.

Permitted Investments: Any one or more of the following obligations or securities held in the name of the Trustee for the benefit of the Certificateholders:

(i) direct obligations of, and obligations the timely payment of which are fully guaranteed by the United States of America or any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America;

(ii) (a) demand or time deposits, federal funds or bankers' acceptances (which shall each have a maturity of not more than 90 days and, in the case of bankers' acceptances, shall in no event have an original maturity of more than 365 days or a remaining maturity of more than 30 days) issued by any depository institution or trust company incorporated under the laws of the United States of America or any state thereof (including the Trustee or the Master Servicer or its Affiliates acting in its commercial banking capacity) and subject to supervision and examination by federal and/or state banking authorities, provided that the commercial paper and/or the short-term debt rating and/or the long-term unsecured debt obligations of such depository institution or trust company at the time of such investment or contractual commitment providing for such investment have the Applicable Credit Rating or better from each Rating Agency and (b) any other demand or time deposit or certificate of deposit that is fully insured by the Federal Deposit Insurance Corporation;

(iii) repurchase obligations with respect to (a) any security described in clause (i) above or (b) any other security issued or guaranteed by an agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America, in either case entered into with a depository institution or trust company (acting as principal) described in clause (ii)(a) above where the Trustee holds the security therefor; provided that such repurchase obligations shall have a remaining maturity of not more than 365 days;

(iv) securities bearing interest or sold at a discount issued by any corporation (including the Trustee or the Master Servicer or its Affiliates) incorporated under the laws of the United States of America or any state thereof that have the Applicable Credit Rating or better from each Rating Agency at the time of such investment or contractual

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commitment providing for such investment; provided, however, that securities issued by any particular corporation will not be Permitted Investments to the extent that investments therein will cause the then outstanding principal amount of securities issued by such corporation and held as part of the Trust to exceed 10% of the aggregate Outstanding Principal Balances of all the Mortgage Loans and Permitted Investments held as part of the Trust;

(v) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) having the Applicable Credit Rating or better from each Rating Agency at the time of such investment; provided, that such commercial paper shall have a remaining maturity of not more than 365 days;

(vi) a Reinvestment Agreement issued by any bank, insurance company or other corporation or entity;

(vii) any other demand, money market or time deposit, obligation, security or investment as may be acceptable to each Rating Agency as evidenced in writing by each Rating Agency to the Trustee; and

(viii) any money market or common trust fund having the Applicable Credit Rating or better from each Rating Agency, including any such fund for which the Trustee or Master Servicer or any affiliate of the Trustee or Master Servicer acts as a manager or an advisor; provided, however, that no instrument or security shall be a Permitted Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par or if such instrument or security is purchased at a price greater than par; provided, further, that, if rated, any such obligation or security shall not have an "r" highlighter affixed to its rating.

Permitted Transferee: Any Person other than a Disqualified Organization or an "electing large partnership" (as defined by Section 775 of the Code).

Person: Any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

Physical Certificates: The Residual Certificates and the Private Certificates.

Platinum: Platinum Capital Group and its successor in interest.

Plaza: Plaza Home Mortgage, Inc. and its successor in interest.

PMC Bancorp: PMC Bancorp and its successor in interest.

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Prepayment Charge: With respect to any Mortgage Loan, the charges or premiums, if any, due in connection with a full or partial prepayment of such Mortgage Loan in accordance with the terms of the related Mortgage Note.

Prepayment Interest Shortfalls: With respect to any Distribution Date, for each Mortgage Loan that was the subject of a partial Principal Prepayment or a Principal Prepayment in full during the related Prepayment Period, the amount, if any, by which (i) one month's interest at the applicable Net Rate on the Scheduled Principal Balance of such Mortgage Loan immediately prior to such prepayment, or, in the case of a partial Principal Prepayment, on the amount of such prepayment, exceeds (ii) the amount of interest paid or collected in connection with such Principal Prepayment less the sum of (a) any Prepayment Charges relating to such Mortgage Loan and (b) the related Servicing Fee.

Prepayment Period: As to any Distribution Date and (i) the Mortgage Loans serviced by each Servicer, other than the EMC Servicer, the prepayment period specified in the related Servicing Agreement and (ii) the Mortgage Loans serviced by the EMC Servicer, the period from the sixteenth day of the calendar month preceding the calendar month in which such Distribution Date occurs through the close of business on the fifteenth day of the calendar month in which such Distribution Date occurs.

Primary Mortgage Insurance Policy: Any primary mortgage guaranty insurance policy issued in connection with a Mortgage Loan which provides compensation to a Mortgage Note holder in the event of default by the obligor under such Mortgage Note or the related Security Instrument, if any, or any replacement policy therefor through the related Interest Accrual Period for such Class relating to a Distribution Date.

Principal Prepayment: Any payment (whether partial or full) or other recovery of (or proceeds with respect to) principal on a Mortgage Loan which is received in advance of its scheduled Due Date to the extent that it is not accompanied by an amount as to interest representing scheduled interest due on any date or dates in any month or months subsequent to the month of prepayment, including Insurance Proceeds and Repurchase Proceeds, but excluding the principal portion of Net Liquidation Proceeds received at the time a Mortgage Loan becomes a Liquidated Mortgage Loan.

Private Certificates: Any Class B-4, Class B-5 or Class B-6 Certificate.

Projected Principal Balance: For each specified Distribution Date, as set forth on Schedule B to the Prospectus Supplement.

Prospectus: The Prospectus, dated December 20, 2004, relating to the offering of the Offered Certificates.

Prospectus Supplement: The Prospectus Supplement, dated May 27, 2005, relating to the offering of the Offered Certificates.

Protected Account: An account or accounts established and maintained for the benefit of Certificateholders by each Servicer with respect to the related Mortgage Loans and with respect

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to REO Property serviced by such Servicer pursuant to the related Servicing Agreement, and which is an Eligible Account.

QIB: A Qualified Institutional Buyer as defined in Rule 144A promulgated under the Securities Act.

Qualified Insurer: Any insurance company duly qualified as such under the laws of the state or states in which the related Mortgaged Property or Mortgaged Properties is or are located, duly authorized and licensed in such state or states to transact the type of insurance business in which it is engaged and approved as an insurer by the Master Servicer, so long as its claims-paying ability is acceptable to the Rating Agencies for pass-through certificates having the same rating as the Certificates rated by the Rating Agencies as of the Closing Date.

Rating Agencies: Each of S&P and Moody's. If any such organization or its successor is no longer in existence, "Rating Agency" shall be a nationally recognized statistical rating organization, or other comparable Person, designated by the Depositor, notice of which designation shall be given to the Trustee. References herein to a given rating category of a Rating Agency shall mean such rating category without giving effect to any modifiers.

Realized Loss: With respect to (i) a Mortgage Loan, a Bankruptcy Loss, and (ii) a Liquidated Mortgage Loan, an amount (not less than zero nor greater than the Scheduled Principal Balance of such Mortgage Loan) equal to (x) the Outstanding Principal Balance of such Liquidated Mortgage Loan plus accrued and unpaid interest thereon at the related Mortgage Interest Rate through the last day of the month of such liquidation, less (y) the Net Liquidation Proceeds with respect to such Liquidated Mortgage Loan and the related Mortgaged Property that are allocated to principal. In addition, to the extent the Paying Agent receives from the related Servicer Subsequent Recoveries with respect to any Mortgage Loan, the amount of the Realized Loss with respect to that Mortgage Loan will be reduced to the extent such recoveries are applied to reduce the Current Principal Amount of any Class or Classes of Certificates (other than the Residual Certificates) on any Distribution Date. As to any Mortgage Loan which has become the subject of a Deficient Valuation, if the principal amount due under the related Mortgage Note has been reduced, then "Realized Loss" is the difference between the principal balance of such Mortgage Loan outstanding immediately prior to such Deficient Valuation and the principal balance of such Mortgage Loan as reduced by the Deficient Valuation.

Record Date: With respect to each Distribution Date and each Class of Certificates (other than the Residual Certificates and the Adjustable Rate Certificates), the close of business on the last Business Day of the month next preceding the month in which the related Distribution Date occurs. With respect to each Distribution Date and the Adjustable Rate Certificates, the 24th day of the month of such Distribution Date. With respect to the Residual Certificates, the Closing Date.

Reinvestment Agreements: One or more reinvestment agreements, acceptable to the Rating Agencies, from a bank, insurance company or other corporation or entity (including the Trustee).

Relief Act: The Servicemembers' Civil Relief Act or similar state law.

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Relief Act Mortgage Loan: Any Mortgage Loan as to which the Scheduled Payment thereof has been reduced due to the application of the Relief Act or similar state laws.

REMIC: A real estate mortgage investment conduit, as defined in the Code.

REMIC I: That group of assets contained in the Trust Fund designated as a REMIC consisting of (i) the Mortgage Loans, and the Mortgage Notes, mortgages and other documents related thereto, (ii) the Protected Accounts, (iii) any REO Property relating to the Mortgage Loans, and any revenues received thereon, (iv) the rights of the Depositor under the Mortgage Loan Purchase Agreement, (v) the rights with respect to the Servicing Agreements, to the extent assigned to the Trustee, (vi) the rights with respect to the Yield Maintenance Agreement and the Assignment Agreements, (vii) such funds or assets as from time to time are credited in the Distribution Account (or are required by the terms of this Agreement to be credited to the Distribution Account) and belonging to the Trust Fund (exclusive of the Group I Carryover Shortfall Reserve Fund, the Group II Carryover Shortfall Reserve Fund, the Subordinate Carryover Shortfall Fund, and the Yield Maintenance Account), (viii) the rights of the Trustee under all the Insurance Policies required to be maintained pursuant to this Agreement, and any amounts paid or payable by the related insurer under any such Insurance Policy (to the extent the related mortgagee has a claim thereto), and (ix) any proceeds of the foregoing.

REMIC I Interests: The REMIC I Regular Interests and the Class R-I Certificates.

REMIC I Regular Interests: The REMIC I Regular Interests, with such terms as described in Section 5.01(c).

REMIC I Subordinated Balance Ratio: The ratio among the Uncertificated Principal Balances of each of the REMIC I Regular Interests ending with the designation "A", equal to the ratio between, with respect to each such REMIC I Regular Interest, the excess of (x) the aggregate Scheduled Principal Balance of the Mortgage Loans in the related Loan Group over (y) the aggregate Current Principal Amount of the Senior Certificates (other than the Residual Certificates) in the related Loan Group.

REMIC II: That group of assets contained in the Trust Fund designated as a REMIC consisting of the REMIC I Regular Interests.

REMIC II Interests: The REMIC II Regular Interests and the Class R-II Certificates.

REMIC II Regular Interests: The REMIC II Regular Interests, with such terms as described in Section 5.01(c).

REMIC III: That group of assets contained in the Trust Fund designated as a REMIC consisting of the REMIC II Regular Interests.

REMIC III Interests: The REMIC III Regular Certificates and the Class R-III Certificates.

REMIC III Regular Certificates: The REMIC III Regular Interests, with such terms as described in Section 5.01(c).

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REMIC Opinion: An Opinion of Independent Counsel, to the effect that the proposed action described therein would not, under the REMIC Provisions, (i) cause REMIC I, REMIC II or REMIC III to fail to qualify as a REMIC while any regular interest in such REMIC is outstanding, (ii) result in a tax on prohibited transactions with respect to any REMIC or (iii) constitute a taxable contribution to any REMIC after the Startup Day.

REMIC Provisions: The provisions of the federal income tax law relating to REMICs, which appear at Sections 860A through 860G of the Code, and related provisions and regulations promulgated thereunder, as the foregoing may be in effect from time to time.

REO Property: A Mortgaged Property acquired in the name of the Trustee, for the benefit of Certificateholders, by foreclosure or deed-in-lieu of foreclosure in connection with a defaulted Mortgage Loan.

Repurchase Price: With respect to any Mortgage Loan (or any property acquired with respect thereto) required or permitted to be repurchased by the Seller pursuant to the Mortgage Loan Purchase Agreement or Article II or Section 3.21 of this Agreement, an amount equal to the sum of (i) (A) 100% of the Outstanding Principal Balance of such Mortgage Loan as of the date of repurchase (or if the related Mortgaged Property was acquired with respect thereto, 100% of the Outstanding Principal Balance of such Mortgage Loan as of the date of the acquisition), plus (B) accrued but unpaid interest on the Outstanding Principal Balance of such Mortgage Loan at the related Mortgage Interest Rate from the date through which interest was last paid on such Mortgage Loan by the related Mortgagor or advanced with respect to such Mortgage Loan to the first day of the month in which such amount is to be distributed, through and including the last day of the month of repurchase, and reduced by (C) any portion of the Master Servicing Compensation, Servicing Fee and Monthly Advances relating to such Mortgage Loan and advances payable to the purchaser of such Mortgage Loan, and (ii) any costs and damages incurred by the Trust and the Trustee in connection with any violation of such Mortgage Loan of any predatory or abusive lending laws.

Repurchase Proceeds: The Repurchase Price in connection with any repurchase of a Mortgage Loan by the Seller or any cash deposit in connection with the substitution of a Mortgage Loan.

Request for Release: A request for release in the form attached hereto as Exhibit D.

Required Insurance Policy: With respect to any Mortgage Loan, any insurance policy which is required to be maintained from time to time under this Agreement or the related Servicing Agreement with respect to such Mortgage Loan.

Rescap: Residential Mortgage Capital and its successor in interest.

Residual Certificates: Any of the Class R Certificates.

Responsible Officer: Any officer assigned to the Corporate Trust Office (or any successor thereto), including any Vice President, Assistant Vice President, Trust Officer, any Assistant Secretary, any trust officer or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and having direct

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responsibility for the administration of this Agreement, and any other officer of the Trustee to whom a matter arising hereunder may be referred.

Rule 144A: Rule 144A promulgated under the Securities Act.

Rule 144A Certificate: The certificate to be furnished by each purchaser of a Private Certificate (which is also a Physical Certificate) which is a Qualified Institutional Buyer as defined under Rule 144A promulgated under the Securities Act, substantially in the form set forth as Exhibit F-2 hereto.

S&P: Standard & Poor's, a division of The McGraw-Hill Companies, Inc., and its successors in interest.

Scheduled Payment: With respect to any Mortgage Loan and any Due Period, the scheduled payment or payments of principal and interest due during such Due Period on such Mortgage Loan which either is payable by a Mortgagor in such month under the related Mortgage Note or, in the case of REO Property, would otherwise have been payable under the related Mortgage Note.

Scheduled Principal: The principal portion of any Scheduled Payment.

Scheduled Principal Balance: With respect to any Mortgage Loan or related REO Property on any Distribution Date, the principal balance thereof as of the Cut-off Date, plus any Deferred Interest that is added to the Outstanding Principal Balance of such Mortgage Loan, and minus the sum of (1) the principal portion of the scheduled Monthly Payments due from Mortgagors with respect to such Mortgage Loan during each Due Period ending prior to such Distribution Date, irrespective of any delinquency in its payment, as specified in the amortization schedule at the time relating thereto (before any adjustment to such amortization schedule by reason of any bankruptcy or similar proceeding occurring after the Cut-off Date (other than a Deficient Valuation) or any moratorium or similar waiver or grace period), (2) all Principal Prepayments with respect to such Mortgage Loan received prior to or during the related Prepayment Period, and all Net Liquidation Proceeds relating to such Mortgage Loan, to the extent applied by the related Servicer as recoveries of principal in accordance with this Agreement or the related Servicing Agreement, that were received by the related Servicer as of the close of business on the last day of the Prepayment Period related to such Distribution Date and (3) any Realized Loss thereon incurred prior to or during the related Prepayment Period; provided that the Scheduled Principal Balance of any Liquidated Mortgage Loan is zero.

Securities Act: The Securities Act of 1933, as amended.

Securities Administrator: Wells Fargo Bank, National Association, and its successor in interest, and any successor securities administrator appointed as herein provided.

Securities Legend: "THIS CERTIFICATE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER ANY STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING THIS CERTIFICATE, AGREES THAT THIS CERTIFICATE MAY BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY IN

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COMPLIANCE WITH THE SECURITIES ACT AND OTHER APPLICABLE LAWS AND ONLY (1) PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A") TO A PERSON THAT THE HOLDER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A (A "QIB"), PURCHASING FOR ITS OWN ACCOUNT OR A QIB PURCHASING FOR THE ACCOUNT OF A QIB, WHOM THE HOLDER HAS INFORMED, IN EACH CASE, THAT THE REOFFER, RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (3) IN CERTIFICATED FORM TO AN "INSTITUTIONAL ACCREDITED INVESTOR" WITHIN THE MEANING THEREOF IN RULE 501(a)(1), (2), (3) or (7) OF REGULATION D UNDER THE SECURITIES ACT OR ANY ENTITY IN WHICH ALL OF THE EQUITY OWNERS COME WITHIN SUCH PARAGRAPHS PURCHASING NOT FOR DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, SUBJECT TO (A) THE RECEIPT BY THE TRUSTEE AND THE CERTIFICATE REGISTRAR OF A LETTER SUBSTANTIALLY IN THE FORM PROVIDED IN THE AGREEMENT AND (B) THE RECEIPT BY THE TRUSTEE AND THE CERTIFICATE REGISTRAR OF SUCH OTHER EVIDENCE ACCEPTABLE TO THE TRUSTEE AND THE CERTIFICATE REGISTRAR THAT SUCH REOFFER, RESALE, PLEDGE OR TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT AND OTHER APPLICABLE LAWS OR IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE UNITED STATES AND ANY OTHER APPLICABLE JURISDICTION. THIS CERTIFICATE MAY NOT BE ACQUIRED DIRECTLY OR INDIRECTLY BY, OR ON BEHALF OF, AN EMPLOYEE BENEFIT PLAN OR OTHER RETIREMENT ARRANGEMENT WHICH IS SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED, OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED [in the case of a Residual Certificate or a Private Certificate] UNLESS THE OPINION OF COUNSEL REQUIRED BY SECTION 5.07 OF THE POOLING AND SERVICING AGREEMENT IS PROVIDED [in the case of the Class B-4, Class B-5 and Class B-6 Certificates]:, UNLESS THE TRANSFEREE CERTIFIES OR REPRESENTS THAT THE PROPOSED TRANSFER AND HOLDING OF A CERTIFICATE AND THE SERVICING, MANAGEMENT AND OPERATION OF THE TRUST AND ITS ASSETS: (I) WILL NOT RESULT IN ANY PROHIBITED TRANSACTION WHICH IS NOT COVERED UNDER AN INDIVIDUAL OR CLASS PROHIBITED TRANSACTION EXEMPTION, INCLUDING, BUT NOT LIMITED TO, PROHIBITED TRANSACTION EXEMPTION ("PTE") 84-14, PTE 91-38, PTE 90-1, PTE 95-60 OR PTE 96-23 AND (II) WILL NOT GIVE RISE TO ANY ADDITIONAL FIDUCIARY DUTIES ON THE PART OF THE DEPOSITOR, THE SECURITIES ADMINISTRATOR, THE MASTER SERVICER, ANY SERVICER OR THE TRUSTEE, WHICH WILL BE DEEMED REPRESENTED BY AN OWNER OF A BOOK-ENTRY CERTIFICATE OR A GLOBAL CERTIFICATE AND WILL BE EVIDENCED BY A REPRESENTATION OR AN OPINION OF COUNSEL TO SUCH EFFECT BY OR ON BEHALF OF AN INSTITUTIONAL ACCREDITED INVESTOR."

Security Instrument: A written instrument creating a valid first lien on a Mortgaged Property securing a Mortgage Note, which may be any applicable form of mortgage, deed of trust, deed to secure debt or security deed, including any riders or addenda thereto.

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Seller: EMC Mortgage Corporation, as seller under the Mortgage Loan Purchase Agreement.

Senior Certificates: The Class I-A-1 Certificates, the Class I-A-2 Certificates, the Class II-A-1 Certificates, the Class II-A-2 Certificates, the Class II-A-3 Certificates, the Class III-A-1 Certificates, the Class III-A-2 Certificates, the Class I-X Certificates, the Class II-X Certificates and the Residual Certificates.

Senior Percentage: The Group I Senior Percentage, the Group II Senior Percentage or the Group III Senior Percentage.

Senior Prepayment Percentage: The Group I Senior Prepayment Percentage, the Group II Senior Prepayment Percentage or the Group III Prepayment Percentage.

Senior Optimal Principal Amount: The Group I Senior Optimal Principal Amount, the Group II Senior Optimal Principal Amount or the Group III Senior Optimal Principal Amount.

Servicer: With respect to each Mortgage Loan, any of EverHome, Washington Mutual, EMC Mortgage and Countrywide, as set forth in the Mortgage Loan Schedule.

Servicer Remittance Date: With respect to each Mortgage Loan (other than any Mortgage Loan serviced by Washington Mutual pursuant to the Washington Mutual Servicing Agreement), the 18th day of each month, or if such day is not a Business Day, then the preceding Business Day. With respect to each Mortgage Loan serviced by Washington Mutual pursuant to the Washington Mutual Servicing Agreement, the 18th day of each month, or if such day is not a Business Day, then the next Business Day.

Servicing Agreement(s): The EverHome Subservicing Agreement, the Countrywide Servicing Agreement, the EMC Servicing Agreement and the Washington Mutual Servicing Agreement, as applicable.

Servicing Fee: As to any Mortgage Loan and a Distribution Date, an amount equal to the product of (i) the Scheduled Principal Balance of such Mortgage Loan as of the Due Date in the month preceding the month in which such Distribution Date occurs and (ii) the applicable Servicing Fee Rate, or, in the event of any payment of interest that accompanies a Principal Prepayment in full during the related Due Period made by the Mortgagor immediately prior to such prepayment, interest at the Servicing Fee Rate on the Scheduled Principal Balance of such Mortgage Loan for the period covered by such payment of interest.

Servicing Fee Rate: As to any Mortgage Loan, a per annum rate (including, as applicable, any additional servicing fees) as set forth in the Mortgage Loan Schedule.

Servicing Officer: As defined in the related Servicing Agreement.

Startup Day: May 31, 2005.

Strike Price: With respect to the Yield Maintenance Agreement is, for the Distribution Date occurring in:

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(i) June 2005, 9.17%;

(ii) July 2005, 9.26%;

(iii) April, June (other than June 2005), September and November of each year during the term of the Yield Maintenance Agreement, 9.61%;

(iv) January, March, May, July (other than July 2005), August, October and December of each year during the term of the Yield Maintenance Agreement, 9.30%; and

(v) February of each year during the term of the Yield Maintenance Agreement, 10.30%.

Subordinate Carryover Shortfall: With respect to the Subordinate Certificates (other than the Class M-X Certificates) and any Distribution Date for which the respective Pass-Through Rate for such Certificates is equal to the weighted average of the Net Rates on the Mortgage Loans, the excess, if any, of (x) Accrued Certificate Interest on the Subordinate Certificates (other than the Class M-X Certificates) for such Distribution Date, using the lesser of (a) One-Month LIBOR plus the related Margin, as calculated for such Distribution Date, and (b) 10.50% per annum, over (y) Accrued Certificate Interest on the Subordinate Certificates (other than the Class M-X Certificates) for such Distribution Date at the weighted average of the Net Rates on the Mortgage Loans.

Subordinate Carryover Shortfall Amount: With respect to the Subordinate Certificates (other than the Class M-X Certificates) and each Distribution Date, the sum of (a) the aggregate amount of Subordinate Carryover Shortfall for such Classes of Certificates on such Distribution Date which is not covered on such Distribution Date by interest distributions otherwise payable to the Class M-X Certificates, plus (b) any Subordinate Carryover Shortfall Amount for such Classes of Certificates remaining unpaid from the preceding Distribution Date, plus (c) one month's interest on the amount in clause (b) (based on the number of days in the preceding Interest Accrual Period) at a rate equal to the lesser of (i) One-Month LIBOR plus the related Margin for such Distribution Date and (ii) 10.50% per annum.

Subordinate Carryover Shortfall Reserve Fund: An "outside reserve fund" within the meaning of Treasury Regulation Section 1.860G-2(h), which is not an asset of any REMIC, ownership of which is evidenced by the Class M-X Certificates, and which is established and maintained pursuant to Section 4.06.

Subordinate Certificates: The Class M-X, Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class B-1, Class B-2, Class B-3, Class B-4, Class B-5 and Class B-6 Certificates.

Subordinate Certificate Writedown Amount: With respect to the Subordinate Certificates, the amount by which (a) the sum of the aggregate Current Principal Amount of all of the Certificates other than the Residual Certificates (after giving effect to the distribution of principal collections on the Mortgage Loans and the allocation of applicable Realized Losses on the Mortgage Loans on a pro rata basis in reduction of the respective Current Principal Amount

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of such Certificates on such Distribution Date) exceeds (b) the aggregate Scheduled Principal Balance of the Mortgage Loans on the Due Date related to such Distribution Date.

Subordinate Optimal Principal Amount: The Group I Subordinate Optimal Principal Amount, the Group II Subordinate Optimal Principal Amount or the Group III Subordinate Optimal Principal Amount, as applicable.

Subordinate Percentage: As of any Distribution Date and with respect to any Loan Group, 100% minus the related Senior Percentage for the Senior Certificates (other than the Residual Certificates) related to such Loan Group. The initial Subordinate Percentage for each Loan Group is equal to 7.80%.

Subordinate Prepayment Percentage: For the Subordinate Certificates and as of any Distribution Date and with respect to each Loan Group related to the Mortgage Loans, will equal 100% minus the related Senior Prepayment Percentage for the Senior Certificates (other than the Residual Certificates) related to such Loan Group, except that on any Distribution Date after the Current Principal Amount of each Class of Senior Certificates (other than the Residual Certificates) has been reduced to zero, the Subordinate Prepayment Percentage for the Subordinate Certificates with respect to each Loan Group related to the Mortgage Loans will equal 100%.

Subsequent Recoveries: As of any Distribution Date, amounts received during the related Due Period by the related Servicer or surplus amounts held by the Master Servicer to cover estimated expenses (including, but not limited to, recoveries in respect of the representations and warranties made by the Seller) specifically related to a Liquidated Mortgage Loan or disposition of an REO property prior to the related Prepayment Period that result in a Realized Loss on a Mortgage Loan, after liquidation or disposition of such Mortgage Loan.

Substitute Mortgage Loan: A mortgage loan tendered to the Trustee pursuant to the related Servicing Agreement, the Mortgage Loan Purchase Agreement or Section 2.04 of this Agreement, as applicable, in each case, (i) which has an Outstanding Principal Balance not greater nor materially less than the Mortgage Loan for which it is to be substituted; (ii) which has a Mortgage Interest Rate and Net Rate not less than, and not materially greater than, such Mortgage Loan; (iii) which has a maturity date not materially earlier or later than such Mortgage Loan and not later than the latest maturity date of any Mortgage Loan; (iv) which is of the same property type and occupancy type as such Mortgage Loan; (v) which has a Loan-to-Value Ratio not greater than the Loan-to-Value Ratio of such Mortgage Loan; (vi) which (to the extent applicable) has a Combined Loan-to-Value Ratio not greater than the Combined Loan-to-Value Ratio of such Mortgage Loan; (vii) which is current in payment of principal and interest as of the date of substitution; (viii) as to which the payment terms do not vary in any material respect from the payment terms of the Mortgage Loan for which it is to be substituted; (ix) which has a Gross Margin, Periodic Rate Cap and Maximum Lifetime Mortgage Rate no less than those of such Mortgage Loan, has the same Index and interval between Interest Adjustment Dates as such Mortgage Loan, and has a Minimum Lifetime Mortgage Rate no lower than that of such Mortgage Loan; and (x) which is not secured by Mortgaged Property located in (A) the State of New Jersey, if such Mortgage Loan was originated on or after November 27, 2003 or (B) the State of New Mexico, if such Mortgage Loan was originated on or after January 1, 2004.

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Tax Administration and Tax Matters Person: The person designated as "tax matters person" in the manner provided under Treasury regulation § 1.860F-4(d) and temporary Treasury regulation § 301.6231(a)(7)-1T. The Securities Administrator or any successor thereto or assignee thereof shall serve as tax administrator hereunder and as agent for the Tax Matters Person. The Holder of each Class of Residual Certificates shall be the Tax Matters Person for the related REMIC, as more particularly set forth in Section 9.12 hereof.

Termination Costs: The costs and expenses related to the termination of any Servicer, the appointment of a successor servicer or the transfer and assumption of servicing with respect to the related Servicing Agreement, including, without limitation, the items set forth in Section 3.03(c).

Trust Fund or Trust: The corpus of the trust created by this Agreement, consisting of the Mortgage Loans and the other assets described in Section 2.01(a).

Trustee: JPMorgan Chase Bank, N.A., and its successor in interest, or any successor trustee appointed as herein provided.

Uncertificated Principal Balance: With respect to any REMIC I Regular Interest or REMIC II Regular Interest as of any Distribution Date, the initial principal amount of such Regular Interest, reduced by (i) all amounts distributed on previous Distribution Dates on such Regular Interest with respect to principal, (ii) the principal portion of all Realized Losses on the Mortgage Loans allocated prior to such Distribution Date to such Regular Interest, taking account of the Loss Allocation Limitation and (iii) in the case of a REMIC II Regular Interest for which the Corresponding Certificate is a Subordinate Certificate, such Regular Interest's pro rata share, if any, of the applicable Subordinate Certificate Writedown Amount allocated to such Corresponding Certificate for previous Distribution Dates.

Underlying Seller: With respect to each Mortgage Loan, Century Lending, GreenPoint, Metrocities, Washington Mutual Mortgage Loan Trust 2001-1, F&M, First Horizon, Mortgage Store, Platinum, Plaza, PMC Bancorp, Rescap, WestStar, or Countrywide, as indicated on the Mortgage Loan Schedule.

Uninsured Cause: Any cause of damage to a Mortgaged Property or related REO Property such that the complete restoration of such Mortgaged Property or related REO Property is not fully reimbursable by the hazard insurance policies or flood insurance policies required to be maintained pursuant to the related Servicing Agreement, without regard to whether or not such policy is maintained.

United States Person: A citizen or individual resident of the United States, a corporation or partnership (including an entity treated as a corporation or partnership for federal income tax purposes) created or organized in, or under the laws of, the United States or any state thereof or the District of Columbia (except, in the case of a partnership, to the extent provided in regulations), provided that, for purposes solely of the Class R Certificates, no partnership or other entity treated as a partnership for United States federal income tax purposes shall be treated as a United States Person unless all persons that own an interest in such partnership, either directly or through any entity that is not a corporation for United States federal income tax

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purposes, are United States Persons, or an estate whose income is subject to United States federal income tax regardless of its source, or a trust if a court within the United States is able to exercise primary supervision over the administration of such trust and one or more such United States Persons have the authority to control all substantial decisions of such trust or if the Trust was in existence on August 20, 1996 and properly elected to continue to be treated as such a United States Person.

Washington Mutual: Washington Mutual Bank and its successor in interest.

Washington Mutual AAR: That certain Assignment, Assumption and Recognition Agreement, made and entered into as of May 31, 2005, among Washington Mutual, EMC, the Trustee and the Depositor.

Washington Mutual Servicing Agreement: That certain Servicing Agreement dated as of April 1, 2005, by and between Washington Mutual and EMC, as attached hereto as Exhibit H-3, as modified pursuant to the Washington Mutual AAR.

WestStar: WestStar Mortgage, Inc., and its successor in interest.

Yield Maintenance Account: The account to be established and maintained pursuant to the Yield Maintenance Agreement and Section 4.07, which account will be an asset of the Trust but not of any REMIC.

Yield Maintenance Agreement: The Interest Rate Corridor Letter Agreement dated May 26, 2005, entered into by the Yield Maintenance Provider and the Trustee on behalf of the Trust.

Yield Maintenance Payment: An amount equal to the result of multiplying (A) the actual number of days in the applicable Interest Accrual Period divided by 360 by (B) the product of (i) the rate equal to the excess of (x) the lesser of then-current One-Month LIBOR and 10.50% per annum over (y) the applicable Strike Price and (ii) an amount equal to the lesser of the principal balance of the applicable Class of Certificates and the Projected Principal Balance for such Class of Certificates for such Distribution Date.

Yield Maintenance Provider: Wells Fargo Bank, National Association.

Section 1.02 Calculation of LIBOR. LIBOR applicable to the calculation of the Pass-Through Rate on the Adjustable Rate Certificates for any Interest Accrual Period will be determined on each Interest Determination Date. On each Interest Determination Date, LIBOR shall be established by the Securities Administrator and, as to any Interest Accrual Period, will equal the rate for one month United States dollar deposits that appears on the Telerate Screen Page 3750 as of 11:00 a.m., London time, on such Interest Determination Date. "Telerate Screen Page 3750" means the display designated as page 3750 on the Telerate Service (or such other page as may replace page 3750 on that service for the purpose of displaying London interbank offered rates of major banks). If such rate does not appear on such page (or such other page as may replace that page on that service, or if such service is no longer offered, LIBOR shall be so established by use of such other service for displaying LIBOR or comparable rates as may be reasonably selected by the Securities Administrator), the rate will be the Reference Bank Rate. The "Reference Bank Rate" will be determined on the basis of the rates at which deposits in U.S.

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dollars are offered by the reference banks (which shall be any three major banks that are engaged in transactions in the London interbank market, selected by the Securities Administrator) as of 11:00 a.m., London time, on the Interest Determination Date to prime banks in the London interbank market for a period of one month in amounts approximately equal to the aggregate Current Principal Amounts of the Adjustable Rate Certificates, then outstanding. The Securities Administrator will request the principal London office of each of the reference banks to provide a quotation of its rate. If at least two such quotations are provided, the rate will be the arithmetic mean of the quotations rounded up to the nearest whole multiple of 0.03125%. If on such date fewer than two quotations are provided as requested, the rate will be the arithmetic mean of the rates quoted by one or more major banks in New York City, selected by the Securities Administrator, as of 11:00 a.m., New York City time, on such date for loans in U.S. dollars to leading European banks for a period of one month in amounts approximately equal to the aggregate Current Principal Amounts of the Adjustable Rate Certificates, then outstanding. If no such quotations can be obtained, the rate will be LIBOR for the prior Distribution Date; provided, however, if, under the priorities described above, LIBOR for a Distribution Date would be based on LIBOR for the previous Distribution Date for the third consecutive Distribution Date, the Securities Administrator shall select an alternative comparable index (over which the Securities Administrator has no control), used for determining one-month Eurodollar lending rates that is calculated and published (or otherwise made available) by an independent party. The establishment of LIBOR by the Securities Administrator on any Interest Determination Date and the Securities Administrator's subsequent calculation of the Pass-Through Rate applicable to the Adjustable Rate Certificates for the relevant Interest Accrual Period, in the absence of manifest error, will be final and binding. Promptly following each Interest Determination Date, the Securities Administrator shall supply the Master Servicer with the results of its determination of LIBOR on such date.

ARTICLE II
Conveyance of Mortgage Loans; Original Issuance of Certificates

Section 2.01 Conveyance of Mortgage Loans to Trustee. (a) The Depositor, concurrently with the execution and delivery of this Agreement, sells, transfers and assigns to the Trust without recourse all its right, title and interest in and to (i) the Mortgage Loans identified in the Mortgage Loan Schedule, and the related Mortgage Notes, mortgages and other related documents, including all interest and principal due with respect to the Mortgage Loans after the Cut-off Date, but excluding any payments of principal and interest due on or prior to the Cut-off Date with respect to the Mortgage Loans, (ii) such assets as shall from time to time be credited or are required by the terms of this Agreement to be credited to the Distribution Account, (iii) such assets relating to the Mortgage Loans as from time to time may be held by the related Servicer in Protected Accounts and the Paying Agent in the Group I Carryover Shortfall Reserve Fund, the Group II Carryover Shortfall Reserve Fund, the Subordinate Carryover Shortfall Reserve Fund, the Yield Maintenance Account and the Distribution Account for the benefit of the Paying Agent on behalf of the Certificateholders, (iv) any REO Property, and any revenues received thereon, (v) the Required Insurance Policies and any amounts paid or payable by the related insurer under any Insurance Policy (to the extent the related mortgagee has a claim thereto), (vi) the Mortgage Loan Purchase Agreement to the extent provided in Subsection 2.03(a), (vii) the rights with respect to the Servicing Agreements as assigned to the Trustee on behalf of the Certificateholders

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by the Assignment Agreements, (viii) the rights with respect to the Yield Maintenance Agreement and (ix) any proceeds of the foregoing. Although it is the intent of the parties to this Agreement that the conveyance of the Depositor's right, title and interest in and to the Mortgage Loans and other assets in the Trust Fund pursuant to this Agreement shall constitute a purchase and sale and not a loan, in the event that such conveyance is deemed to be a loan, it is the intent of the parties to this Agreement that the Depositor shall be deemed to have granted to the Trustee a first priority perfected security interest in all of the Depositor's right, title and interest in, to and under the Mortgage Loans and other assets in the Trust Fund, and that this Agreement shall constitute a security agreement under applicable law.

(b) In connection with the above sale, transfer and assignment, the Depositor hereby deposits with the Trustee, or the Custodian, as its agent, as described in the Mortgage Loan Purchase Agreement, with respect to each Mortgage Loan, (i) the original Mortgage Note, including any riders thereto, endorsed without recourse (A) to the order of the Trustee, or (B) in the case of a Mortgage Loan registered on the MERS® System, in blank, and in each case showing an unbroken chain of endorsements from the original payee thereof to the Person endorsing it to the Trustee, or a lost note affidavit with indemnity, together with a copy of the related Mortgage Note, (ii) the original Security Instrument (noting the presence of the MIN of the Mortgage Loan and language indicating that the Mortgage Loan is a MOM Loan if the Mortgage Loan is a MOM Loan), which shall have been recorded (or if the original is not available, a copy), with evidence of such recording indicated thereon (or if clause (x) in the proviso below applies, shall be in recordable form), (iii) unless the Mortgage Loan is registered on the MERS® System, a certified copy of the assignment (which may be in the form of a blanket assignment if permitted in the jurisdiction in which the Mortgaged Property is located) to "JPMorgan Chase Bank, N.A., as Trustee," with evidence of recording with respect to each Mortgage Loan in the name of the Trustee thereon (or if clause (x) in the proviso below applies or for Mortgage Loans with respect to which the related Mortgaged Property is located in a state other than Maryland or an Opinion of Counsel has been provided as set forth in this Section 2.01(b), shall be in recordable form), (iv) all intervening assignments of the Security Instrument, if applicable and only to the extent available to the Depositor with evidence of recording thereon, (v) the original or a copy of the policy or certificate of primary mortgage guaranty insurance, to the extent available, if any, (vi) the original policy of title insurance or mortgagee's certificate of title insurance or commitment or binder for title insurance and (vii) originals of all assumption and modification agreements, if applicable and available; provided, however, that in lieu of the foregoing, the Depositor may deliver the following documents, under the circumstances set forth below: (x) in lieu of the original Security Instrument, assignments to the Trustee or intervening assignments thereof which have been delivered, are being delivered or will, upon receipt of recording information relating to the Security Instrument required to be included thereon, be delivered to recording offices for recording and have not been returned to the Depositor in time to permit their delivery as specified above, the Depositor may deliver, or cause to be delivered, a true copy thereof with a certification by the Depositor, the applicable Servicer or the title company issuing the related commitment for title insurance, on the face of such copy, substantially as follows: "Certified to be a true and correct copy of the original, which has been transmitted for recording"; (y) in lieu of the Security Instrument, assignment to the Trustee or intervening assignments thereof, if the applicable jurisdiction retains the originals of such documents (as evidenced by a certification from the Depositor, to such effect) the Depositor may deliver, or cause to be delivered, photocopies of such documents containing an original

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certification by the judicial or other governmental authority of the jurisdiction where such documents were recorded; and (z) the Depositor shall not be required to deliver intervening assignments or Mortgage Note endorsements between the related Underlying Seller and EMC Mortgage Corporation, between EMC Mortgage Corporation and the Depositor, and between the Depositor and the Trustee; and provided, further, however, that, in the case of Mortgage Loans which have been prepaid in full after the Cut-off Date and prior to the Closing Date, the Depositor, in lieu of delivering the above documents, may deliver to the Trustee or the Custodian, as its agent, a certification to such effect and shall deposit all amounts paid in respect of such Mortgage Loans in the Distribution Account on the Closing Date. The Depositor shall deliver such original documents (including any original documents as to which certified copies had previously been delivered) to the Trustee or the Custodian, as its agent, promptly after they are received. The Depositor shall cause, at its expense, the assignment of the related Security Instrument to the Trustee to be recorded not later than 180 days after the Closing Date with respect to the Mortgage Loans, unless (1) such recordation is not required by the Rating Agencies, (2) an Opinion of Counsel has been provided to the Trustee (with a copy to the Custodian) which states that recordation of such Security Instrument is not required to protect the interests of the Certificateholders in the related Mortgage Loans or (3) MERS is identified on the related Security Instrument or on a properly recorded assignment of such Security Instrument as mortgagee of record solely as nominee for Depositor and its successors and assigns; provided, however, that each assignment shall be submitted for recording by the Depositor in the manner described above, at no expense to the Trust or the Trustee, or the Custodian, as its agent, upon the earliest to occur of: (i) reasonable direction by the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than 25% of the Trust, (ii) the occurrence of an Event of Default, (iii) the occurrence of a bankruptcy, insolvency or foreclosure relating to the Depositor, (iv) the rating of The Bear Stearns Companies Inc. falls below Baa3, (v) the occurrence of a servicing transfer as described in Section 8.02 hereof, or (vi) with respect to any one assignment of Mortgage, the occurrence of a bankruptcy, insolvency or foreclosure relating to the Mortgagor under the related Mortgage. Notwithstanding the foregoing, if the Depositor fails to pay the cost of recording the assignments, such expense will be paid by the Trustee and the Trustee shall be reimbursed for such expenses by the Trust in accordance with Section 9.05.

Section 2.02 Acceptance of Trust Fund by Trustee. (a) The Trustee acknowledges the sale, transfer and assignment of the Trust Fund to it by the Depositor and receipt of, subject to further review and the exceptions which may be noted pursuant to the procedures described below, and declares that it holds, the documents (or certified copies thereof) delivered to it pursuant to Section 2.01, and declares that it will continue to hold those documents and any amendments, replacements or supplements thereto and all other assets of the Trust Fund delivered to it as Trustee in trust for the use and benefit of all present and future Holders of the Certificates. On the Closing Date, the Custodian shall acknowledge, with respect to each Mortgage Loan by an Initial Certification substantially in the form of Exhibit One to the Custodial Agreement, receipt of the Mortgage File, but without review of such Mortgage File, except to the extent necessary to confirm that such Mortgage File contains the related Mortgage Note or a lost note affidavit in lieu thereof. No later than 90 days after the Closing Date (or, with respect to any Substitute Mortgage Loan, within five Business Days after the receipt by the Trustee or Custodian thereof), the Trustee agrees, for the benefit of the Certificateholders, to review or cause to be reviewed by the Custodian on its behalf (under the Custodial Agreement), each Mortgage File delivered to it and to execute and deliver, or cause to be executed and

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delivered, to the Depositor and the Trustee an Interim Certification substantially in the form annexed as Exhibit Two to the Custodial Agreement. In conducting such review, the Trustee or Custodian will ascertain whether all required documents have been executed and received, and based on the Mortgage Loan Schedule, whether those documents relate, determined on the basis of the Mortgagor name, original principal balance and loan number, to the Mortgage Loans it has received, as identified in the Mortgage Loan Schedule. In performing any such review, the Trustee or the Custodian, as its agent, may conclusively rely on the purported due execution and genuineness of any such document and on the purported genuineness of any signature thereon. If the Trustee or the Custodian, as its agent, finds any document constituting part of the Mortgage File not to have been executed or received, or to be unrelated to the Mortgage Loans or to appear to be defective on its face, then the Trustee or the Custodian, as its agent, shall promptly notify the Seller. In accordance with the Mortgage Loan Purchase Agreement, the Seller shall correct or cure any such defect within ninety (90) days from the date of notice from the Trustee or the Custodian, as its agent, of the defect and, if the Seller fails to correct or cure the defect within such period, and such defect materially and adversely affects the interests of the Certificateholders in the related Mortgage Loan, the Trustee or the Custodian, as its agent, shall enforce the Seller's obligation pursuant to the Mortgage Loan Purchase Agreement, to, within 90 days from the Trustee's or the Custodian's notification, provide a Substitute Mortgage Loan (if within two years of the Closing Date) or purchase such Mortgage Loan at the Repurchase Price; provided that, if such defect would cause the Mortgage Loan to be other than a "qualified mortgage" as defined in Section 860G(a)(3) of the Code, any such cure or repurchase must occur within 90 days from the date such breach was discovered; provided, however, that if such defect relates solely to the inability of the Seller to deliver the original Security Instrument or intervening assignments thereof, or a certified copy thereof, because the originals of such documents or a certified copy have not been returned by the applicable jurisdiction, then the Seller shall not be required to purchase such Mortgage Loan if the Seller delivers such original documents or certified copy promptly upon receipt, but in no event later than 360 days after the Closing Date. The foregoing repurchase obligation shall not apply in the event that the Seller cannot deliver such original or copy of any document submitted for recording to the appropriate recording office in the jurisdiction because such document has not been returned by such office; provided that the Seller shall instead deliver a recording receipt of such recording office or, if such receipt is not available, a certificate of the Seller or a Servicing Officer confirming that such documents have been accepted for recording, and delivery to the Trustee or the Custodian, as its agent, shall be effected by the Seller within thirty days of its receipt of the original recorded document.

(b) No later than 180 days after the Closing Date (or, with respect to any Substitute Mortgage Loan, within five Business Days after the receipt by the Trustee or the Custodian thereof), the Trustee or the Custodian, as its agent, will review, for the benefit of the Certificateholders, the Mortgage Files delivered to it and will execute and deliver or cause to be executed and delivered to the Depositor and the Trustee a Final Certification substantially in the form annexed as Exhibit Three to the Custodial Agreement. In conducting such review, the Trustee or the Custodian, as its agent, will ascertain whether an original of each document required to be recorded has been returned from the recording office with evidence of recording thereon or a certified copy has been obtained from the recording office. If the Trustee or the Custodian, as its agent, finds any document constituting part of the Mortgage File has not been received, or to be unrelated, determined on the basis of the Mortgagor name, original principal

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balance and loan number, to the Mortgage Loans, or to appear defective on its face, the Trustee or the Custodian, as its agent, shall promptly notify the Seller (provided, however, that with respect to those documents described in subsection (b)(iv), (b)(v) and (b)(vii) of Section 2.01, the Trustee's and the Custodian's obligations shall extend only to the documents actually delivered to the Trustee or Custodian pursuant to such subsections). In accordance with the Mortgage Loan Purchase Agreement, the Seller shall correct or cure any such defect or EMC shall deliver to the Trustee an Opinion of Counsel to the effect that such defect does not materially or adversely affect the interests of Certificateholders in such Mortgage Loan within 90 days from the date of notice from the Trustee of the defect and if the Seller is unable to cure such defect within such period, and if such defect materially and adversely affects the interests of the Certificateholders in the related Mortgage Loan, then the Trustee shall enforce the Seller's obligation under the Mortgage Loan Purchase Agreement to, within 90 days from the Trustee's or Custodian's notification, provide a Substitute Mortgage Loan (if within two years of the Closing Date) or purchase such Mortgage Loan at the Repurchase Price; provided that, if such defect would cause the Mortgage Loan to be other than a "qualified mortgage" as defined in Section 860G(a)(3) of the Code, any such cure, repurchase or substitution must occur within 90 days from the date such breach was discovered; provided, further, however, that if such defect relates solely to the inability of the Seller to deliver the original Security Instrument or intervening assignments thereof, or a certified copy thereof, because the originals of such documents or a certified copy have not been returned by the applicable jurisdiction, then the Seller shall not be required to purchase such Mortgage Loan if the Seller delivers such original documents or certified copy promptly upon receipt, but in no event later than 360 days after the Closing Date. The foregoing repurchase obligation shall not apply in the event that the Seller cannot deliver such original or copy of any document submitted for recording to the appropriate recording office in the applicable jurisdiction because such document has not been returned by such office; provided that the Seller shall instead deliver a recording receipt of such recording office or, if such receipt is not available, a certificate confirming that such documents have been accepted for recording, and delivery to the Trustee or the Custodian, as its agent, shall be effected by the Seller within thirty days of its receipt of the original recorded document.

(c) In the event that a Mortgage Loan is purchased by the Seller in accordance with Subsections 2.02(a) or (b) above, the Seller shall remit to the Paying Agent the applicable Repurchase Price for deposit in the Distribution Account and the Seller shall provide to the Master Servicer, the Paying Agent and the Trustee written notification detailing the components of the Repurchase Price. Upon deposit of the Repurchase Price in the Distribution Account, the Depositor shall notify the Trustee and the Trustee or the Custodian, as its agent (upon receipt of a Request for Release in the form of Exhibit D attached hereto with respect to such Mortgage Loan), shall release to the Seller the related Mortgage File and the Trustee shall execute and deliver all instruments of transfer or assignment, without recourse, furnished to it by the Seller as are necessary to vest in the Seller title to and rights under the related Mortgage Loan. Such purchase shall be deemed to have occurred on the date on which the Repurchase Price in available funds is received by the Paying Agent. The Trustee shall amend the Mortgage Loan Schedule, which was previously delivered to it by the Depositor in a form agreed to between the Depositor and the Trustee, to reflect such repurchase and shall promptly notify the Rating Agencies and the Master Servicer of such amendment. The obligation of the Seller to repurchase any Mortgage Loan as to which such a defect in a constituent document exists shall be the sole

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remedy respecting such defect available to the Certificateholders or to the Trustee on their behalf.

Section 2.03 Assignment of Interest in the Mortgage Loan Purchase Agreement. (a) The Depositor hereby assigns to the Trustee, on behalf of the Certificateholders, all of its right, title and interest in the Mortgage Loan Purchase Agreement, including but not limited to the Depositor's rights and obligations pursuant to the Servicing Agreements (noting that the Seller has retained the right in the event of breach of the representations, warranties and covenants, if any, with respect to the related Mortgage Loans of the related Servicer under the related Servicing Agreement to enforce the provisions thereof and to seek all or any available remedies). The obligations of the Seller to substitute or repurchase, as applicable, a Mortgage Loan shall be the Trustee's and the Certificateholders' sole remedy for any breach thereof. At the request of the Trustee, the Depositor shall take such actions as may be necessary to enforce the above right, title and interest on behalf of the Trustee and the Certificateholders or shall execute such further documents as the Trustee may reasonably require in order to enable the Trustee to carry out such enforcement.

(b) If the Depositor, the Securities Administrator or the Trustee discovers a breach of any of the representations and warranties set forth in the Mortgage Loan Purchase Agreement, which breach materially and adversely affects the value of the interests of Certificateholders or the Trustee in the related Mortgage Loan, the party discovering the breach shall give prompt written notice of the breach to the other parties. The Seller, within 90 days of its discovery or receipt of notice that such breach has occurred (whichever occurs earlier), shall cure the breach in all material respects or, subject to the Mortgage Loan Purchase Agreement or Section 2.04 of this Agreement, as applicable, shall purchase the Mortgage Loan or any property acquired with respect thereto from the Trustee; provided, however, that if there is a breach of any representation set forth in the Mortgage Loan Purchase Agreement or Section 2.04 of this Agreement, as applicable, and the Mortgage Loan or the related property acquired with respect thereto has been sold, then the Seller shall pay, in lieu of the Repurchase Price, any excess of the Repurchase Price over the Net Liquidation Proceeds received upon such sale. (If the Net Liquidation Proceeds exceed the Repurchase Price, any excess shall be paid to the Seller, to the extent not required by law to be paid to the related borrower.) Any such purchase by the Seller shall be made by providing an amount equal to the Repurchase Price to the Paying Agent for deposit in the Distribution Account and written notification detailing the components of such Repurchase Price to the Trustee, the Paying Agent and the Master Servicer. The Depositor shall notify the Trustee and submit to the Trustee or the Custodian, as its agent, a Request for Release in the form of Exhibit D attached hereto, and the Trustee shall release, or the Trustee shall cause the Custodian to release, to the Seller, the related Mortgage File and the Trustee shall execute and deliver all instruments of transfer or assignment furnished to it by the Seller, without recourse, as are necessary to vest in the Seller title to and rights under the Mortgage Loan or any property acquired with respect thereto. Such purchase shall be deemed to have occurred on the date on which the Repurchase Price in available funds is received by the Securities Administrator. The Trustee shall amend the Mortgage Loan Schedule to reflect such repurchase and shall promptly notify the Master Servicer and the Rating Agencies of such amendment. Enforcement of the obligation of the Seller to purchase (or substitute a Substitute Mortgage Loan for) any Mortgage Loan or any property acquired with respect thereto (or pay the Repurchase Price as set forth in the above proviso) as to which a breach has occurred and is continuing shall

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constitute the sole remedy respecting such breach available to the Certificateholders or the Trustee on their behalf.

Section 2.04 Substitution of Mortgage Loans. Notwithstanding anything to the contrary in this Agreement, in lieu of purchasing a Mortgage Loan pursuant to the Mortgage Loan Purchase Agreement or Sections 2.02 or 2.03 of this Agreement, the Seller may, no later than the date by which such purchase by the Seller would otherwise be required, tender to the Trustee a Substitute Mortgage Loan accompanied by a certificate of an authorized officer of the Seller that such Substitute Mortgage Loan conforms to the requirements set forth in the definition of "Substitute Mortgage Loan" in the Mortgage Loan Purchase Agreement or this Agreement, as applicable; provided, however, that substitution pursuant to the Mortgage Loan Purchase Agreement or Section 2.04 of this Agreement, as applicable, in lieu of purchase shall not be permitted after the termination of the two-year period beginning on the Startup Day; provided, further, that if the breach of a Mortgage Loan representation or warranty would cause such Mortgage Loan to be other than a "qualified mortgage" as defined in Section 860G(a)(3) of the Code, then any such substitution must occur within 90 days from the date the breach was discovered. The Trustee or the Custodian, as its agent, shall examine the Mortgage File for any Substitute Mortgage Loan in the manner set forth in Section 2.02(a) and the Trustee or the Custodian, as its agent, shall notify the Seller in writing, within five Business Days after receipt, whether or not the documents relating to the Substitute Mortgage Loan satisfy the requirements of the fourth sentence of Subsection 2.02(a). Within two Business Days after such notification, the Seller shall provide to the Paying Agent for deposit in the Distribution Account the amount, if any, by which the Outstanding Principal Balance as of the next preceding Due Date of the Mortgage Loan for which substitution is being made, after giving effect to Scheduled Principal due on such date, exceeds the Outstanding Principal Balance as of such date of the Substitute Mortgage Loan, after giving effect to Scheduled Principal due on such date, which amount shall be treated for the purposes of this Agreement as if it were the payment by the Seller of the Repurchase Price for the purchase of a Mortgage Loan by the Seller. After such notification to the Seller and, if any such excess exists, upon receipt of such deposit, the Trustee shall accept such Substitute Mortgage Loan which shall thereafter be deemed to be a Mortgage Loan hereunder. In the event of such a substitution, accrued interest on the Substitute Mortgage Loan for the month in which the substitution occurs and any Principal Prepayments made thereon during such month shall be the property of the Trust Fund and accrued interest for such month on the Mortgage Loan for which the substitution is made and any Principal Prepayments made thereon during such month shall be the property of the Seller. The Scheduled Principal on a Substitute Mortgage Loan due on the Due Date in the month of substitution shall be the property of the Seller and the Scheduled Principal on the Mortgage Loan for which the substitution is made due on such Due Date shall be the property of the Trust Fund. Upon acceptance of the Substitute Mortgage Loan (and delivery to the Trustee or Custodian of a Request for Release for such Mortgage Loan), the Trustee (or the Custodian, as its agent) shall release to the Seller the Mortgage File related to any Mortgage Loan released pursuant to the Mortgage Loan Purchase Agreement or Section 2.04 of this Agreement, as applicable, and the Trustee shall execute and deliver all instruments of transfer or assignment, without recourse, in form as provided to it as are necessary to vest in the Seller title to and rights under any Mortgage Loan released pursuant to the Mortgage Loan Purchase Agreement or Section 2.04 of this Agreement, as applicable. The Seller shall deliver the documents related to the Substitute Mortgage Loan in accordance with the provisions of the Mortgage Loan Purchase Agreement or Subsections 2.01(b) and

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2.02(b) of this Agreement, as applicable, with the date of acceptance of the Substitute Mortgage Loan deemed to be the Closing Date for purposes of the time periods set forth in those Subsections. The representations and warranties set forth in the Mortgage Loan Purchase Agreement shall be deemed to have been made by the Seller with respect to each Substitute Mortgage Loan as of the date of acceptance of such Mortgage Loan by the Trustee. The Securities Administrator shall amend the Mortgage Loan Schedule to reflect such substitution and shall provide a copy of such amended Mortgage Loan Schedule to the Master Servicer, the Trustee and the Rating Agencies.

Section 2.05 Issuance of Certificates. The Trustee acknowledges the assignment to it of the Mortgage Loans and the other assets comprising the Trust Fund and, concurrently therewith, has signed, and the Certificate Registrar has countersigned and delivered to the Depositor, in exchange therefor, Certificates in such authorized denominations representing such Fractional Undivided Interests as the Depositor has requested. The Trustee agrees that it will hold the Mortgage Loans and such other assets as may from time to time be delivered to it segregated on the books of the Trustee in trust for the benefit of the Certificateholders.

The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey in trust to the Trustee without recourse all the right, title and interest of the Depositor in and to the REMIC I Regular Interests and the other assets of REMIC II for the benefit of the holders of the REMIC II Interests. The Trustee acknowledges receipt of the REMIC I Regular Interests (which are uncertificated) and the other assets of REMIC II and declares that it holds and will hold the same in trust for the exclusive use and benefit of the holders of the REMIC II Certificates.

The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey in trust to the Trustee without recourse all the right, title and interest of the Depositor in and to the REMIC II Regular Interests, and the other assets of REMIC III for the benefit of the holders of the REMIC III Certificates. The Trustee acknowledges receipt of the REMIC II Regular Interests (which are uncertificated) and the other assets of REMIC III and declares that it holds and will hold the same in trust for the exclusive use and benefit of the holders of the REMIC III Certificates.

Section 2.06 Representations and Warranties Concerning the Depositor. The Depositor hereby represents and warrants to the Trustee, the Master Servicer and the Securities Administrator as follows:

(i) the Depositor (a) is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and (b) is qualified and in good standing as a foreign corporation to do business in each jurisdiction where such qualification is necessary, except where the failure so to qualify would not reasonably be expected to have a material adverse effect on the Depositor's business as presently conducted or on the Depositor's ability to enter into this Agreement and to consummate the transactions contemplated hereby;

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(ii) the Depositor has full corporate power to own its property, to carry on its business as presently conducted and to enter into and perform its obligations under this Agreement;

(iii) the execution and delivery by the Depositor of this Agreement have been duly authorized by all necessary corporate action on the part of the Depositor; and neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated, nor compliance with the provisions hereof, will conflict with or result in a breach of, or constitute a default under, any of the provisions of any law, governmental rule, regulation, judgment, decree or order binding on the Depositor or its properties or the articles of incorporation or by-laws of the Depositor, except those conflicts, breaches or defaults which would not reasonably be expected to have a material adverse effect on the Depositor's ability to enter into this Agreement and to consummate the transactions contemplated hereby;

(iv) the execution, delivery and performance by the Depositor of this Agreement and the consummation of the transactions contemplated hereby do not require the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any state, federal or other governmental authority or agency, except those consents, approvals, notices, registrations or other actions as have already been obtained, given or made;

(v) this Agreement has been duly executed and delivered by the Depositor and, assuming due authorization, execution and delivery by the other parties hereto, constitutes a valid and binding obligation of the Depositor enforceable against it in accordance with its terms (subject to applicable bankruptcy and insolvency laws and other similar laws affecting the enforcement of the rights of creditors generally);

(vi) there are no actions, suits or proceedings pending or, to the knowledge of the Depositor, threatened against the Depositor, before or by any court, administrative agency, arbitrator or governmental body (i) with respect to any of the transactions contemplated by this Agreement or (ii) with respect to any other matter which in the judgment of the Depositor will be determined adversely to the Depositor and will, if determined adversely to the Depositor, materially and adversely affect the Depositor's ability to enter into this Agreement or perform its obligations under this Agreement; and the Depositor is not in default with respect to any order of any court, administrative agency, arbitrator or governmental body so as to materially and adversely affect the transactions contemplated by this Agreement; and

(vii) immediately prior to the transfer and assignment thereof to the Trustee, each Mortgage Note and each Mortgage was not subject to an assignment or pledge, and the Depositor had good and marketable title to and was the sole owner thereof and had full right to transfer and sell the Mortgage Loans to the Trustee free and clear of any encumbrance, equity, lien, pledge, charge, claim or security interest.

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Section 2.07 Covenants of the Master Servicer and the EMC Servicer. The Master Servicer covenants to the Depositor, the Securities Administrator and the Trustee, and the EMC Servicer covenants to the Master Servicer, as follows:

(i) it shall comply in the performance of its obligations under this Agreement;

(ii) no written information, certificate of an officer, statement furnished in writing or written report prepared by the Master Servicer or the EMC Servicer, as applicable, pursuant to this Agreement and delivered, in the case of the Master Servicer, to the Securities Administrator, the Depositor, any affiliate of the Depositor or the Trustee, or, in the case of the EMC Servicer, to the Master Servicer, will contain any untrue statement of a material fact or omit to state a material fact necessary to make the information, certificate, statement or report not misleading; and

(iii) it shall (in the case of the Master Servicer, only in its capacity as successor servicer pursuant to a Servicing Agreement) accurately and fully provide information regarding payment performance of the Mortgagors to the nationally recognized credit repositories, to the extent such reporting remains customary and prudent in the servicing of mortgage loans similar to the Mortgage Loans.

Nothing in this Section shall derogate from the obligation of the Master Servicer or the EMC Servicer to observe any applicable law prohibiting disclosure of information regarding the Mortgagors, and the failure of the Master Servicer or the EMC Servicer to provide access as provided in this Section as a result of such obligation shall not constitute a breach of this Section.

ARTICLE III
Administration and Servicing of Mortgage Loans

Section 3.01 Master Servicer. The Master Servicer shall, from and after the Closing Date, supervise, monitor and oversee the obligation of the Servicers to service and administer their respective Mortgage Loans in accordance with the terms of the related Servicing Agreement and shall have full power and authority to do any and all things which it may deem necessary or desirable in connection with such master servicing and administration. In performing its obligations hereunder, the Master Servicer shall act in a manner consistent with Accepted Master Servicing Practices. Furthermore, the Master Servicer shall oversee and consult with each Servicer as necessary from time-to-time to carry out the Master Servicer's obligations hereunder, shall receive, review and evaluate all reports, information and other data provided to the Master Servicer by each Servicer and shall cause each Servicer to perform and observe the covenants, obligations and conditions to be performed or observed by such Servicer under the related Servicing Agreement. The Master Servicer shall independently and separately monitor each Servicer's servicing activities with respect to each related Mortgage Loan, reconcile the results of such monitoring with such information provided in the previous sentence on a monthly basis and coordinate corrective adjustments to the related Servicer's and Master Servicer's records, and based on such reconciled and corrected information, the Master Servicer shall provide such information to the Securities Administrator as shall be necessary in order for it to prepare the statements specified in Section 6.04, and prepare any other information and statements required to be forwarded by the Master Servicer hereunder. The Master Servicer

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shall reconcile the results of its Mortgage Loan monitoring with the actual remittances of the related Servicer to the Distribution Account pursuant to the related Servicing Agreement.

The Trustee shall furnish each Servicer and the Master Servicer with any powers of attorney, in substantially the form attached hereto as Exhibit K, and other documents in form as provided to it necessary or appropriate to enable such Servicer and the Master Servicer to service and administer the related Mortgage Loans and REO Property.

The Trustee shall provide access to the records and documentation in possession of the Trustee regarding the related Mortgage Loans and REO Property and the servicing thereof to the Certificateholders, the FDIC, and the supervisory agents and examiners of the FDIC, such access being afforded only upon reasonable prior written request and during normal business hours at the office of the Trustee; provided, however, that, unless otherwise required by law, the Trustee shall not be required to provide access to such records and documentation if the provision thereof would violate the legal right to privacy of any Mortgagor. The Trustee shall allow representatives of the above entities to photocopy any of the records and documentation and shall provide equipment for that purpose at a charge that covers the Trustee's actual costs.

The Trustee shall execute and deliver to the related Servicer and the Master Servicer any court pleadings, requests for trustee's sale or other documents necessary or desirable to (i) the foreclosure or trustee's sale with respect to a Mortgaged Property; (ii) any legal action brought to obtain judgment against any Mortgagor on the Mortgage Note or Security Instrument; (iii) obtain a deficiency judgment against the Mortgagor; or (iv) enforce any other rights or remedies provided by the Mortgage Note or Security Instrument or otherwise available at law or equity.

Section 3.02 REMIC-Related Covenants. For as long as each REMIC shall exist, the Trustee and the Securities Administrator shall act in accordance herewith to assure continuing treatment of such REMIC as a REMIC, and the Trustee and the Securities Administrator shall comply with any directions of the Depositor, the Servicers or the Master Servicer to assure such continuing treatment. In particular, the Trustee shall not (a) sell or permit the sale of all or any portion of the Mortgage Loans or of any investment of deposits in an Account unless such sale is as a result of a repurchase of the Mortgage Loans pursuant to this Agreement or the Trustee has received a REMIC Opinion, prepared at the expense of the Trust Fund; and (b) other than with respect to a substitution pursuant to the Mortgage Loan Purchase Agreement or Section 2.04 of this Agreement, as applicable, accept any contribution to any REMIC after the Startup Day without receipt of a REMIC Opinion. In addition, the Trustee shall comply with all of the requirements of Treasury Regulation § 1.860F-2(a)(2), including, without limitation, the requirement that each REMIC account for items of income and ownership of assets in a manner that respects the separate existence of each REMIC.

Section 3.03 Monitoring of Servicers. (a) The Master Servicer shall be responsible for reporting to the Trustee and the Depositor the compliance by the Servicers with their respective duties under the related Servicing Agreement. In the review of each Servicer's activities, the Master Servicer may rely upon an officer's certificate of such Servicer (or similar document signed by an officer of the Servicer) with regard to such Servicer's compliance with the terms of the related Servicing Agreement. In the event that the Master Servicer, in its judgment, determines that such Servicer should be terminated in accordance with the related Servicing

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Agreement, or that a notice should be sent pursuant to the related Servicing Agreement with respect to the occurrence of an event that, unless cured, would constitute grounds for such termination, the Master Servicer shall notify the Depositor and the Trustee thereof and the Master Servicer shall issue such notice or take such other action as it deems appropriate.

(b) The Master Servicer, for the benefit of the Trustee and the Certificateholders, shall enforce the obligations of each Servicer under the related Servicing Agreement, and shall, in the event that a Servicer fails to perform its obligations in accordance with the related Servicing Agreement, subject to the preceding paragraph, terminate the rights and obligations of such Servicer thereunder and act as servicer of the related Mortgage Loans or cause the Trustee to enter into a new Servicing Agreement with a successor Servicer selected by the Master Servicer; provided, however, it is understood and acknowledged by the parties hereto that there will be a period of transition (not to exceed 90 days) before the actual servicing functions can be fully transferred to such successor Servicer. Such enforcement, including, without limitation, the legal prosecution of claims, termination of the related Servicing Agreement and the pursuit of other appropriate remedies, shall be in such form and carried out to such an extent and at such time as the Master Servicer, in its good faith business judgment, would require were it the owner of the related Mortgage Loans. The Master Servicer shall pay the costs of such enforcement at its own expense, provided that the Master Servicer shall not be required to prosecute or defend any legal action except to the extent that the Master Servicer shall have received reasonable indemnity for its costs and expenses in pursuing such action.

(c) To the extent that the costs and expenses of the Master Servicer related to any termination of a Servicer, appointment of a successor Servicer or the transfer and assumption of servicing by the Master Servicer with respect to the related Servicing Agreement (including, without limitation, (i) all legal costs and expenses and all due diligence costs and expenses associated with an evaluation of the potential termination of a Servicer as a result of an event of default by such Servicer and (ii) all costs and expenses associated with the complete transfer of servicing, including all servicing files and all servicing data and the completion, correction or manipulation of such servicing data as may be required by the successor servicer to correct any errors or insufficiencies in the servicing data or otherwise to enable the successor servicer to service the Mortgage Loans in accordance with the related Servicing Agreement) are not fully and timely reimbursed by the terminated Servicer, the Master Servicer shall be entitled to reimbursement of such costs and expenses from the Distribution Account.

(d) The Master Servicer shall require each Servicer to comply with the remittance requirements and other obligations set forth in the related Servicing Agreement, including any related Assignment Agreement. The Master Servicer shall enforce the obligation of each Servicer pursuant to the related Servicing Agreement to provide it with the annual officer's certificate of compliance and annual independent accountants' servicing reports, as well as back-up certifications to each Master Servicer Certification pursuant to Section 3.18.

(e) If the Master Servicer acts as Servicer, it will not assume liability for the representations and warranties of the Servicers, if any, that it replaces.

Section 3.04 Fidelity Bond. The Master Servicer, at its expense, shall maintain in effect a blanket fidelity bond and an errors and omissions insurance policy, affording coverage

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with respect to all directors, officers, employees and other Persons acting on such Master Servicer's behalf, and covering errors and omissions in the performance of the Master Servicer's obligations hereunder. The amount of coverage to be maintained by the Master Servicer with respect to the blanket fidelity bond policy shall be $50,000,000 per occurrence, and, with respect to the errors and omissions insurance policy, shall be $20,000,000 per occurrence.

Section 3.05 Power to Act; Procedures. The Master Servicer shall master service the Mortgage Loans and shall have full power and authority, subject to the REMIC Provisions and the provisions of Article X hereof, to do any and all things that it may deem necessary or desirable in connection with the master servicing and administration of the Mortgage Loans, including but not limited to the power and authority (i) to execute and deliver, on behalf of the Certificateholders and the Trustee, customary consents or waivers and other instruments and documents, (ii) to consent to transfers of any Mortgaged Property and assumptions of the Mortgage Notes and related Mortgages, (iii) to collect any Insurance Proceeds and Liquidation Proceeds, and (iv) to effectuate foreclosure or other conversion of the ownership of the Mortgaged Property securing any Mortgage Loan, in each case, in accordance with the provisions of this Agreement and the related Servicing Agreement, as applicable; provided, however, that the Master Servicer shall not (and, consistent with its responsibilities under Section 3.03, shall not permit a Servicer to) knowingly or intentionally take any action, or fail to take (or fail to cause to be taken) any action reasonably within its control and the scope of duties more specifically set forth herein, that, under the REMIC Provisions, if taken or not taken, as the case may be, would cause any REMIC hereunder to fail to qualify as a REMIC or result in the imposition of a tax upon the Trust Fund (including but not limited to the tax on prohibited transactions as defined in Section 860F(a)(2) of the Code and the tax on contributions to a REMIC set forth in Section 860G(d) of the Code) unless the Master Servicer has received an Opinion of Counsel (but not at the expense of the Master Servicer) to the effect that the contemplated action will not cause any REMIC hereunder to fail to qualify as a REMIC or result in the imposition of a tax upon any REMIC hereunder. The Trustee shall furnish the Master Servicer, upon written request from a Servicing Officer, with any powers of attorney empowering the Master Servicer or the related Servicer to execute and deliver instruments of satisfaction or cancellation, or of partial or full release or discharge, and to foreclose upon or otherwise liquidate Mortgaged Property, and to appear in, prosecute or defend any court action relating to the Mortgage Loans or the Mortgaged Property, in accordance with the related Servicing Agreement and this Agreement, and the Trustee shall execute and deliver such other documents as the Master Servicer may request, to enable the Master Servicer to master service and administer the Mortgage Loans and carry out its duties hereunder, in each case in accordance with Accepted Master Servicing Practices (and the Trustee shall have no liability for misuse of any such powers of attorney by the Master Servicer or a Servicer). If the Master Servicer or the Trustee has been advised that it is likely that the laws of the state in which action is to be taken prohibit such action if taken in the name of the Trustee or that the Trustee would be adversely affected under the "doing business" or tax laws of such state if such action is taken in its name, then the Master Servicer shall join with the Trustee in the appointment of a co-trustee pursuant to Section 9.11 hereof. In the performance of its duties hereunder, the Master Servicer shall be an independent contractor and shall not, except in those instances where it is taking action in the name of the Trustee, be deemed to be the agent of the Trustee.

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The Trustee shall execute and deliver to the related Servicer any court pleadings, requests for trustee's sale or other documents necessary or desirable or relating to (i) the foreclosure or trustee's sale with respect to a Mortgaged Property; (ii) any legal action brought to obtain judgment against any Mortgagor on the related Mortgage Note or related Mortgage; (iii) obtaining a deficiency judgment against the related Mortgagor; or (iv) enforcing any other rights or remedies provided by a Mortgage Note or related Mortgage or otherwise available at law or equity.

Section 3.06 Due-on-Sale Clauses; Assumption Agreements. To the extent provided in the related Servicing Agreement, to the extent Mortgage Loans contain enforceable due-on-sale clauses, the Master Servicer shall cause the related Servicer to enforce such clauses in accordance with the related Servicing Agreement. If applicable law prohibits the enforcement of a due-on-sale clause or such clause is otherwise not enforced in accordance with the related Servicing Agreement, and, as a consequence, a Mortgage Loan is assumed, the original Mortgagor may be released from liability in accordance with the related Servicing Agreement.

Section 3.07 Release of Mortgage Files. (a) Upon becoming aware of the payment in full of any Mortgage Loan, or the receipt by the related Servicer of a notification that payment in full has been escrowed in a manner customary for such purposes for payment to Certificateholders on the next Distribution Date, such Servicer will (and if such Servicer does not, then the Master Servicer may), if required under the related Servicing Agreement, promptly furnish to the Custodian, on behalf of the Trustee, two copies of a certification substantially in the form of Exhibit D hereto signed by a Servicing Officer or in a mutually agreeable electronic format which will, in lieu of a signature on its face, originate from a Servicing Officer (which certification shall include a statement to the effect that all amounts received in connection with such payment that are required to be deposited in the related Protected Account maintained by such Servicer pursuant to Section 4.01 or by such Servicer pursuant to the related Servicing Agreement have been or will be so deposited) and shall request that the Custodian, on behalf of the Trustee, deliver to such Servicer the related Mortgage File. Upon receipt of such certification and request, the Custodian, on behalf of the Trustee, shall promptly release the related Mortgage File to the related Servicer, and the Trustee and Custodian shall have no further responsibility with regard to such Mortgage File. Upon any such payment in full, the related Servicer is authorized to give, as agent for the Trustee, as the mortgagee under the Mortgage that secured the Mortgage Loan, an instrument of satisfaction (or assignment of mortgage without recourse) regarding the Mortgaged Property subject to the Mortgage, which instrument of satisfaction or assignment, as the case may be, shall be delivered to the Person or Persons entitled thereto against receipt therefor of such payment, it being understood and agreed that no expenses incurred in connection with such instrument of satisfaction or assignment, as the case may be, shall be chargeable to the related Protected Account.

(b) From time to time and as appropriate for the servicing or foreclosure of any Mortgage Loan and in accordance with the related Servicing Agreement, the Trustee shall execute such documents as shall be prepared and furnished to the Trustee by the related Servicer or the Master Servicer (in form reasonably acceptable to the Trustee) and as are necessary to the prosecution of any such proceedings. The Custodian, on behalf of the Trustee, shall, upon the request of the related Servicer or the Master Servicer, and delivery to the Custodian, on behalf of the Trustee, of two copies of a Request for Release signed by a Servicing Officer substantially in

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the form of Exhibit D (or in a mutually agreeable electronic format which will, in lieu of a signature on its face, originate from a Servicing Officer), release the related Mortgage File held in its possession or control to such Servicer or the Master Servicer, as applicable. Such trust receipt shall obligate the related Servicer or the Master Servicer to return the Mortgage File to the Custodian on behalf of the Trustee when the need therefor by such Servicer or the Master Servicer no longer exists, unless the Mortgage Loan shall be liquidated, in which case, upon receipt of a certificate of a Servicing Officer similar to that hereinabove specified, the Mortgage File shall be released by the Custodian, on behalf of the Trustee, to the related Servicer or the Master Servicer.

(c) The Master Servicer hereby covenants that it shall not alter the codes referenced in Section 4(c) of the Mortgage Loan Purchase Agreement, with respect to any Mortgage Loan during the term of this Agreement, unless and until such Mortgage Loan is repurchased in accordance with the terms of this Agreement.

Section 3.08 Documents, Records and Funds in Possession of Master Servicer To Be Held for Trustee.

(a) The Master Servicer shall transmit and the Servicers (to the extent required by the related Servicing Agreement) shall transmit to the Trustee or Custodian such documents and instruments coming into the possession of the Master Servicer or the Servicers from time to time as are required by the terms hereof, or in the case of the Servicers, the related Servicing Agreement, to be delivered to the Trustee or Custodian. Any funds received by the Master Servicer or by the related Servicer in respect of any Mortgage Loan or which otherwise are collected by the Master Servicer or by such Servicer as Liquidation Proceeds or Insurance Proceeds in respect of any Mortgage Loan shall be held for the benefit of the Trustee and the Certificateholders subject to the Master Servicer's right to retain the Master Servicing Compensation and other amounts provided in this Agreement, and to the right of such Servicer to retain its Servicing Fee and other amounts as provided in the related Servicing Agreement. The Master Servicer shall, and (to the extent provided in the related Servicing Agreement) shall cause the Servicers to, provide access to information and documentation regarding the Mortgage Loans to the Trustee, the Securities Administrator and their respective agents and accountants at any time upon reasonable request and during normal business hours, and to Certificateholders that are savings and loan associations, banks or insurance companies, the Office of Thrift Supervision, the FDIC and the supervisory agents and examiners of such Office and Corporation or examiners of any other federal or state banking or insurance regulatory authority if so required by applicable regulations of the Office of Thrift Supervision or other regulatory authority, such access to be afforded without charge but only upon reasonable request in writing and during normal business hours at the offices of the Master Servicer designated by it. In fulfilling such a request the Master Servicer shall not be responsible for determining the sufficiency of such information.

(b) All Mortgage Files and funds collected or held by, or under the control of, the Master Servicer in respect of any Mortgage Loans, whether from the collection of principal and interest payments or from Liquidation Proceeds or Insurance Proceeds, shall be held by the Master Servicer for and on behalf of the Trustee and the Certificateholders and shall be and remain the sole and exclusive property of the Trustee; provided, however, that the Master

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Servicer and the Servicers shall be entitled to setoff against, and deduct from, any such funds any amounts that are properly due and payable to the Master Servicer or such Servicer under this Agreement or the related Servicing Agreement.

Section 3.09 Standard Hazard Insurance and Flood Insurance Policies.

(a) For each Mortgage Loan, the Master Servicer shall enforce any obligation of the Servicer under the related Servicing Agreement to maintain or cause to be maintained standard fire and casualty insurance and, where applicable, flood insurance, all in accordance with the provisions of the related Servicing Agreement. It is understood and agreed that such insurance shall be with insurers meeting the eligibility requirements set forth in the related Servicing Agreement and that no earthquake or other additional insurance is to be required of any Mortgagor or to be maintained on property acquired in respect of a defaulted Mortgage Loan, other than pursuant to such applicable laws and regulations as shall at any time be in force and as shall require such additional insurance.

(b) Pursuant to Section 4.01, any amounts collected by a Servicer or the Master Servicer under any insurance policies (other than amounts to be applied to the restoration or repair of the property subject to the related Mortgage or released to the Mortgagor in accordance with the related Servicing Agreement) shall be deposited into the Distribution Account, subject to withdrawal pursuant to Section 4.03. Any cost incurred by the Master Servicer or the related Servicer in maintaining any such insurance (if the Mortgagor defaults in its obligation to do so) shall be added to the amount owing under the Mortgage Loan where the terms of the Mortgage Loan so permit; provided, however, that the addition of any such cost shall not be taken into account for purposes of calculating the distributions to be made to Certificateholders and shall be recoverable by the Master Servicer or such Servicer pursuant to Sections 4.01 and 4.03.

Section 3.10 Presentment of Claims and Collection of Proceeds. The Master Servicer shall (to the extent provided in the Servicing Agreements) cause each Servicer to prepare and present on behalf of the Trustee and the Certificateholders all claims under the Insurance Policies and take such actions (including the negotiation, settlement, compromise or enforcement of the insured's claim) as shall be necessary to realize recovery under such policies. Any proceeds disbursed to the Master Servicer (or disbursed to a Servicer and remitted to the Master Servicer) in respect of such policies, bonds or contracts shall be promptly deposited in the Distribution Account upon receipt, except that any amounts realized that are to be applied to the repair or restoration of the related Mortgaged Property as a condition precedent to the presentation of claims on the related Mortgage Loan to the insurer under any applicable Insurance Policy need not be so deposited (or remitted).

Section 3.11 Maintenance of the Primary Mortgage Insurance Policies.

(a) The Master Servicer shall not take, or permit a Servicer (to the extent such action is prohibited under the related Servicing Agreement) to take, any action that would result in noncoverage under any applicable Primary Mortgage Insurance Policy of any loss which, but for the actions of such Master Servicer or Servicer, would have been covered thereunder. The Master Servicer shall use its best reasonable efforts to cause each Servicer (to the extent required under the related Servicing Agreement) to keep in force and effect (to the extent that the

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Mortgage Loan requires the Mortgagor to maintain such insurance) primary mortgage insurance applicable to each Mortgage Loan in accordance with the provisions of this Agreement and the related Servicing Agreement, as applicable. The Master Servicer shall not, and shall not permit a Servicer (to the extent required under the related Servicing Agreement) to, cancel or refuse to renew any such Primary Mortgage Insurance Policy that is in effect at the date of the initial issuance of the Mortgage Note and is required to be kept in force hereunder except in accordance with the provisions of this Agreement and the related Servicing Agreement, as applicable.

(b) The Master Servicer agrees to present, or to cause each Servicer (to the extent required under the related Servicing Agreement) to present, on behalf of the Trustee and the Certificateholders, claims to the insurer under any Primary Mortgage Insurance Policies and, in this regard, to take such reasonable action as shall be necessary to permit recovery under any Primary Mortgage Insurance Policies respecting defaulted Mortgage Loans. Any amounts collected by the Master Servicer or the related Servicer under any Primary Mortgage Insurance Policies shall be deposited in the Distribution Account, subject to withdrawal pursuant to Section 4.03.

Section 3.12 Trustee to Retain Possession of Certain Insurance Policies and Documents.

The Trustee (or the Custodian, as directed by the Trustee), shall retain possession and custody of the originals (to the extent available) of any Primary Mortgage Insurance Policies, or certificate of insurance, if applicable, and any certificates of renewal as to the foregoing as may be issued from time to time as contemplated by this Agreement. Until all amounts distributable in respect of the Certificates have been distributed in full and the Master Servicer otherwise has fulfilled its obligations under this Agreement, the Trustee (or its Custodian, if any, as directed by the Trustee) shall also retain possession and custody of each Mortgage File in accordance with and subject to the terms and conditions of this Agreement. The Master Servicer shall promptly deliver or cause to be delivered to the Trustee (or the Custodian, as directed by the Trustee), upon the execution or receipt thereof the originals of any Primary Mortgage Insurance Policies, any certificates of renewal, and such other documents or instruments that constitute portions of the Mortgage File that come into the possession of the Master Servicer from time to time.

Section 3.13 Realization Upon Defaulted Mortgage Loans. The Master Servicer shall cause each Servicer (to the extent required under the related Servicing Agreement) to foreclose upon, repossess or otherwise comparably convert the ownership of Mortgaged Properties securing such of the Mortgage Loans as come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments, all in accordance with the related Servicing Agreement.

Section 3.14 Compensation for the Servicers and the Master Servicer.

The Master Servicer will be entitled to all income and gain realized from any investment of funds in the Distribution Account from the Servicer Remittance Date in each calendar month to the related Distribution Date (the "Master Servicing Compensation"). Servicing compensation in the form of assumption fees, if any, late payment charges, as collected, if any, or otherwise (but not including any prepayment premium or penalty) shall be retained by the related Servicer

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and shall not be deposited in the related Protected Account. The Master Servicer will be entitled to retain, as additional compensation, any interest remitted by the related Servicer in connection with a Principal Prepayment in full or otherwise in excess of amounts required to be remitted to the Distribution Account. The Master Servicer shall be required to pay all expenses incurred by it in connection with its activities hereunder and shall not be entitled to reimbursement therefor except as provided in this Agreement.

Section 3.15 REO Property.

(a) In the event the Trust Fund acquires ownership of any REO Property in respect of any related Mortgage Loan, the deed or certificate of sale shall be issued to the Trustee, or to its nominee, on behalf of the related Certificateholders. The Master Servicer shall, to the extent provided in the Servicing Agreements, cause the related Servicer to sell any REO Property as expeditiously as possible and in accordance with the provisions of this Agreement and the related Servicing Agreement, as applicable. Pursuant to its efforts to sell such REO Property, the Master Servicer shall cause the related Servicer to protect and conserve such REO Property in the manner and to the extent required by the related Servicing Agreement, in accordance with the REMIC Provisions and in a manner that does not result in a tax on "net income from foreclosure property" or cause such REO Property to fail to qualify as "foreclosure property" within the meaning of Section 860G(a)(8) of the Code.

(b) The Master Servicer shall, to the extent required by the Servicing Agreements, cause the related Servicer to deposit all funds collected and received in connection with the operation of any REO Property in the related Protected Account.

(c) The Master Servicer and the related Servicer, upon the final disposition of any REO Property, shall be entitled to reimbursement for any related unreimbursed Monthly Advances and other unreimbursed advances as well as any unpaid Servicing Fees from Liquidation Proceeds received in connection with the final disposition of such REO Property; provided, that any such unreimbursed Monthly Advances as well as any unpaid Servicing Fees may be reimbursed or paid, as the case may be, prior to final disposition, out of any net rental income or other net amounts derived from such REO Property.

(d) To the extent provided in the Servicing Agreements, the Liquidation Proceeds from the final disposition of the REO Property, net of any payment to the Master Servicer and the related Servicer as provided above, shall be deposited in the related Protected Account on or prior to the Determination Date in the month following receipt thereof and be remitted by wire transfer in immediately available funds to the Master Servicer for deposit into the Distribution Account on the next succeeding Servicer Remittance Date.

Section 3.16 Annual Officer's Certificate as to Compliance.

(a) The Master Servicer shall deliver to the Trustee and the Rating Agencies on or before March 1 of each year, commencing on March 1, 2006, an Officer's Certificate, certifying that with respect to the year ending December 31 of the prior year: (i) such Servicing Officer has reviewed the activities of such Master Servicer during the preceding calendar year or portion thereof and its performance under this Agreement, (ii) to the best of such Servicing Officer's

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knowledge, based on such review, such Master Servicer has performed and fulfilled its duties, responsibilities and obligations under this Agreement in all material respects throughout such year, or, if there has been a default in the fulfillment of any such duties, responsibilities or obligations, specifying each such default known to such Servicing Officer and the nature and status thereof, and (iii) nothing has come to the attention of such Servicing Officer to lead such Servicing Officer to believe that a Servicer has failed to perform any of its duties, responsibilities and obligations under the related Servicing Agreement in all material respects throughout such year, or, if there has been a material default in the performance or fulfillment of any such duties, responsibilities or obligations, specifying each such default known to such Servicing Officer and the nature and status thereof.

(b) Copies of such statements shall be provided to any Certificateholder upon request, by the Master Servicer or by the Trustee at the Master Servicer's expense if the Master Servicer failed to provide such copies (unless (i) the Master Servicer shall have failed to provide the Trustee with such statement or (ii) the Trustee shall be unaware of the Master Servicer's failure to provide such statement).

Section 3.17 Annual Independent Accountant's Servicing Report. If the Master Servicer has, during the course of any fiscal year, directly serviced any of the Mortgage Loans, then the Master Servicer at its expense shall cause a nationally recognized firm of independent certified public accountants to furnish a statement to the Trustee, the Rating Agencies and the Depositor on or before March 1 of each year, commencing on March 1, 2006, to the effect that, with respect to the most recently ended fiscal year, such firm has examined certain records and documents relating to the Master Servicer's performance of its servicing obligations under this Agreement and pooling and servicing and trust agreements in material respects similar to this Agreement and to each other and that, on the basis of such examination conducted substantially in compliance with the Audit Program for Mortgages Serviced for Freddie Mac or the Uniform Single Attestation Program for Mortgage Bankers, such firm is of the opinion that the Master Servicer's activities have been conducted in compliance with this Agreement, or that such examination has disclosed no material items of noncompliance except for (i) such exceptions as such firm believes to be immaterial, (ii) such other exceptions as are set forth in such statement and (iii) such exceptions that the Uniform Single Attestation Program for Mortgage Bankers or the Audit Program for Mortgages Serviced by Freddie Mac requires it to report. Copies of such statements shall be provided by the Master Servicer to any Certificateholder upon request, or by the Trustee at the expense of the Master Servicer if the Master Servicer shall fail to provide such copies. If such report discloses exceptions that are material, the Master Servicer shall advise the Trustee whether such exceptions have been or are susceptible of cure, and will take prompt action to do so.

Section 3.18 Reports Filed with Securities and Exchange Commission. (a) Within 15 days after each Distribution Date, the Securities Administrator shall, in accordance with industry standards, file with the Commission via the Electronic Data Gathering and Retrieval System ("EDGAR"), a Form 8-K (or other comparable form containing the same or comparable information, or other information mutually agreed upon) with a copy of the statement to the Certificateholders for such Distribution Date as an exhibit thereto. Prior to January 30 in any year, the Securities Administrator shall, in accordance with industry standards and only if instructed by the Depositor, file a Form 15 Suspension Notice with respect to the Trust Fund, if

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applicable. Prior to (i) March 15, 2006 and (ii) unless and until a Form 15 Suspension Notice shall have been filed, prior to March 15 of each year thereafter, the Master Servicer shall provide the Securities Administrator with a Master Servicer Certification, together with a copy of the annual independent accountant's servicing report and annual statement of compliance of each Servicer, in each case, required to be delivered pursuant to the related Servicing Agreement, and, if applicable, the annual statement of compliance and the annual independent accountant's servicing report to be delivered by the Master Servicer pursuant to Sections 3.16 and 3.17. Prior to (i) March 31, 2006, or such earlier filing date as may be required by the Commission, and (ii) unless and until a Form 15 Suspension Notice shall have been filed, March 31 of each year thereafter, or such earlier filing date as may be required by the Commission, the Securities Administrator shall prepare and file a Form 10-K, in substance conforming to industry standards, with respect to the Trust. Such Form 10-K shall include the Master Servicer Certification and other documentation provided by the Master Servicer pursuant to the second preceding sentence. The Depositor hereby grants to the Securities Administrator a limited power of attorney to execute and file each such document on behalf of the Depositor. Such power of attorney shall continue until either the earlier of (i) receipt by the Securities Administrator from the Depositor of written termination of such power of attorney and (ii) the termination of the Trust Fund. The Depositor agrees to promptly furnish to the Securities Administrator, from time to time upon request, such further information, reports and financial statements within its control related to this Agreement and the Mortgage Loans as the Securities Administrator reasonably deems appropriate to prepare and file all necessary reports with the Commission. The Securities Administrator shall have no responsibility to file any items other than those specified in this Section 3.18; provided, however, the Securities Administrator will cooperate with the Depositor in connection with any additional filings with respect to the Trust Fund as the Depositor deems necessary under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

(b) The Master Servicer shall indemnify and hold harmless the Depositor, the Trustee and their respective officers, directors and Affiliates from and against any losses, damages, penalties, fines, forfeitures, reasonable and necessary legal fees and related costs, judgments and other costs and expenses arising out of or based upon a breach of the Master Servicer's obligations under this Section 3.18 or the Master Servicer's negligence, bad faith or willful misconduct in connection therewith. Fees and expenses incurred by the Master Servicer in connection with this Section 3.18 shall not be reimbursable from the Trust Fund.

Section 3.19 EMC. On the Closing Date, EMC will receive from the Depositor a payment of $5,000.

Section 3.20 UCC. The Depositor shall inform the Trustee in writing of any Uniform Commercial Code financing statements that were filed on the Closing Date in connection with the Trust with stamped recorded copies of such financing statements to be delivered to the Trustee promptly upon receipt by the Depositor. The Trustee agrees to monitor and notify the Depositor if any continuation statements for such Uniform Commercial Code financing statements need to be filed. If directed by the Depositor in writing, the Trustee will file any such continuation statements solely at the expense of the Depositor. The Depositor shall file any financing statements or amendments thereto required by any change in the Uniform Commercial Code.

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Section 3.21 Optional Purchase of Defaulted Mortgage Loans. With respect to any Mortgage Loan which as of the first day of a Fiscal Quarter is delinquent in payment by 90 days or more or is an REO Property, EMC shall have the right to purchase such Mortgage Loan from the Trust at a price equal to the Repurchase Price; provided, however, (i) that such Mortgage Loan is still 90 days or more delinquent or is an REO Property as of the date of such purchase and (ii) this purchase option, if not theretofore exercised, shall terminate on the date prior to the last day of the related Fiscal Quarter. This purchase option, if not exercised, shall not be thereafter reinstated unless the delinquency is cured and the Mortgage Loan thereafter again becomes 90 days or more delinquent or becomes an REO Property, in which case the option shall again become exercisable as of the first day of the related Fiscal Quarter.

In addition, EMC shall, at its option, purchase any Mortgage Loan from the Trust if the first Due Date for such Mortgage Loan is subsequent to the Cut-off Date, and the initial Monthly Payment with respect to such Mortgage Loan is not made within thirty (30) days of such Due Date. Such purchase shall be made at a price equal to the Repurchase Price.

If at any time EMC remits to the Paying Agent a payment for deposit in the Distribution Account covering the amount of the Repurchase Price for such a Mortgage Loan, and EMC provides to the Trustee and the Master Servicer a certification signed by a Servicing Officer stating that the amount of such payment has been deposited in the Distribution Account, then the Trustee shall execute the assignment of such Mortgage Loan at the request of EMC, without recourse, to EMC which shall succeed to all the Trustee's right, title and interest in and to such Mortgage Loan, and all security and documents relative thereto. Such assignment shall be an assignment outright and not for security. EMC will thereupon own such Mortgage Loan, and all such security and documents, free of any further obligation to the Trustee or the Certificateholders with respect thereto.

ARTICLE IV
Accounts

Section 4.01 Protected Accounts. (a) The Master Servicer shall enforce the obligation of each respective Servicer to establish and maintain a Protected Account in accordance with the related Servicing Agreement, with records to be kept with respect thereto on a Mortgage Loan by Mortgage Loan basis, into which Protected Account shall be deposited, within 48 hours (or as of such other time specified in the related Servicing Agreement) of receipt thereof, all collections of principal and interest on any Mortgage Loan and with respect to any REO Property received by the related Servicer, including Principal Prepayments, Insurance Proceeds, Liquidation Proceeds, and advances made from such Servicer's own funds (less servicing compensation as permitted by the related Servicing Agreement) and all other amounts to be deposited in the related Protected Account. Each Servicer is hereby authorized to make withdrawals from and deposits to the related Protected Account for purposes required or permitted by this Agreement. To the extent provided in the related Servicing Agreement, the related Protected Account shall be held in a Designated Depository Institution and segregated as a trust account on the books of such institution in the name of the Trustee for the benefit of Certificateholders.

(b) To the extent provided in a Servicing Agreement, amounts on deposit in the related Protected Account may be invested in Permitted Investments in the name of the Trustee

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for the benefit of Certificateholders and, except as provided in the preceding paragraph, not commingled with any other funds, such Permitted Investments to mature, or to be subject to redemption or withdrawal, no later than the date on which such funds are required to be withdrawn for deposit in the Distribution Account, and shall be held until required for such deposit. The income earned from Permitted Investments made pursuant to this Section 4.01 shall be paid to the related Servicers under the related Servicing Agreement, and the risk of loss of moneys required to be distributed to the Certificateholders resulting from such investments shall be borne by and be the risk of the related Servicer. Each Servicer (to the extent provided in the related Servicing Agreement) shall deposit the amount of any such loss in the related Protected Account within two Business Days of receipt of notification of such loss but not later than the second Business Day prior to the Distribution Date on which the moneys so invested are required to be distributed to the Certificateholders.

(c) To the extent provided in a Servicing Agreement and subject to this Article IV, on or before each Servicer Remittance Date, the Master Servicer shall (if acting as a successor servicer to a Servicer), or shall cause the related Servicer to, withdraw or shall cause to be withdrawn from the related Protected Account, and shall immediately deposit or cause to be deposited in the Distribution Account, amounts representing the following collections and payments (other than with respect to principal of or interest on the Mortgage Loans due on or before the Cut-off Date) with respect to each Mortgage Loan serviced by it:

(i) Scheduled Payments on the Mortgage Loans received or any related portion thereof advanced by the related Servicer pursuant to the related Servicing Agreement which were due on or before the related Due Date, net of the amount thereof comprising the related Servicing Fee or any fees with respect to any lender-paid primary mortgage insurance policy;

(ii) Full Principal Prepayments and any Liquidation Proceeds received by the related Servicer with respect to such Mortgage Loans in the related Prepayment Period (or, in the case of Subsequent Recoveries, during the related Due Period), with interest to the date of prepayment or liquidation, net of the amount thereof comprising the related Servicing Fee;

(iii) Partial Principal Prepayments received by the related Servicer for such Mortgage Loans in the related Prepayment Period;

(iv) All funds collected and received in connection with the operation of any REO Property, and Liquidation Proceeds received upon the final disposition of any REO Property (net of any unreimbursed Monthly Advances, other advances of the related Servicer or Master Servicer with respect thereto, and unpaid related Servicing Fees with respect thereto); and

(v) Any amount to be used as a Monthly Advance.

(d) Withdrawals may be made from a Protected Account only to make remittances as provided in Section 4.01(c); to reimburse the Master Servicer or the related Servicer for Monthly Advances which have been recovered by subsequent collection from the related Mortgagor; to

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remove amounts deposited in error; to remove fees, charges or other such amounts deposited on a temporary basis; or to clear and terminate the account at the termination of this Agreement in accordance with Section 10.01. As provided in Section 4.01(c), certain amounts otherwise due to the related Servicers may be retained by them and need not be deposited in the Distribution Account.

Section 4.02 Distribution Account. (a) The Paying Agent shall establish and maintain in the name of the Paying Agent, for the benefit of the Certificateholders, the Distribution Account as a segregated trust account or accounts. On the Closing Date, the Depositor shall deposit the Deposit Amount into the Distribution Account.

(b) All amounts deposited to the Distribution Account shall be held by the Paying Agent in the name of the Paying Agent in trust for the benefit of the Certificateholders in accordance with the terms and provisions of this Agreement.

(c) The Distribution Account shall constitute a trust account of the Trust Fund segregated on the books of the Paying Agent. The Distribution Account shall be an Eligible Account. The Distribution Account and the funds deposited therein shall not be subject to, and shall be protected from, all claims, liens, and encumbrances of any creditors or depositors of the Trustee, the Paying Agent, the Securities Administrator or the Master Servicer (whether made directly, or indirectly through a liquidator or receiver of the Trustee, the Paying Agent, the Securities Administrator or the Master Servicer). The amount at any time credited to the Distribution Account shall, if invested, be invested in the name of the Trustee, in such Permitted Investments selected by the Master Servicer. All Permitted Investments shall mature or be subject to redemption or withdrawal on or before, and shall be held until, the next succeeding Distribution Date if the obligor for such Permitted Investment is the Paying Agent or, if such obligor is any other Person, the Business Day preceding such Distribution Date. All investment earnings from Permitted Investments in the Distribution Account from time to time shall be for the account of the Master Servicer. The Master Servicer shall be permitted to withdraw or receive distribution of any and all investment earnings from the Distribution Account on each Distribution Date. If there is any loss on a Permitted Investment or demand deposit, the Master Servicer shall promptly remit the amount of the loss to the Paying Agent, who shall deposit such amount in the Distribution Account. With respect to the Distribution Account and the funds deposited therein, the Paying Agent shall take such action as may be necessary to ensure that the Certificateholders shall be entitled to the priorities afforded to such a trust account (in addition to a claim against the estate of the Paying Agent) as provided by 12 U.S.C. § 92a(e), and applicable regulations pursuant thereto, if applicable, or any applicable comparable state statute applicable to state chartered banking corporations.

Section 4.03 Permitted Withdrawals and Transfers from the Distribution Account. (a) The Paying Agent will, from time to time on demand of the Master Servicer or the Securities Administrator, make or cause to be made such withdrawals or transfers from the Distribution Account as the Master Servicer has designated for such transfer or withdrawal pursuant to the related Servicing Agreement or this Agreement or as the Securities Administrator has instructed hereunder for the following purposes:

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(i) to reimburse the Master Servicer or the related Servicer for any Monthly Advance of its own funds or any advance of such Master Servicer's or Servicer's own funds, the right of the Master Servicer or a Servicer to reimbursement pursuant to this subclause (i) being limited to amounts received on a particular Mortgage Loan (including, for this purpose, the Repurchase Price therefor, Insurance Proceeds and Liquidation Proceeds) which represent late payments or recoveries of the principal of or interest on such Mortgage Loan respecting which such Monthly Advance or advance was made;

(ii) to reimburse the Master Servicer or the related Servicer from Insurance Proceeds or Liquidation Proceeds relating to a particular Mortgage Loan for amounts expended by the Master Servicer or the related Servicer in good faith in connection with the restoration of the related Mortgaged Property which was damaged by an Uninsured Cause or in connection with the liquidation of such Mortgage Loan;

(iii) to reimburse the Master Servicer or the related Servicer from Insurance Proceeds relating to a particular Mortgage Loan for insured expenses incurred with respect to such Mortgage Loan and to reimburse the Master Servicer or the related Servicer from Liquidation Proceeds from a particular Mortgage Loan for Liquidation Expenses incurred with respect to such Mortgage Loan; provided that the Master Servicer shall not be entitled to reimbursement for Liquidation Expenses with respect to a Mortgage Loan to the extent that (i) any amounts with respect to such Mortgage Loan were paid as Excess Liquidation Proceeds pursuant to clause (x) of this Subsection 4.03(a) to the Master Servicer, and (ii) such Liquidation Expenses were not included in the computation of such Excess Liquidation Proceeds;

(iv) to pay the Master Servicer or the related Servicer, as appropriate, from Liquidation Proceeds or Insurance Proceeds received in connection with the liquidation of any Mortgage Loan, the amount which the Master Servicer or the related Servicer would have been entitled to receive under subclause (xi) of this Subsection 4.03(a) as servicing compensation on account of each defaulted Scheduled Payment on such Mortgage Loan if paid in a timely manner by the related Mortgagor;

(v) to pay the related Servicer from the Repurchase Price for any Mortgage Loan, the amount which the related Servicer would have been entitled to receive under subclause (xi) of this Subsection 4.03(a) as servicing compensation;

(vi) to reimburse the Master Servicer or the related Servicer for advances of funds, and the right to reimbursement pursuant to this subclause being limited to amounts received on the related Mortgage Loan (including, for this purpose, the Repurchase Price therefor, Insurance Proceeds and Liquidation Proceeds) which represent late recoveries of the payments for which such advances were made;

(vii) to reimburse the Master Servicer or the related Servicer for any Monthly Advance or advance, after a Realized Loss has been allocated with respect to the related Mortgage Loan, if the Monthly Advance or advance has not been reimbursed pursuant to clauses (i) and (vi);

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(viii) to pay the Master Servicer as set forth in Section 3.14;

(ix) to reimburse the Master Servicer for expenses, costs and liabilities incurred by and reimbursable to it pursuant to Sections 3.03, 7.04(c) and 7.04 (d);

(x) to pay to the Master Servicer, as additional servicing compensation, any Excess Liquidation Proceeds to the extent not retained by the related Servicer;

(xi) to reimburse or pay a Servicer any such amounts as are due thereto under the related Servicing Agreement and have not been retained by or paid to such Servicer, to the extent provided in the related Servicing Agreement;

(xii) to reimburse or pay the Trustee, the Securities Administrator or the Custodian for fees, expenses, costs and liabilities incurred by and reimbursable or payable to it pursuant to this Agreement and not otherwise reimbursable or payable to it;

(xiii) to remove amounts deposited in error;

(xiv) to clear and terminate the Distribution Account pursuant to Section 10.01; and

(xv) on the first Distribution Date, to withdraw an amount equal to the Deposit Amount from the Distribution Account and distribute such amount to the holders of the Class R-I, Class R-II and Class R-III Certificates, pro rata, until their respective Current Principal Amounts have been reduced to zero.

(b) The Master Servicer shall keep and maintain separate accounting, on a Mortgage Loan by Mortgage Loan basis, for the purpose of accounting for any reimbursement from the Distribution Account pursuant to subclauses (i) through (vii), inclusive, and (x).

(c) On each Distribution Date, the Paying Agent shall distribute the Available Funds to the extent on deposit in the Distribution Account for each Loan Group to the Holders of the Certificates (other than the Residual Certificates) in accordance with distribution instructions provided to it by the Securities Administrator no later than two Business Days prior to such Distribution Date and determined by the Securities Administrator in accordance with Section 6.01.

Section 4.04 Distribution of Group I Carryover Shortfall Amount; Group I Carryover Shortfall Reserve Fund.

(a) On the Closing Date, the Paying Agent shall establish and maintain, in trust for the benefit of the holders of the Class I-A-1 Certificates and the Class I-A-2 Certificates, a segregated trust account or sub-account of a trust account, which shall be titled "Group I Carryover Shortfall Reserve Fund, JPMorgan Chase Bank, N.A., as trustee for the benefit of holders of Structured Asset Mortgage Investments II Trust 2005-AR2, Mortgage Pass-Through Certificates, Series 2005-AR2, Class I-A-1 and Class I-A-2" (the "Group I Carryover Shortfall Reserve Fund"). The Paying Agent shall, promptly upon receipt, deposit in the Group I Carryover Shortfall Reserve Fund an amount equal to $5,000 to be remitted on the Closing Date

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to the Paying Agent by the Depositor. On each Distribution Date, the Paying Agent shall transfer from the Distribution Account to the Group I Carryover Shortfall Reserve Fund the amounts specified pursuant to Section 6.01(a)(A). On each Distribution Date, to the extent required, the Paying Agent shall make withdrawals from the Group I Carryover Shortfall Reserve Fund and use the amounts in the Group I Carryover Shortfall Reserve Fund to make distributions pro rata to the Class I-A-1 and Class I-A-2 Certificates, in an amount equal to the amount of any Group I Carryover Shortfall Amount on such Certificates, pursuant to Section 6.01(a)(G). Any such amounts transferred shall be treated for federal tax purposes as amounts distributed by REMIC III to the Class I-X Certificateholders as transferee thereof. For federal tax return and information reporting purposes, the rights of the Holders of the Class I-A-1 and Class I-A-2 Certificates to receive such distributions shall be assigned a value determined by the Depositor and reported by it to the Securities Administrator.

(b) The Group I Carryover Shortfall Reserve Fund shall be an Eligible Account. Amounts held in the Group I Carryover Shortfall Reserve Fund from time to time shall continue to constitute assets of the Trust Fund, but not of the REMICs, until released from the Group I Carryover Shortfall Reserve Fund pursuant to this Section 4.04 and Section 6.01(a)(G). The Group I Carryover Shortfall Reserve Fund constitutes an "outside reserve fund" within the meaning of Treasury Regulation § 1.860G-2(h) and is not an asset of the REMICs. The Class I-X Certificateholders shall be the owners of the Group I Carryover Shortfall Reserve Fund, and for all federal tax purposes, amounts transferred by the REMICs to the Group I Carryover Shortfall Reserve Fund shall be treated as amounts distributed by the REMICs to the Class I-X Certificateholders. The Paying Agent shall keep records that accurately reflect the funds on deposit in the Group I Carryover Shortfall Reserve Fund.

(c) The Paying Agent will invest funds deposited in the Group I Carryover Shortfall Reserve Fund as directed by the Class I-X Certificateholders in writing in Permitted Investments with a maturity date (i) no later than the Business Day immediately preceding the date on which such funds are required to be withdrawn from the Group I Carryover Shortfall Reserve Fund pursuant to this Agreement, if a Person other than the Paying Agent or an Affiliate of the Paying Agent manages or advises such Permitted Investment, or (ii) no later than the date on which such funds are required to be withdrawn from the Group I Carryover Shortfall Reserve Fund pursuant to this Agreement, if the Paying Agent or an Affiliate of the Paying Agent manages or advises such Permitted Investment. If no written direction with respect to such Permitted Investment shall be received by the Paying Agent from the Class I-X Certificateholders, then funds in the Group I Carryover Shortfall Reserve Fund shall remain uninvested. All income and gain realized from investment of funds deposited in the Group I Carryover Shortfall Reserve Fund shall be for the sole and exclusive benefit of the Class I-X Certificateholders and shall be remitted by the Paying Agent to the Class I-X Certificateholders no later than the first Business Day following receipt of such income and gain by the Paying Agent. The Class I-X Certificateholders shall deposit in the Group I Carryover Shortfall Reserve Fund the amount of any net loss incurred in respect of any such Permitted Investment immediately upon realization of such loss, without any right of reimbursement therefor.

Section 4.05 Distribution of Group II Carryover Shortfall Amount; Group II Carryover Shortfall Reserve Fund. (a) On the Closing Date, the Paying Agent shall establish and maintain, in trust for the benefit of Class II-A-1 Certificates, the Class II-A-2 Certificates, and the Class II-

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A-3 Certificates, a segregated trust account or sub-account of a trust account, which shall be titled "Group II Carryover Shortfall Reserve Fund, JPMorgan Chase Bank, N.A., as trustee for the benefit of holders of Structured Asset Mortgage Investments II Trust 2005-AR2, Mortgage Pass-Through Certificates, Series 2005-AR2, Class II-A-1, Class II-A-2 and Class II-A-3" (the "Group II Carryover Shortfall Reserve Fund"). The Paying Agent shall, promptly upon receipt, deposit in the Group II Carryover Shortfall Reserve Fund an amount equal to $5,000 to be remitted on the Closing Date to the Paying Agent by the Depositor. On each Distribution Date, the Paying Agent shall transfer from the Distribution Account to the Group II Carryover Shortfall Reserve Fund the amounts specified pursuant to Section 6.01(a)(B). On each Distribution Date, to the extent required, the Paying Agent shall make withdrawals from the Group II Carryover Shortfall Reserve Fund and use the amounts in the Group II Carryover Shortfall Reserve Fund to make distributions pro rata to the Class II-A-1 Certificates, the Class II-A-2 Certificates and the Class II-A-3 Certificates, in an amount equal to the amount of any Group II Carryover Shortfall Amount on such Certificates, pursuant to Section 6.01(a)(H). Any such amounts transferred shall be treated for federal tax purposes as amounts distributed by REMIC III to the Class II-X Certificateholders as transferee thereof. For federal tax return and information reporting purposes, the rights of the Holders of the Class II-A-1 Certificates, the Class II-A-2 Certificates and the Class II-A-3 Certificates to receive such distributions shall be assigned a value determined by the Depositor and reported by it to the Securities Administrator.

(b) The Group II Carryover Shortfall Reserve Fund shall be an Eligible Account. Amounts held in the Group II Carryover Shortfall Reserve Fund from time to time shall continue to constitute assets of the Trust Fund, but not of the REMICs, until released from the Group II Carryover Shortfall Reserve Fund pursuant to this Section 4.05 and Section 6.01(a)(H). The Group II Carryover Shortfall Reserve Fund constitutes an "outside reserve fund" within the meaning of Treasury Regulation § 1.860G-2(h) and is not an asset of the REMICs. The Class II-X Certificateholders shall be the owners of the Group II Carryover Shortfall Reserve Fund, and for all federal tax purposes, amounts transferred by the REMICs to the Group II Carryover Shortfall Reserve Fund shall be treated as amounts distributed by the REMICs to the Class II-X Certificateholders. The Paying Agent shall keep records that accurately reflect the funds on deposit in the Group II Carryover Shortfall Reserve Fund.

(c) The Paying Agent will invest funds deposited in the Group II Carryover Shortfall Reserve Fund as directed by the Class II-X Certificateholders in writing in Permitted Investments with a maturity date (i) no later than the Business Day immediately preceding the date on which such funds are required to be withdrawn from the Group II Carryover Shortfall Reserve Fund pursuant to this Agreement, if a Person other than the Paying Agent or an Affiliate of the Paying Agent manages or advises such Permitted Investment, or (ii) no later than the date on which such funds are required to be withdrawn from the Group II Carryover Shortfall Reserve Fund pursuant to this Agreement, if the Paying Agent or an Affiliate of the Paying Agent manages or advises such Permitted Investment. If no written direction with respect to such Permitted Investment shall be received by the Paying Agent from the Class II-X Certificateholders, then funds in the Group II Carryover Shortfall Reserve Fund shall remain uninvested. All income and gain realized from investment of funds deposited in the Group II Carryover Shortfall Reserve Fund shall be for the sole and exclusive benefit of the Class II-X Certificateholders and shall be remitted by the Paying Agent to the Class II-X Certificateholders no later than the first Business Day following receipt of such income and gain by the Paying

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Agent. The Class II-X Certificateholders shall deposit in the Group II Carryover Shortfall Reserve Fund the amount of any net loss incurred in respect of any such Permitted Investment immediately upon realization of such loss, without any right of reimbursement therefor.

Section 4.07 Distribution of Subordinate Carryover Shortfall Amount; Subordinate Carryover Shortfall Reserve Fund. (a) On the Closing Date, the Paying Agent shall establish and maintain in its name, in trust for the benefit of Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class B-1, Class B-2, Class B-3, Class B-4, Class B-5 and Class B-6 Certificates, a segregated trust account or sub-account of a trust account, which shall be titled "Subordinate Carryover Shortfall Reserve Fund, JPMorgan Chase Bank, N.A., as trustee for the benefit of holders of Structured Asset Mortgage Investments II Trust 2005-AR2, Mortgage Pass-Through Certificates, Series 2005-AR2, Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class B-1, Class B-2, Class B-3, Class B-4, Class B-5 and Class B-6" (the "Subordinate Carryover Shortfall Reserve Fund"). The Paying Agent shall, promptly upon receipt, deposit in the Subordinate Carryover Shortfall Reserve Fund an amount equal to $5,000 to be remitted on the Closing Date to the Paying Agent by the Depositor. On each Distribution Date, the Paying Agent shall transfer from the Distribution Account to the Subordinate Carryover Shortfall Reserve Fund the amounts specified pursuant to Section 6.01(a)(A), (B) and (C). On each Distribution Date, to the extent required, the Paying Agent shall make withdrawals from the Subordinate Carryover Shortfall Reserve Fund and use the amounts in the Subordinate Carryover Shortfall Reserve Fund to make distributions sequentially to the Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class B-1, Class B-2, Class B-3, Class B-4, Class B-5 and Class B-6 Certificates, in an amount equal to the amount of any Subordinate Carryover Shortfall Amount on such Certificates, pursuant to Section 6.01(a)(I). Any such amounts transferred shall be treated for federal tax purposes as amounts distributed by REMIC III to the Class M-X Certificateholders as transferee thereof. For federal tax return and information reporting purposes, the rights of the Holders of the Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class B-1, Class B-2, Class B-3, Class B-4, Class B-5 and Class B-6 Certificates to receive such distributions shall be assigned a value determined by the Depositor and reported by it to the Securities Administrator.

(b) The Subordinate Carryover Shortfall Reserve Fund shall be an Eligible Account. Amounts held in the Subordinate Carryover Shortfall Reserve Fund from time to time shall continue to constitute assets of the Trust Fund, but not of the REMICs, until released from the Subordinate Carryover Shortfall Reserve Fund pursuant to this Section 4.06 and Section 6.01(a)(I). The Subordinate Carryover Shortfall Reserve Fund constitutes an "outside reserve fund" within the meaning of Treasury Regulation § 1.860G-2(h) and is not an asset of the REMICs. The Class M-X Certificateholders shall be the owners of the Subordinate Carryover Shortfall Reserve Fund, and for all federal tax purposes, amounts transferred by the REMICs to the Subordinate Carryover Shortfall Reserve Fund shall be treated as amounts distributed by the REMICs to the Class M-X Certificateholders. The Paying Agent shall keep records that accurately reflect the funds on deposit in the Subordinate Carryover Shortfall Reserve Fund.

(c) The Paying Agent will invest funds deposited in the Subordinate Carryover Shortfall Reserve Fund as directed by the Class M-X Certificateholders in writing in Permitted Investments with a maturity date (i) no later than the Business Day immediately preceding the date on which such funds are required to be withdrawn from the Subordinate Carryover Shortfall

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Reserve Fund pursuant to this Agreement, if a Person other than the Paying Agent or an Affiliate of the Paying Agent manages or advises such Permitted Investment, or (ii) no later than the date on which such funds are required to be withdrawn from the Subordinate Carryover Shortfall Reserve Fund pursuant to this Agreement, if the Paying Agent or an Affiliate of the Paying Agent manages or advises such Permitted Investment. If no written direction with respect to such Permitted Investment shall be received by the Paying Agent from the Class M-X Certificateholders, then funds in the Subordinate Carryover Shortfall Reserve Fund shall remain uninvested. All income and gain realized from investment of funds deposited in the Subordinate Carryover Shortfall Reserve Fund shall be for the sole and exclusive benefit of the Class M-X Certificateholders and shall be remitted by the Paying Agent to the Class M-X Certificateholders no later than the first Business Day following receipt of such income and gain by the Paying Agent. The Class M-X Certificateholders shall deposit in the Subordinate Carryover Shortfall Reserve Fund the amount of any net loss incurred in respect of any such Permitted Investment immediately upon realization of such loss, without any right of reimbursement therefor.

Section 4.09 Yield Maintenance Account and Yield Maintenance Agreement.

The Trustee is hereby directed to execute the Yield Maintenance Agreement on behalf of the Trust Fund. Amounts payable by the Trust Fund on the Closing Date pursuant to the Yield Maintenance Agreement shall be paid by the Seller. The Trustee in its individual capacity shall have no responsibility for any of the undertakings, agreements or representations with respect to the Yield Maintenance Agreement, including, without limitation, for making any payments thereunder.

The Paying Agent shall establish and maintain in the name of the Paying Agent, for the benefit of the Class I-A-1, Class I-A-2, Class II-A-1, Class II-A-2 and Class II-A-3 Certificateholders, the Yield Maintenance Account as a segregated trust account. The Yield Maintenance Account constitutes an "outside reserve fund" within the meaning of Treasury Regulation § 1.860G-2(h) and is not an asset of the REMICs. The Class I-X and Class II-X Certificateholders shall be the owners of the Yield Maintenance Account, and for all federal tax purposes, amounts transferred by the REMICs to the Yield Maintenance Account shall be treated as amounts distributed by the REMICs to the Class I-X and Class II-X Certificateholders. The Paying Agent shall keep records that accurately reflect the funds on deposit in the Yield Maintenance Account.

The Paying Agent will invest funds deposited in the Yield Maintenance Account as directed by the Class I-X and Class II-X Certificateholders in writing in Permitted Investments with a maturity date (i) no later than the Business Day immediately preceding the date on which such funds are required to be withdrawn from the Yield Maintenance Account pursuant to this Agreement, if a Person other than the Paying Agent or an Affiliate of the Paying Agent manages or advises such Permitted Investment, or (ii) no later than the date on which such funds are required to be withdrawn from the Yield Maintenance Account pursuant to this Agreement, if the Paying Agent or an Affiliate of the Paying Agent manages or advises such Permitted Investment. If no written direction with respect to such Permitted Investment shall be received by the Paying Agent from the Class I-X and Class II-X Certificateholders, then funds in the Yield Maintenance Account shall remain uninvested. All income and gain realized from investment of funds deposited in the Yield Maintenance Account shall be for the sole and exclusive benefit of the

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Class I-X and Class II-X Certificateholders and shall be remitted by the Paying Agent pro rata to the Class I-X and Class II-X Certificateholders no later than the first Business Day following receipt of such income and gain by the Paying Agent. The Class I-X and Class II-X Certificateholders shall deposit in the Yield Maintenance Account their pro rata share of the amount of any net loss incurred in respect of any such Permitted Investment immediately upon realization of such loss, without any right of reimbursement therefor.

Any Yield Maintenance Payments made by the Yield Maintenance Provider pursuant to the Yield Maintenance Agreement with respect to a Distribution Date shall be deposited by the Paying Agent into the Yield Maintenance Account and distributed by the Paying Agent on the related Distribution Date to the Class I-A-1, Class I-A-2, Class II-A-1, Class II-A-2 and Class II-A-3 Certificateholders, on a pro rata basis, in an amount equal to the lesser of the respective Class of Certificates' pro rata share of (1) the amount of such Yield Maintenance Payment made with respect to such Distribution Date, and (2) the Accrued Certificate Interest that the related Class of Certificates would have been entitled to receive on such Distribution Date had the applicable Pass-Through Rate on such Class of Certificates been calculated at One-Month LIBOR for the related Distribution Date plus the related Margin for the related Interest Accrual Period, to the extent that such Accrued Certificate Interest was not otherwise paid from Group I or Group II Available Funds, as the case may be, on such Distribution Date to the related Class of Certificates.

ARTICLE V
Certificates

Section 5.01 Certificates (a) The Depository and the Depositor have entered into a Depository Agreement dated as of the Closing Date (the "Depository Agreement"). Except for the Residual Certificates, the Private Certificates and the Individual Certificates and as provided in Subsection 5.01(b), the Certificates shall at all times remain registered in the name of the Depository or its nominee and at all times: (i) registration of such Certificates may not be transferred by the Certificate Registrar except to a successor to the Depository; (ii) ownership and transfers of registration of such Certificates on the books of the Depository shall be governed by applicable rules established by the Depository; (iii) the Depository may collect its usual and customary fees, charges and expenses from its Depository Participants; (iv) the Certificate Registrar, as agent of the Depositor, shall deal with the Depository as representative of such Certificate Owners of the respective Class of Certificates for purposes of exercising the rights of Certificateholders under this Agreement, and requests and directions for and votes of such representative shall not be deemed to be inconsistent if they are made with respect to different Certificate Owners; and (v) the Certificate Registrar, as agent of the Depositor, may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its Depository Participants.

The Residual Certificates and the Private Certificates are initially Physical Certificates. If at any time the Holders of all of the Certificates of one or more such Classes request that the Certificate Registrar cause such Class to become Global Certificates, the Certificate Registrar and the Depositor will take such action as may be reasonably required to cause the Depository to accept such Class or Classes of Certificates for trading if it may legally be so traded.

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All transfers by Certificate Owners of such respective Classes of Book-Entry Certificates and any Global Certificates shall be made in accordance with the procedures established by the Depository Participant or brokerage firm representing such Certificate Owners. Each Depository Participant shall only transfer Book-Entry Certificates of Certificate Owners it represents or of brokerage firms for which it acts as agent in accordance with the Depository's normal procedures.

(b) If (i)(A) the Depositor advises the Certificate Registrar in writing that the Depository is no longer willing or able to properly discharge its responsibilities as Depository and (B) the Certificate Registrar or the Depositor is unable to locate a qualified successor within 30 days or (ii) the Depositor at its option advises the Certificate Registrar, as agent of the Depositor, in writing that it elects to terminate the book-entry system through the Depository, the Certificate Registrar, as agent of the Depositor, shall request that the Depository notify all Certificate Owners of the occurrence of any such event and of the availability of definitive, fully registered Certificates to Certificate Owners requesting the same. Upon surrender to the Certificate Registrar, as agent of the Depositor, of the Certificates by the Depository, accompanied by registration instructions from the Depository for registration, the Certificate Registrar shall issue the definitive Certificates.

In addition, if an Event of Default has occurred and is continuing, each Certificate Owner materially adversely affected thereby may at its option request a definitive Certificate evidencing such Certificate Owner's interest in the related Class of Certificates. In order to make such request, such Certificate Owner shall, subject to the rules and procedures of the Depository, provide the Depository or the related Depository Participant with directions for the Certificate Registrar to exchange or cause the exchange of the Certificate Owner's interest in such Class of Certificates for an equivalent interest in fully registered definitive form. Upon receipt by the Certificate Registrar, as agent of the Depositor, of instructions from the Depository directing the Certificate Registrar to effect such exchange (such instructions to contain information regarding the Class of Certificates and the Current Principal Balance or Notional Amount, as applicable, being exchanged, the registered holder of and delivery instructions for the definitive Certificate, and any other information reasonably required by the Certificate Registrar), (i) the Certificate Registrar shall execute and deliver, in accordance with the registration and delivery instructions provided by the Depository, a Definitive Certificate evidencing such Certificate Owner's interest in such Class of Certificates and (ii) the Certificate Registrar shall execute a new Book-Entry Certificate reflecting the reduction in the aggregate Current Principal Balance or Notional Amount, as applicable, of such Class of Certificates by the amount of the definitive Certificates.

Neither the Depositor nor the Certificate Registrar shall be liable for any delay in the delivery of any instructions required pursuant to this Section 5.01(b) and may conclusively rely on, and shall be protected in relying on, such instructions.

(c) (i) REMIC I will be evidenced by (x) the REMIC I Regular Interests (designated below), which will be uncertificated and non-transferable and are hereby designated as the "regular interests" in REMIC I and have the principal balances and accrue interest at the Pass-Through Rates equal to those set forth in this Section 5.01(c)(i) and (y) the Class R-I Certificates, which are hereby designated as the single "residual interest" in REMIC I.

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The REMIC I Regular Interests and the Class R-I Certificate will have the following designations, initial balances and pass-through rates:

REMIC I Interest	Initial Balance	Pass-Through Rate	Related Group
1A	$2,213.92	(1)	Group I
1B	$28,383.27	(2)	Group I
2A	$3,229.99	(1)	Group II
2B	$41,409.69	(3)	Group II
3A	$934.32	(1)	Group III
3B	$11,978.55	(4)	Group III
ZZZ	$817,626,889.26	(1)	N/A
Class R-I	$50.00	N/A	Group I

(1) The weighted average of the Net Rates of the Mortgage Loans (as of the second preceding Due Date)as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted on the basis of the respective Scheduled Principal Balance of each such Mortgage Loan as of the beginning of the Due Period immediately preceding the related Distribution Date.

(2) The weighted average of the Net Rates of the Group I Mortgage Loans (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted on the basis of the respective Scheduled Principal Balance of each such Mortgage Loan as of the beginning of the Due Period immediately preceding the related Distribution Date.

(3) The weighted average of the Net Rates of the Group II Mortgage Loans (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted on the basis of the respective Scheduled Principal Balance of each such Mortgage Loan as of the beginning of the Due Period immediately preceding the related Distribution Date.

(4) The weighted average of the Net Rates of the Group III Mortgage Loans (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted on the basis of the respective Scheduled Principal Balance of each such Mortgage Loan as of the beginning of the Due Period immediately preceding the related Distribution Date.

Distributions of principal shall be deemed to be made from amounts received on the Mortgage Loans to the REMIC I Regular Interests, first, so as to keep the Uncertificated Principal Balance of each REMIC I Regular Interest ending with the designation "B" equal to 0.01% of the aggregate Scheduled Principal Balance of the Mortgage Loans in the related Loan Group; second, to each REMIC I Regular Interest ending with the designation "A," so that the Uncertificated Principal Balance of each such REMIC I Regular Interest is equal to 0.01% of the excess of (x) the aggregate Scheduled Principal Balance of the Mortgage Loans in the related Loan Group over (y) the Current Principal Amount of the Senior Certificates (other than the Residual Certificates) in the related Loan Group (except that if any such excess is a larger number than in the preceding distribution period, the least amount of principal shall be distributed to such REMIC I Regular Interests such that the REMIC I Subordinated Balance

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Ratio is maintained); and third, any remaining principal to REMIC I Regular Interest ZZZ. Realized Losses on the Mortgage Loans shall be applied after all distributions have been made on each Distribution Date first, so as to keep the Uncertificated Principal Balance of each REMIC I Regular Interest ending with the designation "B" equal to 0.01% of the aggregate Scheduled Principal Balance of the Mortgage Loans in the related Loan Group; second, to each REMIC I Regular Interest ending with the designation "A," so that the Uncertificated Principal Balance of each such REMIC I Regular Interest is equal to 0.01% of the excess of (x) the aggregate Scheduled Principal Balance of the Mortgage Loans in the related Loan Group over (y) the Current Principal Amount of the Senior Certificates (other than the Residual Certificates) in the related Loan Group (except that if any such excess is a larger number than in the preceding distribution period, the least amount of Realized Losses on the Mortgage Loans shall be applied to such REMIC I Regular Interests such that the REMIC I Subordinated Balance Ratio is maintained); and third, any remaining Realized Losses on the Mortgage Loans shall be allocated to REMIC I Regular Interest ZZZ.

(ii) REMIC II will be evidenced by (x) the REMIC II Regular Interests (designated below), which will be uncertificated and non-transferable and are hereby designated as the "regular interests" in REMIC II and have the principal balances and accrue interest at the Pass-Through Rates equal to those set forth in this Section 5.01(c)(ii) and (y) the Class R-II Certificate, which is hereby designated as the single "residual interest" in REMIC II.

The REMIC II Regular Interests and the Class R-II Certificate will have the following designations, initial balances and pass-through rates:

REMIC II Interest	Initial Balance	Pass-Through Rate	Related Group
I-A-1	$222,439,500	(1)	Group I
I-A-2	$39,254,000	(1)	Group I
II-A-1	$229,078,300	(2)	Group II
II-A-2	$95,449,200	(2)	Group II
II-A-3	$57,269,500	(2)	Group II
III-A-1	$105,411,300	(3)	Group III
III-A-2	$5,031,000	(3)	Group III
MT-R	$50	N/A	Group I
M-1	$10,630,200	(4)	N/A
M-2	$9,403,800	(4)	N/A
M-3	$5,724,100	(4)	N/A
M-4	$6,950,600	(4)	N/A
M-5	$3,270,900	(4)	N/A
M-6	$3,270,900	(4)	N/A
M-7	$3,270,900	(4)	N/A
B-1	$4,088,600	(4)	N/A
B-2	$1,635,500	(4)	N/A
B-3	$2,453,100	(4)	N/A
B-4	$4,497,500	(4)	N/A
B-5	$4,906,300	(4)	N/A
B-6	$3,679,839	(4)	N/A
R-II	$50	N/A	Group I

(1) The weighted average of the Net Rates of the Group I Mortgage Loans (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted on the basis of the respective Scheduled Principal

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Balance of each such Mortgage Loan as of the beginning of the Due Period immediately preceding the related Distribution Date.

(2) The weighted average of the Net Rates of the Group II Mortgage Loans (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted on the basis of the respective Scheduled Principal Balance of each such Mortgage Loan as of the beginning of the Due Period immediately preceding the related Distribution Date.

(3) The weighted average of the Net Rates of the Group III Mortgage Loans (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted on the basis of the respective Scheduled Principal Balance of each such Mortgage Loan as of the beginning of the Due Period immediately preceding the related Distribution Date.

(4) A variable Pass-Through Rate equal to the weighted average of the Pass-Through Rates on REMIC I Regular Interests 1A, 2A and 3A, weighted on the basis of the Uncertificated Principal Balance of each such REMIC I Regular Interest immediately preceding the related Distribution Date, provided that for purposes of that weighted average, the Pass-Through Rate of each such REMIC I Regular Interest shall be subject to a cap and a floor equal to the Pass-Through Rate of the REMIC I Regular Interest from the related Group ending with the designation "B".

Principal shall be payable to, and shortfalls, losses and prepayments are allocable to, the REMIC II Regular Interests as such amounts are payable and allocable to the Corresponding Certificates.

(iii) The Classes of the Certificates shall have the following designations, initial principal amounts and Pass-Through Rates:

Designation	Initial Principal/ Notional Amount	Pass-Through Rate
I-A-1	$222,439,500	(1)
I-A-2	$39,254,000	(2)
II-A-1	$229,078,300	(3)
II-A-2	$95,449,200	(4)
II-A-3	$57,269,500	(5)
III-A-1	$105,411,300	(6)
III-A-2	$5,031,000	(7)
I-X	$261,693,500	(8)
II-X	$381,797,000	(9)
M-X	$63,782,239	(10)
R-I	$50	(11)
R-II	$50	(11)
R-III	$50	(11)
M-1	$10,630,200	(11)
M-2	$9,403,800	(12)
M-3	$5,724,100	(13)
M-4	$6,950,600	(14)
M-5	$3,270,900	(15)
M-6	$3,270,900	(16)
M-7	$3,270,900	(17)

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B-1	$4,088,600	(18)
B-2	$1,635,500	(19)
B-3	$2,453,100	(20)
B-4	$4,497,500	(21)
B-5	$4,906,300	(21)
B-6	$3,679,839	(21)

(1) The Class I-A-1 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 0.230%, (ii) 10.50% per annum and (iii) the weighted average of the Net Rates of the Group I Mortgage Loans (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted on the basis of the respective Scheduled Principal Balances of each such Mortgage Loan as of the beginning of the Due Period immediately preceding the related Distribution Date; provided that, on such Distribution Dates, for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of the Group I Mortgage Loans expressed as the weighted average of the Pass-Through Rate on REMIC II Regular Interest I-A-1, weighted on the basis of the Uncertificated Principal Balance of such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class I-A-1 Certificates with respect to the first Interest Accrual Period is 3.331% per annum.

(2) The Class I-A-2 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 0.300%, (ii) 10.50% per annum and (iii) the weighted average of the Net Rates of the Group I Mortgage Loans (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted on the basis of the respective Scheduled Principal Balances of each such Mortgage Loan as of the beginning of the Due Period immediately preceding the related Distribution Date; provided that, on such Distribution Dates, for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of the Group I Mortgage Loans expressed as the weighted average of the Pass-Through Rate on REMIC II Regular Interest I-A-2, weighted on the basis of the Uncertificated Principal Balance of such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class I-A-2 Certificates with respect to the first Interest Accrual Period is 3.401% per annum.

(3) The Class II-A-1 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 0.230% per annum (ii) 10.50% per annum and (iii) the weighted average of the Net Rates of the Group II Mortgage Loans (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted on the basis of the respective Scheduled Principal Balances of each such Mortgage Loan as of the beginning of the Due Period immediately preceding the related Distribution Date; provided that, on such Distribution Dates, for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of the Group II Mortgage Loans expressed as the weighted average of the Pass-Through Rate on REMIC II Regular Interest II-A-1, weighted on the basis of the Uncertificated Principal Balance of such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class II-A-1 Certificates with respect to the first Interest Accrual Period is 3.331% per annum.

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(4) The Class II-A-2 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 2.280% per annum (ii) 10.50% per annum and (iii) the weighted average of the Net Rates of the Group II Mortgage Loans (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted on the basis of the respective Scheduled Principal Balances of each such Mortgage Loan as of the beginning of the Due Period immediately preceding the related Distribution Date; provided that, on such Distribution Dates, for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of the Group II Mortgage Loans expressed as the weighted average of the Pass-Through Rate on REMIC II Regular Interest II-A-2, weighted on the basis of the Uncertificated Principal Balance of such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class II-A-2 Certificates with respect to the first Interest Accrual Period is 3.381% per annum.

(5) The Class II-A-3 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 0.320% per annum (ii) 10.50% per annum and (iii) the weighted average of the Net Rates of the Group II Mortgage Loans (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted on the basis of the respective Scheduled Principal Balances of each such Mortgage Loan as of the beginning of the Due Period immediately preceding the related Distribution Date; provided that, on such Distribution Dates, for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of the Group II Mortgage Loans expressed as the weighted average of the Pass-Through Rate on REMIC II Regular Interest II-A-3, weighted on the basis of the Uncertificated Principal Balance of such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class II-A-3 Certificates with respect to the first Interest Accrual Period is 3.421% per annum.

(6) The Class III-A-1 Certificates will bear interest at a variable Pass-Through Rate equal to the weighted average of the Net Rates of the Group III Mortgage Loans (as of the second preceding Due Date), weighted on the basis of the respective Scheduled Principal Balances of each such Mortgage Loan as of the beginning of the Due Period immediately preceding the related Distribution Date; provided that, on such Distribution Dates, for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of the Group III Mortgage Loans expressed as the weighted average of the Pass-Through Rate on REMIC II Regular Interest III-A-1, weighted on the basis of the Uncertificated Principal Balance of such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class III-A-1 Certificates with respect to the first Interest Accrual Period is 4.551% per annum.

(7) The Class III-A-2 Certificates will bear interest at a variable Pass-Through Rate equal to the weighted average of the Net Rates of the Group III Mortgage Loans (as of the second preceding Due Date), weighted on the basis of the respective Scheduled Principal Balances of each such Mortgage Loan as of the beginning of the Due Period immediately preceding the related Distribution Date; provided that, on such Distribution Dates, for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of the Group III Mortgage Loans expressed as the

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weighted average of the Pass-Through Rate on REMIC II Regular Interest III-A-2, weighted on the basis of the Uncertificated Principal Balance of such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class III-A-2 Certificates with respect to the first Interest Accrual Period is 4.551% per annum.

(8) The Class I-X Certificates will bear interest at a variable Pass-Through Rate equal to the greater of (i) zero and (ii) the excess of (x) the weighted average of the Net Rates of the Group I Mortgage Loans (as of the second preceding Due Date), over (y) the weighted average of the Pass-Through Rates on the Class I-A-1 Certificates and the Class I-A-2 Certificates, based on a Notional Amount equal to the aggregate Current Principal Amount of the Class I-A-1 Certificates, the Class I-A-2 Certificates and the Class I-X Certificates and calculated on the basis of a year of 360 days with twelve 30-day months. The amount of interest payable to the Class I-X Certificates on a Distribution Date will be reduced by any amounts necessary to fund the Group I Carryover Shortfall Reserve Fund on such Distribution Date to pay any Group I Carryover Shortfall Amounts to the relating to such Distribution Date and the Class I-A-1 Certificates and the Class I-A-2 Certificates.

(9) The Class II-X Certificates will bear interest at a variable Pass-Through Rate equal to the greater of (i) zero and (ii) the excess of (x) the weighted average of the Net Rates of the Group II Mortgage Loans (as of the second preceding Due Date), over (y) the weighted average of the Pass-Through Rates on the Class II-A-1 Certificates, the Class I-A-2 Certificates and the Class II-A-3 Certificates, based on a Notional Amount equal to the aggregate Current Principal Amount of the Class II-A-1 Certificates, the Class II-A-2 Certificates, the Class II-A-3 Certificates and the Class II-X Certificates and calculated on the basis of a year of 360 days with twelve 30-day months. The amount of interest payable to the Class II-X Certificates on a Distribution Date will be reduced by any amounts necessary to fund the Group II Carryover Shortfall Reserve Fund on such Distribution Date to pay any Group II Carryover Shortfall Amounts relating to such Distribution Date and the Class II-A-1 Certificates, the Class II-A-2 Certificates and the Class II-A-3 Certificates.

(10) The Class M-X Certificates will bear interest at a variable Pass-Through Rate equal to the greater of (i) zero and (ii) the excess of (x) the weighted average of the Net Rates of each Loan Group (as of the second preceding Due Date), weighted in proportion to the results of subtracting from the aggregate Principal Balance of each Loan Group the aggregate Current Principal Amount of the related Classes of Senior Certificates (other than the Residual Certificates) immediately prior to the related Distribution Date, over (y) the weighted average of the Pass-Through Rates on the Subordinate Certificates, based on a Notional Amount equal to the aggregate Current Principal Amount of the Subordinate Certificates. The amount of interest payable to the Class M-X Certificates on a Distribution Date will be reduced by any amounts necessary to fund the Subordinate Carryover Shortfall Reserve Fund on such Distribution Date to pay any Subordinate Carryover Shortfall Amounts relating to such Distribution Date and the Subordinate Certificates.

(11) The Class R-I, Class R-II and Class R-III Certificates do not have a Pass-Through Rate and will not bear interest.

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(12) The Class M-1 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 0.450%, (ii) 10.50% per annum and (iii) the weighted average of the Net Rates of each Loan Group (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted in proportion to the results of subtracting from the aggregate principal balance of each Loan Group the aggregate Current Principal Amount of the related Classes of Senior Certificates (other than the Residual Certificates) immediately prior to the related Distribution Date; provided that for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of each Loan Group expressed as the weighted average of the Pass-Through Rates on REMIC II Regular Interests M-1, M-2, M-3, M-4, M-5, M-6, M-7, B-1, B-2, B-3, B-4, B-5 and B-6, weighted on the basis of the Uncertificated Principal Balance of each such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class M-1 Certificates with respect to the first Interest Accrual Period is 3.551% per annum.

(13) The Class M-2 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 0.480%, (ii) 10.50% per annum and (iii) the weighted average of the Net Rates of each Loan Group (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted in proportion to the results of subtracting from the aggregate principal balance of each Loan Group the aggregate Current Principal Amount of the related Classes of Senior Certificates (other than the Residual Certificates) immediately prior to the related Distribution Date; provided that for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of each Loan Group expressed as the weighted average of the Pass-Through Rates on REMIC II Regular Interests M-1, M-2, M-3, M-4, M-5, M-6, M-7, B-1, B-2, B-3, B-4, B-5 and B-6, weighted on the basis of the Uncertificated Principal Balance of each such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class M-1 Certificates with respect to the first Interest Accrual Period is 3.581% per annum.

(14) The Class M-3 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 0.500%, (ii) 10.50% per annum and (iii) the weighted average of the Net Rates of each Loan Group (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted in proportion to the results of subtracting from the aggregate principal balance of each Loan Group the aggregate Current Principal Amount of the related Classes of Senior Certificates (other than the Residual Certificates) immediately prior to the related Distribution Date; provided that for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of each Loan Group expressed as the weighted average of the Pass-Through Rates on REMIC II Regular Interests M-1, M-2, M-3, M-4, M-5, M-6, M-7, B-1, B-2, B-3, B-4, B-5 and B-6, weighted on the basis of the Uncertificated Principal Balance of each such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class M-3 Certificates with respect to the first Interest Accrual Period is 3.601% per annum.

(15) The Class M-4 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 0.680%, (ii)

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10.50% per annum and (iii) the weighted average of the Net Rates of each Loan Group (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted in proportion to the results of subtracting from the aggregate principal balance of each Loan Group the aggregate Current Principal Amount of the related Classes of Senior Certificates (other than the Residual Certificates) immediately prior to the related Distribution Date; provided that for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of each Loan Group expressed as the weighted average of the Pass-Through Rates on REMIC II Regular Interests M-1, M-2, M-3, M-4, M-5, M-6, M-7, B-1, B-2, B-3, B-4, B-5 and B-6, weighted on the basis of the Uncertificated Principal Balance of each such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class M-4 Certificates with respect to the first Interest Accrual Period is 3.781% per annum.

(16) The Class M-5 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 0.740%, (ii) 10.50% per annum and (iii) the weighted average of the Net Rates of each Loan Group (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted in proportion to the results of subtracting from the aggregate principal balance of each Loan Group the aggregate Current Principal Amount of the related Classes of Senior Certificates (other than the Residual Certificates) immediately prior to the related Distribution Date; provided that for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of each Loan Group expressed as the weighted average of the Pass-Through Rates on REMIC II Regular Interests M-1, M-2, M-3, M-4, M-5, M-6, M-7, B-1, B-2, B-3, B-4, B-5 and B-6, weighted on the basis of the Uncertificated Principal Balance of each such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class M-5 Certificates with respect to the first Interest Accrual Period is 3.841% per annum.

(17) The Class M-6 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 0.760%, (ii) 10.50% per annum and (iii) the weighted average of the Net Rates of each Loan Group (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted in proportion to the results of subtracting from the aggregate principal balance of each Loan Group the aggregate Current Principal Amount of the related Classes of Senior Certificates (other than the Residual Certificates) immediately prior to the related Distribution Date; provided that for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of each Loan Group expressed as the weighted average of the Pass-Through Rates on REMIC II Regular Interests M-1, M-2, M-3, M-4, M-5, M-6, M-7, B-1, B-2, B-3, B-4, B-5 and B-6, weighted on the basis of the Uncertificated Principal Balance of each such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class M-6 Certificates with respect to the first Interest Accrual Period is 3.861% per annum.

(18) The Class M-7 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 1.250%, (ii) 10.50% per annum and (iii) the weighted average of the Net Rates of each Loan Group (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on

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an actual/360 basis, weighted in proportion to the results of subtracting from the aggregate principal balance of each Loan Group the aggregate Current Principal Amount of the related Classes of Senior Certificates (other than the Residual Certificates) immediately prior to the related Distribution Date; provided that for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of each Loan Group expressed as the weighted average of the Pass-Through Rates on REMIC II Regular Interests M-1, M-2, M-3, M-4, M-5, M-6, M-7, B-1, B-2, B-3, B-4, B-5 and B-6, weighted on the basis of the Uncertificated Principal Balance of each such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class M-7 Certificates with respect to the first Interest Accrual Period is 4.351% per annum.

(19) The Class B-1 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 1.350%, (ii) 10.50% per annum and (iii) the weighted average of the Net Rates of each Loan Group (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted in proportion to the results of subtracting from the aggregate Scheduled Principal Balance of each Loan Group, the aggregate Current Principal Amount of the related Classes of Senior Certificates (other than the Residual Certificates) immediately prior to the related Distribution Date; provided that for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of each Loan Group expressed as the weighted average of the Pass-Through Rates on REMIC II Regular Interests M-1, M-2, M-3, M-4, M-5, M-6, M-7, B-1, B-2, B-3, B-4, B-5 and B-6, weighted on the basis of the Uncertificated Principal Balance of each such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class B-1 Certificates with respect to the first Interest Accrual Period is 4.451% per annum.

(20) The Class B-2 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 1.700%, (ii) 10.50% per annum and (iii) the weighted average of the Net Rates of each Loan Group (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted in proportion to the results of subtracting from the aggregate Scheduled Principal Balance of each Loan Group, the aggregate Current Principal Amount of the related Classes of Senior Certificates (other than the Residual Certificates) immediately prior to the related Distribution Date; provided that for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of each Loan Group expressed as the weighted average of the Pass-Through Rates on REMIC II Regular Interests M-1, M-2, M-3, M-4, M-5, M-6, M-7, B-1, B-2, B-3, B-4, B-5 and B-6, weighted on the basis of the Uncertificated Principal Balance of each such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate with respect to the first Interest Accrual Period is 4.801% per annum.

(21) The Class B-3 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 1.800%, (ii) 10.50% per annum and (iii) the weighted average of the Net Rates of each Loan Group (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted in proportion to the results of subtracting from the aggregate Scheduled Principal Balance of each Loan Group, the aggregate Current Principal Amount of the

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related Classes of Senior Certificates (other than the Residual Certificates) immediately prior to the related Distribution Date; provided that for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, with the weighted average of the Net Rates of each Loan Group expressed as the weighted average of the Pass-Through Rate on REMIC II Regular Interests M-1, M-2, M-3, M-4, M-5, M-6, M-7, B-1, B-2, B-3, B-4, B-5 and B-6, weighted on the basis of the Uncertificated Principal Balance of each such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate with respect to the first Interest Accrual Period is 4.851% per annum.

(22) The Class B-4, Class B-5 and Class B-6 Certificates will bear interest at a variable Pass-Through Rate equal to the least of (i) One-Month LIBOR plus a margin initially equal to 1.800%, (ii) 10.50% per annum and (iii) the weighted average of the Net Rates of each Loan Group (as of the second preceding Due Date) as adjusted to an effective rate reflecting the accrual of interest on an actual/360 basis, weighted in proportion to the results of subtracting from the aggregate Scheduled Principal Balance of each Loan Group, the aggregate Current Principal Amount of the related Classes of Senior Certificates (other than the Residual Certificates) immediately prior to the related Distribution Date; provided that for federal income tax purposes such Certificates will bear interest at a rate equivalent to the foregoing, expressed as the weighted average of the Pass-Through Rates on REMIC II Regular Interests M-1, M-2, M-3, M-4, M-5, M-6, M-7, B-1, B-2, B-3, B-4, B-5 and B-6, weighted on the basis of the Uncertificated Principal Balance of each such REMIC II Regular Interest immediately preceding the related Distribution Date. The Pass-Through Rate for the Class B-4, Class B-5 and Class B-6 Certificates with respect to the first Interest Accrual Period is 4.901% per annum.

Principal shall be payable to, and shortfalls, losses and prepayments are allocable to, the REMIC I Regular Interests as such amounts are payable and allocable to the Corresponding Certificates.

(d) Solely for purposes of Section 1.860G-1(a)(4)(iii) of the Treasury regulations, the Distribution Date immediately following the maturity date for the Mortgage Loan with the latest maturity date in the Trust Fund has been designated as the "latest possible maturity date" for the REMIC I Regular Interests, REMIC II Regular Interests and the Certificates.

(e) With respect to each Distribution Date, each Class of Certificates (other than the Residual Certificates) shall accrue interest during the related Interest Accrual Period. With respect to each Distribution Date and each such Class of Certificates (other than the Residual Certificates, the Interest Only Certificates and the Group III Senior Certificates), interest shall be calculated on the basis of a 360-day year and the actual number of days elapsed in the related Interest Accrual Period, and with respect to each Distribution Date and the Interest Only Certificates and the Group III Senior Certificates, interest is calculated on the basis of a 360-day year consisting of twelve 30 day months, based upon the respective Pass-Through Rate set forth, or determined as provided, above and the Current Principal Amount (or Notional Amount, in the case of the Interest Only Certificates) of such Class of Certificates applicable to such Distribution Date. The Residual Certificates do not have a Pass-Through Rate and shall not bear interest.

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(f) The Certificates shall be substantially in the forms set forth in Exhibits A-1, A-2, A-3 and A-4. On original issuance, the Trustee shall sign, and the Certificate Registrar shall countersign and deliver the Certificates at the direction of the Depositor. Pending the preparation of definitive Certificates of any Class, the Trustee may sign and the Certificate Registrar may countersign temporary Certificates that are printed, lithographed or typewritten, in authorized denominations for Certificates of such Class, substantially of the tenor of the definitive Certificates in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers or authorized signatories executing such Certificates may determine, as evidenced by their execution of such Certificates. If temporary Certificates are issued, the Depositor will cause definitive Certificates to be prepared without unreasonable delay. After the preparation of definitive Certificates, the temporary Certificates shall be exchangeable for definitive Certificates upon surrender of the temporary Certificates at the Certificate Registrar Office, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Certificates, the Trustee shall sign and the Certificate Registrar shall countersign and deliver in exchange therefor a like aggregate principal amount, in authorized denominations for such Class, of definitive Certificates of the same Class. Until so exchanged, such temporary Certificates shall in all respects be entitled to the same benefits as definitive Certificates.

(g) Each Class of Book-Entry Certificates will be registered as a single Certificate of such Class held by a nominee of the Depository or the DTC Custodian, and beneficial interests will be held by investors through the book-entry facilities of the Depository in minimum denominations of (i) in the case of the Senior Certificates (other than the Residual Certificates), $1,000 and in each case increments of $1.00 in excess thereof, and (ii) in the case of the Offered Subordinate Certificates, $25,000 and increments of $1.00 in excess thereof, except that one Certificate of each such Class may be issued in a different amount so that the sum of the denominations of all outstanding Certificates of such Class shall equal the Current Principal Amount or Notional Amount, as the case may be, of such Class of Certificates on the Closing Date.

On the Closing Date, the Trustee shall execute, and the Certificate Registrar shall countersign, Physical Certificates all in an aggregate principal amount that shall equal the Current Principal Amount or Notional Amount, as the case may be, of such Class of Certificates on the Closing Date. The Private Certificates shall be issued in certificated fully-registered form in minimum dollar denominations of $25,000 and integral multiples of $1.00 in excess thereof, except that one Private Certificate of each such Class may be issued in a different amount so that the sum of the denominations of all outstanding Private Certificates of such Class shall equal the Current Principal Amount or Notional Amount, as the case may be, of such Class of Certificates on the Closing Date. The Residual Certificates shall each be issued in certificated fully-registered form in the denomination of $50, $50 and $50, respectively. Each Class of Global Certificates, if any, shall be issued in fully registered form in minimum dollar denominations of $50,000 and integral multiples of $1.00 in excess thereof, except that one Certificate of each Class may be in a different denomination so that the sum of the denominations of all outstanding Certificates of such Class shall equal the Current Principal Amount or Notional Amount, as the case may be, of such Class of Certificates on the Closing Date.

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On the Closing Date, the Trustee shall execute and the Certificate Registrar shall countersign (i) in the case of each Class of Offered Certificates, the Certificate in the entire Current Principal Amount or Notional Amount, as the case may be, of the respective Class of Certificates and (ii) in the case of each Class of Private Certificates, Individual Certificates all in an aggregate principal amount or notional amount, as the case may be, that shall equal the Current Principal Amount or Notional Amount, as the case may be, of each such respective Class of Certificates on the Closing Date. The Certificates referred to in clause (i) and, if at any time there are to be Global Certificates, the Global Certificates, shall be delivered by the Depositor to the Depository or, pursuant to the Depository's instructions, shall be delivered by the Depositor on behalf of the Depository to and deposited with the DTC Custodian. The Trustee shall sign the Certificates by facsimile or manual signature and the Certificate Registrar shall countersign them by manual signature on behalf of the Trustee by one or more authorized signatories, each of whom shall be Responsible Officers of the Trustee or its agent and the Certificate Registrar or its agent, as applicable. A Certificate bearing the manual and facsimile signatures of individuals who were the authorized signatories of the Trustee or its agent or the Certificate Registrar or its agent, as applicable, at the time of issuance shall bind the Trustee and the Certificate Registrar, notwithstanding that such individuals or any of them have ceased to hold such positions prior to the delivery of such Certificate.

(h) No Certificate shall be entitled to any benefit under this Agreement, or be valid for any purpose, unless there appears on such Certificate the manually executed countersignature of the Certificate Registrar or its agent, and such countersignature upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly executed and delivered hereunder. All Certificates issued on the Closing Date shall be dated the Closing Date. All Certificates issued thereafter shall be dated the date of their countersignature.

(i) The Closing Date is hereby designated as the "startup" day of each REMIC within the meaning of Section 860G(a)(9) of the Code.

(j) For federal income tax purposes, each REMIC shall have a tax year that is a calendar year and shall report income on an accrual basis.

(k) The Trustee on behalf of the Trust shall cause each REMIC to timely elect to be treated as a REMIC under Section 860D of the Code. Any inconsistencies or ambiguities in this Agreement or in the administration of any Trust established hereby shall be resolved in a manner that preserves the validity of such elections.

(l) The following legend shall be placed on the Residual Certificates, whether upon original issuance or upon issuance of any other Certificate of any such Class In exchange therefor or upon transfer thereof:

THIS CERTIFICATE MAY NOT BE ACQUIRED DIRECTLY OR INDIRECTLY BY, OR ON BEHALF OF, AN EMPLOYEE BENEFIT PLAN OR OTHER RETIREMENT ARRANGEMENT WHICH IS SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED, OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, UNLESS THE PROPOSED TRANSFEREE PROVIDES THE TRUSTEE WITH AN OPINION OF COUNSEL

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ADDRESSED TO THE TRUSTEE, THE CERTIFICATE REGISTRAR, THE MASTER SERVICER AND THE SECURITIES ADMINISTRATOR AND ON WHICH THEY MAY RELY THAT IS SATISFACTORY TO THE TRUSTEE THAT THE PURCHASE OF CERTIFICATES ON BEHALF OF SUCH PERSON WILL NOT RESULT IN OR CONSTITUTE A NONEXEMPT PROHIBITED TRANSACTION, IS PERMISSIBLE UNDER APPLICABLE LAW AND WILL NOT GIVE RISE TO ANY ADDITIONAL OBLIGATIONS ON THE PART OF THE DEPOSITOR, THE CERTIFICATE REGISTRAR, THE MASTER SERVICER, THE SECURITIES ADMINISTRATOR OR THE TRUSTEE.

The following legend shall be placed upon the Private Certificates, whether upon original issuance or upon issuance of any other Certificate of any such Class In exchange therefor or upon transfer thereof:

THIS CERTIFICATE MAY NOT BE ACQUIRED DIRECTLY OR INDIRECTLY BY, OR ON BEHALF OF, AN EMPLOYEE BENEFIT PLAN OR OTHER RETIREMENT ARRANGEMENT WHICH IS SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED, OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, UNLESS THE PROPOSED TRANSFEREE CERTIFIES OR REPRESENTS THAT THE PROPOSED TRANSFER AND HOLDING OF A CERTIFICATE AND THE SERVICING, MANAGEMENT AND OPERATION OF THE TRUST AND ITS ASSETS: (I) WILL NOT RESULT IN ANY PROHIBITED TRANSACTION WHICH IS NOT COVERED UNDER AN INDIVIDUAL OR CLASS PROHIBITED TRANSACTION EXEMPTION, INCLUDING, BUT NOT LIMITED TO, PROHIBITED TRANSACTION EXEMPTION ("PTCE") 84-14, PTE 91-38, PTE 90-1, PTE 95-60 OR PTE 96-23 AND (II) WILL NOT GIVE RISE TO ANY ADDITIONAL OBLIGATIONS ON THE PART OF THE DEPOSITOR, THE SECURITIES ADMINISTRATOR, THE MASTER SERVICER OR THE TRUSTEE, WHICH WILL BE DEEMED REPRESENTED BY AN OWNER OF A BOOK-ENTRY CERTIFICATE OR A GLOBAL CERTIFICATE OR UNLESS THE OPINION SPECIFIED IN SECTION 5.07 OF THE AGREEMENT IS PROVIDED.

Section 5.02 Registration of Transfer and Exchange of Certificates (a) The Certificate Registrar shall maintain at its Certificate Registrar Office a Certificate Register in which, subject to such reasonable regulations as it may prescribe, the Certificate Registrar shall provide for the registration of Certificates and of transfers and exchanges of Certificates as herein provided.

(b) Subject to Subsection 5.01(a) and, in the case of any Global Certificate or Physical Certificate upon the satisfaction of the conditions set forth below, upon surrender for registration of transfer of any Certificate at any office or agency of the Certificate Registrar maintained for such purpose, the Trustee shall sign, and the Certificate Registrar shall countersign and deliver, in the name of the designated transferee or transferees, a new Certificate of a like Class and aggregate Fractional Undivided Interest, but bearing a different number.

(c) By acceptance of an Individual Certificate, whether upon original issuance or subsequent transfer, each holder of such a Certificate acknowledges the restrictions on the transfer of such Certificate set forth in the Securities Legend and agrees that it will transfer such a Certificate only as provided herein. In addition to the provisions of Subsection 5.02(h), the

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following restrictions shall apply with respect to the transfer and registration of transfer of an Individual Certificate to a transferee that takes delivery in the form of an Individual Certificate:

(i) The Certificate Registrar shall register the transfer of an Individual Certificate if the requested transfer is being made to a transferee who has provided the Certificate Registrar with a Rule 144A Certificate or comparable evidence as to its QIB status.

(ii) The Certificate Registrar shall register the transfer of any Individual Certificate if (x) the transferor has advised the Certificate Registrar in writing that the Certificate is being transferred to an Institutional Accredited Investor, and (y) prior to the transfer the transferee furnishes to the Certificate Registrar an Investment Letter (and the Certificate Registrar shall be fully protected in so doing), provided that, if based upon an Opinion of Counsel to the effect that the delivery of (x) and (y) above are not sufficient to confirm that the proposed transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and other applicable laws, the Certificate Registrar shall as a condition of the registration of any such transfer require the transferor to furnish such other certifications, legal opinions or other information prior to registering the transfer of an Individual Certificate as shall be set forth in such Opinion of Counsel.

(d) Subject to Subsection 5.02(h), so long as a Global Certificate of such Class Is outstanding and is held by or on behalf of the Depository, transfers of beneficial interests in such Global Certificate, or transfers by holders of Individual Certificates of such Class to transferees that take delivery in the form of beneficial interests in the Global Certificate, may be made only in accordance with this Subsection 5.02(d) and in accordance with the rules of the Depository:

(i) In the case of a beneficial interest in the Global Certificate being transferred to an Institutional Accredited Investor, such transferee shall be required to take delivery in the form of an Individual Certificate or Certificates and the Certificate Registrar shall register such transfer only upon compliance with the provisions of Subsection 5.02(c)(ii).

(ii) In the case of a beneficial interest in a Class of Global Certificates being transferred to a transferee that takes delivery in the form of an Individual Certificate or Certificates of such Class, except as set forth in clause (i) above, the Certificate Registrar shall register such transfer only upon compliance with the provisions of Subsection 5.02(c)(i).

(iii) In the case of an Individual Certificate of a Class being transferred to a transferee that takes delivery in the form of a beneficial interest in a Global Certificate of such Class, the Certificate Registrar shall register such transfer if the transferee has provided the Trustee with a Rule 144A Certificate or comparable evidence as to its QIB status.

(iv) No restrictions shall apply with respect to the transfer or registration of transfer of a beneficial interest in the Global Certificate of a Class to a transferee that

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takes delivery in the form of a beneficial interest in the Global Certificate of such Class; provided that each such transferee shall be deemed to have made such representations and warranties contained in the Rule 144A Certificate as are sufficient to establish that it is a QIB.

(e) Subject to Subsection 5.02(h), an exchange of a beneficial interest in a Global Certificate of a Class for an Individual Certificate or Certificates of such Class, an exchange of an Individual Certificate or Certificates of a Class for a beneficial interest in the Global Certificate of such Class and an exchange of an Individual Certificate or Certificates of a Class for another Individual Certificate or Certificates of such Class (in each case, whether or not such exchange is made in anticipation of subsequent transfer, and, in the case of the Global Certificate of such Class, so long as such Certificate is outstanding and is held by or on behalf of the Depository) may be made only in accordance with this Subsection 5.02(e) and in accordance with the rules of the Depository:

(i) A holder of a beneficial interest in a Global Certificate of a Class may at any time exchange such beneficial interest for an Individual Certificate or Certificates of such Class.

(ii) A holder of an Individual Certificate or Certificates of a Class may exchange such Certificate or Certificates for a beneficial interest in the Global Certificate of such Class If such holder furnishes to the Certificate Registrar a Rule 144A Certificate or comparable evidence as to its QIB status.

(iii) A holder of an Individual Certificate of a Class may exchange such Certificate for an equal aggregate principal amount of Individual Certificates of such Class In different authorized denominations without any certification.

(f) (i) Upon acceptance for exchange or transfer of an Individual Certificate of a Class for a beneficial interest in a Global Certificate of such Class as provided herein, the Certificate Registrar shall cancel such Individual Certificate and shall (or shall request the Depository to) endorse on the schedule affixed to the applicable Global Certificate (or on a continuation of such schedule affixed to the Global Certificate and made a part thereof) or otherwise make in its books and records an appropriate notation evidencing the date of such exchange or transfer and an increase in the certificate balance of the Global Certificate equal to the certificate balance of such Individual Certificate exchanged or transferred therefor.

(ii) Upon acceptance for exchange or transfer of a beneficial interest in a Global Certificate of a Class for an Individual Certificate of such Class as provided herein, the Certificate Registrar shall (or shall request the Depository to) endorse on the schedule affixed to such Global Certificate (or on a continuation of such schedule affixed to such Global Certificate and made a part thereof) or otherwise make in its books and records an appropriate notation evidencing the date of such exchange or transfer and a decrease in the certificate balance of such Global Certificate equal to the certificate balance of such Individual Certificate issued in exchange therefor or upon transfer thereof.

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(g) The Securities Legend shall be placed on any Individual Certificate issued in exchange for or upon transfer of another Individual Certificate or of a beneficial interest in a Global Certificate.

(h) Subject to the restrictions on transfer and exchange set forth in this Section 5.02, the holder of any Individual Certificate may transfer or exchange the same in whole or in part (in an initial certificate balance equal to the minimum authorized denomination set forth in Section 5.01(g) above or any integral multiple of $1.00 in excess thereof) by surrendering such Certificate at the Certificate Registrar Office, or at the office of any transfer agent, together with an executed instrument of assignment and transfer satisfactory in form and substance to the Certificate Registrar in the case of transfer and a written request for exchange in the case of exchange. The holder of a beneficial interest in a Global Certificate may, subject to the rules and procedures of the Depository, cause the Depository (or its nominee) to notify the Certificate Registrar (as agent of the Depositor) in writing of a request for transfer or exchange of such beneficial interest for an Individual Certificate or Certificates. Following a proper request for transfer or exchange, the Certificate Registrar shall, within five Business Days of such request made at such the Certificate Registrar Office, sign, countersign and deliver at the Certificate Registrar Office, to the transferee (in the case of transfer) or holder (in the case of exchange) or send by first class mail at the risk of the transferee (in the case of transfer) or holder (in the case of exchange) to such address as the transferee or holder, as applicable, may request, an Individual Certificate or Certificates, as the case may require, for a like aggregate Fractional Undivided Interest and in such authorized denomination or denominations as may be requested. The presentation for transfer or exchange of any Individual Certificate shall not be valid unless made at the Certificate Registrar Office by the registered holder in person, or by a duly authorized attorney-in-fact.

(i) At the option of the Certificateholders, Certificates may be exchanged for other Certificates of authorized denominations of a like Class and aggregate Fractional Undivided Interest, upon surrender of the Certificates to be exchanged at any such office or agency; provided, however, that no Certificate may be exchanged for new Certificates unless the original Fractional Undivided Interest represented by each such new Certificate (i) is at least equal to the minimum authorized denomination or (ii) is acceptable to the Depositor as indicated to the Trustee in writing. Whenever any Certificates are so surrendered for exchange, the Trustee shall sign and the Certificate Registrar shall countersign and deliver the Certificates which the Certificateholder making the exchange is entitled to receive.

(j) If the Certificate Registrar so requires, every Certificate presented or surrendered for transfer or exchange shall be duly endorsed by, or be accompanied by a written instrument of transfer, with a signature guarantee, in form satisfactory to the Certificate Registrar, duly executed by the holder thereof or his or her attorney duly authorized in writing.

(k) No service charge shall be made for any transfer or exchange of Certificates, but the Certificate Registrar may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of Certificates.

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(l) The Certificate Registrar shall cancel all Certificates surrendered for transfer or exchange but shall retain such Certificates in accordance with its standard retention policy or for such further time as is required by the record retention requirements of the Exchange Act, and thereafter may destroy such Certificates.

Section 5.03 Mutilated, Destroyed, Lost or Stolen Certificates. (a) If (i) any mutilated Certificate is surrendered to the Certificate Registrar, or the Certificate Registrar receives evidence to its satisfaction of the destruction, loss or theft of any Certificate, and (ii) there is delivered to the Certificate Registrar, the Master Servicer, the Securities Administrator and the Trustee such security or indemnity as it may require to save it harmless, and (iii) the Certificate Registrar has not received notice that such Certificate has been acquired by a third Person, the Trustee shall sign and the Certificate Registrar shall countersign and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like tenor and Fractional Undivided Interest but in each case bearing a different number. The mutilated, destroyed, lost or stolen Certificate shall thereupon be canceled of record by the Certificate Registrar and shall be of no further effect and evidence no rights.

(a) Upon the issuance of any new Certificate under this Section 5.03, the Certificate Registrar may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Certificate Registrar) connected therewith. Any duplicate Certificate issued pursuant to this Section 5.03 shall constitute complete and indefeasible evidence of ownership in the Trust Fund, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

Section 5.04 Persons Deemed Owners. Prior to due presentation of a Certificate for registration of transfer, the Depositor, the Paying Agent, the Certificate Registrar, the Trustee and any agent of the Depositor, the Paying Agent, the Certificate Registrar, or the Trustee may treat the Person in whose name any Certificate is registered as the owner of such Certificate for the purpose of receiving distributions pursuant to Section 6.01 and for all other purposes whatsoever. Neither the Depositor, the Paying Agent, the Certificate Registrar the Trustee nor any agent of the Depositor, the Paying Agent, the Certificate Registrar or the Trustee shall be affected by notice to the contrary. No Certificate shall be deemed duly presented for a transfer effective on any Record Date unless the Certificate to be transferred is presented no later than the close of business on the third Business Day preceding such Record Date.

Section 5.05 Transfer Restrictions on Residual Certificates. (a) Residual Certificates, or interests therein, may not be transferred without the prior express written consent of the Tax Matters Person and the Depositor. As a prerequisite to such consent, the proposed transferee must provide the Tax Matters Person, the Depositor, the Certificate Registrar and the Trustee with an affidavit that the proposed transferee is a Permitted Transferee (and, unless the Tax Matters Person and the Depositor consent to the transfer to a person who is not a U.S. Person, an affidavit that it is a U.S. Person) as provided in Subsection 5.05(b).

(b) No transfer, sale or other disposition of a Residual Certificate (including a beneficial interest therein) may be made unless, prior to the transfer, sale or other disposition of a Residual Certificate, the proposed transferee (including the initial purchasers thereof) delivers to

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the Tax Matters Person, the Certificate Registrar, the Trustee and the Depositor an affidavit in the form attached hereto as Exhibit E stating, among other things, that as of the date of such transfer (i) such transferee is a Permitted Transferee and that (ii) such transferee is not acquiring such Residual Certificate for the account of any person who is not a Permitted Transferee. The Tax Matters Person shall not consent to a transfer of a Residual Certificate if it has actual knowledge that any statement made in the affidavit issued pursuant to the preceding sentence is not true. Notwithstanding any transfer, sale or other disposition of a Residual Certificate to any Person who is not a Permitted Transferee, such transfer, sale or other disposition shall be deemed to be of no legal force or effect whatsoever and such Person shall not be deemed to be a Holder of a Residual Certificate for any purpose hereunder, including, but not limited to, the receipt of distributions thereon. If any purported transfer shall be in violation of the provisions of this Subsection 5.05(b), then the prior Holder thereof shall, upon discovery that the transfer of such Residual Certificate was not in fact permitted by this Subsection 5.05(b), be restored to all rights as a Holder thereof retroactive to the date of the purported transfer. None of the Trustee, the Certificate Registrar, the Tax Matters Person or the Depositor shall be under any liability to any Person for any registration or transfer of a Residual Certificate that is not permitted by this Subsection 5.05(b) or for making payments due on such Residual Certificate to the purported Holder thereof or taking any other action with respect to such purported Holder under the provisions of this Agreement so long as the written affidavit referred to above was received with respect to such transfer, and the Tax Matters Person, the Trustee and the Depositor, as applicable, had no knowledge that it was untrue. The prior Holder shall be entitled to recover from any purported Holder of a Residual Certificate that was in fact not a Permitted Transferee under this Subsection 5.05(b) at the time it became a Holder all payments made on such Residual Certificate. Each Holder of a Residual Certificate, by acceptance thereof, shall be deemed for all purposes to have consented to the provisions of this Subsection 5.05(b) and to any amendment of this Agreement deemed necessary (whether as a result of new legislation or otherwise) by counsel of the Tax Matters Person or the Depositor to ensure that the Residual Certificates are not transferred to any Person who is not a Permitted Transferee and that any transfer of such Residual Certificates will not cause the imposition of a tax upon the Trust or cause any REMIC to fail to qualify as a REMIC.

(c) Unless the Tax Matters Person and the Depositor shall have consented in writing (which consent may be withheld in the Tax Matters Person's or the Depositor's sole discretion), the Residual Certificates (including a beneficial interest therein) may not be purchased by or transferred to any person who is not a United States Person.

(d) By accepting a Residual Certificate, the purchaser thereof agrees to be a Tax Matters Person, and appoints the Securities Administrator to act as its agent with respect to all matters concerning the tax obligations of the Trust.

Section 5.06 Restrictions on Transferability of Certificates. (a) No offer, sale, transfer or other disposition (including pledge) of any Certificate shall be made by any Holder thereof unless registered under the Securities Act, or an exemption from the registration requirements of the Securities Act and any applicable state securities or "Blue Sky" laws is available and the prospective transferee (other than the Depositor) of such Certificate signs and delivers to the Certificate Registrar an Investment Letter, if the transferee is an Institutional Accredited Investor, in the form set forth as Exhibit F-1 hereto, or a Rule 144A Certificate, if the transferee

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is a QIB, in the form set forth as Exhibit F-2 hereto. Notwithstanding the provisions of the immediately preceding sentence, no restrictions shall apply with respect to the transfer or registration of transfer of a beneficial interest in any Certificate that is a Global Certificate of a Class to a transferee that takes delivery in the form of a beneficial interest in the Global Certificate of such Class, provided that each such transferee shall be deemed to have made such representations and warranties contained in the Rule 144A Certificate as are sufficient to establish that it is a QIB. In the case of a proposed transfer of any Certificate to a transferee other than a QIB, the Certificate Registrar may require an Opinion of Counsel that such transaction is exempt from the registration requirements of the Securities Act. The cost of such opinion shall not be an expense of the Trustee or the Trust Fund.

(b) The Private Certificates shall each bear a Securities Legend. The Trustee and the Securities Administrator shall comply with the requirements of Treasury Regulations §§ 1.860D-1(b)(5) and 1.860E-2(a)(5) with respect to the furnishing of information.

Section 5.07 ERISA Restrictions. (a) Subject to the provisions of Subsection 5.07(b), no Residual Certificates or Private Certificates may be acquired directly or indirectly by, or on behalf of, an employee benefit plan or other retirement arrangement which is subject to Title I of ERISA and/or Section 4975 of the Code, unless the proposed transferee provides either (i) the Trustee, the Certificate Registrar, the Master Servicer and the Securities Administrator with an Opinion of Counsel satisfactory to the Trustee, the Certificate Registrar, the Master Servicer and the Securities Administrator, which opinion will not be at the expense of the Trustee, the Master Servicer or the Securities Administrator, that the purchase of such Certificates by or on behalf of such Plan is permissible under applicable law, will not constitute or result in the assets of the Trust being deemed to be "plan assets" subject to the prohibited transaction provisions of ERISA or Section 4975 of the Code, will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code and will not subject the Trustee, the Certificate Registrar, the Master Servicer, the Depositor, any Servicer or the Securities Administrator to any obligation in addition to those undertaken in the Agreement or (ii) in the case of the Class B-4, Class B-5 and Class B-6 Certificates, a representation or certification to the Trustee and the Certificate Registrar (upon which each of the Trustee and the Certificate Registrar is authorized to rely) to the effect that the proposed transfer and/or holding of such a Certificate and the servicing, management and operation of the Trust: (I) will not result in a prohibited transaction under Section 406 of ERISA or Section 4975 of the Code unless it is covered under an individual or class prohibited transaction exemption, including but not limited to Department of Labor Prohibited Transaction Class Exemption ("PTCE") 84-14 (Class Exemption for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers); PTCE 91-38 (Class Exemption for Certain Transactions Involving Bank Collective Investment Funds); PTCE 90-1 (Class Exemption for Certain Transactions Involving Insurance Company Pooled Separate Accounts), PTCE 95-60 (Class Exemption for Certain Transactions Involving Insurance Company General Accounts), and PTCE 96-23 (Class Exemption for Plan Asset Transactions Determined by In-House Asset Managers), or Section 401(c) of ERISA and the regulations promulgated thereunder; (II) will not constitute or result in the assets of the Trust being deemed to be "plan assets" subject to the prohibited transaction provisions of ERISA or Section 4975 of the Code; and (III) will not subject the Depositor, the Certificate Registrar, the Securities Administrator, any Servicer, the Master Servicer or the Trustee to any obligation in addition to those undertaken in the Agreement.

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(b) Each beneficial owner of a Class M, Class B-1, Class B-2 or Class B-3 Certificate or any interest therein shall be deemed to have represented, by virtue of its acquisition or holding of that certificate or interest therein, that either (i) it is not a Plan or investing with "Plan Assets", (ii) it has acquired and is holding such Certificate in reliance on Prohibited Transaction Exemption 97-34, as amended (the "Exemption"), and that it understands that there are certain conditions to the availability of the Exemption, including that the certificate must be rated, at the time of purchase, not lower than "BBB-" (or its equivalent) by S&P, Fitch or Moody's Investors Service, Inc., and the certificate is so rated or (iii) (1) it is an insurance company, (2) the source of funds used to acquire or hold the certificate or interest therein is an "insurance company general account," as such term is defined in Prohibited Transaction Class Exemption ("PTCE") 95-60, and (3) the applicable conditions of PTCE 95-60 have been satisfied.

(c) Any Person acquiring an interest in a Global Certificate which is a Private Certificate, by acquisition of such Certificate, shall be deemed to have represented to the Trustee that, in the case of the Class B-4, Class B-5 and Class B-6 Certificates, either: (i) it is not acquiring an interest in such Certificate directly or indirectly by, or on behalf of, an employee benefit plan or other retirement arrangement which is subject to Title I of ERISA and/or Section 4975 of the Code, or (ii) the transfer and/or holding of an interest in such Certificate to that Person and the subsequent servicing, management and/or operation of the Trust and its assets: (I) will not result in any prohibited transaction unless it is covered under an individual or class prohibited transaction exemption, including, but not limited to, PTCE 84-14, PTCE 91-38, PTCE 90-1, PTCE 95-60 or PTCE 96-23, or Section 401(c) of ERISA and the regulations promulgated thereunder; (II) will not constitute or result in the assets of the Trust being deemed to be "plan assets" subject to the prohibited transaction provisions of ERISA or Section 4975 of the Code; and (III) will not subject the Depositor, the Certificate Registrar, the Securities Administrator, any Servicer, the Master Servicer or the Trustee to any obligation in addition to those undertaken in the Agreement.

(d) Neither the Trustee, the Certificate Registrar, the Master Servicer nor the Securities Administrator will be required to monitor, determine or inquire as to compliance with the transfer restrictions with respect to the Global Certificates or any Book-Entry Certificate. Any attempted or purported transfer of any Certificate in violation of the provisions of Subsections (a) or (b) above shall be void ab initio and such Certificate shall be considered to have been held continuously by the prior permitted Certificateholder. Any transferor of any Certificate in violation of such provisions, shall indemnify and hold harmless the Trustee, the Certificate Registrar, the Securities Administrator and the Master Servicer from and against any and all liabilities, claims, costs or expenses incurred by the Trustee, the Certificate Registrar, the Securities Administrator or the Master Servicer as a result of such attempted or purported transfer. Neither the Trustee nor the Certificate Registrar shall have any liability for transfer of any such Global Certificates or any Book-Entry Certificates in or through book-entry facilities of any Depository or between or among Depository Participants or Certificate Owners made in violation of the transfer restrictions set forth herein.

Section 5.08 Rule 144A Information. For so long as any Certificates are outstanding and are "restricted securities" within the meaning of Rule 144(a)(3) of the Securities Act: (1) the Depositor will provide or cause to be provided to any holder of such Certificates and any prospective purchaser thereof designated by such a holder, upon the request of such holder or

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prospective purchaser, the information required to be provided to such holder or prospective purchaser by Rule 144A(d)(4) under the Securities Act; and (2) the Depositor shall update such information from time to time in order to prevent such information from becoming false and misleading and will take such other actions as are necessary to ensure that the safe harbor exemption from the registration requirements of the Securities Act under Rule 144A is and will be available for resales of such Certificates conducted in accordance with Rule 144A.

Section 5.09 Appointment of Paying Agent and Certificate Registrar. Wells Fargo Bank, National Association, as Securities Administrator, shall act as the initial Paying Agent and Certificate Registrar for so long as it is also the Master Servicer. Each of the Paying Agent and the Certificate Registrar may resign upon thirty (30) days' prior written notice to the Trustee; provided hereto that no such resignation shall be effective until the appointment of a successor paying agent or certificate registrar. In the event the Paying Agent and/or the Certificate Registrar resigns or is removed by the Trustee for cause, the Trustee may appoint a successor paying agent or certificate registrar, as applicable. The Trustee shall cause such successor paying agent, if other than the Trustee or the Master Servicer or the Securities Administrator, to execute and deliver to the Trustee an instrument in which such paying agent shall agree with the Trustee that such paying agent will hold all sums held by it for the payment to Certificateholders in trust for the benefit of the Certificateholders entitled thereto until such sums have been paid to the Certificateholders.

ARTICLE VI
Payments to Certificateholders

Section 6.01 Distributions on the Certificates. (a) Interest and (as applicable) principal on the Certificates (other than the Residual Certificates) will be distributed monthly on each Distribution Date, commencing in June 2005, in an aggregate amount equal to the Available Funds for such Distribution Date.

On the first Distribution Date, an amount equal to the Deposit Amount shall be distributed to the Residual Certificates, pro rata, in reduction of their Current Principal Amounts, until their respective Current Principal Amounts are reduced to zero.

(A) On each Distribution Date, the Group I Available Funds will be distributed to the Group I Senior Certificates (other than the Residual Certificates) and the Class M-X Certificates as follows:

first, to the Class I-A-1 Certificates, the Class I-A-2 Certificates and the Class I-X Certificates, the Accrued Certificate Interest on each such Class of Certificates for such Distribution Date, pro rata, and then to the Class M-X Certificates, the Group I Allocation Fraction of Accrued Certificate Interest on such Class of Certificates for such Distribution Date, in each case based on the Accrued Certificate Interest owed to each such Class of Certificates; provided, however, that the amount of Accrued Certificate Interest paid to the Class I-X Certificates pursuant to this clause will be reduced by the aggregate amount of any Group I Carryover Shortfall Amounts on the Class I-A-1 Certificates and the Class I-A-2 Certificates, which amount will be deposited on such Distribution Date in the Group I Carryover Shortfall Reserve Fund for distribution to the Class I-A-1 Certificates and the Class I-A-2 Certificates, as

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set forth in subparagraph second below and in clause (G) below, and that the amount of Accrued Certificate Interest paid to the Class M-X Certificates pursuant to this clause on each Distribution Date will be reduced by the Group I Allocation Fraction of any Subordinate Carryover Shortfall Amounts on the Subordinate Certificates (other than the Class M-X Certificates), which amount will be deposited on such Distribution Date into the Subordinate Carryover Reserve Fund for distribution as set forth in Section 6.01(a)(I) below. In addition, Accrued Certificate Interest on the Class I-A-1 Certificates, the Class I-A-2 Certificates, the Class I-X Certificates and the Class M-X Certificates is subject to reduction in the event of certain Net Interest Shortfalls and Net Deferred Interest allocable thereto. Any Net Interest Shortfalls and Net Deferred Interest shall be allocated among such Class I-A-1 Certificates, the Class I-A-2 Certificates, the Class I-X Certificates and the Class M-X Certificates in accordance with the provisions of Section 6.02(g);

second, to the Class I-A-1 Certificates and the Class I-A-2 Certificates, any Group I Carryover Shortfall Amounts due to such Certificates (in accordance with Section 6.01(a)(G) below) to the extent such amount was deducted from the Accrued Certificate Interest on the Class I-X Certificates for such Distribution Date;

third, to the extent of remaining Group I Available Funds, to the Class I-A-1 Certificates, the Class I-A-2 Certificates and the Class I-X Certificates, any Accrued Certificate Interest thereon pursuant to clause first remaining undistributed from previous Distribution Dates (other than, with respect to the Class I-X Certificates, any amounts pursuant to clause first deposited into the Group I Carryover Shortfall Reserve), pro rata, and then to the Class M-X Certificates, the Accrued Certificate Interest thereon pursuant to clause first remaining undistributed from previous Distribution Dates (other than any amounts pursuant to clause first deposited into the Subordinate Carryover Shortfall Reserve Fund), in each case based on the undistributed Accrued Certificate Interest owed to each such Class of Certificates; and

fourth, to the extent of remaining Group I Available Funds, to the Class I-A-1 Certificates, the Class I-A-2 Certificates and the Class I-X Certificates, in reduction of the respective Current Principal Amount thereof, the remaining Group I Senior Optimal Principal Amount for such Distribution Date, until the respective Current Principal Amount of each such Class of Certificates has been reduced to zero.

(B) On each Distribution Date, the Group II Available Funds will be distributed to the Class II-A-1 Certificates, the Class II-A-2 Certificates, the Class II-A-3 Certificates, the Class II-X Certificates and the Class M-X Certificates as follows:

first, to the Class II-A-1 Certificates, the Class II-A-2 Certificates, the Class II-A-3 Certificates and the Class II-X Certificates, the Accrued Certificate Interest on each such Class of Certificates for such Distribution Date, pro rata, and then to the Class M-X Certificates, the Group II Allocation Fraction of Accrued Certificate Interest on such Class of Certificates for such Distribution Date, in each case based on the Accrued Certificate Interest owed to each such Class of Certificates, provided, however, that the amount of Accrued Certificate Interest paid to the Class II-X Certificates pursuant to this clause will be reduced by the aggregate amount of any Group II Carryover Shortfall Amounts for that Distribution Date on the Class II-A-1 Certificates, the Class II-A-2 Certificates and the Class II-A-3 Certificates, which amount will be deposited on such Distribution Date into the Group II Carryover Shortfall Reserve Fund for distribution to

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the Class II-A-1 Certificates, the Class II-A-2 Certificates and the Class II-A-3 Certificates as set forth in subparagraph second below and in clause (H) below; and provided further, that the amount of Accrued Certificate Interest paid to the Class M-X certificates pursuant to this clause on each Distribution Date will be reduced by the Group II Allocation Fraction of any Subordinate Carryover Shortfall Amounts on the Subordinate Certificates (other than the Class M-X Certificates), which amount will be deposited on such Distribution Date in the Subordinate Carryover Shortfall Reserve Fund for distribution to the Subordinate Certificates (other than the Class M-X Certificates) as set forth in clause (I) below. In addition, as described below, Accrued Certificate Interest on the Class II-A-1 Certificates, the Class II-A-2 Certificates, the Class II-A-3 Certificates, the Class II-X Certificates and the Class M-X Certificates is subject to reduction in the event of certain Net Interest Shortfalls and Net Deferred Interest allocable thereto. Any Net Interest Shortfalls and Net Deferred Interest shall be allocated among the Class II-A-1 Certificates, the Class II-A-2 Certificates, the Class II-A-3 Certificates, the Class II-X Certificates and the Class M-X Certificates in accordance with the provisions of Section 6.02(g);

third, to the extent of remaining Group II Available Funds, to the Class II-A-1 Certificates, the Class II-A-2 Certificates, the Class II-A-3 Certificates and the Class II-X Certificates, any Accrued Certificate Interest thereon pursuant to clause first remaining undistributed from previous Distribution Dates (other than, with respect to the Class II-X Certificates, any amounts pursuant to clause first deposited into the Group II Carryover Shortfall Reserve Fund), pro rata, and then to the Class M-X Certificates, the Group II Allocation Fraction of Accrued Certificate Interest on such Class of Certificates for such Distribution Date, in each case based on the undistributed Accrued Certificate Interest owed to each such Class of Certificates; and

fourth, to the extent of remaining Group II Available Funds, to the Class II-A-1 Certificates, the Class II-A-2 Certificates, the Class II-A-3 Certificates and the Class II-X Certificates, pro rata, in reduction of the respective Current Principal Amount thereof, the Group II Senior Optimal Principal Amount for such Distribution Date, until the respective Current Principal Amount of each such Class of Certificates has been reduced to zero.

(C) On each Distribution Date, the Group III Available Funds will be distributed to the Group III Senior Certificates and the Class M-X Certificates in the following order:

first, to the Group III Senior Certificates, the Accrued Certificate Interest on each such Class of Certificates for such Distribution Date, pro rata, and then to the Class M-X Certificates, the Group III Allocation Fraction of Accrued Certificate Interest on such Class of Certificates for such Distribution Date, in each case based on the Accrued Certificate Interest owed to each such Class of Certificates ; provided, however, that the amount of Accrued Certificate Interest paid to the Class M-X Certificates pursuant to this clause will be reduced by the Group III Allocation Fraction of any Subordinate Carryover Shortfall Amounts on the Subordinate Certificates (other than the Class M-X Certificates), which amount will be deposited on such Distribution Date in the Subordinate Carryover Shortfall Reserve Fund for distribution to the Subordinate Certificates (other than the Class M-X Certificates) as set forth in clause (I) below. As described below, Accrued Certificate Interest on the Group III Senior Certificates and the Class M-X Certificates is subject to reduction in the event of certain Net Interest Shortfalls and Net Deferred Interest

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allocable thereto. Any Net Interest Shortfalls and Net Deferred Interest shall be allocated among the Group III Senior Certificates and the Class M-X Certificates as described below;

second, to the extent of remaining Group III Available Funds, to the Group III Senior Certificates, any Accrued Certificate Interest thereon pursuant to clause first remaining undistributed from previous Distribution Dates, pro rata, and then to the Class M-X Certificates, the Group III Allocation Fraction of Accrued Certificate Interest on such Class of Certificates for such Distribution Date, in each case based on the undistributed Accrued Certificate Interest owed to each such Class of Certificates; and

third, to the extent of remaining Group III Available Funds, to the Group III Senior Certificates, pro rata, in reduction of the respective Current Principal Amount thereof, the Group III Senior Optimal Principal Amount for such Distribution Date, until the respective Current Principal Amount of each such Class of Certificates has been reduced to zero.

(D) Except as provided in paragraphs (E) and (F) below, on each Distribution Date on or prior to the Cross-Over Date, an amount equal to the sum of the remaining Group I Available Funds, Group II Available Funds and Group III Available Funds after the distributions in (A), (B) and (C) above will be distributed sequentially, in the following order, to the Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class B-1, Class B-2, Class B-3, Class B-4, Class B-5 and Class B-6 Certificates, in each case up to an amount equal to and in the following order: (a) the Accrued Certificate Interest thereon for such Distribution Date, (b) any Accrued Certificate Interest thereon remaining undistributed from previous Distribution Dates , (c) in reduction of the Current Principal Amount of the Class M-X Certificates, in an amount not to exceed the Subordinate Optimal Principal Amount for such Distribution Date, until the Current Principal Amount of such Class of Certificates has been reduced to zero and (d) such Class's Allocable Share for such Distribution Date, in each case, to the extent of the remaining Group I Available Funds, Group II Available Funds and Group III Available Funds.

(E) On each Distribution Date prior to the Cross-Over Date but after the reduction of the respective Current Principal Amount of any of the Group I Senior Certificates (other than the Residual Certificates), the Group II Senior Certificates or the Group III Senior Certificates to zero, the remaining Class or Classes of Senior Certificates (other than the Residual Certificates), as the case may be, will be entitled to receive on a pro rata basis in reduction of their Current Principal Amounts, in addition to any Principal Prepayments related to such remaining Class of Senior Certificates' respective Loan Group allocated to such Senior Certificates, 100% of the Principal Prepayments on any Mortgage Loan in the Loan Group relating to such fully repaid Class or Classes of Group I Senior Certificates, Group II Senior Certificates or Group III Senior Certificates; provided, however, that if (A) the weighted average of the Subordinate Percentages on such Distribution Date equals or exceeds two times the initial weighted average of the Subordinate Percentages and (B) the aggregate Scheduled Principal Balance of the Mortgage Loans delinquent 60 days or more (including for this purpose any such Mortgage Loans in foreclosure and Mortgage Loans with respect to which the related Mortgaged Property has been acquired by the Trust), averaged over the last six months, as a percentage of the sum of the aggregate Current Principal Amount of the Subordinate Certificates, does not exceed 100%, then the additional allocation of Principal Prepayments to such Group I Senior Certificates, Group II Senior Certificates or Group III Senior Certificates in accordance with this clause (E) will not be

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made and 100% of the Principal Prepayments on any Mortgage Loan in the Loan Group relating to such fully prepaid Class or Classes of Group I Senior Certificates, Group II Senior Certificates or Group III Senior Certificates will be allocated on a pro rata basis to the Subordinate Certificates.

(F) If on any Distribution Date the aggregate Current Principal Amount of the Group I Senior Certificates (other than the Residual Certificates), the Group II Senior Certificates or the Group III Senior Certificates would be greater than the aggregate Scheduled Principal Balance of the Mortgage Loans in the related Loan Group and any Subordinate Certificates are still outstanding, in each case after giving effect to distributions to be made on such Distribution Date, then (i) 100% of amounts otherwise allocable to the Subordinate Certificates in respect of principal collections on the Mortgage Loans will be distributed to the Group I Senior Certificates, the Group II Senior Certificates or to the Group III Senior Certificates (other than the Residual Certificates), on a pro rata basis, in reduction of the respective Current Principal Amount thereof, until the aggregate Current Principal Amount of such Class or Classes of Senior Certificates, as applicable, is an amount equal to the aggregate Scheduled Principal Balance of the Mortgage Loans in the related Loan Group, and (ii) the Accrued Certificate Interest otherwise allocable to the Subordinate Certificates on such Distribution Date will be reduced, if necessary, and distributed on a pro rata basis to such Class or Classes of Senior Certificates in an amount equal to the Accrued Certificate Interest for such Distribution Date on the excess of (x) the aggregate Current Principal Amount of such Class or Classes of Senior Certificates over (y) the aggregate Scheduled Principal Balance of the Mortgage Loans in the related Loan Group. Any such reduction in the Accrued Certificate Interest on the Subordinate Certificates will be allocated on a pro rata basis in reverse order of the payment priority of the Subordinate Certificates, commencing with the Class B-6 Certificates.

(G) On each Distribution Date, any amounts in the Group I Carryover Shortfall Reserve Fund will be distributed to the Class I-A-1 Certificates and the Class I-A-2 Certificates, pro rata based on unpaid Group I Carryover Shortfall Amounts on each such Class of Certificates, up to an amount equal to any unpaid Group I Carryover Shortfall Amounts with respect to the respective Classes of Certificates.

(H) On each Distribution Date, any amounts in the Group II Carryover Shortfall Reserve Fund will be distributed to the Class II-A-1 Certificates, the Class II-A-2 Certificates and the Class II-A-3 Certificates, pro rata based on unpaid Group II Carryover Shortfall Amounts on each such Class of Certificates, up to an amount equal to any unpaid Group II Carryover Shortfall Amounts with respect to the respective Classes of Certificates.

(I) (i) On each Distribution Date on which all distributions set forth in paragraphs (A), (B), (C) and (D) above to be made on such Distribution Date have been made, any amounts in the Subordinate Carryover Shortfall Reserve Fund will be distributed sequentially to the Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class B-1, Class B-2, Class B-3, Class B-4, Class B-5 and Class B-6 certificates, in each case up to an amount equal to any unpaid Subordinate Carryover Shortfall Amounts with respect to such Class or Classes of Certificates.

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(a) If, after distributions have been made pursuant to priorities first, second and third of clause (A) above, priorities first, second and third of clause (B) above or priorities first and second of clause (C) above, as the case may be, on any Distribution Date, the remaining Group I Available Funds, Group II Available Funds or Group III Available Funds, respectively, are less than the Group I Senior Optimal Principal Amount, Group II Senior Optimal Principal Amount and Group III Senior Optimal Principal Amount, respectively, then such respective amounts shall be reduced, and such remaining funds will be distributed to the related Senior Certificates (other than the Residual Certificates) on the basis of such reduced amounts.

(b) "Pro rata" principal distributions among Classes of Certificates will be made in proportion to the then Current Principal Amounts of such Classes of Certificates. "Pro rata" interest distributions among Classes of Certificates that bear interest on any Distribution Date will be made in proportion to the Accrued Certificate Interest payable on such Distribution Date.

(c) On each Distribution Date, any Available Funds remaining after payment of interest and principal to the Classes of Certificates entitled thereto, as described above, will be distributed to the Class R-III Certificates; provided that if on any Distribution Date there are any Group I Available Funds, Group II Available Funds or Group III Available Funds remaining after payment of interest and principal to a Class or Classes of Certificates entitled thereto, such amounts will be distributed to the other Classes of Senior Certificates (other than the Residual Certificates), pro rata, based upon their Current Principal Amounts, until all amounts due to all such Classes of Senior Certificates (other than the Residual Certificates) have been paid in full, before any amounts are distributed to the Class R-III Certificates.

(d) [Reserved.]

(e) No Accrued Certificate Interest will be payable with respect to any Class or Classes of Certificates that bears interest after the Distribution Date on which the Current Principal Amount of such Certificate or Certificates or Notional Amount of such Certificate or Certificates has been reduced to zero.

(f) (i) If on any Distribution Date the Group I Available Funds, Group II Available Funds, or Group III Available Funds for the Group I Senior Certificates (other than the Residual Certificates), Group II Senior Certificates and Group III Senior Certificates, respectively, in any Certificate Group are less than the Accrued Certificate Interest on the related Senior Certificates for such Distribution Date prior to reduction for Net Interest Shortfalls and the interest portion of Realized Losses on the related Mortgage Loans, the shortfall will be allocated among the holders of each Class of related Senior Certificates (other than the Residual Certificates) in such Certificate Group and related Interest Only Certificates (as applicable) in proportion to the respective amounts of Accrued Certificate Interest for such Distribution Date that would have been allocated thereto in the absence of such Net Interest Shortfall and/or Realized Losses on the related Mortgage Loans for such Distribution Date. In addition, the amount of any interest shortfalls (not including Interest Shortfalls) will constitute unpaid Accrued Certificate Interest and will be distributable to holders of the Certificates of the related Classes (other than the Residual Certificates) entitled to such amounts on subsequent Distribution Dates, to the extent of the related Certificate Group's Available Funds after current interest distributions as required herein. Any such amounts so carried forward will not bear interest. Any interest shortfalls will

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not be offset by a reduction in the servicing compensation of the Master Servicer, the Servicers or otherwise, except to the extent of applicable Compensating Interest Payments.

(g) The expenses and fees of the Trust shall be paid by each of the REMICs, to the extent that such expenses relate to the assets of each of such respective REMICs, and all other expenses and fees of the Trust shall be paid pro rata by each of the REMICs.

Section 6.02 Allocation of Losses and Subsequent Recoveries. (a) On or prior to each Determination Date, the Master Servicer shall determine the amount of any Realized Loss in respect of each Mortgage Loan that occurred during the immediately preceding calendar month.

(a) With respect to any Certificates (other than the Residual Certificates) on any Distribution Date, the principal portion of each Realized Loss on a Mortgage Loan shall be allocated as follows:

Section 6.03 *first*, to the Class B-6 Certificates until the Current Principal Amount thereof has been reduced to zero;

second, to the Class B-5 Certificates until the Current Principal Amount thereof has been reduced to zero;

third, to the Class B-4 Certificates until the Current Principal Amount thereof has been reduced to zero;

fourth, to the Class B-3 Certificates until the Current Principal Amount thereof has been reduced to zero;

fifth, to the Class B-2 Certificates until the Current Principal Amount thereof has been reduced to zero;

sixth, to the Class B-1 Certificates until the Current Principal Amount thereof has been reduced to zero;

seventh, to the Class M-7 Certificates until the Current Principal Amount thereof has been reduced to zero;

eighth, to the Class M-6 Certificates until the Current Principal Amount thereof has been reduced to zero;

ninth, to the Class M-5 Certificates until the Current Principal Amount thereof has been reduced to zero;

tenth, to the Class M-4 Certificates until the Current Principal Amount thereof has been reduced to zero;

eleventh, to the Class M-3 Certificates until the Current Principal Amount thereof has been reduced to zero;

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twelfth, to the Class M-2 Certificates until the Current Principal Amount thereof has been reduced to zero;

thirteenth, to the Class M-1 Certificates until the Current Principal Amount thereof has been reduced to zero; and

fourteenth, after the Cross-over Date, (i) the principal portion of Realized Losses on the Mortgage Loans in Loan Group I will be allocated on any Distribution Date after the Cross-over Date first to the Class I-A-2 Certificates until the Current Principal Amount thereof has been reduced to zero, and then to the Class I-A-1 Certificates until the Current Principal Amount thereof has been reduced to zero, (ii) the principal portion of Realized Losses on the Mortgage Loans in Loan Group II will be allocated on any Distribution Date after the Cross-over Date first to the Class II-A-3 Certificates until the Current Principal Amount thereof has been reduced to zero, and then to the Class II-A-2 Certificates until the Current Principal Amount thereof has been reduced to zero, and then to the Class II-A-1 Certificates until the Current Principal Amount thereof has been reduced to zero, and (iii) the principal portion of Realized Losses on the Mortgage Loans in Loan Group III will be allocated on any Distribution Date after the Cross-over Date first to the Class III-A-2 Certificates until the Current Principal Amount thereof has been reduced to zero, and then to the Class III-A-1 Certificates until the Current Principal Amount thereof has been reduced to zero.

(a) Notwithstanding the foregoing clause (b), (i) no such allocation of any Realized Loss on the Group I Mortgage Loans, Group II Mortgage Loans or Group III Mortgage Loans, as the case may be, shall be made on a Distribution Date to any Class or Classes of Group I Senior Certificates (other than the Residual Certificates), Group II Senior Certificates or Group III Senior Certificates, respectively, to the extent that such allocation would result in the reduction of the aggregate Current Principal Amounts of all Certificates (other than the Residual Certificates) in the related Certificate Group as of such Distribution Date, after giving effect to all distributions and prior allocations of Realized Losses on the Mortgage Loans in the related Loan Group on such date, to an amount less than the aggregate Scheduled Principal Balance of all of the Mortgage Loans in the related Loan Group as of the first day of the month of such Distribution Date , and (ii) no reduction of the Current Principal Amount of any Class of Subordinate Certificates shall be made on any Distribution Date on account of Realized Losses on the Mortgage Loans to the extent that such reduction would have the effect of reducing the aggregate Current Principal Amount of all Certificates as of such Distribution Date, after giving effect to all distributions and prior allocations of Realized Losses on the Mortgage Loans on such date, to an amount less than the aggregate Scheduled Principal Balance of all of the Mortgage Loans as of the first day of the month during which such Distribution Date occurs (the limitations set forth in such clauses (i) and (ii), the "Loss Allocation Limitation").

(b) The principal portion of any Realized Losses on the Mortgage Loans allocated to a Class of Certificates (other than the Residual Certificates) shall be allocated among the Certificates of such Class (other than the Residual Certificates) in proportion to their respective Current Principal Amounts. Once the Senior Certificates (other than, as applicable, the Residual Certificates) of a Certificate Group have been reduced to zero, the principal portion of Realized Losses on the Mortgage Loans in the related Loan Group (if any) will be allocated on a pro rata basis to the remaining Senior Certificates (other than, as applicable, the Residual Certificates) of

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the other Certificate Groups. Within each Certificate Group, the principal portion of Realized Losses on the related Mortgage Loans will be allocated to each Certificate (other than, as applicable, the Residual Certificates) pro rata based upon the respective Current Principal Amount of such Certificate. The principal portion of any allocation of Realized Losses on the Mortgage Loans shall be accomplished by reducing the Current Principal Amount of the related Certificates on the related Distribution Date.

(c) Realized Losses on the Mortgage Loans shall be allocated on the Distribution Date in the month following the month in which such loss was incurred and, in the case of the principal portion thereof, after giving effect to distributions made on such Distribution Date.

(d) On each Distribution Date, the Securities Administrator shall determine and notify the Paying Agent of the Subordinate Certificate Writedown Amount. Any such Subordinate Certificate Writedown Amount shall effect a corresponding reduction in the Current Principal Amount of (i) with respect to the Subordinate Certificate Writedown Amount, if prior to the Cross-Over Date, the Subordinate Certificates, in the reverse order of their numerical Class designations and (ii) from and after the Cross-Over Date, the Senior Certificates (other than the Residual Certificates), which reduction shall occur on such Distribution Date after giving effect to distributions made on such Distribution Date.

(e) (i) The applicable Senior Percentage of any Prepayment Interest Shortfalls and interest shortfalls resulting from the application of the Relief Act or similar state law will be allocated among the Senior Certificates (other than the Residual Certificates) in proportion to the amount of Accrued Certificate Interest that would have been allocated thereto in the absence of such shortfalls. The applicable Subordinate Percentage of any Prepayment Interest Shortfalls and interest shortfalls resulting from the application of the Relief Act or similar state law will be allocated sequentially to the Subordinate Certificates, beginning with the Subordinate Certificates with the highest payment priority, in proportion to the respective amounts of Accrued Certificate Interest that would have been allocated thereto in the absence of such shortfalls. The principal portion of any Realized Losses with respect to the Group I Mortgage Loans, Group II Mortgage Loans or Group III Mortgage Loans occurring on or prior to the Cross-Over Date will not be allocated among any Senior Certificates, but will reduce the amount of Group I Available Funds, Group II Available Funds or Group III Available Funds, respectively, available for distribution on the related Distribution Date. As a result of the subordination of the Subordinate Certificates in right of distribution, such Realized Losses on the Mortgage Loans will be borne by the Subordinate Certificates in inverse order of their payment priority. Following the Cross-Over Date, the principal portion of Realized Losses on the Mortgage Loans will be allocated as set forth in Section 6.02(d) above.

(ii) The principal portion of Debt Service Reductions will not be allocated in reduction of the Current Principal Amount of any Class of Certificates. However, after the Cross-over Date, the amounts distributable to the Senior Certificates (other than the Residual Certificates) under clause (1) of the definition of Senior Optimal Principal Amount for the Senior Certificates (other than the Residual Certificates) of each Certificate Group and distributable to the Subordinate Certificates under clause (1) of the definition of Subordinate Optimal Principal Amount will be reduced by the amount of any Debt Service Reductions applicable to the Mortgage Loans of the related Loan

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Group. Any Debt Service Reductions relating to the Mortgage Loans prior to the Cross-over Date will be borne by the Subordinate Certificates (to the extent then outstanding) in inverse order of priority.

(f) In addition, in the event that the Paying Agent receives any Subsequent Recoveries on the Mortgage Loans from a Servicer, the Paying Agent shall deposit such funds into the Distribution Account pursuant to Section 4.01(c)(ii). If, after taking into account such Subsequent Recoveries on the Mortgage Loans, the amount of a Realized Loss on a Mortgage Loan is reduced, the amount of such Subsequent Recoveries will be applied to increase the Current Principal Amount of the Class or Classes of Subordinate Certificates with the highest payment priority, to which Realized Losses on the Mortgage Loans have been allocated, but not by more than the amount of Realized Losses on the Mortgage Loans previously allocated to that Class or Classes of Subordinate Certificates pursuant to Section 6.02. The amount of any Subsequent Recoveries on the Mortgage Loans following the application set forth in the immediately preceding sentence will be applied to sequentially increase the Current Principal Amount of the Subordinate Certificates, beginning with the Class of Subordinate Certificates with the next highest payment priority, up to the amount of such Realized Losses on the Mortgage Loans previously allocated to such Class or Classes of Certificates pursuant to this Section 6.02. Holders of such Certificates will not be entitled to any payments in respect of Accrued Certificate Interest on the amount of such increases for any Interest Accrual Period preceding the Distribution Date on which such increase occurs. Any such increases shall be applied to the Current Principal Amount of each Subordinate Certificate of such Class of Certificates, in accordance with its respective Fractional Undivided Interest.

Section 6.04 Payments (a) On each Distribution Date, other than the final Distribution Date, the Paying Agent shall distribute, to the extent of funds then on deposit in the Distribution Account, to each Certificateholder of record on the directly preceding Record Date (other than each Certificateholder of record of the Residual Certificates) the Certificateholder's pro rata share of its Class of Certificates (based on the aggregate Fractional Undivided Interest represented by such Holder's Certificates) of all amounts required to be distributed on such Distribution Date to such Class of Certificates, based on information provided to the Securities Administrator by the Master Servicer. The Securities Administrator shall calculate the amount to be distributed to each Class of Certificates and, based on such amounts, the Securities Administrator shall determine the amount to be distributed to each Certificateholder. All of the Securities Administrator's calculations of payments shall be based solely on information provided to the Securities Administrator by the Master Servicer. The Securities Administrator shall not be required to confirm, verify or recompute any such information but shall be entitled to rely conclusively on such information.

(b) Payment of the above amounts to each Certificateholder shall be made (i) by check mailed to each Certificateholder entitled thereto at the address appearing in the Certificate Register or (ii) upon receipt by the Paying Agent on or before the fifth Business Day preceding the Record Date of written instructions from a Certificateholder by wire transfer to a United States dollar account maintained by the payee at any United States depository institution with appropriate facilities for receiving such a wire transfer; provided, however, that the final payment in respect of each Class of Certificates will be made only upon presentation and

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surrender of such respective Certificates at the office or agency of the Paying Agent specified in the notice to Certificateholders of such final payment.

Section 6.05 Statements to Certificateholders. (a) Concurrently with each distribution to Certificateholders, the Securities Administrator shall make available to the parties hereto and each Certificateholder via the Securities Administrator's internet website as set forth below, the following information, expressed with respect to clauses (i) through (vii) in the aggregate and as a Fractional Undivided Interest representing an initial Current Principal Amount of $1,000, in the case of the Interest Only Certificates, a Notional Amount of $1,000, or in the case of the Residual Certificates, an initial Current Principal Amount of $50:

(i) the Current Principal Amount or Notional Amount, as applicable, of each Class of Certificates immediately prior to such Distribution Date;

(ii) the amount of the distribution allocable to principal on each applicable Class of Certificates;

(iii) the aggregate amount of interest accrued at the related Pass-Through Rate with respect to each Class during the related Interest Accrual Period;

(iv) any Carryover Shortfall, any Carryover Shortfall Amounts, the Net Interest Shortfall and any other adjustments to interest at the related Pass-Through Rate necessary to account for any difference between interest accrued and aggregate interest distributed with respect to each Class of Certificates (other than the Residual Certificates);

(v) the amount of the distribution allocable to interest on each Class of Certificates that bears interest;

(vi) the Pass-Through Rates for each Class of Certificates with respect to such Distribution Date;

(vii) the Current Principal Amount or Notional Amount of each Class of Certificates after such Distribution Date;

(viii) the amount of any Monthly Advances, Compensating Interest Payments and outstanding unreimbursed advances by the Master Servicer or the Trustee included in such distribution, separately stated for each Loan Group;

(ix) the aggregate amount of any Realized Losses on the Mortgage Loans (listed separately for each category of Realized Loss and for each Loan Group) and Subsequent Recoveries on the Mortgage Loans during the related Prepayment Period and cumulatively since the Cut-off Date with respect to the Mortgage Loans, and the amount and source (separately identified) of any distribution in respect thereof included in such distribution;

(x) with respect to each Mortgage Loan which incurred a Realized Loss during the related Prepayment Period, (i) the loan number, (ii) the Scheduled Principal

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Balance of such Mortgage Loan as of the Cut-off Date, (iii) the Scheduled Principal Balance of such Mortgage Loan as of the beginning of the related Due Period, (iv) the Net Liquidation Proceeds with respect to such Mortgage Loan and (v) the amount of the Realized Loss with respect to such Mortgage Loan;

(xi) with respect to each Loan Group, the amount of Scheduled Principal and Principal Prepayments (including but separately identifying the principal amount of principal prepayments, Insurance Proceeds, the purchase price in connection with the purchase of Mortgage Loans, cash deposits in connection with substitutions of Mortgage Loans and Net Liquidation Proceeds) and the number and principal balance of Mortgage Loans purchased or substituted for during the relevant period and cumulatively since the Cut-off Date with respect to the Mortgage Loans;

(xii) the number of Mortgage Loans (excluding REO Property) in each Loan Group remaining in the Trust Fund as of the end of the related Prepayment Period;

(xiii) information for each Loan Group and in the aggregate regarding any Mortgage Loan delinquencies as of the end of the related Prepayment Period, including the aggregate number and aggregate Outstanding Principal Balance of Mortgage Loans (a) delinquent 30 to 59 days on a contractual basis, (b) delinquent 60 to 89 days on a contractual basis, and (c) delinquent 90 or more days on a contractual basis, in each case as of the close of business on the last day of the immediately preceding month;

(xiv) for each Loan Group, the number of Mortgage Loans in the foreclosure process as of the end of the related Due Period and the aggregate Outstanding Principal Balance of such Mortgage Loans;

(xv) for each Loan Group, the number and aggregate Outstanding Principal Balance of all Mortgage Loans as to which the Mortgaged Property was REO Property as of the end of the related Due Period;

(xvi) the book value (the sum of (A) the Outstanding Principal Balance of the related Mortgage Loan and (B) accrued interest through the date of foreclosure, minus (C) foreclosure expenses) of any REO Property in each Loan Group; provided that, in the event that such information is not available to the Securities Administrator on the Distribution Date, such information shall be furnished promptly after it becomes available;

(xvii) the amount of Realized Losses on the Mortgage Loans allocated to each Class of Certificates (other than the Residual Certificates) since the prior Distribution Date and in the aggregate for all prior Distribution Dates;

(xviii) the Average Loss Severity Percentage for each Loan Group;

(xix) the then applicable Group I, Group II and Group III Senior Percentage, Group I, Group II and Group III Senior Prepayment Percentage, Group I, Group II and Group III Subordinate Percentage, and Group I, Group II and Group III Subordinate Prepayment Percentage; and

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(xx) the amount of any Subsequent Recovery on the Mortgage Loans for such Distribution Date, and the amount by which the Current Principal Amount of each Class of Subordinate Certificates was increased as a result thereof.

The information set forth above shall be calculated or reported, as the case may be, by the Securities Administrator, based solely on, and to the extent of, information provided to the Securities Administrator by the Master Servicer. The Securities Administrator may conclusively rely on such information and shall not be required to confirm, verify or recalculate any such information.

The Securities Administrator may make available each month, to any interested party, the monthly statement to Certificateholders via the Securities Administrator's website initially located at "www.ctslink.com." Assistance in using the website can be obtained by calling the Securities Administrator's customer service desk at (301) 815-6600. Parties that are unable to use the above distribution option are entitled to have a paper copy mailed to them via first class mail by calling the Securities Administrator's customer service desk and indicating such. The Securities Administrator shall have the right to change the way such reports are distributed in order to make such distribution more convenient and/or more accessible to the parties, and the Securities Administrator shall provide timely and adequate notification to all parties regarding any such change.

To the extent timely received from the Securities Administrator, the Trustee will also make monthly statements available each month to certificateholders via the Trustee's internet website. The Trustee's internet website will initially be located at www.jpmorgan.com/sfr. Assistance in using the Trustee's website service can be obtained by calling the Trustee's customer service desk at (877) 722-1095.

(b) By March 31 of each year beginning in 2006, the Trustee will furnish such report to each Holder of the Certificates of record at any time during the prior calendar year as to the aggregate of amounts reported pursuant to subclauses (a)(ii) and (a)(v) above with respect to the Certificates, plus information with respect to the amount of servicing compensation and such other customary information as the Securities Administrator may determine and advise the Trustee to be necessary and/or to be required by the Internal Revenue Service or by a federal or state law or rules or regulations to enable such Holders to prepare their tax returns for such calendar year. Such obligations shall be deemed to have been satisfied to the extent that substantially comparable information shall be provided by the Securities Administrator pursuant to the requirements of the Code.

Section 6.06 Monthly Advances. Pursuant to the related Servicing Agreement, each Servicer will make Monthly Advances. Each such Monthly Advance shall be remitted to the Distribution Account no later than 1:00 p.m. Eastern time on the Distribution Account Deposit Date in immediately available funds. Subject to the Master Servicer's recoverability determination, in the event that the related Servicer fails to make a required Monthly Advance, the Master Servicer shall be required to remit the amount of such Monthly Advance to the Distribution Account. The Master Servicer shall be obligated to make any such Monthly Advance only to the extent that such advance would not be a Nonrecoverable Advance. If the Master Servicer shall have determined that it has made a Nonrecoverable Advance or that a

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proposed Monthly Advance or a lesser portion of such Monthly Advance would constitute a Nonrecoverable Advance, on the related Distribution Account Deposit Date the Master Servicer shall deliver (i) to the Paying Agent for the benefit of the Certificateholders funds constituting the remaining portion of such Monthly Advance, if applicable, and (ii) to the Trustee an Officer's Certificate setting forth the basis for such determination.

The Master Servicer and each Servicer shall be entitled to be reimbursed from the Distribution Account for all Monthly Advances of its own funds made pursuant to this Section as provided in Section 4.03. The obligation to make Monthly Advances with respect to any Mortgage Loan shall continue until such Mortgage Loan is paid in full or the related Mortgaged Property or related REO Property has been liquidated or until the purchase or repurchase thereof (or substitution therefor) from the Trust Fund pursuant to any applicable provision of this Agreement, except as otherwise provided in this Section 6.05.

Subject to and in accordance with the provisions of Article VIII hereof, in the event the Master Servicer fails to make such Monthly Advance, then the Trustee, as the successor Master Servicer, shall be obligated to make such Monthly Advance, subject to the provisions of this Section 6.05.

Section 6.07 Compensating Interest Payments. Upon timely notice by the Paying Agent, the Master Servicer shall deposit in the Distribution Account not later than each Distribution Account Deposit Date an amount equal to the lesser of (i) the sum of the amounts required to be paid by each Servicer under the related Servicing Agreement with respect to subclauses (a) and (b) of the definition of Interest Shortfall with respect to the Mortgage Loans for the related Distribution Date, and not so paid by such Servicers and (ii) the Master Servicing Compensation for such Distribution Date (such amount, the "Compensating Interest Payment"). The Master Servicer shall not be entitled to any reimbursement of any Compensating Interest Payment.

ARTICLE VII
The Master Servicer

Section 7.01 Liabilities of the Master Servicer. The Master Servicer shall be liable in accordance herewith only to the extent of the obligations specifically imposed upon and undertaken by it herein.

Section 7.02 Merger or Consolidation of the Master Servicer.

(a) The Master Servicer will keep in full force and effect its existence, rights and franchises as a corporation under the laws of the state of its incorporation, and will obtain and preserve its qualification to do business as a foreign corporation in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement, the Certificates or any of the Mortgage Loans and to perform its duties under this Agreement.

(b) Any Person into which the Master Servicer may be merged or consolidated, or any corporation resulting from any merger or consolidation to which the Master Servicer shall be a party, or any Person succeeding to the business of the Master Servicer, shall be the successor of

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the Master Servicer hereunder, without the execution or filing of any paper or further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 7.03 Indemnification of the Trustee, the Custodian and the Securities Administrator. (a) The Master Servicer agrees to indemnify the Indemnified Persons for, and to hold them harmless against, any loss, liability or expense (including reasonable legal fees and disbursements of counsel) incurred on their part that may be sustained in connection with, arising out of, or relating to, any claim or legal action (including any pending or threatened claim or legal action) relating to this Agreement or the Certificates (i) related to the Master Servicer's failure to perform its duties in compliance with this Agreement (except as any such loss, liability or expense shall be otherwise reimbursable pursuant to this Agreement) or (ii) incurred by reason of the Master Servicer's willful misfeasance, bad faith or gross negligence in the performance of duties hereunder or by reason of reckless disregard of obligations and duties hereunder, provided, in each case, that with respect to any such claim or legal action (or pending or threatened claim or legal action), the Indemnified Person shall have given the Master Servicer and the Depositor written notice thereof promptly after the Indemnified Person shall have, with respect to such claim or legal action, knowledge thereof. The Indemnified Person's failure to give such notice shall not affect the Indemnified Person's right to indemnification hereunder, except to the extent that the Master Servicer is materially prejudiced by such failure to give notice. This indemnity shall survive the resignation or removal of the Trustee, the Master Servicer, the Custodian or the Securities Administrator and the termination of this Agreement.

(b) The Depositor will indemnify any Indemnified Person for any loss, liability or expense of any Indemnified Person not otherwise covered by the Master Servicer's indemnification pursuant to Subsection (a) above.

(c) The Securities Administrator agrees to indemnify the Indemnified Persons (other than the Securities Administrator) for, and to hold them harmless against, any loss, liability or expense (including reasonable legal fees and disbursements of counsel) incurred on their part (i) in connection with, arising out of, or relating to the Securities Administrator's failure to prepare and file a Form 10-K in accordance with Section 3.18, (ii) by reason of the Securities Administrator's willful misfeasance, bad faith or gross negligence in the performance of its obligations pursuant to Section 3.18 or (iii) by reason of the Securities Administrator's reckless disregard of its obligations pursuant to Section 3.18 (including, without limitation, in respect of any powers of attorney furnished to the Securities Administrator), provided, in each case, that with respect to any such claim or legal action (or pending or threatened claim or legal action), an Indemnified Person shall have given the Securities Administrator written notice thereof promptly after such Indemnified Person shall have knowledge with respect to such claim or legal action. The Indemnified Person's failure to give such notice shall not affect the Indemnified Person's right to indemnification hereunder. This indemnity shall survive the resignation or removal of the Trustee, the Master Servicer or the Securities Administrator and the termination of this Agreement.

Section 7.05 Limitations on Liability of the Master Servicer and Others. Subject to the obligation of the Master Servicer to indemnify the Indemnified Persons pursuant to Section 7.03:

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(a) Neither the Master Servicer nor any of the directors, officers, employees or agents of the Master Servicer shall be under any liability to the Indemnified Persons, the Depositor, the Trust Fund or the Certificateholders for taking any action or for refraining from taking any action in good faith pursuant to this Agreement, or for errors in judgment; provided, however, that this provision shall not protect the Master Servicer or any such Person against any breach of warranties or representations made herein or any liability which would otherwise be imposed by reason of such Person's willful misfeasance, bad faith or gross negligence in the performance of duties or by reason of reckless disregard of obligations and duties hereunder.

(b) The Master Servicer and any director, officer, employee or agent of the Master Servicer may rely in good faith on any document of any kind prima facie properly executed and submitted by any Person respecting any matters arising hereunder.

(c) The Master Servicer, the Custodian and any director, officer, employee or agent of the Master Servicer or the Custodian shall be indemnified by the Trust and held harmless thereby against any loss, liability or expense (including reasonable legal fees and disbursements of counsel) incurred on their part that may be sustained in connection with, arising out of, or related to, any claim or legal action (including any pending or threatened claim or legal action) relating to this Agreement, the Certificates or the Servicing Agreements (except to the extent that the Master Servicer is indemnified by the related Servicer thereunder), other than (i) any such loss, liability or expense related to the Master Servicer's failure to perform its duties in compliance with this Agreement (except as any such loss, liability or expense shall be otherwise reimbursable pursuant to this Agreement), or to the Custodian's failure to perform its duties under the Custodial Agreement, respectively, or (ii) any such loss, liability or expense incurred by reason of the Master Servicer's or the Custodian's willful misfeasance, bad faith or gross negligence in the performance of duties hereunder or under the Custodial Agreement, as applicable, or by reason of reckless disregard of obligations and duties hereunder or under the Custodial Agreement, as applicable.

(d) The Master Servicer shall not be under any obligation to appear in, prosecute or defend any legal action that is not incidental to its duties under this Agreement and that in its opinion may involve it in any expense or liability; provided, however, the Master Servicer may in its discretion, with the consent of the Trustee (which consent shall not be unreasonably withheld), undertake any such action which it may deem necessary or desirable with respect to this Agreement and the rights and duties of the parties hereto and the interests of the Certificateholders hereunder. In such event, the legal expenses and costs of such action and any liability resulting therefrom shall be expenses, costs and liabilities of the Trust Fund, and the Master Servicer shall be entitled to be reimbursed therefor out of the Distribution Account as provided by Section 4.03. Nothing in this Subsection 7.04(d) shall affect the Master Servicer's obligation to supervise, or to take such actions as are necessary to ensure, the servicing and administration of the Mortgage Loans pursuant to Section 3.01.

(e) In taking or recommending any course of action pursuant to this Agreement, unless specifically required to do so pursuant to this Agreement, the Master Servicer shall not be required to investigate or make recommendations concerning potential liabilities which the Trust might incur as a result of such course of action by reason of the condition of the Mortgaged Properties but shall give notice to the Trustee if it has notice of such potential liabilities.

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(f) The Master Servicer shall not be liable for any acts or omissions of any Servicer, except as otherwise expressly provided herein.

Section 7.06 Master Servicer Not to Resign. Except as provided in Section 7.07, the Master Servicer shall not resign from the obligations and duties hereby imposed on it except upon a determination that any such duties hereunder are no longer permissible under applicable law and such impermissibility cannot be cured. Any such determination permitting the resignation of the Master Servicer shall be evidenced by an Opinion of Independent Counsel to such effect delivered to the Trustee. No such resignation by the Master Servicer shall become effective until EMC or the Trustee or a successor to the Master Servicer reasonably satisfactory to the Trustee shall have assumed the responsibilities and obligations of the Master Servicer in accordance with Section 8.02 hereof. The Trustee shall notify the Rating Agencies of the resignation of the Master Servicer.

Section 7.07 Successor Master Servicer. In connection with the appointment of any successor Master Servicer or the assumption of the duties of the Master Servicer, EMC or the Trustee may make such arrangements for the compensation of such successor Master Servicer out of payments on the Mortgage Loans as EMC or the Trustee and such successor Master Servicer shall agree. If the successor Master Servicer does not agree that such market value is a fair price, such successor Master Servicer shall obtain two quotations of market value from third parties actively engaged in the servicing of single-family Mortgage Loans. Notwithstanding the foregoing, the compensation payable to a successor master servicer may not exceed the compensation which the Master Servicer would have been entitled to retain if the Master Servicer had continued to act as Master Servicer hereunder.

Section 7.08 Sale and Assignment of Master Servicing. The Master Servicer may sell and assign its rights and delegate its duties and obligations in its entirety as Master Servicer under this Agreement and EMC may terminate the Master Servicer without cause and select a new Master Servicer; provided, however, that: (i) the purchaser or transferee accepting such assignment and delegation (a) shall be a Person or shall be an Affiliate of a Person which shall be qualified to service Mortgage Loans for Fannie Mae or Freddie Mac; (b) shall have a net worth of not less than $10,000,000 (unless otherwise approved by each Rating Agency pursuant to clause (ii) below); (c) shall be reasonably satisfactory to the Trustee (as evidenced in a writing signed by the Trustee); and (d) shall execute and deliver to the Trustee an agreement, in form and substance reasonably satisfactory to the Trustee, which contains an assumption by such Person of the due and punctual performance and observance of each covenant and condition to be performed or observed by it as Master Servicer under this Agreement and any custodial agreement from and after the effective date of such agreement; (ii) each Rating Agency shall be given prior written notice of the identity of the proposed successor to the Master Servicer and each Rating Agency's rating of the Certificates in effect immediately prior to such assignment, sale and delegation will not be downgraded, qualified or withdrawn as a result of such assignment, sale and delegation, as evidenced by a letter to such effect delivered to the Master Servicer and the Trustee; (iii) the Master Servicer assigning and delegating its rights and obligations hereunder shall deliver to the Trustee an Officer's Certificate and an Opinion of Independent Counsel, each stating that all conditions precedent to such action under this Agreement have been completed and such action is permitted by and complies with the terms of this Agreement; and (iv) in the event the Master Servicer is terminated without cause by EMC,

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EMC shall pay the terminated Master Servicer a termination fee equal to 0.25% of the aggregate Scheduled Principal Balance of the Mortgage Loans at the time the master servicing of the Mortgage Loans is transferred to the successor Master Servicer. No such assignment or delegation shall affect any liability of the Master Servicer arising prior to the effective date thereof.

ARTICLE VIII
Default

Section 8.01 "Event of Default" wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) and only with respect to the defaulting Master Servicer:

(i) The Master Servicer fails to deposit in the Distribution Account any amount so required by it to be deposited pursuant to this Agreement (other than any Monthly Advance), and such failure continues unremedied for a period of three Business Days after the date upon which written notice of such failure, requiring the same to be remedied, shall have been given to the Master Servicer; or

(ii) The Master Servicer fails to observe or perform in any material respect any other material covenants and agreements set forth in this Agreement to be performed by it, which covenants and agreements materially affect the rights of Certificateholders, and such failure continues unremedied for a period of 60 days (or, in the case of a breach of its obligation to provide a Master Servicer Certification pursuant to Section 3.18, for a period of five days) after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Master Servicer by the Trustee or to the Master Servicer and the Trustee by the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than 25% of the Trust Fund; or

(iii) There is entered against the Master Servicer a decree or order by a court or agency or supervisory authority having jurisdiction in the premises for the appointment of a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of its affairs, and the continuance of any such decree or order is unstayed and in effect for a period of 60 consecutive days, or an involuntary case is commenced against the Master Servicer under any applicable insolvency or reorganization statute and the petition is not dismissed within 60 days after the commencement of the case; or

(iv) The Master Servicer consents to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings of or relating to the Master Servicer or substantially all of its property; or the Master Servicer admits in writing its inability to pay its debts generally as they become due, files a petition to take advantage of any applicable insolvency or reorganization statute, makes an assignment for the benefit of its creditors, or voluntarily suspends payment of its obligations; or

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(v) The Master Servicer assigns or delegates its duties or rights under this Agreement in contravention of the provisions permitting such assignment or delegation under Sections 7.05 or 7.07; or

(vi) The Master Servicer fails to deposit, or cause to be deposited, on the Distribution Date in the Distribution Account any Monthly Advance (other than a Nonrecoverable Advance) required to be made with respect to such Distribution Date.

In each and every such case, so long as such Event of Default with respect to the Master Servicer shall not have been remedied, either the Trustee or the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than 51% of the principal of the Trust Fund, by notice in writing to the Master Servicer (and to the Trustee, if given by such Certificateholders), with a copy to the Rating Agencies, and with the consent of EMC, may terminate all of the rights and obligations (but not the liabilities) of the Master Servicer under this Agreement and in and to the Mortgage Loans and/or the REO Property serviced by the Master Servicer and the proceeds thereof. Upon the receipt by the Master Servicer of such written notice, all authority and power of the Master Servicer under this Agreement, whether with respect to the Certificates, the Mortgage Loans, REO Property or under any other related agreements (but only to the extent that such other agreements relate to the Mortgage Loans or related REO Property) shall, subject to Section 8.02 and to bankruptcy, insolvency or similar laws, if applicable, automatically and without further action pass to and be vested in the Trustee pursuant to this Section 8.01; and, without limitation, the Trustee is hereby authorized and empowered to execute and deliver, on behalf of the Master Servicer as attorney-in-fact or otherwise, any and all documents and other instruments and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such notice of termination, whether to complete the transfer and endorsement or assignment of the Mortgage Loans and related documents, or otherwise. The Master Servicer agrees to cooperate with the Trustee in effecting the termination of the Master Servicer's rights and obligations hereunder, including, without limitation, the transfer to the Trustee of (i) the property and amounts which are then or should be part of the Trust or which thereafter become part of the Trust, and (ii) originals or copies of all documents of the Master Servicer reasonably requested by the Trustee to enable it to assume the Master Servicer's duties hereunder. In addition to any other amounts which are then, or, notwithstanding the termination of its activities under this Agreement, may become payable to the Master Servicer under this Agreement, the Master Servicer shall be entitled to receive, out of any amount received on account of a Mortgage Loan or related REO Property, that portion of such payments which it would have received as reimbursement under this Agreement if notice of termination had not been given. The termination of the rights and obligations of the Master Servicer shall not affect any obligations incurred by the Master Servicer prior to such termination.

Notwithstanding the foregoing, if an Event of Default described in clause (vi) of this Section 8.01 shall occur, the Trustee shall, by notice in writing to the Master Servicer, which may be delivered by telecopy, immediately terminate all of the rights and obligations of the Master Servicer thereafter arising under this Agreement, but without prejudice to any rights it may have as a Certificateholder or to reimbursement of Monthly Advances and other advances of its own funds, and the Trustee shall act as provided in Section 8.02 to carry out the duties of the Master Servicer, including the obligation to make any Monthly Advance the nonpayment of which was

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an Event of Default described in clause (vi) of this Section 8.01. Any such action taken by the Trustee must be taken prior to the distribution on the relevant Distribution Date.

Section 8.02 Trustee to Act; Appointment of Successor. (a) Upon the receipt by the Master Servicer of a notice of termination pursuant to Section 8.01 or an Opinion of Independent Counsel pursuant to Section 7.05 to the effect that the Master Servicer is legally unable to act or to delegate its duties to a Person which is legally able to act, the Trustee shall automatically become the successor in all respects to the Master Servicer in its capacity under this Agreement and the transactions set forth or provided for herein and shall thereafter be subject to all the responsibilities, duties, liabilities and limitations on liabilities relating thereto placed on the Master Servicer by the terms and provisions hereof; provided, however, that EMC shall have the right to either (a) immediately assume the duties of the Master Servicer or (b) select a successor Master Servicer; provided, further, however, that the Trustee shall have no obligation whatsoever with respect to any liability (other than advances deemed recoverable and not previously made) incurred by the Master Servicer at or prior to the time of termination. As compensation therefor, but subject to Section 7.06, the Trustee shall be entitled to all funds relating to the Mortgage Loans which the Master Servicer would have been entitled to retain if the Master Servicer had continued to act hereunder, except for those amounts due the Master Servicer as reimbursement permitted under this Agreement for advances previously made or expenses previously incurred. Notwithstanding the above, the Trustee may, if it shall be unwilling so to act, or shall, if it is legally unable so to act, appoint or petition a court of competent jurisdiction to appoint any established housing and home finance institution which is a Fannie Mae- or Freddie Mac-approved servicer, and with respect to a successor to the Master Servicer only having a net worth of not less than $10,000,000, as the successor to the Master Servicer hereunder in the assumption of all or any part of the responsibilities, duties or liabilities of the Master Servicer hereunder; provided, that the Trustee shall obtain a letter from each Rating Agency that the ratings, if any, of such Rating Agency on each of the Certificates will not be downgraded, qualified or withdrawn as a result of the selection of the successor to the Master Servicer. Pending appointment of a successor to the Master Servicer hereunder, the Trustee shall act in such capacity as hereinabove provided. In connection with such appointment and assumption, the Trustee may make such arrangements for the compensation of such successor out of payments on the Mortgage Loans as it and such successor shall agree; provided, however, that the provisions of Section 7.06 shall apply, no such compensation shall be in excess of that permitted the Trustee under this Subsection 8.02(a), and that such successor shall undertake and assume the obligations of the Trustee to pay compensation to any third Person acting as an agent or independent contractor in the performance of master servicing responsibilities hereunder. The Trustee and such successor shall take such action, consistent with this Agreement, as shall be necessary to effectuate any such succession.

(b) If the Trustee shall succeed to any duties of the Master Servicer respecting the Mortgage Loans as provided herein, it shall do so in a separate capacity and not in its capacity as Trustee and, accordingly, the provisions of Article IX shall be inapplicable to the Trustee in its duties as the successor to the Master Servicer in the servicing of the Mortgage Loans (although such provisions shall continue to apply to the Trustee in its capacity as Trustee); the provisions of all other provisions of this Agreement and the respective Servicing Agreements relating to the Master Servicer, including the provisions of Article VII, however, shall apply to it in its capacity as successor Master Servicer.

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Section 8.03 Notification to Certificateholders. Upon any termination or appointment of a successor to the Master Servicer, the Trustee shall give prompt written notice thereof to Certificateholders at their respective addresses appearing in the Certificate Register, and to the Rating Agencies.

Section 8.04 Waiver of Defaults. The Trustee shall transmit by mail to all Certificateholders, within 60 days after the occurrence of any Event of Default known to the Trustee, unless such Event of Default shall have been cured, notice of each such Event of Default hereunder known to the Trustee. The Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than 51% of the Trust Fund may, on behalf of all Certificateholders, waive any default by the Master Servicer in the performance of its obligations hereunder and the consequences thereof, except a default in the making of or the causing to be made of any required distribution on the Certificates, which default may only be waived by Holders of Certificates evidencing Fractional Undivided Interests aggregating 100% of the Trust Fund. Upon any such waiver of a past default, such default shall be deemed to cease to exist, and any Event of Default arising therefrom shall be deemed to have been timely remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon except to the extent expressly so waived. The Trustee shall give notice of any such waiver to the Rating Agencies.

Section 8.05 List of Certificateholders. Upon written request of three or more Certificateholders of record, for purposes of communicating with other Certificateholders with respect to their rights under this Agreement, the Trustee will afford such Certificateholders access during business hours to the most recent list of Certificateholders held by the Trustee.

ARTICLE IX
Concerning the Trustee and the Securities Administrator

Section 9.01 Duties of Trustee. (a) The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default which may have occurred, and the Securities Administrator each undertake to perform such duties and only such duties as are specifically set forth in this Agreement as duties of the Trustee and the Securities Administrator, respectively. If an Event of Default has occurred and has not been cured or waived, the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and subject to Section 8.02(b) use the same degree of care and skill in their exercise, as a prudent person would exercise under the circumstances in the conduct of his own affairs.

(b) Upon receipt of all resolutions, certificates, statements, opinions, reports, documents, orders or other instruments which are specifically required to be furnished to the Trustee and the Securities Administrator pursuant to any provision of this Agreement, the Trustee and the Securities Administrator, respectively, shall examine them to determine whether they are in the form required by this Agreement; provided, however, that neither the Trustee nor the Securities Administrator shall be responsible for the accuracy or content of any resolution, certificate, statement, opinion, report, document, order or other instrument furnished by the Master Servicer; and provided, further, that neither the Trustee nor the Securities Administrator shall be responsible for the accuracy or verification of any calculation provided to it pursuant to this Agreement.

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(c) On each Distribution Date, the Paying Agent shall make monthly distributions and the final distribution to the Certificateholders from funds in the Distribution Account as provided in Sections 6.01 and 10.01 herein based on the report of the Securities Administrator.

(d) No provision of this Agreement shall be construed to relieve the Trustee or the Securities Administrator from liability for its own negligent action, its own negligent failure to act or its own willful misconduct; provided, however, that:

(i) Prior to the occurrence of an Event of Default, and after the curing or waiver of all such Events of Default which may have occurred, the duties and obligations of the Trustee and the Securities Administrator shall be determined solely by the express provisions of this Agreement, neither the Trustee nor the Securities Administrator shall be liable except for the performance of their respective duties and obligations as are specifically set forth in this Agreement, no implied covenants or obligations shall be read into this Agreement against the Trustee or the Securities Administrator and, in the absence of bad faith on the part of the Trustee or the Securities Administrator, respectively, the Trustee or the Securities Administrator, respectively, may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee or the Securities Administrator, respectively, and conforming to the requirements of this Agreement;

(ii) Neither the Trustee nor the Securities Administrator shall be liable in its individual capacity for an error of judgment made in good faith by a Responsible Officer or Responsible Officers of the Trustee or an officer of the Securities Administrator, respectively, unless it shall be proved that the Trustee or the Securities Administrator, respectively, was negligent in ascertaining the pertinent facts;

(iii) Neither the Trustee nor the Securities Administrator shall be liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the directions of the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than 25% of the Trust Fund, if such action or non-action relates to the time, method and place of conducting any proceeding for any remedy available to the Trustee or the Securities Administrator, respectively, or exercising any trust or other power conferred upon the Trustee or the Securities Administrator, respectively, under this Agreement;

(iv) The Trustee shall not be required to take notice or be deemed to have notice or knowledge of any default or Event of Default unless a Responsible Officer of the Trustee's Corporate Trust Office shall have actual knowledge thereof. In the absence of such notice, the Trustee may conclusively assume there is no such default or Event of Default;

(v) The Trustee shall not in any way be liable by reason of any insufficiency in any Account held by or in the name of Trustee unless it is determined by a court of competent jurisdiction that the Trustee's gross negligence or willful misconduct was the primary cause of such insufficiency (except to the extent that the Trustee is obligor and has defaulted thereon);

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(vi) Anything in this Agreement to the contrary notwithstanding, in no event shall the Trustee or the Securities Administrator be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee or the Securities Administrator, respectively, has been advised of the likelihood of such loss or damage and regardless of the form of action; and

(vii) None of the Securities Administrator, EMC or the Trustee shall be responsible for the acts or omissions of the other, the Master Servicer or any Servicer, it being understood that this Agreement shall not be construed to render them partners, joint venturers or agents of one another.

Neither the Trustee nor the Securities Administrator shall be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it, and none of the provisions contained in this Agreement shall in any event require the Trustee or the Securities Administrator to perform, or be responsible for the manner of performance of, any of the obligations of the Master Servicer under the Servicing Agreements, except during such time, if any, as the Trustee shall be the successor to, and be vested with the rights, duties, powers and privileges of, the Master Servicer in accordance with the terms of this Agreement.

(e) All funds received by the Master Servicer and the Paying Agent and required to be deposited in the Distribution Account pursuant to this Agreement will be promptly so deposited by the Master Servicer or the Paying Agent, as applicable.

(f) Except for those actions that the Trustee or the Securities Administrator is required to take hereunder, neither the Trustee nor the Securities Administrator shall have any obligation or liability to take any action or to refrain from taking any action hereunder in the absence of written direction as provided hereunder.

Section 9.02 Certain Matters Affecting the Trustee and the Securities Administrator. Except as otherwise provided in Section 9.01:

(i) The Trustee and the Securities Administrator may rely and shall be protected in acting or refraining from acting in reliance on any resolution, certificate of a Depositor, Master Servicer or Servicer, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(ii) The Trustee and the Securities Administrator may consult with counsel, and any advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection with respect to any action taken or suffered or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel:

(iii) Neither the Trustee nor the Securities Administrator shall be under any obligation to exercise any of the trusts or powers vested in it by this Agreement, other

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than its obligation to give notices pursuant to this Agreement, or to institute, conduct or defend any litigation hereunder or in relation hereto at the request, order or direction of any of the Certificateholders pursuant to the provisions of this Agreement, unless such Certificateholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which may be incurred therein or thereby. Nothing contained herein shall, however, relieve the Trustee of the obligation, upon the occurrence of an Event of Default of which a Responsible Officer of the Trustee's Corporate Trust Office has actual knowledge (which has not been cured or waived), subject to Section 8.02(b), to exercise such of the rights and powers vested in it by this Agreement, and to use the same degree of care and skill in their exercise, as a prudent person would exercise under the circumstances in the conduct of his own affairs;

(iv) Prior to the occurrence of an Event of Default hereunder and after the curing or waiver of all Events of Default which may have occurred, neither the Trustee nor the Securities Administrator shall be liable in its individual capacity for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement;

(v) Neither the Trustee nor the Securities Administrator shall be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other paper or document, unless requested in writing to do so by Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than 25% of the Trust Fund, and provided that the payment within a reasonable time to the Trustee or the Securities Administrator, as applicable, of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee or the Securities Administrator, as applicable, reasonably assured to the Trustee or the Securities Administrator, as applicable, by the security afforded to it by the terms of this Agreement. The Trustee or the Securities Administrator may require reasonable indemnity against such expense or liability as a condition to taking any such action. The reasonable expense of every such examination shall be paid by the Certificateholders requesting the investigation;

(vi) The Trustee and the Securities Administrator may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through Affiliates, agents or attorneys; provided, however, that the Trustee may not appoint any agent to perform its custodial functions with respect to the Mortgage Files or paying agent functions under this Agreement without the express written consent of the Master Servicer, which consent will not be unreasonably withheld or delayed. Neither the Trustee nor the Securities Administrator shall be liable or responsible for the misconduct or negligence of any of the Trustee's or the Securities Administrator's agents or attorneys or a custodian or paying agent appointed hereunder by the Trustee or the Securities Administrator with due care and, when required, with the consent of the Master Servicer;

(vii) Should the Trustee or the Securities Administrator deem the nature of any action required on its part, other than a payment or transfer under Subsection 4.01(b) or Section 4.02, to be unclear, the Trustee or the Securities Administrator, respectively,

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may require prior to such action that it be provided by the Depositor with reasonable further instructions;

(viii) The right of the Trustee or the Securities Administrator to perform any discretionary act enumerated in this Agreement shall not be construed as a duty, and neither the Trustee nor the Securities Administrator shall be accountable for other than its negligence, negligent failure to act or willful misconduct in the performance of any such act;

(ix) Neither the Trustee nor the Securities Administrator shall be required to give any bond or surety with respect to the execution of the trust created hereby or the powers granted hereunder, except as provided in Subsection 9.07; and

(x) Neither the Trustee nor the Securities Administrator shall have any duty to conduct any affirmative investigation as to the occurrence of any condition requiring the repurchase of any Mortgage Loan by the Seller pursuant to this Agreement, the Mortgage Loan Purchase Agreement or the eligibility of any Mortgage Loan for purposes of this Agreement.

Section 9.03 Trustee and Securities Administrator Not Liable for Certificates or Mortgage Loans. The recitals contained herein and in the Certificates (other than the signature of the Trustee, and the countersignature of the Certificate Registrar, on the Certificates) shall be taken as the statements of the Depositor, and neither the Trustee nor the Securities Administrator shall have any responsibility for their correctness. Neither the Trustee nor the Securities Administrator makes any representation as to the validity or sufficiency of the Certificates (other than the signature of the Trustee on the Certificates) or of any Mortgage Loan except as expressly provided in Sections 2.02 and 2.05 hereof; provided, however, that the foregoing shall not relieve the Trustee of the obligation to review the Mortgage Files pursuant to Sections 2.02 and 2.04. The Trustee's signature on the Certificates shall be solely in its capacity as Trustee and shall not constitute the Certificates an obligation of the Trustee in any other capacity. Neither the Trustee or the Securities Administrator shall be accountable for the use or application by the Depositor of any of the Certificates or of the proceeds of such Certificates, or for the use or application of any funds paid to the Depositor with respect to the Mortgage Loans. Subject to the provisions of Section 2.05, neither the Trustee nor the Securities Administrator shall be responsible for the legality or validity of this Agreement or any document or instrument relating to this Agreement, the validity of the execution of this Agreement or of any supplement hereto or instrument of further assurance, or the validity, priority, perfection or sufficiency of the security for the Certificates issued hereunder or intended to be issued hereunder. Neither the Trustee nor the Securities Administrator shall at any time have any responsibility or liability for or with respect to the legality, validity and enforceability of any Mortgage or any Mortgage Loan, or the perfection and priority of any Mortgage or the maintenance of any such perfection and priority, or for or with respect to the sufficiency of the Trust Fund or its ability to generate the payments to be distributed to Certificateholders, under this Agreement. Neither the Trustee nor the Securities Administrator shall have any responsibility for filing any financing or continuation statement in any public office at any time or to otherwise perfect or maintain the perfection of any security interest or lien granted to it hereunder or to record this Agreement, other than any continuation statements required to be filed by the Trustee pursuant to Section 3.20.

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Section 9.04 Trustee and Securities Administrator May Own Certificates. Each of the Trustee and the Securities Administrator, in its individual capacity or in any capacity other than as Trustee or Securities Administrator hereunder, may become the owner or pledgee of any Certificates with the same rights it would have if it were not the Trustee or the Securities Administrator, as applicable, and may otherwise deal with the parties hereto.

Section 9.05 Trustee's and Securities Administrator's Fees and Expenses. The fees and expenses of the Trustee and the Securities Administrator shall be paid in accordance with a side letter agreement. In addition, the Trustee and the Securities Administrator will be entitled to recover from the Distribution Account pursuant to Section 4.03 all reasonable out-of-pocket expenses, disbursements and advances and the expenses of the Trustee and the Securities Administrator, respectively, or any of their respective directors, officers, employees or agents in connection with any Event of Default, any breach of this Agreement or any claim or legal action (including any pending or threatened claim or legal action) incurred or made by the Trustee or the Securities Administrator, respectively, or any of their respective directors, officers, employees or agents in the administration of the trusts hereunder (including the reasonable compensation, expenses and disbursements of its counsel) except any such expense, disbursement or advance as may arise from its or their negligence, negligent failure to act or intentional misconduct or which is the responsibility of the Certificateholders or the Trust Fund hereunder. If funds in the Distribution Account are insufficient therefor, the Trustee and the Securities Administrator shall recover such expenses from the Depositor. Such compensation and reimbursement obligation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust.

Section 9.06 Eligibility Requirements for Trustee, Paying Agent and Securities Administrator. The Trustee and any successor Trustee, the Paying Agent and any successor Paying Agent and the Securities Administrator and any successor Securities Administrator shall during the entire duration of this Agreement be a state bank or trust company or a national banking association organized and doing business under the laws of such state or the United States of America, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus and undivided profits of at least $40,000,000 or, in the case of a successor Trustee, $50,000,000, subject to supervision or examination by federal or state authority and, in the case of the Trustee, rated "BBB" or higher by S&P with respect to their long-term rating and rated "BBB" or higher by S&P and "Baa2" or higher by Moody's with respect to any outstanding long-term unsecured unsubordinated debt, and, in the case of a successor Trustee, successor Paying Agent or successor Securities Administrator other than pursuant to Section 9.10, rated in one of the two highest long-term debt categories of, or otherwise acceptable to, each of the Rating Agencies. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 9.06 the combined capital and surplus of such corporation shall be deemed to be its total equity capital (combined capital and surplus) as set forth in its most recent report of condition so published. In case at any time the Trustee, the Paying Agent or the Securities Administrator shall cease to be eligible in accordance with the provisions of this Section 9.06, the Trustee, the Paying Agent or the Securities Administrator, as applicable, shall resign immediately in the manner and with the effect specified in Section 9.08.

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Section 9.07 Insurance. The Trustee, the Paying Agent and the Securities Administrator, at their own expense, shall at all times maintain and keep in full force and effect: (i) fidelity insurance, (ii) theft of documents insurance and (iii) forgery insurance (which may be collectively satisfied by a "Financial Institution Bond" and/or a "Bankers' Blanket Bond"). All such insurance shall be in amounts, with standard coverage and subject to deductibles, as are customary for insurance typically maintained by banks or their affiliates which act as custodians for investor-owned mortgage pools. A certificate of an officer of the Trustee, the Paying Agent or the Securities Administrator as to the Trustee's, the Paying Agent's or the Securities Administrator's, respectively, compliance with this Section 9.07 shall be furnished to any Certificateholder upon reasonable written request.

Section 9.08 Resignation and Removal of the Trustee and Securities Administrator. (a) The Trustee and the Securities Administrator may at any time resign and be discharged from the Trust hereby created by giving written notice thereof to the Depositor and the Master Servicer, with a copy to the Rating Agencies. Upon receiving such notice of resignation, the Depositor shall promptly appoint a successor Trustee or successor Securities Administrator, as applicable, by written instrument, in triplicate, one copy of which instrument shall be delivered to each of the resigning Trustee or Securities Administrator, as applicable, and the successor Trustee or Securities Administrator, as applicable. If no successor Trustee or Securities Administrator shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Trustee or Securities Administrator may petition any court of competent jurisdiction for the appointment of a successor Trustee or Securities Administrator.

(b) If at any time (i) the Trustee, the Paying Agent or the Securities Administrator shall cease to be eligible in accordance with the provisions of Section 9.06 and shall fail to resign after written request therefor by the Depositor, (ii) the Trustee, the Paying Agent or the Securities Administrator shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or a receiver of the Trustee, the Paying Agent or the Securities Administrator, as applicable, or of its property shall be appointed, or any public officer shall take charge or control of the Trustee, the Paying Agent or the Securities Administrator, as applicable, or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, or (iii)(A) a tax is imposed with respect to the Trust Fund by any state in which the Trustee or the Securities Administrator or the Trust Fund is located, and (B) the imposition of such tax would be avoided by the appointment of a different trustee or securities administrator, then the Depositor shall promptly remove the Trustee, or shall be entitled to remove the Paying Agent or the Securities Administrator, as applicable, and appoint a successor Trustee, Paying Agent or Securities Administrator, as applicable, by written instrument, in triplicate, one copy of which instrument shall be delivered to each of the Master Servicer, the Trustee, the Paying Agent or Securities Administrator, as applicable, so removed, and the successor Trustee, Paying Agent or Securities Administrator, as applicable.

(c) The Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than 51% of the Trust Fund may at any time remove the Trustee, the Paying Agent or the Securities Administrator and appoint a successor Trustee, Paying Agent or Securities Administrator by written instrument or instruments, in sextuplicate, signed by such Holders or their attorneys-in-fact duly authorized, one complete set of which instruments shall be delivered to the Depositor, the Paying Agent, the Master Servicer, the Securities Administrator (if the

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Trustee is removed), the Trustee (if the Securities Administrator or the Paying Agent is removed), and the Trustee, Paying Agent or Securities Administrator so removed and the successor so appointed. Notice of any removal of the Trustee or the Securities Administrator shall be given to each Rating Agency by the Master Servicer or the successor trustee, or by the Securities Administrator or the successor securities administrator, as applicable. In the event that the Trustee, the Paying Agent or the Securities Administrator is removed by the Holders of Certificates in accordance with this Section 9.08(c), the Holders of such Certificates shall be responsible for paying any compensation payable to a successor Trustee, successor Paying Agent or successor Securities Administrator, in excess of the amount paid to the predecessor Trustee, predecessor Paying Agent or predecessor Securities Administrator, as applicable.

(d) No resignation or removal of the Trustee, the Paying Agent or the Securities Administrator and appointment of a successor Trustee, Paying Agent or Securities Administrator pursuant to any of the provisions of this Section 9.08 shall become effective except upon appointment of and acceptance of such appointment by the successor Trustee, Paying Agent or Securities Administrator as provided in Section 9.09.

Section 9.09 Successor Trustee, Paying Agent and Successor Securities Administrator. (a) Any successor Trustee, Paying Agent or Securities Administrator appointed as provided in Section 9.08 shall execute, acknowledge and deliver to the Depositor and to its predecessor Trustee, Paying Agent or Securities Administrator, as applicable, and the Master Servicer an instrument accepting such appointment hereunder. The resignation or removal of the predecessor Trustee, Paying Agent or Securities Administrator shall then become effective and such successor Trustee, Paying Agent or Securities Administrator, without any further act, deed or conveyance, shall become fully vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee, Paying Agent or Securities Administrator herein. The predecessor Trustee, Paying Agent or Securities Administrator shall, after its receipt of payment of its outstanding fees and expenses with respect hereunder, promptly deliver to the successor Trustee, Paying Agent or Securities Administrator, as applicable, all assets and records of the Trust held by it hereunder, and the Depositor and the predecessor Trustee, Paying Agent or Securities Administrator, as applicable, shall execute and deliver such instruments and do such other things as may reasonably be required for more fully and certainly vesting and confirming in the successor Trustee, Paying Agent or Securities Administrator, as applicable, all such rights, powers, duties and obligations.

(b) No successor Trustee, Paying Agent or Securities Administrator shall accept appointment as provided in this Section 9.09 unless at the time of such acceptance such successor Trustee, Paying Agent or Securities Administrator shall be eligible under the provisions of Section 9.06.

(c) Upon acceptance of appointment by a successor Trustee, Paying Agent or Securities Administrator as provided in this Section 9.09, the successor Trustee, Paying Agent or Securities Administrator shall mail notice of the succession of such Trustee, Paying Agent or Securities Administrator hereunder to all Certificateholders at their addresses as shown in the Certificate Register and to the Rating Agencies. EMC shall pay the cost of any such mailing by the successor Trustee, Paying Agent or Securities Administrator.

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Section 9.10 Merger or Consolidation of Trustee, Paying Agent or Securities Administrator. Any state bank or trust company or national banking association into which the Trustee, the Paying Agent or the Securities Administrator may be merged or converted or with which it may be consolidated, or any state bank or trust company or national banking association resulting from any merger, conversion or consolidation to which the Trustee, the Paying Agent or the Securities Administrator, respectively, shall be a party, or any state bank or trust company or national banking association succeeding to all or substantially all of the corporate trust business of the Trustee, the Paying Agent or the Securities Administrator, respectively, shall be the successor of the Trustee, the Paying Agent or the Securities Administrator, respectively, hereunder, provided such state bank or trust company or national banking association shall be eligible under the provisions of Section 9.06. Such succession shall be valid without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 9.12 Appointment of Co-Trustee or Separate Trustee. (a) Notwithstanding any other provisions hereof, at any time, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust or property constituting the same may at the time be located, the Depositor and the Trustee acting jointly shall have the power and shall execute and deliver all instruments to appoint one or more Persons approved by the Trustee and the Depositor to act as co-trustee or co-trustees, jointly with the Trustee, or separate trustee or separate trustees, of all or any part of the Trust, and to vest in such Person or Persons, in such capacity and for the benefit of the Certificateholders such title to the Trust, or any part thereof, and, subject to the other provisions of this Section 9.11, such powers, duties, obligations, rights and trusts as the Depositor and the Trustee may consider necessary or desirable.

(a) If the Depositor shall not have joined in such appointment within 15 days after the receipt by it of a written request so to do, the Trustee shall have the power to make such appointment without the Depositor.

(b) No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor Trustee under Section 9.06 hereunder and no notice to Certificateholders of the appointment of co-trustee(s) or separate trustee(s) shall be required under Section 9.08 hereof.

(c) In the case of any appointment of a co-trustee or separate trustee pursuant to this Section 9.11, all rights, powers, duties and obligations conferred or imposed upon the Trustee (except for the obligation of the Trustee under this Agreement to advance funds on behalf of the Master Servicer) and required to be conferred on such co-trustee shall be conferred or imposed upon and exercised or performed by the Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed (whether as Trustee hereunder or as successor to the Master Servicer hereunder), the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Trust or any portion thereof in any such jurisdiction) shall be exercised and performed by such separate trustee or co-trustee at the direction of the Trustee.

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(d) Any notice, request or other writing given to the Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Agreement and the conditions of this Article IX. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Trustee or separately, as may be provided therein, subject to all the provisions of this Agreement, specifically including every provision of this Agreement relating to the conduct of, affecting the liability of, or affording protection to, the Trustee. Every such instrument shall be filed with the Trustee.

(e) To the extent not prohibited by law, any separate trustee or co-trustee may, at any time, request the Trustee, or its agent or attorney-in-fact, with full power and authority, to do any lawful act under or with respect to this Agreement on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Trustee, to the extent permitted by law, without the appointment of a new or successor Trustee.

(f) No trustee under this Agreement shall be personally liable by reason of any act or omission of another trustee under this Agreement. The Depositor and the Trustee acting jointly may at any time accept the resignation of or remove any separate trustee or co-trustee.

Section 9.13 Federal Information Returns and Reports to Certificateholders; REMIC Administration. (a) For federal income tax purposes, the taxable year of each of REMIC I, REMIC II and REMIC III shall be a calendar year and the Securities Administrator shall maintain or cause the maintenance of the books of each such REMIC on the accrual method of accounting.

(b) (i) The Securities Administrator shall prepare and file or cause to be filed with the Internal Revenue Service, and the Trustee shall sign, Federal tax information returns or elections required to be made hereunder with respect to each REMIC, the Trust Fund, if applicable, and the Certificates, containing such information and at the times and in the manner as may be required by the Code or applicable Treasury regulations, and shall furnish to each Holder of Certificates at any time during the calendar year for which such returns or reports are made such statements or information at the times and in the manner as may be required thereby, including, without limitation, reports relating to interest, original issue discount and market discount or premium (using a constant prepayment assumption of 25% CPR). The Securities Administrator shall apply for an Employee Identification Number from the IRS under Form SS-4 or any other acceptable method for all tax entities. In connection with the foregoing, the Securities Administrator shall timely prepare and file, and the Trustee shall sign, IRS Form 8811, and updated versions thereof, as required, which shall provide the name and address of the person who can be contacted to obtain information required to be reported to the holders of regular interests in each REMIC. The Trustee shall make elections to treat each REMIC hereunder as a REMIC (which elections shall apply to the taxable period ending December 31, 2005 and each calendar year thereafter) in such manner as the Code or applicable Treasury regulations may prescribe (and, if applicable, under applicable state and local law), and as described by the Securities Administrator. The Trustee shall sign all tax information returns filed pursuant to this Section 9.12 and any other returns as may be required by the Code. The Holder of the largest

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percentage interest of the Class R-I Certificate is hereby designated as the "Tax Matters Person" (within the meaning of Treas. Reg. §1.860F-4(d)) for REMIC I, the Holder of the largest percentage interest of the Class R-II Certificate is hereby designated as the "Tax Matters Person" (within the meaning of Treas. Reg. § 1.860F-4(d)) for REMIC II, and the Holder of the largest percentage interest of the Class R-III Certificate is hereby designated as the "Tax Matters Person" (within the meaning of Treas. Reg. § 1.860F-4(d)) for REMIC III. The Securities Administrator is hereby designated and appointed as the agent of each such Tax Matters Person. Any Holder of a Residual Certificate will by acceptance thereof appoint the Securities Administrator as agent and attorney-in-fact for the purpose of acting as Tax Matters Person for each REMIC during such time as the Securities Administrator does not own any such Residual Certificate. In the event that the Code or applicable Treasury regulations prohibit the Trustee from signing tax or information returns or other statements, or the Securities Administrator from acting as agent for the Tax Matters Person, each of the Trustee and the Securities Administrator shall take whatever action that in its sole good faith judgment is necessary for the proper filing of such information returns or for the provision of a Tax Matters Person for each REMIC, including designation of the Holder of a Residual Certificate to sign such returns or act as Tax Matters Person for each REMIC. Each Holder of a Residual Certificate shall be bound by this Section.

(ii) The Securities Administrator shall, to the extent that they are under its control, conduct matters relating to the assets of any REMIC hereunder at all times that any Certificates are outstanding so as to maintain its status as a REMIC under the REMIC Provisions. The Securities Administrator shall not knowingly or intentionally take any action or omit to take any action that would cause the termination of the REMIC status of any REMIC hereunder. The Securities Administrator shall not permit the creation of any interests in REMIC III other than the Certificates. The Securities Administrator shall not receive any amount representing a fee or other compensation for services (except as otherwise permitted by this Agreement). The Securities Administrator shall not receive any income attributable to any asset which is neither a "qualified mortgage" nor a "permitted investment" within the meaning of the REMIC Provisions. The Securities Administrator shall not receive any contributions to any REMIC hereunder after the Startup Day that would be subject to tax under Section 860G(d) of the Code. The Securities Administrator shall not dispose of any assets of any REMIC hereunder at a gain if such disposition would be a "prohibited transaction" within the meaning of Section 860F(a)(2) of the Code. As agent of each Tax Matters Person, the Securities Administrator shall, as and when necessary and appropriate, represent the related REMIC in any administrative or judicial proceedings relating to an examination or audit by any governmental taxing authority, request an administrative adjustment as to any taxable year of such REMIC, enter into settlement agreements with any governmental taxing agency, extend any statute of limitations relating to any tax item of such REMIC, and otherwise act on behalf of such REMIC in relation to any tax matter or controversy involving it.

(c) The Securities Administrator shall provide, upon request and receipt of reasonable compensation, such information as required in Section 860D(a)(6)(B) of the Code to the Internal Revenue Service, to any Person purporting to transfer a Residual Certificate to a Person other than a transferee permitted by Section 5.05(b), and to any regulated investment company, real estate investment trust, common trust fund, partnership, trust, estate, organization described in

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Section 1381 of the Code, or nominee holding an interest in a pass-through entity described in Section 860E(e)(6) of the Code, or any record holder of which is not a transferee permitted by Section 5.05(b) (or which is deemed by statute to be an entity with a disqualified member) and otherwise shall comply with all of the requirements of Section 860E(e) of the Code.

(d) The Securities Administrator shall prepare and file or cause to be filed, and the Trustee shall sign, any state income tax returns required under Applicable State Law with respect to each REMIC or the Trust Fund.

(e) Notwithstanding any other provision of this Agreement, the Trustee and the Securities Administrator shall comply with all federal withholding requirements respecting payments to Certificateholders of interest or original issue discount on the Mortgage Loans, that the Trustee or the Securities Administrator reasonably believes are applicable under the Code. The consent of Certificateholders shall not be required for such withholding. In the event the Trustee or the Securities Administrator withholds any amount from interest or original issue discount payments or advances thereof to any Certificateholder pursuant to federal withholding requirements, the Trustee or the Securities Administrator shall, together with its monthly report to such Certificateholders, indicate such amount withheld.

(f) The Trustee and the Securities Administrator agree to indemnify the Trust Fund and the Depositor for any taxes and costs, including, without limitation, any reasonable attorneys fees, imposed on or incurred by the Trust Fund, the Depositor or the Master Servicer as a result of a breach of the Trustee's covenants or the Securities Administrator's covenants, respectively, set forth in this Section 9.12; provided, however, such liability and obligation to indemnify in this paragraph shall not be joint and several and neither the Trustee nor the Securities Administrator shall be liable or be obligated to indemnify the Trust Fund for the failure by the other to perform any duty under this Agreement or the breach by the other of any covenant in this Agreement.

ARTICLE X
Termination

Section 10.01 Termination Upon Repurchase by the Depositor or its Designee or Liquidation of the Mortgage Loans. (a) Subject to Section 10.02, the respective obligations and responsibilities of the Depositor, the Trustee, the Paying Agent, the Master Servicer, EMC and the Securities Administrator created hereby, other than the obligation of the Paying Agent to make payments to Certificateholders as hereinafter set forth, shall terminate upon the earlier of:

> (i) in accordance with Section 10.01(c), the repurchase by or at the direction of the Depositor or its designee of all of the Mortgage Loans and all related REO Property remaining in the Trust at a price (the "Termination Purchase Price") equal to the sum of (a) 100% of the Outstanding Principal Balance of each Mortgage Loan (other than a Mortgage Loan related to REO Property) as of the date of repurchase, net of the principal portion of any unreimbursed Monthly Advances made by the purchaser, together with interest at the applicable Mortgage Interest Rate accrued but unpaid to, but not including, the first day of the month of repurchase, (b) the appraised value of any related REO Property, less the good faith estimate of the Depositor of liquidation

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expenses to be incurred in connection with its disposal thereof (but not more than the Outstanding Principal Balance of the related Mortgage Loan, together with interest at the applicable Mortgage Interest Rate accrued on that balance but unpaid to, but not including, the first day of the month of repurchase), such appraisal to be calculated by an appraiser mutually agreed upon by the Depositor and the Trustee at the expense of the Depositor, (c) unreimbursed out-of pocket costs of the related Servicer and the Master Servicer, including unreimbursed servicing advances and the principal portion of any unreimbursed Monthly Advances, made on the Mortgage Loans prior to the exercise of such repurchase right, (d) any costs and damages incurred by the Trust in connection with any violation of such Mortgage Loan of any predatory or abusive lending laws and (e) any unreimbursed costs and expenses of the Trustee and the Securities Administrator payable pursuant to Section 9.05; or

(ii) the later of (A) the making of the final payment or other liquidation, or any advance with respect thereto, of the last Mortgage Loan remaining in the Trust Fund and (B) the disposition of all property acquired with respect to any Mortgage Loan; provided, however, that in the event that an advance has been made, but not yet recovered, at the time of such termination, the Person having made such advance shall be entitled to receive, notwithstanding such termination, any payments received subsequent thereto with respect to which such advance was made; or

(iii) the payment to Certificateholders of all amounts required to be paid to them pursuant to this Agreement.

(b) In no event, however, shall the Trust created hereby continue beyond the expiration of 21 years from the death of the last survivor of the descendants of Joseph P. Kennedy, the late Ambassador of the United States to the Court of St. James's, living on the date of this Agreement.

(c) The right of the Depositor or its designee to repurchase all of the assets of the Trust Fund pursuant to Subsection 10.01(a)(i) above shall be exercisable only if (i) the aggregate Scheduled Principal Balance of the Mortgage Loans at the time of any such repurchase is less than or equal to 10% of the Cut-off Date Balance, or (ii) the Depositor, based upon an Opinion of Counsel addressed to the Depositor, the Trustee and the Securities Administrator, has determined that the REMIC status of a REMIC hereunder has been lost or that a substantial risk exists that such REMIC status will be lost for the then-current taxable year. At any time thereafter, in the case of (i) or (ii) above, the Depositor may elect to terminate REMIC I, REMIC II or REMIC III at any time, and upon such election, the Depositor or its designee shall repurchase all of the assets of the Trust Fund as described in Subsection 10.01(a)(i) above.

(d) The Paying Agent shall give notice of any termination to the Certificateholders, with a copy to the Master Servicer, the Securities Administrator and the Rating Agencies, upon which the Certificateholders shall surrender their Certificates to the Paying Agent for payment of the final distribution and cancellation. Such notice shall be given by letter, mailed not earlier than the 15th day and not later than the 25th day of the month next preceding the month of such final distribution, and shall specify (i) the Distribution Date upon which final payment of the Certificates will be made upon presentation and surrender of the Certificates at the office of the

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Paying Agent therein designated, (ii) the amount of any such final payment and (iii) that the Record Date otherwise applicable to such Distribution Date is not applicable, payments being made only upon presentation and surrender of the Certificates at the office of the Paying Agent therein specified.

(e) If the option of the Depositor to repurchase or cause the repurchase of all of the assets of the Trust Fund as described in Subsection 10.01 (a)(i) above is exercised, the Depositor and/or its designee shall deliver to the Paying Agent for deposit in the Distribution Account, by the Business Day prior to the applicable Distribution Date, an amount equal to the Termination Purchase Price. Upon presentation and surrender of the Certificates by the Certificateholders, the Paying Agent shall distribute to the Certificateholders, as directed by the Securities Administrator in writing, an amount determined as follows: with respect to each Certificate (other than the Class R Certificates), the outstanding Current Principal Amount, plus with respect to each Certificate (other than the Class R Certificates), one month's interest thereon at the applicable Pass-Through Rate; and with respect to the Class R Certificates, the percentage interest evidenced thereby multiplied by the difference, if any, between the above described repurchase price and the aggregate amount to be distributed to the Holders of the Certificates (other than the Class R Certificates). If the proceeds with respect to the Group I Mortgage Loans are not sufficient to pay all of the Group I Senior Certificates (other than the Residual Certificates) in full, any such deficiency will be allocated first, to the Subordinate Certificates, in inverse order of their payment priority, and then to the Group I Senior Certificates (other than the Residual Certificates), in each case on a pro rata basis. If the proceeds with respect to the Group II Mortgage Loans are not sufficient to pay all of the Group II Senior Certificates in full, any such deficiency will be allocated first, to the Subordinate Certificates, in inverse order of their payment priority, and then to the Group II Senior Certificates, in each case on a pro rata basis. If the proceeds with respect to the Group III Mortgage Loans are not sufficient to pay all of the Group III Senior Certificates in full, any such deficiency will be allocated first, to the Subordinate Certificates, in inverse order of their payment priority, and then to the Group III Senior Certificates, in each case on a pro rata basis. Upon deposit of the required repurchase price and following such final Distribution Date relating thereto, the Trustee shall release promptly to the Depositor and/or its designee the Mortgage Files for the remaining applicable Mortgage Loans, and the Accounts with respect thereto shall terminate, subject to the Paying Agent's obligation to hold any amounts payable to Certificateholders in trust without interest pending final distributions pursuant to Subsection 10.01(f) and (g). After final distributions pursuant to Section 10.01(f) and (g) to all Certificateholders, any other amounts remaining in the Accounts will belong to the Depositor.

(f) Upon the presentation and surrender of the Certificates, the Paying Agent shall distribute to the remaining Certificateholders, pursuant to the written direction of the Securities Administrator and in accordance with their respective interests, all distributable amounts remaining in the Distribution Account.

(g) If not all of the Certificateholders shall surrender their Certificates for cancellation within six months after the time specified in the above-mentioned written notice, the Paying Agent shall give a second written notice to the remaining Certificateholders to surrender their Certificates for cancellation and receive the final distribution with respect thereto. If within six months after the second notice not all the Certificates shall have been surrendered for

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cancellation, the Paying Agent may take appropriate steps, or appoint any agent to take appropriate steps, to contact the remaining Certificateholders concerning surrender of their Certificates, and the cost thereof shall be paid out of the funds and other assets which remain subject to this Agreement.

Section 10.03 Additional Termination Requirements. (a) If the option of the Depositor to repurchase all the Mortgage Loans under Subsection 10.01(a)(i) above is exercised, the Trust Fund and each of REMIC I, REMIC II and REMIC III shall be terminated in accordance with the following additional requirements, unless the Trustee has been furnished with an Opinion of Counsel to the effect that the failure of the Trust to comply with the requirements of this Section 10.02 will not (i) result in the imposition of taxes on "prohibited transactions" as defined in Section 860F of the Code on REMIC I, REMIC II or REMIC III or (ii) cause any REMIC to fail to qualify as a REMIC at any time that any Certificates are outstanding:

(i) within 90 days prior to the final Distribution Date, at the written direction of the Depositor, the Trustee, as agent for the respective Tax Matters Persons, shall adopt a plan of complete liquidation of REMIC I, REMIC II and REMIC III provided to it by the Depositor meeting the requirements of a "qualified liquidation" under Section 860F of the Code and any regulations thereunder;

(ii) the Depositor shall notify the Trustee at the commencement of such 90-day liquidation period and, at or prior to the time of making of the final payment on the Certificates, the Trustee shall sell or otherwise dispose of all of the remaining assets of the Trust Fund in accordance with the terms hereof; and

(iii) at or after the time of adoption of such a plan of complete liquidation of any of REMIC I, REMIC II and REMIC III and at or prior to the final Distribution Date relating thereto, the Trustee shall sell for cash all of the assets of the Trust to or at the direction of the Depositor, and REMIC I, REMIC II and REMIC III, as applicable, shall terminate at such time.

(b) By their acceptance of the Residual Certificates, the Holders thereof hereby (i) agree to adopt such a plan of complete liquidation of the related REMIC upon the written request of the Depositor and to take such action in connection therewith as may be reasonably requested by the Depositor and (ii) appoint the Depositor as their attorney-in-fact, with full power of substitution, for purposes of adopting such a plan of complete liquidation. The Trustee shall adopt such plan of liquidation by filing the appropriate statement on the final tax return of each REMIC. Upon complete liquidation or final distribution of all of the assets of the Trust Fund, the Trust Fund and each of REMIC I, REMIC II and REMIC III shall terminate.

ARTICLE XI
Miscellaneous Provisions

Section 11.01 Intent of Parties. The parties intend that each of REMIC I, REMIC II and REMIC III shall be treated as a REMIC for federal income tax purposes and that the provisions of this Agreement should be construed in furtherance of this intent.

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It is the express intent of the parties hereto that the conveyance of the Mortgage Notes, Mortgages, assignments of Mortgages, title insurance policies and any modifications, extensions and/or assumption agreements and private mortgage insurance policies relating to the Mortgage Loans by the Seller to the Depositor, and by the Depositor to the Trust be, and be construed as, an absolute sale thereof to the Depositor or the Trust, as applicable. It is, further, not the intention of the parties that such conveyance be deemed a pledge thereof by the Seller to the Depositor, or by the Depositor to the Trust. However, in the event that, notwithstanding the intent of the parties, such assets are held to be the property of the Seller or the Depositor, as applicable, or if for any other reason this Agreement is held or deemed to create a security interest in such assets, then (i) this Agreement shall be deemed to be a security agreement within the meaning of the Uniform Commercial Code of the State of New York, (ii) each conveyance provided for in this Agreement shall be deemed to be an assignment and a grant by the Seller or the Depositor, as applicable, for the benefit of the Certificateholders, of a security interest in all of the assets that constitute the Trust Fund, whether now owned or hereafter acquired, (iii) the possession by the Trustee or the Custodian of the Mortgage Notes and such other items of property as may be perfected by possession pursuant to Section 9-313 (or comparable provision) of the applicable Uniform Commercial Code shall be deemed to be "possession by the secured party" for purposes of effecting the security interest pursuant to such section of the applicable Uniform Commercial Code and other applicable law. Any assignment of the Seller and the Depositor shall also be deemed to be an assignment of any security interest created hereby.

Each of the Seller and the Depositor for the benefit of the Certificateholders shall, to the extent consistent with this Agreement, take such actions as may be necessary to ensure that, if this Agreement were deemed to create a security interest in the assets of the Trust Fund, such security interest would be deemed to be a perfected security interest of first priority under applicable law and will be maintained as such throughout the term of the Agreement.

Section 11.02 Amendment. (a) This Agreement may be amended from time to time by EMC, the Depositor, the Master Servicer, the Securities Administrator and the Trustee, and the Servicing Agreements may be amended from time to time by EMC, the Master Servicer and the Trustee, without notice to or the consent of any of the Certificateholders, to (i) cure any ambiguity, (ii) conform the terms hereof to the disclosure in the Prospectus or the Prospectus Supplement, (iii) correct or supplement any provisions herein that may be defective or inconsistent with any other provisions herein, (iv) comply with any changes in the Code or (v) make any other provisions with respect to matters or questions arising under this Agreement or the Servicing Agreements which shall not be inconsistent with the provisions of this Agreement; provided, however, that with regard to clauses (iv) and (v) of this Section 11.02(a), such action shall not, as evidenced by an Opinion of Independent Counsel, addressed to the Trustee, adversely affect in any material respect the interests of any Certificateholder.

(b) This Agreement may also be amended from time to time by EMC, the Master Servicer, the Depositor, the Securities Administrator and the Trustee, and the Servicing Agreements may also be amended from time to time by the Master Servicer and the Trustee, with the consent of the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than 51% of the Trust Fund or of the applicable Class or Classes of Certificates, if such amendment affects only such Class or Classes of Certificates, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of

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this Agreement or the Servicing Agreements or of modifying in any manner the rights of the Certificateholders; provided, however, that no such amendment shall (i) reduce in any manner the amount of, or delay the timing of, payments received on Mortgage Loans which are required to be distributed on any Certificate without the consent of the Holder of such Certificate, (ii) reduce the aforesaid percentage of Certificates the Holders of which are required to consent to any such amendment, without the consent of the Holders of all Certificates then outstanding, or (iii) cause REMIC I, REMIC II or REMIC III to fail to qualify as a REMIC for federal income tax purposes, as evidenced by an Opinion of Independent Counsel which shall be provided to the Trustee other than at the Trustee's expense. Notwithstanding any other provision of this Agreement, for purposes of the giving or withholding of consents pursuant to Section 11.02(b), Certificates registered in the name of or held for the benefit of the Depositor, the Securities Administrator, the Master Servicer, or the Trustee or any Affiliate thereof shall be entitled to vote their Fractional Undivided Interests with respect to matters affecting such Certificates.

(c) Promptly after the execution of any such amendment, the Trustee shall furnish a copy of such amendment or written notification of the substance of such amendment to each Certificateholder, with a copy to the Rating Agencies.

(d) In the case of an amendment under Subsection 11.02(b) above, it shall not be necessary for the Certificateholders to approve the particular form of such an amendment. Rather, it shall be sufficient if the Certificateholders approve the substance of the amendment. The manner of obtaining such consents and of evidencing the authorization of the execution thereof by Certificateholders shall be subject to such reasonable regulations as the Trustee may prescribe.

(e) Prior to the execution of any amendment to this Agreement, the Trustee shall be entitled to receive and rely upon an Opinion of Counsel stating that the execution of such amendment is authorized or permitted by this Agreement. The Trustee and the Securities Administrator may, but shall not be obligated to, enter into any such amendment which affects the Trustee's or the Securities Administrator's own respective rights, duties or immunities under this Agreement.

Section 11.03 Recordation of Agreement. To the extent permitted by applicable law, this Agreement is subject to recordation in all appropriate public offices for real property records in all the counties or other comparable jurisdictions in which any or all of the Mortgaged Properties are situated, and in any other appropriate public recording office or elsewhere. The Depositor shall effect such recordation at the expense of the Trust upon the request in writing of a Certificateholder, but only if such direction is accompanied by an Opinion of Counsel (provided at the expense of the Certificateholder requesting recordation) to the effect that such recordation would materially and beneficially affect the interests of the Certificateholders or is required by law.

Section 11.04 Limitation on Rights of Certificateholders. (a) The death or incapacity of any Certificateholder shall not terminate this Agreement or the Trust, nor entitle such Certificateholder's legal representatives or heirs to claim an accounting or to take any action or proceeding in any court for a partition or winding up of the Trust, nor otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

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(b) Except as expressly provided in this Agreement, no Certificateholders shall have any right to vote or in any manner otherwise control the operation and management of the Trust, or the obligations of the parties hereto, nor shall anything herein set forth, or contained in the terms of the Certificates, be construed so as to establish the Certificateholders from time to time as partners or members of an association; nor shall any Certificateholders be under any liability to any third Person by reason of any action taken by the parties to this Agreement pursuant to any provision hereof.

(c) No Certificateholder shall have any right by virtue of any provision of this Agreement to institute any suit, action or proceeding in equity or at law upon, under or with respect to this Agreement against the Depositor, the Securities Administrator, the Master Servicer or any successor to any such parties unless (i) such Certificateholder previously shall have given to the Trustee a written notice of a continuing default, as herein provided, (ii) the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than 51% of the Trust Fund shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs and expenses and liabilities to be incurred therein or thereby, and (iii) the Trustee, for 60 days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding.

(d) No one or more Certificateholders shall have any right by virtue of any provision of this Agreement to affect the rights of any other Certificateholders or to obtain or seek to obtain priority or preference over any other such Certificateholder, or to enforce any right under this Agreement, except in the manner herein provided and for the equal, ratable and common benefit of all Certificateholders. For the protection and enforcement of the provisions of this Section 11.04, each and every Certificateholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Section 11.05 Acts of Certificateholders. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Agreement to be given or taken by Certificateholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Certificateholders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is expressly required, to the Depositor. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Agreement and conclusive in favor of the Trustee and the Depositor, if made in the manner provided in this Section 11.05.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority. The fact and date of the execution of any such instrument or writing, or the authority of the

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individual executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Certificates (notwithstanding any notation of ownership or other writing on such Certificates, except an endorsement in accordance with Section 5.02 made on a Certificate presented in accordance with Section 5.04) shall be proved by the Certificate Register, and neither the Trustee, the Depositor, the Securities Administrator, the Master Servicer nor any successor to any such parties shall be affected by any notice to the contrary.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action of the holder of any Certificate shall bind every future holder of the same Certificate and the holder of every Certificate issued upon the registration of transfer or exchange thereof, if applicable, or in lieu thereof with respect to anything done, omitted or suffered to be done by the Trustee, the Securities Administrator, the Depositor, the Master Servicer or any successor to any such party in reliance thereon, whether or not notation of such action is made upon such Certificates.

(e) In determining whether the Holders of the requisite percentage of Certificates evidencing Fractional Undivided Interests have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Certificates owned by the Trustee, the Securities Administrator, the Depositor, the Master Servicer or any Affiliate thereof shall be disregarded, except as otherwise provided in Section 11.02(b) and except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Certificates which the Trustee knows to be so owned shall be so disregarded. Certificates which have been pledged in good faith to the Trustee, the Securities Administrator, the Depositor, the Master Servicer or any Affiliate thereof may be regarded as outstanding if the pledgor establishes to the satisfaction of the Trustee the pledgor's right to act with respect to such Certificates and that the pledgor is not an Affiliate of the Trustee, the Securities Administrator, the Depositor, or the Master Servicer, as the case may be.

Section 11.06 GOVERNING LAW. THIS AGREEMENT AND THE CERTIFICATES SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO ITS CONFLICT OF LAWS RULES (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW, WHICH THE PARTIES HERETO EXPRESSLY RELY UPON IN THE CHOICE OF SUCH LAW AS THE GOVERNING LAW HEREUNDER) AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

Section 11.07 Notices. All demands and notices hereunder shall be in writing and shall be deemed given when delivered at (including delivery by facsimile) or mailed by registered mail, return receipt requested, postage prepaid, or by recognized overnight courier, to (i) in the case of the Depositor, 383 Madison Avenue, New York, New York 10179, Attention: Vice President-Servicing, telecopier number: (212) 272-5591, or to such other address as may hereafter be furnished to the other parties hereto in writing; (ii) in the case of the Trustee, at its Corporate Trust Office, or such other address as may hereafter be furnished to the other parties hereto in writing; (iii) in the case of EMC Mortgage Corporation, EMC Mortgage Corporation,

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383 Madison Avenue, New York, New York 10179, Attention: Vice President – Servicing, telecopier number (212) 272-5591, or to such other address as may hereafter be furnished to the other parties hereto in writing; (iv) in the case of the Master Servicer, Paying Agent or Securities Administrator, Wells Fargo Bank, National Association, P.O. Box 98, Columbia, Maryland 21046 and for overnight delivery to 9062 Old Annapolis Road, Columbia, Maryland 21045 (Attention: SAMI II 2005-AR2), telecopier no.: (410) 715-2380, or such other address as may hereafter be furnished to the other parties hereto in writing; (v) in the case of the Certificate Registrar, the Certificate Registrar Office; or (vi) in the case of the Rating Agencies, Moody's Investors Service, Inc., 99 Church Street, 4th Floor, New York, New York 10007, and Standard & Poor's, a division of The McGraw-Hill Companies, Inc., 55 Water Street, 41st Floor, New York, New York, 10041, Attention: Residential Mortgage Surveillance, or such other address as may be furnished to the parties hereto in writing. Any notice delivered to the Depositor, the Master Servicer, the Securities Administrator, EMC or the Trustee under this Agreement shall be effective only upon receipt. Any notice required or permitted to be mailed to a Certificateholder, unless otherwise provided herein, shall be given by first-class mail, postage prepaid, at the address of such Certificateholder as shown in the Certificate Register. Any notice so mailed within the time prescribed in this Agreement shall be conclusively presumed to have been duly given when mailed, whether or not the Certificateholder receives such notice.

Section 11.08 Severability of Provisions. If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severed from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement or of the Certificates or the rights of the holders thereof.

Section 11.09 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

Section 11.10 Article and Section Headings. The article and section headings herein are for convenience of reference only, and shall not limit or otherwise affect the meaning hereof.

Section 11.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which when so executed and delivered shall be an original but all of which together shall constitute one and the same instrument.

Section 11.12 Notice to Rating Agencies. The Trustee shall promptly provide notice to each Rating Agency with respect to each of the following of which it has actual knowledge:

1. Any material change or amendment to this Agreement or a Servicing Agreement;

2. The occurrence of any Event of Default that has not been cured;

3. The resignation or termination of the Master Servicer, the Trustee or the Securities Administrator;

4. The repurchase or substitution of Mortgage Loans;

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5. The final payment to Certificateholders; and

6. Any change in the location of the Distribution Account.

[Signature page follows]

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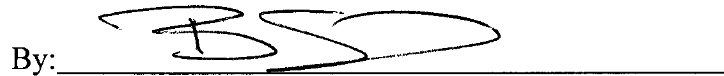
A 495

IN WITNESS WHEREOF, the Depositor, the Trustee, the Master Servicer, the Securities Administrator and EMC Mortgage Corporation have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., as Depositor



By:____________________________________
Name: Baron Silverstein
Title: Vice President

JPMORGAN CHASE BANK, N.A., as Trustee

By:____________________________________
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Master Servicer

By:____________________________________
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Securities Administrator

By:____________________________________
Name:
Title:

EMC MORTGAGE CORPORATION

By:____________________________________
Name:
Title:

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IN WITNESS WHEREOF, the Seller. the Trustee, the Master Servicer, the Securities Administrator and EMC Mortgage Corporation have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., as Seller

By:____________________________________
Name:
Title:

JPMORGAN CHASE BANK, N.A., as Trustee

By:____________________________________
Name: **Peggy L. Rémy**
Title: **Assistant Vice President**

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Master Servicer

By:____________________________________
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Securities Administrator

By:____________________________________
Name
Title:

EMC MORTGAGE CORPORATION

By:____________________________________
Name:
Title:

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IN WITNESS WHEREOF, the Depositor, the Trustee, the Master Servicer, the Securities Administrator and EMC Mortgage Corporation have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., as Depositor

By:____________________________________
Name:
Title:

JPMORGAN CHASE BANK, N.A., as Trustee

By:____________________________________
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Master Servicer

By:____________________________________
Name: Stacey M. Taylor
Title: Vice President

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Securities Administrator

By:____________________________________
Name: Stacey M. Taylor
Title: Vice President

EMC MORTGAGE CORPORATION

By:____________________________________
Name:
Title:

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A 498

IN WITNESS WHEREOF, the Depositor, the Trustee, the Master Servicer, the Securities Administrator and EMC Mortgage Corporation have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., as Depositor

By:____________________________________
Name:
Title:

JPMORGAN CHASE BANK, N.A., as Trustee

By:____________________________________
Name:
Title:

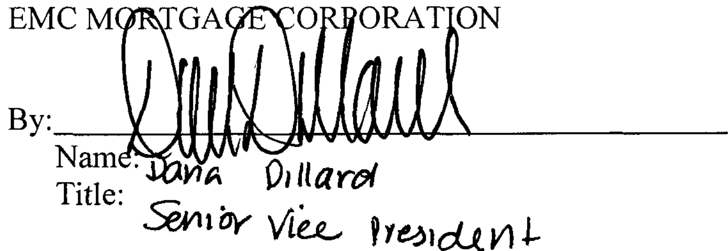
WELLS FARGO BANK, NATIONAL ASSOCIATION, as Master Servicer

By:____________________________________
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Securities Administrator

By:____________________________________
Name:
Title:

EMC MORTGAGE CORPORATION



By:____________________________________
Name: Dana Dillard
Title: Senior Vice President

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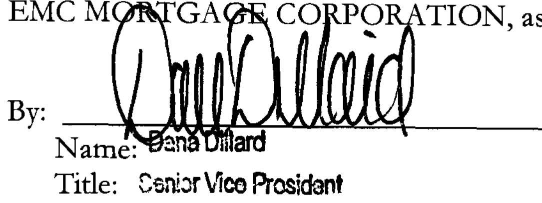
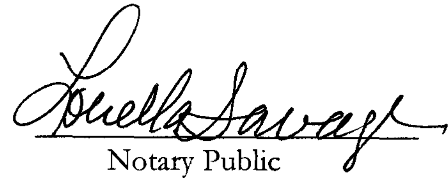
Accepted and Agreed as to
Sections 2.01, 2.02, 2.03, 2.04, 2.07 and 9.09(c)
in its capacity as Seller

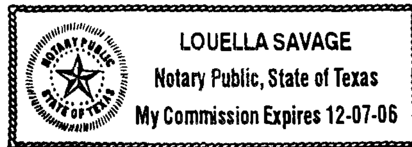
EMC MORTGAGE CORPORATION, as Seller



By: ______________________________
Name: Dana Dillard
Title: Senior Vice President



Notary Public


LOUELLA SAVAGE
Notary Public, State of Texas
My Commission Expires 12-07-06

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A 500

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 31st day of May, 2005 before me, a notary public in and for said State, personally appeared Baron Silverstein known to me to be a Vice President of Structured Asset Mortgage Investments II Inc., the corporation that executed the within instrument, and also known to me to be the person who executed it on behalf of said corporation, and acknowledged to me that such corporation executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

[Notarial Seal]

RAVIND KARAMSINGH, Notary Public
State of New York 02KA5076490
Qualified in Queens County
Certified in Queens County
Commission Expires April 21, 2007

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A 501

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 31st day of May, 2005 before me, a notary public in and for said State, personally appeared Peggy L. Rémy, known to me to be a Assistant Vice President of JPMorgan Chase Bank, N.A., the banking association that executed the within instrument, and also known to me to be the person who executed it on behalf of said banking association, and acknowledged to me that such banking association executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

[Notarial Seal]

IRENE SIEGEL
Notary Public, State of New York
No. 24-4927894
Qualified in Kings County
Commission Expires April 25, 06

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A 502

STATE OF MARYLAND)
) ss.:
COUNTY OF BALTIMORE)

On the 31st day of May, 2005 before me, a notary public in and for said State, personally appeared Stacy Taylor, known to me to be a Vice President of Wells Fargo Bank, National Association, the banking association that executed the within instrument, and also known to me to be the person who executed it on behalf of said banking association, and acknowledged to me that such banking association executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

DARRON C. WOODUS
NOTARY PUBLIC
BALTIMORE COUNTY
MARYLAND
MY COMMISSION EXPIRES DECEMBER 6, 2008

Notary Public

[Notarial Seal]

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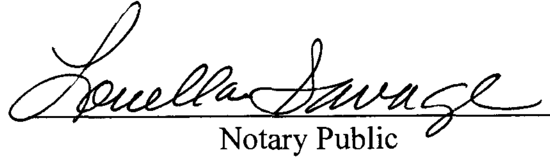
A 503

STATE OF TEXAS)
) ss.:
COUNTY OF DALLAS)

On the 31st day of May, 2005 before me, a notary public in and for said State, personally appeared Dana Dillard, known to me to be a Senior Vice President of EMC Mortgage Corporation, the corporation that executed the within instrument, and also known to me to be the person who executed it on behalf of said corporation, and acknowledged to me that such corporation executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public

[Notarial Seal]

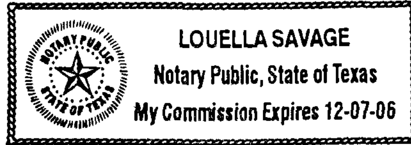


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EXHIBIT A-1

FORM OF CLASS [__-A-__] [__-X] CERTIFICATES

SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES, THIS CERTIFICATE IS A "REGULAR INTEREST" IN A "REAL ESTATE MORTGAGE INVESTMENT CONDUIT," AS THOSE TERMS ARE DEFINED, RESPECTIVELY, IN SECTIONS 860G AND 860D OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE").

THE [CURRENT PRINCIPAL] [NOTIONAL] AMOUNT OF THIS CERTIFICATE WILL BE DECREASED BY THE PRINCIPAL PAYMENTS [HEREON] AND REALIZED LOSSES [ON THE MORTGAGE LOANS AS SET FORTH IN THE AGREEMENT (AS DEFINED BELOW)] [ALLOCABLE HERETO] . ACCORDINGLY, FOLLOWING THE INITIAL ISSUANCE OF THE CERTIFICATES, THE [CURRENT PRINCIPAL] [NOTIONAL] AMOUNT OF THIS CERTIFICATE WILL BE DIFFERENT FROM THE DENOMINATION SHOWN BELOW. ANYONE ACQUIRING THIS CERTIFICATE MAY ASCERTAIN ITS [CURRENT PRINCIPAL] [NOTIONAL] AMOUNT BY INQUIRY OF WELLS FARGO BANK, NATIONAL ASSOCIATION, AS CERTIFICATE REGISTRAR (THE "CERTIFICATE REGISTRAR") WITH RESPECT HERETO.

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE CERTIFICATE REGISTRAR OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY AND ANY PAYMENT IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

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Certificate No.__	Pass-Through Rate: Variable
Class [__-A-__] [__-X] [Senior]	
Date of Pooling and Servicing Agreement and Cut-off Date: May 1, 2005	Aggregate Initial [Current Principal] [Notional] Amount of this Class of Certificates as of the Cut-off Date: $____________
First Distribution Date: June 27, 2005	Initial [Current Principal] [Notional Amount] of this Certificate as of the Cut-off Date: $____________
Master Servicer: Wells Fargo Bank, National Association	CUSIP: 86359L____
Assumed Final Distribution Date: May 25, 2045	

MORTGAGE PASS-THROUGH CERTIFICATE
SERIES 2005-AR2

evidencing a fractional undivided interest in the distributions allocable to the Class [__-A-__] [__-X] Certificates with respect to a Trust Fund consisting primarily of a pool of one- to four-family adjustable rate negative amortization mortgage loans sold by STRUCTURED ASSET MORTGAGE INVESTMENTS II INC.

This Certificate is payable solely from the assets of the Trust Fund, and does not represent an obligation of or interest in Structured Asset Mortgage Investments II Inc., the Master Servicer, the Certificate Registrar or the Trustee referred to below or any of their affiliates or any other person. Neither this Certificate nor the underlying Mortgage Loans are guaranteed or insured by any governmental entity or by Structured Asset Mortgage Investments II Inc., the Master Servicer, the Certificate Registrar or the Trustee or any of their affiliates or any other person. None of Structured Asset Mortgage Investments II Inc., the Master Servicer or any of their affiliates will have any obligation with respect to any certificate or other obligation secured by or payable from payments on the Certificates.

This certifies that Cede & Co. is the registered owner of the Fractional Undivided Interest evidenced hereby in the beneficial ownership interest of Certificates of the same Class as this Certificate in a trust (the "Trust Fund") generally consisting of first lien, adjustable rate negative amortization mortgage loans secured by one- to four-family residences and individual

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condominium units (collectively, the "Mortgage Loans") sold by Structured Asset Mortgage Investments II Inc. ("SAMI II"). The Mortgage Loans were sold on the Closing Date by EMC Mortgage Corporation ("EMC") to SAMI II. Wells Fargo Bank, National Association ("Wells Fargo") will act as master servicer of the Mortgage Loans (the "Master Servicer," which term includes any successors thereto under the Agreement referred to below). The Trust Fund was created pursuant to the Pooling and Servicing Agreement, dated as of the Cut-off Date specified above (the "Agreement"), among SAMI II, as depositor (the "Depositor"), EMC Mortgage Corporation, Wells Fargo, as Master Servicer and securities administrator and JPMorgan Chase Bank, N.A., as trustee (the "Trustee"), a summary of certain of the pertinent provisions of which is set forth hereafter. To the extent not defined herein, capitalized terms used herein shall have the meaning ascribed to them in the Agreement. This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement, to which Agreement the Holder of this Certificate by virtue of its acceptance hereof assents and by which such Holder is bound.

[Interest on this Certificate will accrue during the month prior to the month in which a Distribution Date (as hereinafter defined) occurs on the Current Principal Amount hereof at the per annum Pass-Through Rate set forth in the Agreement.]

[Interest on this Certificate will accrue during the month prior to the month in which a Distribution Date (as defined below) occurs on the Notional Amount hereof at a per-annum Pass-Through Rate equal to the greater of (i) zero and (ii) the excess of (x) the weighted average of the Net Rates of the Mortgage Loans in the related Loan Group or Loan Groups (as of the second preceding Due Date), [weighted in proportion to the results of subtracting from the aggregate Principal Balance of each Loan Group the aggregate Current Principal Amount of the related Classes of Senior Certificates (other than the Residual Certificates) immediately prior to the related Distribution Date,] over (y) the weighted average of the Pass-Through Rates on the related Classes of Certificates, based on a Notional Amount equal to the aggregate Current Principal Amount of the related Classes of Certificates and calculated on the basis of a year of 360 days with twelve 30-day months.]

The Paying Agent will distribute on the 25th day of each month, or, if such 25th day is not a Business Day, the immediately following Business Day (each, a "Distribution Date"), commencing on the First Distribution Date specified above, to the Person in whose name this Certificate is registered [at the close of business on the last Business Day of the calendar month preceding the month] [on the 24th day of the month] of such Distribution Date, an amount equal to the product of the Fractional Undivided Interest evidenced by this Certificate and the amount (of interest and principal, if any) required to be distributed to the Holders of Certificates of the same Class as this Certificate. The Assumed Final Distribution Date is the first Distribution Date in the month immediately following the month of the latest scheduled maturity date of any Mortgage Loan and is not likely to be the date on which the [Current Principal] [Notional] Amount of this Class of Certificates will be reduced to zero.

Distributions on this Certificate will be made by the Paying Agent by check mailed to the address of the Person entitled thereto as such name and address shall appear on the Certificate Register or, if such Person so requests, by notifying the Paying Agent in writing as specified in the Agreement. Notwithstanding the above, the final distribution on this Certificate will be made after due notice by the Paying Agent of the pendency of such distribution and only upon

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presentation and surrender of this Certificate at the office or agency appointed by the Paying Agent for that purpose and designated in such notice. The Initial [Current Principal] [Notional] Amount of this Certificate is set forth above. The Current [Principal] [Notional] Amount hereof will be reduced to the extent of distributions allocable to principal hereon and any Realized Losses allocable hereto as set forth in the Agreement.

This Certificate is one of a duly authorized issue of Certificates designated as set forth on the face hereof (the "Certificates"), issued in twenty-six Classes. The Certificates, in the aggregate, evidence the entire beneficial ownership interest in the Trust Fund formed pursuant to the Agreement.

The Certificateholder, by its acceptance of this Certificate, agrees that it will look solely to the Trust Fund for payment hereunder and that neither the Trustee, the Master Servicer nor the Certificate Registrar is liable to the Certificateholders for any amount payable under this Certificate or the Agreement or, except as expressly provided in the Agreement, subject to any liability under the Agreement.

This Certificate does not purport to summarize the Agreement and reference is made to the Agreement for the interests, rights and limitations of rights, benefits, obligations and duties evidenced hereby, and the rights, duties and immunities of the Trustee, the Master Servicer and the Certificate Registrar.

The Agreement permits, with certain exceptions therein provided, the amendment thereof and the modification of the rights and obligations of the Depositor and the rights of the Certificateholders under the Agreement from time to time by the Depositor and the Trustee with the consent of the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than 51% of the Trust Fund (or in certain cases, Holders of Certificates of affected Classes evidencing such percentage of the Fractional Undivided Interests thereof). Any such consent by the Holder of this Certificate shall be conclusive and binding on such Holder and upon all future Holders of this Certificate and of any Certificate issued upon the transfer hereof or in lieu hereof whether or not notation of such action is made upon this Certificate. The Agreement also permits the amendment thereof, in certain limited circumstances, without the consent of the Holders of any of the Certificates.

As provided in the Agreement and subject to certain limitations therein set forth, the transfer of this Certificate is registrable with the Certificate Registrar upon surrender of this Certificate for registration of transfer at the offices or agencies maintained by the Certificate Registrar for such purposes, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Certificate Registrar duly executed by the Holder hereof or such Holder's attorney duly authorized in writing, and thereupon one or more new Certificates in authorized denominations representing a like aggregate Fractional Undivided Interest will be issued to the designated transferee.

The Certificates are issuable only as registered Certificates without coupons in the Classes and denominations specified in the Agreement. As provided in the Agreement and subject to certain limitations therein set forth, this Certificate is exchangeable for one or more

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new Certificates evidencing the same Class and in the same aggregate Fractional Undivided Interest, as requested by the Holder surrendering the same.

No service charge will be made to the Certificateholders for any such registration of transfer, but the Certificate Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. The Depositor , the Master Servicer, the Trustee, the Certificate Registrar and any agent of any of them may treat the Person in whose name this Certificate is registered as the owner hereof for all purposes, and none of Depositor, the Master Servicer, the Trustee, the Certificate Registrar or any such agent shall be affected by notice to the contrary.

The obligations created by the Agreement and the Trust Fund created thereby (other than the obligations to make payments to Certificateholders with respect to the termination of the Agreement) shall terminate upon (i) the later of the (A) final payment or other liquidation (or Advance with respect thereto) of the last Mortgage Loan remaining in the Trust Fund and (B) disposition of all property acquired with respect to any Mortgage Loan, (ii) the payment to Certificateholders of all amounts required to be paid to them under the Agreement, or (iii) the optional repurchase by the party named in the Agreement of all the Mortgage Loans and other assets of the Trust Fund in accordance with the terms of the Agreement. Such optional repurchase may be made only (A) if (i) the aggregate Scheduled Principal Balance of the Mortgage Loans at the time of any such repurchase is less than or equal to 10% of the Cut-off Date Balance, or (ii) the Depositor, based upon an Opinion of Counsel, has determined that the REMIC status of any REMIC under the Agreement has been lost or a substantial risk exists that such REMIC status will be lost for the then-current taxable year, and (B) following the satisfaction of certain additional termination requirements specified in the Agreement. The exercise of such right will effect the early retirement of the Certificates. In no event, however, will the Trust Fund created by the Agreement continue beyond the expiration of 21 years after the death of certain persons identified in the Agreement.

Unless this Certificate has been countersigned by an authorized signatory of the Certificate Registrar by manual signature, this Certificate shall not be entitled to any benefit under the Agreement, or be valid for any purpose.

[Signature page follows]

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IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed.

Dated: May 31, 2005

JPMORGAN CHASE BANK, N.A.,
not in its individual capacity but solely as Trustee

By: ______________________________
Authorized Signatory

CERTIFICATE OF AUTHENTICATION

This is one of the Class [__-A-__] [__-X] Certificates referred to in the within-mentioned Agreement.

WELLS FARGO BANK,
NATIONAL ASSOCIATION, as Certificate Registrar

By: ______________________________
Authorized Signatory

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A 510

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto ____________________________________ (Please print or typewrite name and address including postal zip code of assignee) a Fractional Undivided Interest evidenced by the within Mortgage Pass-Through Certificate and hereby authorizes the transfer of registration of such interest to assignee on the Certificate Register of the Trust Fund.

I (We) further direct the Certificate Registrar to issue a new Certificate of a like denomination and Class, to the above named assignee and deliver such Certificate to the following address:

Dated: ____

Signature by or on behalf of assignor

Signature Guaranteed

DISTRIBUTION INSTRUCTIONS

The assignee should include the following for purposes of distribution:

Distributions shall be made, by wire transfer or otherwise, in immediately available funds to ___________________________________ for the account of __________________________ account number _____________, or, if mailed by check, to ________________________________. Applicable statements should be mailed to ____.

This information is provided by __________________, the assignee named above, or _________________________, as its agent.

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EXHIBIT A-2

CLASS [M-__] CERTIFICATE

THIS CERTIFICATE IS SUBORDINATED IN RIGHT OF PAYMENT TO THE SENIOR CERTIFICATES [AND][,] THE CLASS M-X CERTIFICATES [AND THE CLASS M-___ CERTIFICATES] AS DESCRIBED IN THE AGREEMENT (AS DEFINED HEREIN).

SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES, THIS CERTIFICATE IS A "REGULAR INTEREST" IN A "REAL ESTATE MORTGAGE INVESTMENT CONDUIT," AS THOSE TERMS ARE DEFINED, RESPECTIVELY, IN SECTIONS 860G AND 860D OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE").

THE CURRENT PRINCIPAL AMOUNT OF THIS CERTIFICATE WILL BE DECREASED BY THE PRINCIPAL PAYMENTS HEREON AND ANY REALIZED LOSSES ALLOCABLE HERETO. ACCORDINGLY, FOLLOWING THE INITIAL ISSUANCE OF THE CERTIFICATES, THE CURRENT PRINCIPAL AMOUNT OF THIS CERTIFICATE WILL BE DIFFERENT FROM THE DENOMINATION SHOWN BELOW. ANYONE ACQUIRING THIS CERTIFICATE MAY ASCERTAIN ITS CURRENT PRINCIPAL AMOUNT BY INQUIRY OF WELLS FARGO BANK, NATIONAL ASSOCIATION, AS CERTIFICATE REGISTRAR (THE "CERTIFICATE REGISTRAR") WITH RESPECT HERETO.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE CERTIFICATE REGISTRAR OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY AND ANY PAYMENT IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

EACH BENEFICIAL OWNER OF THIS CERTIFICATE OR ANY INTEREST HEREIN SHALL BE DEEMED TO HAVE REPRESENTED, BY VIRTUE OF ITS ACQUISITION OR HOLDING OF THIS CERTIFICATE OR INTEREST HEREIN, THAT EITHER (I) IT IS NOT AN EMPLOYEE BENEFIT PLAN SUBJECT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED ("PLAN"), OR INVESTING WITH ASSETS OF A PLAN OR (ii) IT HAS ACQUIRED AND IS HOLDING SUCH CERTIFICATE IN RELIANCE ON PROHIBITED TRANSACTION EXEMPTION 90-30, AS AMENDED FROM TIME TO TIME ("EXEMPTION"), AND THAT IT UNDERSTANDS THAT THERE ARE CERTAIN CONDITIONS TO THE AVAILABILITY OF THE EXEMPTION, INCLUDING THAT

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THE CERTIFICATE MUST BE RATED, AT THE TIME OF PURCHASE, NOT LOWER THAN "BBB-" (OR ITS EQUIVALENT) BY STANDARD & Poor's, FITCH, INC. OR MOODY'S INVESTORS SERVICE, INC., AND THE CERTIFICATE IS SO RATED OR (III) (1) IT IS AN INSURANCE COMPANY, (2) THE SOURCE OF FUNDS USED TO ACQUIRE OR HOLD THE CERTIFICATE OR INTEREST HEREIN IS AN "INSURANCE COMPANY GENERAL ACCOUNT", AS SUCH TERM IS DEFINED IN PROHIBITED TRANSACTION CLASS EXEMPTION ("PTCE") 95-50, AND (3) THE CONDITIONS IN SECTIONS I AND III OF PTCE 95-60 HAVE BEEN SATISFIED.

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A 513

Certificate No. ___

Pass-Through Rate: Variable

Class [M-__] Subordinate

Date of Pooling and Servicing Agreement and Cut-off Date:
May 1, 2005

Aggregate Initial Current Principal Amount of this Class of Certificates as of the Cut-off Date:
$__________

First Distribution Date:
June 27, 2005

Initial Current Principal Amount of this Certificate as of the Cut-off Date:
$__________

Master Servicer:
Wells Fargo Bank, National Association

CUSIP: 86359L ___

Assumed Final Distribution Date:
May 25, 2045

MORTGAGE PASS-THROUGH CERTIFICATE
SERIES 2005-AR2

evidencing a fractional undivided interest in the distributions allocable to the Class [M-__] Certificates with respect to a Trust Fund consisting primarily of a pool of one- to four-family adjustable interest rate negative amortization mortgage loans sold by STRUCTURED ASSET MORTGAGE INVESTMENTS II INC.

This Certificate is payable solely from the assets of the Trust Fund, and does not represent an obligation of or interest in Structured Asset Mortgage Investments II Inc., the Master Servicer or the Certificate Registrar referred to below or any of their affiliates or any other person. Neither this Certificate nor the underlying Mortgage Loans are guaranteed or insured by any governmental entity or by Structured Asset Mortgage Investments II Inc., the Master Servicer or the Certificate Registrar or any of their affiliates or any other person. None of Structured Asset Mortgage Investments II Inc., the Master Servicer, the Certificate Registrar or any of their affiliates will have any obligation with respect to any certificate or other obligation secured by or payable from payments on the Certificates.

This certifies that Cede & Co. is the registered owner of the Fractional Undivided Interest evidenced hereby in the beneficial ownership interest of Certificates of the same Class as this

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Certificate in a trust (the "Trust Fund") generally consisting of first lien, adjustable rate negative amortization mortgage loans secured by one- to four-family residences and individual condominium units (collectively, the "Mortgage Loans") sold by Structured Asset Mortgage Investments II Inc. ("SAMI II"). The Mortgage Loans were sold on the Closing Date by EMC Mortgage Corporation ("EMC") to SAMI II. Wells Fargo Bank, National Association ("Wells Fargo") will act as master servicer of the Mortgage Loans (the "Master Servicer," which term includes any successors thereto under the Agreement referred to below). The Trust Fund was created pursuant to the Pooling and Servicing Agreement, dated as of the Cut-off Date specified above (the "Agreement"), among SAMI II, as depositor (the "Depositor"), EMC Mortgage Corporation, Wells Fargo, as Master Servicer and securities administrator and JPMorgan Chase Bank, N.A., as trustee (the "Trustee"), a summary of certain of the pertinent provisions of which is set forth hereafter. To the extent not defined herein, capitalized terms used herein shall have the meaning ascribed to them in the Agreement. This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement, to which Agreement the Holder of this Certificate by virtue of its acceptance hereof assents and by which such Holder is bound.

Interest on this Certificate will accrue during the month prior to the month in which a Distribution Date (as hereinafter defined) occurs on the Current Principal Amount hereof at a per annum Pass-Through Rate set forth in the Agreement.

The Paying Agent will distribute on the 25th day of each month, or, if such 25th day is not a Business Day, the immediately following Business Day (each, a "Distribution Date"), commencing on the First Distribution Date specified above, to the Person in whose name this Certificate is registered on the 24th day of the month of such Distribution Date, an amount equal to the product of the Fractional Undivided Interest evidenced by this Certificate and the amount (of interest and principal, if any) required to be distributed to the Holders of Certificates of the same Class as this Certificate. The Assumed Final Distribution Date is the first Distribution Date in the month immediately following the month of the latest scheduled maturity date of any Mortgage Loan and is not likely to be the date on which the Current Principal Amount of this Class of Certificates will be reduced to zero.

Distributions on this Certificate will be made by the Paying Agent by check mailed to the address of the Person entitled thereto as such name and address shall appear on the Certificate Register or, if such Person so requests, by notifying the Paying Agent in writing as specified in the Agreement. Notwithstanding the above, the final distribution on this Certificate will be made after due notice by the Paying Agent of the pendency of such distribution and only upon presentation and surrender of this Certificate at the office or agency appointed by the Paying Agent for that purpose and designated in such notice. The Initial Current Principal Amount of this Certificate is set forth above. The Current Principal Amount hereof will be reduced to the extent of distributions allocable to principal hereon and any Realized Losses allocable hereto.

This Certificate is one of a duly authorized issue of Certificates designated as set forth on the face hereof (the "Certificates"), issued in twenty-six Classes. The Certificates, in the aggregate, evidence the entire beneficial ownership interest in the Trust Fund formed pursuant to the Agreement.

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The Certificateholder, by its acceptance of this Certificate, agrees that it will look solely to the Trust Fund for payment hereunder and that neither the Trustee nor the Certificate Registrar is liable to the Certificateholders for any amount payable under this Certificate or the Agreement or, except as expressly provided in the Agreement, subject to any liability under the Agreement.

This Certificate does not purport to summarize the Agreement and reference is made to the Agreement for the interests, rights and limitations of rights, benefits, obligations and duties evidenced hereby, and the rights, duties and immunities of the Trustee and the Certificate Registrar.

The Agreement permits, with certain exceptions therein provided, the amendment thereof and the modification of the rights and obligations of the Depositor and the rights of the Certificateholders under the Agreement from time to time by the Depositor and the Trustee with the consent of the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than 51% of the Trust Fund (or in certain cases, Holders of Certificates of affected Classes evidencing such percentage of the Fractional Undivided Interests thereof). Any such consent by the Holder of this Certificate shall be conclusive and binding on such Holder and upon all future Holders of this Certificate and of any Certificate issued upon the transfer hereof or in lieu hereof, whether or not notation of such consent is made upon this Certificate. The Agreement also permits the amendment thereof, in certain limited circumstances, without the consent of the Holders of any of the Certificates.

As provided in the Agreement and subject to certain limitations therein set forth, the transfer of this Certificate is registrable with the Certificate Registrar upon surrender of this Certificate for registration of transfer at the offices or agencies maintained by the Certificate Registrar for such purposes, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Certificate Registrar duly executed by the Holder hereof or such Holder's attorney duly authorized in writing, and thereupon one or more new Certificates in authorized denominations representing a like aggregate Fractional Undivided Interest will be issued to the designated transferee.

The Certificates are issuable only as registered Certificates without coupons in the Classes and denominations specified in the Agreement. As provided in the Agreement and subject to certain limitations therein set forth, this Certificate is exchangeable for one or more new Certificates evidencing the same Class and in the same aggregate Fractional Undivided Interest, as requested by the Holder surrendering the same.

No service charge will be made to the Certificateholders for any such registration of transfer, but the Certificate Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. The Depositor, the Master Servicer, the Trustee, the Certificate Registrar and any agent of any of them may treat the Person in whose name this Certificate is registered as the owner hereof for all purposes, and none of the Depositor, the Master Servicer, the Trustee, the Certificate Registrar or any such agent shall be affected by notice to the contrary.

The obligations created by the Agreement and the Trust Fund created thereby (other than the obligations to make payments to Certificateholders with respect to the termination of the

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A 516

Agreement) shall terminate upon (i) the later of the (A) final payment or other liquidation (or Advance with respect thereto) of the last Mortgage Loan remaining in the Trust Fund and (B) disposition of all property acquired with respect to any Mortgage Loan, (ii) the payment to Certificateholders of all amounts required to be paid to them under the Agreement, or (iii) the optional repurchase by the party named in the Agreement of all the Mortgage Loans and other assets of the Trust Fund in accordance with the terms of the Agreement. Such optional repurchase may be made only (A) if (i) the aggregate Scheduled Principal Balance of the Mortgage Loans at the time of any such repurchase is less than or equal to 10% of the Cut-off Date Balance, or (ii) the Depositor, based upon an Opinion of Counsel, has determined that the REMIC status of any REMIC under the Agreement has been lost or a substantial risk exists that such REMIC status will be lost for the then-current taxable year, and (B) following the satisfaction of certain additional termination requirements specified in the Agreement. The exercise of such right will effect the early retirement of the Certificates. In no event, however, will the Trust Fund created by the Agreement continue beyond the expiration of 21 years after the death of certain persons identified in the Agreement.

Unless this Certificate has been countersigned by an authorized signatory of the Certificate Registrar by manual signature, this Certificate shall not be entitled to any benefit under the Agreement, or be valid for any purpose.

[Signature page follows]

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IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed.

Dated: May 31, 2005

JPMORGAN CHASE BANK, N.A., not in its individual capacity but solely as Trustee

By: ________________________________
Authorized Signatory

CERTIFICATE OF AUTHENTICATION

This is one of the Class [M-__] Certificates referred to in the within-mentioned Agreement.

WELLS FARGO BANK,
NATIONAL ASSOCIATION, as Certificate Registrar

By: ________________________________
Authorized Signatory

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto ________________________________ (Please print or typewrite name and address including postal zip code of assignee) a Fractional Undivided Interest evidenced by the within Mortgage Pass-Through Certificate and hereby authorizes the transfer of registration of such interest to assignee on the Certificate Register of the Trust Fund.

I (We) further direct the Certificate Registrar to issue a new Certificate of a like denomination and Class, to the above named assignee and deliver such Certificate to the following address:

Dated: ____________

____
Signature by or on behalf of assignor

____
Signature Guaranteed

DISTRIBUTION INSTRUCTIONS

The assignee should include the following for purposes of distribution:

Distributions shall be made, by wire transfer or otherwise, in immediately available funds to ________________________________ for the account of ________________________ account number _____________, or, if mailed by check, to ______________________________. Applicable statements should be mailed to ____.

This information is provided by _________________, the assignee named above, or ________________________, as its agent.

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EXHIBIT A-3

CLASS B-__ CERTIFICATE

THIS CERTIFICATE IS SUBORDINATED IN RIGHT OF PAYMENT TO THE SENIOR CERTIFICATES, THE CLASS M-X CERTIFICATES, THE CLASS M-1 CERTIFICATES, THE CLASS M-2 CERTIFICATES, THE CLASS M-3 CERTIFICATES, THE CLASS M-4 CERTIFICATES, THE CLASS M-5 CERTIFICATES, THE CLASS M-6 CERTIFICATES AND THE M-7 CERTIFICATES [AND THE CLASS B-_ CERTIFICATES] AS DESCRIBED IN THE AGREEMENT (AS DEFINED HEREIN).

SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES, THIS CERTIFICATE IS A "REGULAR INTEREST" IN A "REAL ESTATE MORTGAGE INVESTMENT CONDUIT," AS THOSE TERMS ARE DEFINED, RESPECTIVELY, IN SECTIONS 860G AND 860D OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE").

THE CURRENT PRINCIPAL AMOUNT OF THIS CERTIFICATE WILL BE DECREASED BY THE PRINCIPAL PAYMENTS HEREON AND ANY REALIZED LOSSES ALLOCABLE HERETO. ACCORDINGLY, FOLLOWING THE INITIAL ISSUANCE OF THE CERTIFICATES, THE CURRENT PRINCIPAL AMOUNT OF THIS CERTIFICATE WILL BE DIFFERENT FROM THE DENOMINATION SHOWN BELOW. ANYONE ACQUIRING THIS CERTIFICATE MAY ASCERTAIN ITS CURRENT PRINCIPAL AMOUNT BY INQUIRY OF WELLS FARGO BANK, NATIONAL ASSOCIATION, AS CERTIFICATE REGISTRAR (THE "CERTIFICATE REGISTRAR") WITH RESPECT HERETO.

[For Class B-1, Class B-2 And Class B-3 Certificates] [UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE CERTIFICATE REGISTRAR OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY AND ANY PAYMENT IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[For Class B-1, Class B-2 And Class B-3 Certificates] [EACH BENEFICIAL OWNER OF THIS CERTIFICATE OR ANY INTEREST HEREIN SHALL BE DEEMED TO HAVE REPRESENTED, BY VIRTUE OF ITS ACQUISITION OR HOLDING OF THIS CERTIFICATE OR INTEREST HEREIN, THAT EITHER (I) IT IS NOT AN EMPLOYEE BENEFIT PLAN SUBJECT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED ("PLAN"), OR INVESTING WITH ASSETS OF A PLAN OR (II) IT HAS ACQUIRED AND IS HOLDING SUCH

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CERTIFICATE IN RELIANCE ON PROHIBITED TRANSACTION EXEMPTION 90-30, AS AMENDED FROM TIME TO TIME ("EXEMPTION"), AND THAT IT UNDERSTANDS THAT THERE ARE CERTAIN CONDITIONS TO THE AVAILABILITY OF THE EXEMPTION, INCLUDING THAT THE CERTIFICATE MUST BE RATED, AT THE TIME OF PURCHASE, NOT LOWER THAN "BBB-" (OR ITS EQUIVALENT) BY STANDARD & POOR'S, FITCH, INC. OR MOODY'S INVESTORS SERVICE, INC., AND THE CERTIFICATE IS SO RATED OR (III) (1) IT IS AN INSURANCE COMPANY, (2) THE SOURCE OF FUNDS USED TO ACQUIRE OR HOLD THE CERTIFICATE OR INTEREST HEREIN IS AN "INSURANCE COMPANY GENERAL ACCOUNT", AS SUCH TERM IS DEFINED IN PROHIBITED TRANSACTION CLASS EXEMPTION ("PTCE") 95-60, AND (3) THE CONDITIONS IN SECTIONS I AND III OF PTCE 95-60 HAVE BEEN SATISFIED.]

[For Class B-4, Class B-5 And Class B-6 Certificates] [THIS CERTIFICATE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER ANY STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING THIS CERTIFICATE, AGREES THAT THIS CERTIFICATE MAY BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY IN COMPLIANCE WITH THE SECURITIES ACT AND OTHER APPLICABLE LAWS AND ONLY (1) PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A") TO A PERSON THAT THE HOLDER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A (A "QIB"), PURCHASING FOR ITS OWN ACCOUNT OR A QIB PURCHASING FOR THE ACCOUNT OF A QIB, WHOM THE HOLDER HAS INFORMED, IN EACH CASE, THAT THE REOFFER, RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (3) IN CERTIFICATED FORM TO AN "INSTITUTIONAL ACCREDITED INVESTOR" WITHIN THE MEANING THEREOF IN RULE 501(a)(1), (2), (3) or (7) OF REGULATION D UNDER THE SECURITIES ACT OR ANY ENTITY IN WHICH ALL OF THE EQUITY OWNERS COME WITHIN SUCH PARAGRAPHS PURCHASING NOT FOR DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, SUBJECT TO (A) THE RECEIPT BY THE TRUSTEE AND THE CERTIFICATE REGISTRAR OF A LETTER SUBSTANTIALLY IN THE FORM PROVIDED IN THE AGREEMENT AND (B) THE RECEIPT BY THE TRUSTEE AND THE CERTIFICATE REGISTRAR OF SUCH OTHER EVIDENCE ACCEPTABLE TO THE TRUSTEE AND THE CERTIFICATE REGISTRAR THAT SUCH REOFFER, RESALE, PLEDGE OR TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT AND OTHER APPLICABLE LAWS OR IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE UNITED STATES AND ANY OTHER APPLICABLE JURISDICTION.]

[For Class B-4, Class B-5 And Class B-6 Certificates] [THIS CERTIFICATE MAY NOT BE ACQUIRED DIRECTLY OR INDIRECTLY BY, OR ON BEHALF OF, AN EMPLOYEE BENEFIT PLAN OR OTHER RETIREMENT ARRANGEMENT WHICH IS SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY

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ACT OF 1974, AS AMENDED, OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, UNLESS THE TRANSFEREE CERTIFIES OR REPRESENTS THAT THE PROPOSED TRANSFER AND HOLDING OF A CERTIFICATE AND THE SERVICING, MANAGEMENT AND OPERATION OF THE TRUST AND ITS ASSETS: (I) WILL NOT RESULT IN ANY PROHIBITED TRANSACTION WHICH IS NOT COVERED UNDER AN INDIVIDUAL OR CLASS PROHIBITED TRANSACTION EXEMPTION, INCLUDING, BUT NOT LIMITED TO, PROHIBITED TRANSACTION CLASS EXEMPTION ("PTCE") 84-14, PTCE 91-38, PTCE 90-1, PTCE 95-60 OR PTCE 96-23 AND (II) WILL NOT GIVE RISE TO ANY ADDITIONAL OBLIGATIONS ON THE PART OF THE DEPOSITOR, THE SECURITIES ADMINISTRATOR, THE MASTER SERVICER, THE CERTIFICATE REGISTRAR, ANY SERVICER OR THE TRUSTEE, WHICH WILL BE DEEMED REPRESENTED BY AN OWNER OF A BOOK-ENTRY CERTIFICATE OR A GLOBAL CERTIFICATE, OR UNLESS THE OPINION SPECIFIED IN SECTION 5.07 OF THE AGREEMENT IS PROVIDED.]

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Pass-Through Rate: Variable

Class B-__ Subordinate

Date of Pooling and Servicing Agreement and Cut-off Date: May 1, 2005	Aggregate Initial Current Principal Amount of this Class of Certificates as of the Cut-off Date: $______________
First Distribution Date: June 27, 2005	Initial Current Principal Amount of this Certificate as of the Cut-off Date: $______________
Master Servicer: Wells Fargo Bank, National Association	CUSIP: 86359L_____
Assumed Final Distribution Date: May 25, 2045	

MORTGAGE PASS-THROUGH CERTIFICATE
SERIES 2005-AR2

evidencing a fractional undivided interest in the distributions allocable to the Class B-__ Certificates with respect to a Trust Fund consisting primarily of a pool of one- to four-family adjustable interest rate negative amortization mortgage loans sold by STRUCTURED ASSET MORTGAGE INVESTMENTS II INC.

This Certificate is payable solely from the assets of the Trust Fund, and does not represent an obligation of or interest in Structured Asset Mortgage Investments II Inc., the Master Servicer, the Certificate Registrar or the Trustee referred to below or any of their affiliates or any other person. Neither this Certificate nor the underlying Mortgage Loans are guaranteed or insured by any governmental entity or by Structured Asset Mortgage Investments II Inc., the Master Servicer, the Certificate Registrar or the Trustee or any of their affiliates or any other person. None of Structured Asset Mortgage Investments II Inc., the Master Servicer or any of their affiliates will have any obligation with respect to any certificate or other obligation secured by or payable from payments on the Certificates.

This certifies that [Cede & Co.] [Bear, Stearns Securities Corp.] is the registered owner of the Fractional Undivided Interest evidenced hereby in the beneficial ownership interest of Certificates of the same Class as this Certificate in a trust (the "Trust Fund") generally consisting

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of first lien, adjustable rate negative amortization mortgage loans secured by one- to four-family residences and individual condominium units (collectively, the "Mortgage Loans") sold by Structured Asset Mortgage Investments II Inc. ("SAMI II"). The Mortgage Loans were sold on the Closing Date by EMC Mortgage Corporation ("EMC") to SAMI II. Wells Fargo Bank, National Association ("Wells Fargo") will act as master servicer of the Mortgage Loans (the "Master Servicer," which term includes any successors thereto under the Agreement referred to below). The Trust Fund was created pursuant to the Pooling and Servicing Agreement, dated as of the Cut-off Date specified above (the "Agreement"), among SAMI II, as depositor (the "Depositor"), EMC Mortgage Corporation, Wells Fargo, as Master Servicer and securities administrator and JPMorgan Chase Bank, N.A., as trustee (the "Trustee"), a summary of certain of the pertinent provisions of which is set forth hereafter. To the extent not defined herein, capitalized terms used herein shall have the meaning ascribed to them in the Agreement. This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement, to which Agreement the Holder of this Certificate by virtue of its acceptance hereof assents and by which such Holder is bound.

Interest on this Certificate will accrue during the month prior to the month in which a Distribution Date (as hereinafter defined) occurs on the Current Principal Amount hereof at the per annum Pass-Through Rate set forth in the Agreement. The Paying Agent will distribute on the 25th day of each month, or, if such 25th day is not a Business Day, the immediately following Business Day (each, a "Distribution Date"), commencing on the First Distribution Date specified above, to the Person in whose name this Certificate is registered [on the last Business Day of the month next preceding] [on the 24th day of] the month of such Distribution Date, an amount equal to the product of the Fractional Undivided Interest evidenced by this Certificate and the amount (of interest and principal, if any) required to be distributed to the Holders of Certificates of the same Class as this Certificate. The Assumed Final Distribution Date is the first Distribution Date in the month immediately following the month of the latest scheduled maturity date of any Mortgage Loan and is not likely to be the date on which the Current Principal Amount of this Class of Certificates will be reduced to zero.

Distributions on this Certificate will be made by the Paying Agent by check mailed to the address of the Person entitled thereto as such name and address shall appear on the Certificate Register or, if such Person so requests, by notifying the Paying Agent in writing as specified in the Agreement. Notwithstanding the above, the final distribution on this Certificate will be made after due notice by the Paying Agent of the pendency of such distribution and only upon presentation and surrender of this Certificate at the office or agency appointed by the Paying Agent for that purpose and designated in such notice. The Initial Current Principal Amount of this Certificate is set forth above. The Current Principal Amount hereof will be reduced to the extent of distributions allocable to principal hereon and any Realized Losses allocable hereto.

[For Class B-1, Class B-2 and Class B-3 Certificates] [Each beneficial owner of this Certificate or any interest herein shall be deemed to have represented, by virtue of its acquisition or holding of this certificate or interest herein, that either (i) it is not an employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended or section 4975 of the Internal Revenue Code of 1986, as amended ("Plan"), or investing with assets of a Plan or (ii) it has acquired and is holding such certificate in reliance on Prohibited Transaction Exemption 90-30, as amended from time to time ("Exemption"), and that it understands that

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there are certain conditions to the availability of the Exemption, including that the certificate must be rated, at the time of purchase, not lower than "BBB-" (or its equivalent) by Standard & Poor's, Fitch, Inc. or Moody's Investors Service, Inc., and the certificate is so rated or (iii) (1) it is an insurance company, (2) the source of funds used to acquire or hold the certificate or interest therein is an "insurance company general account", as such term is defined in Prohibited Transaction Class Exemption ("PTCE") 95-60, and (3) the conditions in Sections I and III of PTCE 95-60 have been satisfied.]

[For Class B-4, Class B-5 and Class B-6 Certificates] [No transfer of this Certificate shall be made unless the transfer is made pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), and an effective registration or qualification under applicable state securities laws, or is made in a transaction that does not require such registration or qualification, and is made in accordance with Section 5.02 of the Agreement. In the event that such transfer is to be made the Certificate Registrar shall register such transfer if: (i) made to a transferee who has provided the Certificate Registrar and the Trustee with evidence as to its QIB status; or (ii) (A) the transferor has advised the Trustee and the Certificate Registrar in writing that the Certificate is being transferred to an Institutional Accredited Investor and (B) prior to such transfer the transferee furnishes to the Trustee and the Certificate Registrar an Investment Letter; or (iii) based upon an Opinion of Counsel to the effect that (A) and (B) above are met sufficient to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and other applicable laws.]

Neither the Depositor nor the Certificate Registrar nor the Trustee is obligated to register or qualify the Class of Certificates specified on the face hereof under the Securities Act or any other securities law or to take any action not otherwise required under the Agreement to permit the transfer of such Certificates without registration or qualification. Any Holder desiring to effect a transfer of this Certificate shall be required to indemnify the Trustee, the Certificate Registrar, the Securities Administrator, the Depositor, EMC and the Master Servicer against any liability that may result if the transfer is not so exempt or is not made in accordance with such federal and state laws.

[For Class B-4, Class B-5 and Class B-6 Certificates] [This Certificate may not be acquired directly or indirectly by, or on behalf of, an employee benefit plan or other retirement arrangement which is subject to Title I of the Employee Retirement Income Security Act of 1974, as amended, or Section 4975 of the Internal Revenue Code of 1986, as amended, unless the transferee certifies or represents that the proposed transfer and holding of this Certificate and the servicing, management and operation of the Trust and its assets: (i) will not result in any prohibited transaction under Section 406 of ERISA or Section 4975 of the Code which is not covered under an individual or class prohibited transaction exemption, including, but not limited to Department of Labor Prohibited Transaction Class Exemption ("PTCE") 84-14 (Class Exemption for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers); PTCE 91-38 (Class Exemption for Certain Transactions Involving Bank Collective Investment Funds); PTCE 90-1 (Class Exemption for Certain Transactions Involving Insurance Company Pooled Separate Accounts); PTCE 95-60 (Class Exemption for Certain Transactions Involving Insurance Company General Accounts); and PTCE 96-23 (Class Exemption for Plan Asset Transactions Determined by In-House Asset Managers), or Section 401(c) of ERISA and

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the regulations promulgated thereunder; (ii) will not constitute or result in the assets of the Trust being deemed to be "plan assets" subject to the prohibited transaction provisions of ERISA or Section 4975 of the Code; and (iii) will not give rise to any additional obligations on the part of the Depositor, the Securities Administrator, any Servicer, the Master Servicer, the Certificate Registrar or the Trustee in addition to those undertaken in the Agreement, which will be deemed represented by an owner of a Book-Entry Certificate or a Global Certificate, or unless the opinion specified in Section 5.07 of the Agreement is provided.]

This Certificate is one of a duly authorized issue of Certificates designated as set forth on the face hereof (the "Certificates"), issued in twenty-six Classes. The Certificates, in the aggregate, evidence the entire beneficial ownership interest in the Trust Fund formed pursuant to the Agreement.

The Certificateholder, by its acceptance of this Certificate, agrees that it will look solely to the Trust Fund for payment hereunder and that neither the Trustee nor the Certificate Registrar is liable to the Certificateholders for any amount payable under this Certificate or the Agreement or, except as expressly provided in the Agreement, subject to any liability under the Agreement.

This Certificate does not purport to summarize the Agreement and reference is made to the Agreement for the interests, rights and limitations of rights, benefits, obligations and duties evidenced hereby, and the rights, duties and immunities of the Trustee and the Certificate Registrar.

The Agreement permits, with certain exceptions therein provided, the amendment thereof and the modification of the rights and obligations of the Depositor and the rights of the Certificateholders under the Agreement from time to time by the Depositor and the Trustee with the consent of the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than 51% of the Trust Fund (or in certain cases, Holders of Certificates of affected Classes evidencing such percentage of the Fractional Undivided Interests thereof). Any such consent by the Holder of this Certificate shall be conclusive and binding on such Holder and upon all future Holders of this Certificate and of any Certificate issued upon the transfer hereof or in lieu hereof, whether or not notation of such consent is made upon this Certificate. The Agreement also permits the amendment thereof, in certain limited circumstances, without the consent of the Holders of any of the Certificates.

As provided in the Agreement and subject to certain limitations therein set forth, the transfer of this Certificate is registrable with the Certificate Registrar upon surrender of this Certificate for registration of transfer at the offices or agencies maintained by the Certificate Registrar for such purposes, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Certificate Registrar duly executed by the Holder hereof or such Holder's attorney duly authorized in writing, and thereupon one or more new Certificates in authorized denominations representing a like aggregate Fractional Undivided Interest will be issued to the designated transferee.

The Certificates are issuable only as registered Certificates without coupons in the Classes and denominations specified in the Agreement. As provided in the Agreement and subject to certain limitations therein set forth, this Certificate is exchangeable for one or more

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new Certificates evidencing the same Class and in the same aggregate Fractional Undivided Interest, as requested by the Holder surrendering the same.

No service charge will be made to the Certificateholders for any such registration of transfer, but the Certificate Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. The Depositor, the Master Servicer, the Certificate Registrar, the Trustee and any agent of any of them may treat the Person in whose name this Certificate is registered as the owner hereof for all purposes, and none of the Depositor, the Master Servicer, the Certificate Registrar, the Trustee or any such agent shall be affected by notice to the contrary.

The obligations created by the Agreement and the Trust Fund created thereby (other than the obligations to make payments to Certificateholders with respect to the termination of the Agreement) shall terminate upon (i) the later of the (A) final payment or other liquidation (or Advance with respect thereto) of the last Mortgage Loan remaining in the Trust Fund and (B) disposition of all property acquired with respect to any Mortgage Loan, (ii) the payment to Certificateholders of all amounts required to be paid to them under the Agreement, or (iii) the optional repurchase by the party named in the Agreement of all the Mortgage Loans and other assets of the Trust Fund in accordance with the terms of the Agreement. Such optional repurchase may be made only (A) if (i) the aggregate Scheduled Principal Balance of the Mortgage Loans at the time of any such repurchase is less than or equal to 10% of the Cut-off Date Balance, or (ii) the Depositor, based upon an Opinion of Counsel, has determined that the REMIC status of any REMIC under the Agreement has been lost or a substantial risk exists that such REMIC status will be lost for the then-current taxable year, and (B) following the satisfaction of certain additional termination requirements specified in the Agreement. The exercise of such right will effect the early retirement of the Certificates. In no event, however, will the Trust Fund created by the Agreement continue beyond the expiration of 21 years after the death of certain persons identified in the Agreement.

Unless this Certificate has been countersigned by an authorized signatory of the Certificate Registrar by manual signature, this Certificate shall not be entitled to any benefit under the Agreement, or be valid for any purpose.

[Signature page follows]

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IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed.

Dated: May 31, 2005

JPMORGAN CHASE BANK, N.A., not in its individual capacity but solely as Trustee

By: ______
Authorized Signatory

CERTIFICATE OF AUTHENTICATION

This is one of the Class B-__ Certificates referred to in the within-mentioned Agreement.

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Certificate Registrar

By: ___________________________________
Authorized Signatory

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A 528

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto ________________________________ (Please print or typewrite name and address including postal zip code of assignee) a Fractional Undivided Interest evidenced by the within Mortgage Pass-Through Certificate and hereby authorizes the transfer of registration of such interest to assignee on the Certificate Register of the Trust Fund.

I (We) further direct the Certificate Registrar to issue a new Certificate of a like denomination and Class, to the above named assignee and deliver such Certificate to the following address:

Dated: ____________

____
Signature by or on behalf of assignor

____
Signature Guaranteed

DISTRIBUTION INSTRUCTIONS

The assignee should include the following for purposes of distribution:

Distributions shall be made, by wire transfer or otherwise, in immediately available funds to ________________________________ for the account of ________________________ account number _____________, or, if mailed by check, to ______________________________. Applicable statements should be mailed to ____.

This information is provided by ________________, the assignee named above, or ________________________, as its agent.

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EXHIBIT A-4

CLASS R-__ CERTIFICATE

THIS CERTIFICATE MAY NOT BE HELD BY OR TRANSFERRED TO A NON-UNITED STATES PERSON, A PUBLICLY TRADED PARTNERSHIP OR A DISQUALIFIED ORGANIZATION (AS DEFINED BELOW).

SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES, THIS CERTIFICATE IS A "RESIDUAL INTEREST" IN A "REAL ESTATE MORTGAGE INVESTMENT CONDUIT" AS THOSE TERMS ARE DEFINED, RESPECTIVELY, IN SECTIONS 860G AND 860D OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE").

THIS CERTIFICATE MAY NOT BE ACQUIRED DIRECTLY OR INDIRECTLY BY, OR ON BEHALF OF, AN EMPLOYEE BENEFIT PLAN OR OTHER RETIREMENT ARRANGEMENT WHICH IS SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED, AND/OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, UNLESS THE PROPOSED TRANSFEREE PROVIDES THE CERTIFICATE REGISTRAR AND THE TRUSTEE WITH AN OPINION OF COUNSEL ADDRESSED TO THE TRUSTEE, THE DEPOSITOR, THE MASTER SERVICER, THE CERTIFICATE REGISTRAR AND THE SECURITIES ADMINISTRATOR, AND ON WHICH THEY MAY RELY, IN A FORM SATISFACTORY TO THE TRUSTEE AND THE CERTIFICATE REGISTRAR, THAT THE PROPOSED TRANSFER AND HOLDING OF A CERTIFICATE AND THE SERVICING, MANAGEMENT AND OPERATION OF THE TRUST AND ITS ASSETS: (I) WILL NOT CONSTITUTE OR RESULT IN THE ASSETS OF THE TRUST BEING DEEMED TO BE "PLAN ASSETS" SUBJECT TO THE PROHIBITED TRANSACTION PROVISIONS OF ERISA OR SECTION 4975 OF THE CODE; (II) WILL NOT RESULT IN A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE; (III) IS PERMISSIBLE UNDER APPLICABLE LAW; AND (IV) WILL NOT SUBJECT THE DEPOSITOR, THE SECURITIES ADMINISTRATOR, THE MASTER SERVICER, THE CERTIFICATE REGISTRAR, ANY SERVICER OR THE TRUSTEE TO ANY OBLIGATION IN ADDITION TO THOSE UNDERTAKEN IN THE AGREEMENT (AS DEFINED HEREIN).

ANY RESALE, TRANSFER OR OTHER DISPOSITION OF THIS CERTIFICATE MAY BE MADE ONLY IF THE PROPOSED TRANSFEREE OBTAINS THE PRIOR WRITTEN CONSENT OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. AND THE SECURITIES ADMINISTRATOR AND PROVIDES A TRANSFER AFFIDAVIT TO THE TAX MATTERS PERSON, THE SELLER, THE CERTIFICATE REGISTRAR AND THE TRUSTEE THAT (1) SUCH TRANSFEREE IS NOT (A) THE UNITED STATES (AS DEFINED IN SECTION 7701 OF THE CODE), ANY STATE (AS DEFINED IN SECTION 7701 OF THE CODE) OR POLITICAL SUBDIVISION THEREOF, ANY POSSESSION OF THE UNITED STATES, OR ANY AGENCY OR INSTRUMENTALITY OF ANY OF THE FOREGOING (OTHER THAN

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AN INSTRUMENTALITY WHICH IS A CORPORATION IF ALL OF ITS ACTIVITIES ARE SUBJECT TO TAX AND, EXCEPT FOR FREDDIE MAC OR ANY SUCCESSOR THERETO, A MAJORITY OF ITS BOARD OF DIRECTORS IS NOT SELECTED BY SUCH GOVERNMENTAL UNIT), (B) ANY FOREIGN GOVERNMENT, ANY INTERNATIONAL ORGANIZATION (AS DEFINED IN SECTION 7701 OF THE CODE), OR ANY AGENCY OR INSTRUMENTALITY OF ANY OF THE FOREGOING, (C) ANY ORGANIZATION (OTHER THAN CERTAIN FARMERS' COOPERATIVES DESCRIBED IN SECTION 521 OF THE CODE) WHICH IS EXEMPT FROM THE TAX IMPOSED BY CHAPTER 1 OF THE CODE (INCLUDING THE TAX IMPOSED BY SECTION 511 OF THE CODE ON UNRELATED BUSINESS TAXABLE INCOME), (D) ANY ORGANIZATION DESCRIBED IN SECTION 1381(a)(2)(C) OF THE CODE (ANY SUCH PERSON DESCRIBED IN THE FOREGOING CLAUSES (A), (B), (C) OR (D) BEING HEREIN REFERRED TO AS A "DISQUALIFIED ORGANIZATION") OR (E) AN AGENT OF A DISQUALIFIED ORGANIZATION, (2) NO PURPOSE OF SUCH TRANSFER IS TO IMPEDE THE ASSESSMENT OR COLLECTION OF TAX AND (3) SUCH TRANSFEREE SATISFIES CERTAIN ADDITIONAL CONDITIONS RELATING TO THE FINANCIAL CONDITION OF THE PROPOSED TRANSFEREE. NOTWITHSTANDING THE REGISTRATION IN THE CERTIFICATE REGISTER OR ANY TRANSFER, SALE OR OTHER DISPOSITION OF THIS CERTIFICATE TO A DISQUALIFIED ORGANIZATION OR AN AGENT OF A DISQUALIFIED ORGANIZATION, SUCH REGISTRATION SHALL BE DEEMED TO BE OF NO LEGAL FORCE OR EFFECT WHATSOEVER AND SUCH PERSON SHALL NOT BE DEEMED TO BE A CERTIFICATEHOLDER FOR ANY PURPOSE HEREUNDER, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF DISTRIBUTIONS ON THIS CERTIFICATE. EACH HOLDER OF THIS CERTIFICATE BY ACCEPTANCE OF THIS CERTIFICATE SHALL BE DEEMED TO HAVE CONSENTED TO THE PROVISIONS OF THIS PARAGRAPH.

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A 531

Certificate No. 1

Pass-Through Rate: N/A

Class R-__ Senior

Date of Pooling and Servicing Agreement and Cut-off Date:
May1, 2005

Aggregate Initial Current Principal Amount of this Class of Certificates as of the Cut-off Date: $50.00

First Distribution Date:
June 27, 2005

Initial Current Principal Amount of this Certificate as of the Cut-off Date: $50.00

Master Servicer:
Wells Fargo Bank, National Association

CUSIP: 86359L_____

Assumed Final Distribution Date:
May 29, 2045

MORTGAGE PASS-THROUGH CERTIFICATE
SERIES 2005-AR2

evidencing a fractional undivided interest in the distributions allocable to the Class R-__ Certificates with respect to a Trust Fund consisting primarily of a pool of one- to four-family adjustable interest rate negative amortization mortgage loans sold by STRUCTURED ASSET MORTGAGE INVESTMENTS II INC.

This Certificate is payable solely from the assets of the Trust Fund, and does not represent an obligation of or interest in Structured Asset Mortgage Investments II Inc., the Master Servicer, the Certificate Registrar or the Trustee referred to below or any of their affiliates or any other person. Neither this Certificate nor the underlying Mortgage Loans are guaranteed or insured by any governmental entity or by Structured Asset Mortgage Investments II Inc., the Master Servicer, the Certificate Registrar or the Trustee or any of their affiliates or any other person. None of Structured Asset Mortgage Investments II Inc., the Master Servicer or any of their affiliates will have any obligation with respect to any certificate or other obligation secured by or payable from payments on the Certificates.

This certifies that Bear, Stearns Securities Corp. is the registered owner of the Fractional Undivided Interest evidenced hereby in the beneficial ownership interest of Certificates of the same Class as this Certificate in a trust (the "Trust Fund") generally consisting of first lien, adjustable rate negative amortization mortgage loans secured by one- to four-family residences and individual condominium units (collectively, the "Mortgage Loans") sold by Structured Asset

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Mortgage Investments II Inc. ("SAMI II"). The Mortgage Loans were sold on the Closing Date by EMC Mortgage Corporation ("EMC") to SAMI II. Wells Fargo Bank, National Association ("Wells Fargo") will act as master servicer of the Mortgage Loans (the "Master Servicer," which term includes any successors thereto under the Agreement referred to below). The Trust Fund was created pursuant to the Pooling and Servicing Agreement, dated as of the Cut-off Date specified above (the "Agreement"), among SAMI II, as depositor (the "Depositor"), EMC Mortgage Corporation, Wells Fargo, as Master Servicer and securities administrator and JPMorgan Chase Bank, N.A., as trustee (the "Trustee"), a summary of certain of the pertinent provisions of which is set forth hereafter. To the extent not defined herein, capitalized terms used herein shall have the meaning ascribed to them in the Agreement. This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement, to which Agreement the Holder of this Certificate by virtue of its acceptance hereof assents and by which such Holder is bound.

No Interest will accrue or be payable on this Certificate. On the First Distribution Date specified above, the Paying Agent will distribute to the Class R-____ Certificates $50 from the Deposit Amount deposited by the Depositor on the Closing Date in the Distribution Account, thereby reducing the Current Principal Amount of this Class of Certificates to zero.

Distributions on this Certificate will be made by the Paying Agent by check mailed to the address of the Person entitled thereto as such name and address shall appear on the Certificate Register or, if such Person so requests, by notifying the Paying Agent in writing as specified in the Agreement. Notwithstanding the above, the final distribution on this Certificate will be made after due notice by the Paying Agent of the pendency of such distribution and only upon presentation and surrender of this Certificate at the office or agency appointed by the Paying Agent for that purpose and designated in such notice.

Each Holder of this Certificate will be deemed to have agreed to be bound by the restrictions set forth in the Agreement to the effect that (i) each person holding or acquiring any ownership interest in this Certificate must be a United States Person and a Permitted Transferee, (ii) the transfer of any ownership interest in this Certificate will be conditioned upon the delivery to SAMI II, the Securities Administrator, the Trustee and the Certificate Registrar of, among other things, an affidavit to the effect that it is a United States Person and Permitted Transferee, (iii) any attempted or purported transfer of any ownership interest in this Certificate in violation of such restrictions will be absolutely null and void and will vest no rights in the purported transferee, and (iv) if any person other than a person that is a United States Person and a Permitted Transferee acquires any ownership interest in this Certificate in violation of such restrictions, then the Depositor will have the right, in its sole discretion and without notice to the Holder of this Certificate, to sell this Certificate to a purchaser selected by the Depositor, or any affiliate of the Depositor, on such terms and conditions as the Depositor may impose.

This Certificate may not be acquired directly or indirectly by, or on behalf of, an employee benefit plan or other retirement arrangement which is subject to title I of the Employee Retirement Income Security Act of 1974, as amended, and/or Section 4975 of the Internal Revenue Code of 1986, as amended, unless the proposed transferee provides the Certificate Registrar and the Trustee with an opinion of counsel addressed to the Trustee, the Certificate Registrar, the Master Servicer and the Securities Administrator and on which they may rely

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(which shall not be at the expense of the Trustee, the Certificate Registrar, the Master Servicer or the Securities Administrator) which is acceptable to the Certificate Registrar and the Trustee, that the purchase of this Certificate will not result in or constitute a nonexempt prohibited transaction, is permissible under applicable law and will not give rise to any additional fiduciary obligations on the part of the Depositor, the Master Servicer, the Securities Administrator, the Certificate Registrar or the Trustee.

This Certificate is one of a duly authorized issue of Certificates designated as set forth on the face hereof (the "Certificates"), issued in twenty-six Classes. The Certificates, in the aggregate, evidence the entire beneficial ownership interest in the Trust Fund formed pursuant to the Agreement.

The Certificateholder, by its acceptance of this Certificate, agrees that it will look solely to the Trust Fund for payment hereunder and that neither the Trustee nor the Certificate Registrar is liable to the Certificateholders for any amount payable under this Certificate or the Agreement or, except as expressly provided in the Agreement, subject to any liability under the Agreement.

This Certificate does not purport to summarize the Agreement and reference is made to the Agreement for the interests, rights and limitations of rights, benefits, obligations and duties evidenced hereby, and the rights, duties and immunities of the Trustee and the Certificate Registrar.

The Agreement permits, with certain exceptions therein provided, the amendment thereof and the modification of the rights and obligations of the Depositor, the Master Servicer and the Trustee and the rights of the Certificateholders under the Agreement from time to time by the Depositor and the Trustee with the consent of the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than 51% of the Trust Fund (or in certain cases, Holders of Certificates of affected Classes evidencing such percentage of the Fractional Undivided Interests thereof). Any such consent by the Holder of this Certificate shall be conclusive and binding on such Holder and upon all future Holders of this Certificate and of any Certificate issued upon the transfer hereof or in lieu hereof whether or not notation of such consent is made upon this Certificate. The Agreement also permits the amendment thereof, in certain limited circumstances, without the consent of the Holders of any of the Certificates.

As provided in the Agreement and subject to certain limitations therein set forth, the transfer of this Certificate is registrable with the Certificate Registrar upon surrender of this Certificate for registration of transfer at the offices or agencies maintained by the Certificate Registrar for such purposes, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Certificate Registrar duly executed by the Holder hereof or such Holder's attorney duly authorized in writing, and thereupon one or more new Certificates in authorized denominations representing a like aggregate Fractional Undivided Interest will be issued to the designated transferee.

By accepting this Certificate, the purchaser hereof agrees to be a Tax Matters Person and appoints the Securities Administrator to act as its agent with respect to all matters concerning the tax obligations of the Trust.

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A 534

The Certificates are issuable only as registered Certificates without coupons in the Classes and denominations specified in the Agreement. As provided in the Agreement and subject to certain limitations therein set forth, this Certificate is exchangeable for one or more new Certificates evidencing the same Class and in the same aggregate Fractional Undivided Interest, as requested by the Holder surrendering the same.

No service charge will be made to the Certificateholders for any such registration of transfer, but the Certificate Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. The Depositor, the Master Servicer, the Certificate Registrar, the Trustee and any agent of any of them may treat the Person in whose name this Certificate is registered as the owner hereof for all purposes, and none of the Depositor, the Master Servicer, the Certificate Registrar, the Trustee or any such agent shall be affected by notice to the contrary.

The obligations created by the Agreement and the Trust Fund created thereby (other than the obligations to make payments to Certificateholders with respect to the termination of the Agreement) shall terminate upon (i) the later of the (A) final payment or other liquidation (or Advance with respect thereto) of the last Mortgage Loan remaining in the Trust Fund and (B) disposition of all property acquired with respect to any Mortgage Loan, (ii) the payment to Certificateholders of all amounts required to be paid to them under the Agreement, or (iii) the optional repurchase by the party named in the Agreement of all the Mortgage Loans and other assets of the Trust Fund in accordance with the terms of the Agreement. Such optional repurchase may be made only (A) if (i) the aggregate Scheduled Principal Balance of the Mortgage Loans at the time of any such repurchase is less than or equal to 10% of the Cut-off Date Balance, or (ii) the Depositor, based upon an Opinion of Counsel, has determined that the REMIC status of any REMIC under the Agreement has been lost or a substantial risk exists that such REMIC status will be lost for the then-current taxable year, and (B) following the satisfaction of certain additional termination requirements specified in the Agreement. The exercise of such right will effect the early retirement of the Certificates. In no event, however, will the Trust Fund created by the Agreement continue beyond the expiration of 21 years after the death of certain persons identified in the Agreement.

Unless this Certificate has been countersigned by an authorized signatory of the Certificate Registrar by manual signature, this Certificate shall not be entitled to any benefit under the Agreement, or be valid for any purpose.

[Signature page follows]

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IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed.

Dated: May 31, 2005

JPMORGAN CHASE BANK, N.A.,
not in its individual capacity but solely as Trustee

By: ______________________________
Authorized Signatory

CERTIFICATE OF AUTHENTICATION

This is one of the Class R-__ Certificates referred to in the within-mentioned Agreement.

WELLS FARGO BANK,
NATIONAL ASSOCIATION, as Certificate Registrar

By: ______________________________
Authorized Signatory

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A 536

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto ________________________________ (Please print or typewrite name and address including postal zip code of assignee) a Fractional Undivided Interest evidenced by the within Mortgage Pass-Through Certificate and hereby authorizes the transfer of registration of such interest to assignee on the Certificate Register of the Trust Fund.

I (We) further direct the Certificate Registrar to issue a new Certificate of a like denomination and Class, to the above named assignee and deliver such Certificate to the following address:

Dated: ____________

____
Signature by or on behalf of assignor

Signature Guaranteed

DISTRIBUTION INSTRUCTIONS

The assignee should include the following for purposes of distribution:

Distributions shall be made, by wire transfer or otherwise, in immediately available funds to ________________________________ for the account of ________________________ account number ____________, or, if mailed by check, to ______________________________. Applicable statements should be mailed to ____.

This information is provided by ________________, the assignee named above, or ________________________, as its agent.

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EXHIBIT B

MORTGAGE LOAN SCHEDULE

[PROVIDED UPON REQUEST]

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A 538

EXHIBIT C

[RESERVED]

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A 539

EXHIBIT D

REQUEST FOR RELEASE OF DOCUMENTS

To: JPMorgan Chase Bank, N.A.
4 New York Plaza, 6th Floor
New York, New York 10004

Wells Fargo Bank, National Association
as Custodian
9062 Old Annapolis Road
Columbia, MD 21045
Attn: SAMI II 2005-AR2

RE: Pooling and Servicing Agreement dated as of
May 1, 2005, among Structured Asset Mortgage Investments II Inc.,
EMC Mortgage Corporation, Wells Fargo
Bank, National Association and
JPMorgan Chase Bank, N.A.
as Trustee

In connection with the administration of the Mortgage Loans (as defined in the Agreement) held by you pursuant to the above-captioned Pooling and Servicing Agreement (the "Agreement"), we request the release, and hereby acknowledge receipt, of the Mortgage File (as defined in the Agreement) for the Mortgage Loan described below, for the reason indicated. The release of such Mortgage File will not invalidate any insurance coverage provided in respect of such Mortgage Loan under any of the Insurance Policies (as defined in the Agreement).

Mortgage Loan Number:

Mortgagor Name, Address & Zip Code:

Reason for Requesting Documents (check one):

_____ 1. Mortgage paid in full and proceeds have been deposited into the Custodial Account

_____ 2. Foreclosure

_____ 3. Substitution

_____ 4. Other Liquidation

_____ 5. Nonliquidation Reason:_______________________________

_____ 6. California Mortgage Loan paid in full

By: ___________________________________

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A 540

(authorized signer)

Issuer: ______________________________

Address: ____________________________

Date:________________________________

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EXHIBIT E

Form of Affidavit pursuant to Section 860E(e)(4)

Affidavit pursuant to Section 860E(e)(4) of the Internal Revenue Code of 1986, as amended, and for other purposes

STATE OF)
: ss:
COUNTY OF)

[NAME OF OFFICER], being first duly sworn, deposes and says:

1. That he is [Title of Officer] of [Name of Investor] (the "Investor"), a [savings institution] [corporation] duly organized and existing under the laws of [the State of ______] [the United States], on behalf of which he makes this affidavit.

2. That (i) the Investor is not a "disqualified organization" as defined in Section 860E(e)(5) of the Internal Revenue Code of 1986, as amended (the "Code"), and will not be a disqualified organization as of [Closing Date] [date of purchase]; (ii) it is not acquiring the Structured Asset Mortgage Investments II Trust 2005-AR2, Mortgage Pass-Through Certificates, Series 2005-AR2, Class R-I, Class R-II and Class R-III Certificates (the "Residual Certificates") for the account of a disqualified organization; (iii) it consents to any amendment of the Pooling and Servicing Agreement that shall be deemed necessary by Structured Asset Mortgage Investments II Inc. (upon advice of counsel) to constitute a reasonable arrangement to ensure that the Residual Certificates will not be owned directly or indirectly by a disqualified organization; and (iv) it will not transfer such Residual Certificates unless (a) it has received from the transferee an affidavit in substantially the same form as this affidavit containing these same four representations and (b) as of the time of the transfer, it does not have actual knowledge that such affidavit is false.

3. That the Investor is one of the following: (i) a citizen or resident of the United States, (ii) a corporation or partnership (including an entity treated as a corporation or partnership for federal income tax purposes) created or organized in, or under the laws of, the United States or any state thereof or the District of Columbia (except, in the case of a partnership, to the extent provided in regulations), provided that no partnership or other entity treated as a partnership for United States federal income tax purposes shall be treated as a United States Person unless all persons that own an interest in such partnership, either directly or through any entity that is not a corporation for United States federal income tax purposes, are United States Persons, (iii) an estate whose income is subject to United States federal income tax regardless of its source, or (iv) a trust other than a "foreign trust," as defined in Section 7701 (a)(31) of the Code.

4. That the Investor's taxpayer identification number is ______________________.

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5. That no purpose of the acquisition of the Residual Certificates is to avoid or impede the assessment or collection of tax.

6. That the Investor understands that, as the holder of the Residual Certificates, the Investor may incur tax liabilities in excess of any cash flows generated by such Residual Certificates.

7. That the Investor intends to pay taxes associated with holding the Residual Certificates as they become due.

8. The Investor is not an employee benefit plan or other plan subject to the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code"), or an investment manager, named fiduciary or a trustee of any such plan, or any other Person acting, directly or indirectly, on behalf of or purchasing any Certificate with "plan assets" of any such plan.

IN WITNESS WHEREOF, the Investor has caused this instrument to be executed on its behalf, pursuant to authority of its Board of Directors, by its [Title of Officer] this ____ day of _________, 20__.

[NAME OF INVESTOR]

By:_________________________________

[Name of Officer]
[Title of Officer]
[Address of Investor for receipt of distributions]

Address of Investor for receipt of tax information:

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A 543

Personally appeared before me the above-named [Name of Officer], known or proved to me to be the same person who executed the foregoing instrument and to be the [Title of Officer] of the Investor, and acknowledged to me that he executed the same as his free act and deed and the free act and deed of the Investor.

Subscribed and sworn before me this ___ day of _________, 20___.

NOTARY PUBLIC

COUNTY OF

STATE OF

My commission expires the ___ day of __________________, 20___.

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EXHIBIT F-1

FORM OF INVESTMENT LETTER

____________________[Date]

[DEPOSITOR]

JPMorgan Chase Bank, N.A.
4 New York Plaza, 6th Floor
New York, New York 10004

Wells Fargo Bank, National Association
Sixth Street and Marquette Avenue
Minneapolis, Minnesota 55479

Structured Asset Mortgage Investments II Inc.
383 Madison Avenue
New York, New York 10167

Re: Structured Asset Mortgage Investments II Trust 2005-AR2, Mortgage Pass-Through Certificates Series 2005-AR2 (the "Certificates"), including the [Class B-4, Class B-5, Class B-6] Certificates (the "Privately Offered Certificates")

Dear Ladies and Gentlemen:

In connection with our purchase of Privately Offered Certificates, we confirm that:

(i) we understand that the Privately Offered Certificates are not being registered under the Securities Act of 1933, as amended (the "Act"), or any applicable state securities or "Blue Sky" laws, and are being sold to us in a transaction that is exempt from the registration requirements of such laws;

(ii) any information we desired concerning the Certificates, including the Privately Offered Certificates, the trust in which the Certificates represent the entire beneficial ownership interest (the "Trust") or any other matter we deemed relevant to our decision to purchase Privately Offered Certificates has been made available to us;

(iii) we are able to bear the economic risk of investment in Privately Offered Certificates; we are an institutional "accredited investor" as defined in Section 501(a) of Regulation D promulgated under the Act and a sophisticated institutional investor;

(iv) we are acquiring Privately Offered Certificates for our own account, not as nominee for any other person, and not with a present view to any distribution or other disposition of the Privately Offered Certificates;

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(v) we agree the Privately Offered Certificates must be held indefinitely by us (and may not be sold, pledged, hypothecated or in any way disposed of) unless subsequently registered under the Act and any applicable state securities or "Blue Sky" laws or an exemption from the registration requirements of the Act and any applicable state securities or "Blue Sky" laws is available;

(vi) we agree that in the event that at some future time we wish to dispose of or exchange any of the Privately Offered Certificates (such disposition or exchange not being currently foreseen or contemplated), we will not transfer or exchange any of the Privately Offered Certificates unless:

(A) (1) the sale is to an Eligible Purchaser (as defined below), (2) if required by the Pooling and Servicing Agreement (as defined below), a letter to substantially the same effect as either this letter or, if the Eligible Purchaser is a Qualified Institutional Buyer as defined under Rule 144A of the Act, the Rule 144A and Related Matters Certificate in the form attached as Exhibit F-2 to the Pooling and Servicing Agreement (as defined below) (or such other documentation as may be acceptable to the Trustee and the Certificate Registrar (each such term as defined below)) is executed promptly by the purchaser and delivered to the addressees hereof and (3) all offers or solicitations in connection with the sale, whether directly or through any agent acting on our behalf, are limited only to Eligible Purchasers and are not made by means of any form of general solicitation or general advertising whatsoever; and

(B) if the Privately Offered Certificate is not registered under the Act (as to which we acknowledge you have no obligation), the Privately Offered Certificate is sold in a transaction that does not require registration under the Act and any applicable state securities or "blue sky" laws and, if JPMorgan Chase Bank, N.A. (the "Trustee") or Wells Fargo Bank, National Association (the "Certificate Registrar") so requests, a satisfactory Opinion of Counsel (as defined in the Pooling and Servicing Agreement) is furnished to such effect, which Opinion of Counsel shall be an expense of the transferor or the transferee;

(vii) we agree to be bound by all of the terms (including those relating to restrictions on transfer) of the Pooling and Servicing Agreement, pursuant to which the Trust was formed; we have reviewed carefully and understand the terms of the Pooling and Servicing Agreement;

(viii) we either: (i) are not acquiring the Privately Offered Certificate directly or indirectly by, or on behalf of, an employee benefit plan or other retirement arrangement which is subject to Title I of the Employee Retirement Income Security Act of 1974, as amended, and/or Section 4975 of the Internal Revenue Code of 1986, as amended, or (ii) are providing a representation or an Opinion of Counsel to the effect that the proposed transfer and/or holding of a Privately Offered Certificate and the servicing, management and/or operation of the Trust and its assets: (I) will not result in any prohibited transaction unless it is covered under an individual or prohibited transaction class exemption, including, but not limited to, Class Prohibited Transaction Exemption ("PTCE") 84-14, PTCE 91-38, PTCE 90-1, PTCE 95-60, PTCE 96-23 or Section 401(c) of ERISA and the regulations promulgated thereunder; (II) will not constitute or result in the assets of the Trust being deemed to be "plan assets" subject to the prohibited transaction provisions of ERISA or Section 4975 of the Code; and (III) will not give rise to any

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additional fiduciary duties on the part of the Seller, the Master Servicer, the Certificate Registrar, the Securities Administrator, any Servicer or the Trustee.

(ix) We understand that each of the [Class B-4, Class B-5 and Class B-6] Certificates bears, and will continue to bear, a legend to substantially the following effect: "THIS CERTIFICATE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER ANY STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING THIS CERTIFICATE, AGREES THAT THIS CERTIFICATE MAY BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY IN COMPLIANCE WITH THE SECURITIES ACT AND OTHER APPLICABLE LAWS AND ONLY (1) PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A") TO A PERSON THAT THE HOLDER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A (A "QIB"), PURCHASING FOR ITS OWN ACCOUNT OR A QIB PURCHASING FOR THE ACCOUNT OF A QIB, WHOM THE HOLDER HAS INFORMED, IN EACH CASE, THAT THE REOFFER, RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (3) IN CERTIFICATED FORM TO AN "INSTITUTIONAL ACCREDITED INVESTOR" WITHIN THE MEANING THEREOF IN RULE 501(a)(1), (2), (3) or (7) OF REGULATION D UNDER THE SECURITIES ACT OR ANY ENTITY IN WHICH ALL OF THE EQUITY OWNERS COME WITHIN SUCH PARAGRAPHS PURCHASING NOT FOR DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, SUBJECT TO (A) THE RECEIPT BY THE TRUSTEE AND THE CERTIFICATE REGISTRAR OF A LETTER SUBSTANTIALLY IN THE FORM PROVIDED IN THE AGREEMENT AND (B) THE RECEIPT BY THE TRUSTEE AND THE CERTIFICATE REGISTRAR OF SUCH OTHER EVIDENCE ACCEPTABLE TO THE TRUSTEE AND THE CERTIFICATE REGISTRAR THAT SUCH REOFFER, RESALE, PLEDGE OR TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT AND OTHER APPLICABLE LAWS OR IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE UNITED STATES AND ANY OTHER APPLICABLE JURISDICTION. NO TRANSFER OF THIS CERTIFICATE MAY BE MADE TO ANY PERSON, UNLESS THE TRANSFEREE PROVIDES EITHER A CERTIFICATION PURSUANT TO SECTION 5.07 OF THE AGREEMENT OR ANY OPINION OR COUNSEL SATISFACTORY TO THE MASTER SERVICER, THE TRUSTEE, THE CERTIFICATE REGISTRAR AND THE SECURITIES ADMINISTRATOR THAT THE PURCHASE OF THIS CERTIFICATE WILL NOT CONSTITUTE OR RESULT IN THE ASSETS OF THE TRUST BEING DEEMED TO BE "PLAN ASSETS" SUBJECT TO THE PROHIBITED TRANSACTION PROVISIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE CODE, WILL NOT RESULT IN A NON-EXEMPT PROHIBITED TRANSACTION UNDER ERISA OR SECTION 4975 OF THE CODE AND WILL NOT SUBJECT THE MASTER SERVICER, THE TRUSTEE, THE CERTIFICATE REGISTRAR, THE SELLER, ANY SERVICER OR THE SECURITIES ADMINISTRATOR TO ANY OBLIGATION OR LIABILITY IN ADDITION TO THOSE UNDERTAKEN IN THE AGREEMENT."

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"Eligible Purchaser" means a corporation, partnership or other entity which we have reasonable grounds to believe and do believe (i) can make representations with respect to itself to substantially the same effect as the representations set forth herein, and (ii) is either a Qualified Institutional Buyer as defined under Rule 144A of the Act or an institutional "Accredited Investor" as defined under Rule 501 of the Act.

Terms not otherwise defined herein shall have the meanings assigned to them in the Pooling and Servicing Agreement, dated as of May 1, 2005, among Structured Asset Mortgage Investments II Inc., EMC Mortgage Corporation, Wells Fargo Bank, National Association and JPMorgan Chase Bank, N.A., as Trustee (the "Pooling and Servicing Agreement").

If the Purchaser proposes that its Certificates be registered in the name of a nominee on its behalf, the Purchaser has identified such nominee below, and has caused such nominee to complete the Nominee Acknowledgment at the end of this letter.

Name of Nominee (if any): ____________________

IN WITNESS WHEREOF, this document has been executed by the undersigned who is duly authorized to do so on behalf of the undersigned Eligible Purchaser on the ___ day of ________, 20___.

Very truly yours,

[PURCHASER]

By: ________________________________
(Authorized Officer)

[By:________________________________
Attorney-in-fact]

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A 548

Nominee Acknowledgment

The undersigned hereby acknowledges and agrees that as to the Certificates being registered in its name, the sole beneficial owner thereof is and shall be the Purchaser identified above, for whom the undersigned is acting as nominee.

[NAME OF NOMINEE]

By:________________________________
(Authorized Officer)

[By: ________________________________
Attorney-in-fact]

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EXHIBIT F-2

FORM OF RULE 144A AND RELATED MATTERS CERTIFICATE

_____________________[Date]

[DEPOSITOR]

JPMorgan Chase Bank, N.A.
4 New York Plaza, 6th Floor
New York, New York 10004

Wells Fargo Bank, National Association
Sixth Street and Marquette Avenue
Minneapolis, Minnesota 55479

Structured Asset Mortgage Investments II Inc.
383 Madison Avenue
New York, New York 10179

Re: Structured Asset Mortgage Investments II Trust 2005-AR2, Mortgage Pass-Through Certificates, Series 2005-AR2 Class B-4, Class B-5 and Class B-6 Certificates (the "Privately Offered Certificates")

Dear Ladies and Gentlemen:

In connection with our purchase of Privately Offered Certificates, the undersigned certifies to each of the parties to whom this letter is addressed that it is a qualified institutional buyer (as defined in Rule 144A under the Securities Act of 1933, as amended (the "Act")) as follows:

1. It owned and/or invested on a discretionary basis eligible securities (excluding affiliate's securities, bank deposit notes and CD's, loan participations, repurchase agreements, securities owned but subject to a repurchase agreement and swaps), as described below:

Date: _____________, 20__ (must be on or after the close of its most recent fiscal year)

Amount: $ ____________________; and

2. The dollar amount set forth above is:

a. greater than $100 million and the undersigned is one of the following entities:

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(i) an insurance company as defined in Section 2(a)(13) of the Act[1]; or

(ii) an investment company registered under the Investment Company Act of 1940, as amended (the "Investment Company Act"), or any "business development company" as defined in Section 2(a)(48) of the Investment Company Act; or

(iii) a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; or

(iv) a plan (i) established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, the laws of which permit the purchase of securities of this type, for the benefit of its employees and (ii) the governing investment guidelines of which permit the purchase of securities of this type; or

(v) a "business development company" as defined in Section 202(a)(22) of the Investment Advisers Act of 1940; or

(vi) a corporation (other than a U.S. bank, savings and loan association or equivalent foreign institution), partnership, Massachusetts or similar business trust, or an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

(vii) a U.S. bank, savings and loan association or equivalent foreign institution, which has an audited net worth of at least $25 million as demonstrated in its latest annual financial statements; or

(viii) an investment adviser registered under the Investment Advisers Act; or

b. greater than $10 million, and the undersigned is a broker-dealer registered with the Securities and Exchange Commission ("SEC"); or

c. less than $10 million, and the undersigned is a broker-dealer registered with the SEC and will only purchase Rule 144A securities in transactions in which it acts as a riskless principal (as defined in Rule 144A); or

d. less than $100 million, and the undersigned is an investment company registered under the Investment Company Act of 1940, which, together with one or more registered investment companies having the same or an affiliated investment adviser, owns at least $100 million of eligible securities; or

e. less than $100 million, and the undersigned is an entity, all the equity owners of which are "qualified institutional buyers."

---

1 A purchase by an insurance company for one or more of its "separate accounts", as defined by Section 2(a)(37) of the Investment Company Act of 1940, as amended, which are neither registered nor required to be registered thereunder, shall be deemed to be a purchase for the account of such insurance company.

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A 551

The undersigned further certifies that it is purchasing a Privately Offered Certificate for its own account or for the account of others that independently qualify as "Qualified Institutional Buyers" as defined in Rule 144A. It is aware that the sale of the Privately Offered Certificates is being made in reliance on its continued compliance with Rule 144A. It is aware that the transferor may rely on the exemption from the provisions of Section 5 of the Act provided by Rule 144A. The undersigned understands that the Privately Offered Certificates may be resold, pledged or transferred only to (i) a person reasonably believed to be a Qualified Institutional Buyer that purchases for its own account or for the account of a Qualified Institutional Buyer to whom notice is given that the resale, pledge or transfer is being made in reliance in Rule 144A, or (ii) an institutional "accredited investor," as such term is defined under Rule 501(a) of the Act, in a transaction that otherwise does not constitute a public offering.

The undersigned agrees that if at some future time it wishes to dispose of or exchange any of the Privately Offered Certificates, it will not transfer or exchange any of the Privately Offered Certificates to a Qualified Institutional Buyer without first obtaining a Rule 144A and Related Matters Certificate in the form hereof from the transferee and delivering such certificate to the addressees hereof. Prior to making any transfer of Privately Offered Certificates, if the proposed transferee is an institutional "accredited investor," the transferor shall obtain from the transferee and deliver to the addressees hereof an Investment Letter in the form attached as Exhibit F-1 to the Pooling and Servicing Agreement, dated as of May 1, 2005, among Structured Asset Mortgage Investments II Inc., EMC Mortgage Corporation, Wells Fargo Bank, National Association and JPMorgan Chase Bank, N.A., as Trustee, pursuant to Certificates were issued.

The undersigned certifies that it either: (i) is not acquiring the Privately Offered Certificate directly or indirectly by, or on behalf of, an employee benefit plan or other retirement arrangement which is subject to Title I of the Employee Retirement Income Security Act of 1974, as amended, and/or Section 4975 of the Internal Revenue Code of 1986, as amended, or (ii) is providing a representation or an opinion of counsel to the effect that the proposed transfer and/or holding of a Privately Offered Certificate and the servicing, management and/or operation of the Trust and its assets: (I) will not result in any prohibited transaction unless it is covered under an individual or class prohibited transaction exemption, including, but not limited to, Class Prohibited Transaction Exemption ("PTCE") 84-14, PTCE 91-38, PTCE 90-1, PTCE 95-60, PTCE 96-23 or Section 401(c) of ERISA and the regulations to be promulgated thereunder; (II) will not constitute or result in the assets of the Trust being deemed to be "plan assets" subject to the prohibited transaction provisions of ERISA or Section 4975 of the Code; and (III) will not give rise to any additional fiduciary duties on the part of the Depositor, the Master Servicer, the Certificate Registrar, the Securities Administrator, any Servicer or the Trustee.

If the Purchaser proposes that its Certificates be registered in the name of a nominee on its behalf, the Purchaser has identified such nominee below, and has caused such nominee to complete the Nominee Acknowledgment at the end of this letter.

Name of Nominee (if any):

IN WITNESS WHEREOF, this document has been executed by the undersigned who is duly authorized to do so on behalf of the undersigned purchaser (the "Purchaser") on the ____ day of ___________, 20___.

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A 552

Very truly yours,

[PURCHASER]

By: ___________________________________

(Authorized Officer)

[By: __________________________________

Attorney-in-fact]

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A 553

Nominee Acknowledgment

The undersigned hereby acknowledges and agrees that as to the Certificates being registered in its name, the sole beneficial owner thereof is and shall be the Purchaser identified above, for whom the undersigned is acting as nominee.

[NAME OF NOMINEE]

By: ________________________________
(Authorized Officer)

[By: ________________________________
Attorney-in-fact]

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EXHIBIT G

FORM OF CUSTODIAL AGREEMENT

THIS CUSTODIAL AGREEMENT (as amended and supplemented from time to time, the "Agreement"), dated as of May 1, 2005, by and among JPMORGAN CHASE BANK, N.A., as trustee (including its successors under the Pooling and Servicing Agreement defined below, the "Trustee"), STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., as depositor (together with any successor in interest, the "Depositor"), WELLS FARGO BANK, NATIONAL ASSOCIATION, as master servicer and securities administrator (together with any successor in interest or successor under the Pooling and Servicing Agreement referred to below, the "Master Servicer") and WELLS FARGO BANK, NATIONAL ASSOCIATION, as custodian (together with any successor in interest or any successor appointed hereunder, the "Custodian").

WITNESSETH THAT:

WHEREAS, the Depositor, the Master Servicer, the Trustee and EMC Mortgage Corporation (the "Seller") have entered into a Pooling and Servicing Agreement, dated as of May 1, 2005, relating to the issuance of Structured Asset Mortgage Investments II Trust 2005-AR2, Mortgage Pass-Through Certificates, Series 2005-AR2 (as in effect on the date of this agreement, the "Original Pooling and Servicing Agreement," and as amended and supplemented from time to time, the "Pooling and Servicing Agreement"); and

WHEREAS, the Custodian has agreed to act as agent for the Trustee for the purposes of receiving and holding certain documents and other instruments delivered by (i) the Depositor or the Master Servicer under the Pooling and Servicing Agreement and (ii) the related Servicer under their respective Servicing Agreements, all upon the terms and conditions and subject to the limitations hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the Trustee, the Depositor, the Master Servicer and the Custodian hereby agree as follows:

ARTICLE I
DEFINITIONS

Capitalized terms used in this Agreement and not defined herein shall have the meanings assigned in the Original Pooling and Servicing Agreement, unless otherwise required by the context herein.

ARTICLE II
CUSTODY OF MORTGAGE DOCUMENTS

Section 2.1 Custodian to Act as Agent: Acceptance of Mortgage Files. The Custodian, as the duly appointed agent of the Trustee for these purposes, acknowledges (subject to any exceptions noted in the Initial Certification referred to in Section 2.3(a)) receipt of the Mortgage Files relating to the Mortgage Loans identified on Schedule 1 attached hereto (as such Schedule shall be updated from time to time) (the "Mortgage Files") and declares that it holds

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and will hold such Mortgage Files as agent for the Trustee, in trust, for the use and benefit of all present and future Certificateholders.

Section 2.2 Recordation of Assignments. If any Mortgage File includes one or more assignments of Mortgage to the Trustee in a state which is specifically excluded from the Opinion of Counsel delivered by the Seller to the Trustee and the Custodian pursuant to the provisions of Section 2.01 of the Pooling and Servicing Agreement, each such assignment shall be delivered by the Custodian to the Depositor for the purpose of recording it in the appropriate public office for real property records, and the Depositor, at no expense to the Custodian, shall promptly cause to be recorded in the appropriate public office for real property records each such assignment of Mortgage and, upon receipt thereof from such public office, shall return each such assignment of Mortgage to the Custodian.

Section 2.3 Review of Mortgage Files.

(a) On or prior to the Closing Date, in accordance with Section 2.02 of the Pooling and Servicing Agreement, the Custodian shall deliver to the Depositor and the Trustee an Initial Certification in the form annexed hereto as Exhibit One evidencing receipt (subject to any exceptions noted therein) of a Mortgage File for each of the Mortgage Loans listed on Schedule 1 attached hereto (the "Mortgage Loan Schedule").

(b) Within 90 days of the Closing Date (or, with respect to any Substitute Mortgage Loans, within 5 Business Days after the receipt by the Custodian thereof), the Custodian agrees, for the benefit of Certificateholders, to review, in accordance with the provisions of Section 2.02 of the Pooling and Servicing Agreement, each such document, and shall execute and deliver to the Depositor and the Trustee an Interim Certification in the form annexed hereto as Exhibit Two to the effect that all such documents have been executed and received and that such documents relate to the Mortgage Loans identified on the Mortgage Loan Schedule, except for any exceptions listed on Schedule A attached to such Interim Certification. The Custodian shall be under no duty or obligation to inspect, review or examine said documents, instruments, certificates or other papers to determine that the same are genuine, enforceable, or appropriate for the represented purpose or that they have actually been recorded or that they are other than what they purport to be on their face.

(c) Not later than 180 days after the Closing Date or, with respect to any Substitute Mortgage Loans, within 5 Business Days after the receipt by the Custodian thereof), the Custodian shall review the Mortgage Files as provided in Section 2.02 of the Pooling and Servicing Agreement and execute and deliver to the Depositor and the Trustee (and if the Custodian is not also the Master Servicer, then to the Master Servicer) a Final Certification in the form annexed hereto as Exhibit Three evidencing the completeness of the Mortgage Files.

(d) In reviewing the Mortgage Files as provided herein and in the Pooling and Servicing Agreement, the Custodian shall make no representation as to and shall not be responsible to verify (i) the validity, legality, enforceability, due authorization, recordability, sufficiency or genuineness of any of the documents included in any Mortgage File or (ii) the collectibility, insurability, effectiveness or suitability of any of the documents in any Mortgage File.

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Upon receipt of written request from the Trustee, the Custodian shall as soon as practicable supply the Trustee with a list of all of the documents relating to the Mortgage Loans then contained in the Mortgage Files.

Section 2.4 Notification of Breaches of Representations and Warranties. Upon discovery by the Custodian of a breach of any representation or warranty made by the Depositor as set forth in the Pooling and Servicing Agreement with respect to a Mortgage Loan relating to a Mortgage File, the Custodian shall give prompt written notice to the Company, the applicable Servicer and the Trustee.

Section 2.5 Custodian to Cooperate: Release of Mortgage Files. Upon receipt of written notice from the Trustee that the Mortgage Loan Seller has repurchased a Mortgage Loan pursuant to Article II of the Pooling and Servicing Agreement, and that the Repurchase Price therefor has been deposited in the Distribution Account, and a Request for Release (as defined below), the Custodian agrees to promptly release to the Mortgage Loan Seller the related Mortgage File.

Upon the Custodian's receipt of a request for release (a "Request for Release") substantially in the form of Exhibit D to the Pooling and Servicing Agreement signed by a Servicing Officer of the related Servicer stating that it has received payment in full of a Mortgage Loan or that payment in full will be escrowed in a manner customary for such purposes, the Custodian agrees to promptly release to such Servicer the related Mortgage File. The Depositor shall deliver to the Custodian, and the Custodian agrees to accept, the Mortgage Note and other documents constituting the Mortgage File with respect to any Substitute Mortgage Loan, which documents the Custodian will review to the extent provided in Article II of the Pooling and Servicing Agreement.

From time to time as is appropriate for the servicing or foreclosure of any Mortgage Loan, including, for this purpose, collection under any Primary Mortgage Insurance Policy, the related Servicer shall (or, if the related Servicer does not, then the Master Servicer may) deliver to the Custodian a Request for Release signed by a Servicing Officer requesting that possession of all of the related Mortgage File be released to such Servicer and certifying as to the reason for such release and that such release will not invalidate any insurance coverage provided in respect of the related Mortgage Loan under any of the Insurance Policies. Upon receipt of the foregoing, the Custodian shall deliver such Mortgage File to the related Servicer. The related Servicer shall cause each Mortgage File or any document therein so released to be returned to the Custodian when the need therefor by such Servicer no longer exists, unless (i) such Mortgage Loan has been liquidated and the Liquidation Proceeds relating to the related Mortgage Loan have been deposited in the Distribution Account or (ii) such Mortgage File or such document has been delivered to an attorney, or to a public trustee or other public official as required by law, for purposes of initiating or pursuing legal action or other proceedings for the foreclosure of the related Mortgaged Property either judicially or non-judicially, and the related Servicer has delivered to the Custodian a certificate of a Servicing Officer certifying as to the name and address of the Person to which such Mortgage File or such document was delivered and the purpose or purposes of such delivery.

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At any time that a Servicer or the Master Servicer is required to deliver to the Custodian a Request for Release, such Servicer or the Master Servicer shall deliver two copies of the Request for Release if delivered in hard copy or such Servicer or the Master Servicer may furnish such Request for Release electronically to the Custodian, in which event the Servicing Officer transmitting the same shall be deemed to have signed such Request for Release. In connection with any Request for Release of a Mortgage File because of a repurchase of a Mortgage Loan, the assignment of mortgage and the related Mortgage Note shall be returned to the related Servicer or the Master Servicer, as applicable, for execution and endorsement, respectively, pursuant to a power of attorney from the Trustee and for delivery to the Seller. If the related Servicer or the Master Servicer does not have a power of attorney from the Trustee to execute the applicable assignment and to endorse the related Mortgage Note, such Request for Release shall be accompanied by an assignment of mortgage, without recourse, executed by the Trustee to the Seller and the related Mortgage Note shall be endorsed without recourse by the Trustee (if not in blank) and be returned to the related Servicer or the Master Servicer, as applicable, for delivery to the Seller; provided, however, that in the case of a Mortgage Loan that is registered on the MERS® System, no assignment of mortgage or endorsement of the Mortgage Note by the Trustee, or by the related Servicer or the Master Servicer pursuant to a power of attorney from the Trustee, shall be required. In connection with any Request for Release of a Mortgage File because of the payment in full of a Mortgage Loan and if the related Servicer or the Master Servicer does not have a power of attorney from the Trustee to execute the applicable certificate of satisfaction or similar instrument, such Request for Release shall be accompanied by a certificate of satisfaction or other similar instrument to be executed by or on behalf of the Trustee and returned to the related Servicer or the Master Servicer, as applicable.

Section 2.6 Assumption Agreements. In the event that any assumption agreement, substitution of liability agreement or sale of servicing agreement is entered into with respect to any Mortgage Loan subject to this Agreement in accordance with the terms and provisions of the Pooling and Servicing Agreement, the Master Servicer, to the extent provided in the related Servicing Agreement, shall cause the related Servicer to notify the Custodian that such assumption agreement, substitution of liability agreement or sale of servicing agreement has been completed by forwarding to the Custodian the original of such assumption agreement, substitution of liability agreement or sale of servicing agreement, which shall be added to the related Mortgage File and, for all purposes, shall be considered a part of such Mortgage File to the same extent as all other documents and instruments constituting parts thereof.

ARTICLE III
CONCERNING THE CUSTODIAN

Section 3.1 Custodian a Bailee and Agent of the Trustee. With respect to each Mortgage Note and other documents constituting each Mortgage File which are delivered to the Custodian, the Custodian is exclusively the bailee and agent of the Trustee and has no instructions to hold any Mortgage Note or Mortgage File for the benefit of any person other than the Trustee and the Certificateholders and undertakes to perform such duties and only such duties as are specifically set forth in this Agreement. Except upon compliance with the provisions of Section 2.5 of this Agreement, no Mortgage Note or Mortgage File shall be delivered by the Custodian to the Depositor, the Seller, any Servicer or the Master Servicer or otherwise released from the possession of the Custodian.

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Section 3.2 Reserved.

Section 3.3 Custodian May Own Certificates. The Custodian in its individual or any other capacity may become the owner or pledgee of Certificates with the same rights it would have if it were not Custodian.

Section 3.4 Master Servicer to Pay Custodian's Fees and Expenses. The Master Servicer covenants and agrees to pay to the Custodian from time to time, and the Custodian shall be entitled to, reasonable compensation for all services rendered by it in the exercise and performance of any of the powers and duties hereunder of the Custodian, and the Master Servicer will pay or reimburse the Custodian upon its request for all reasonable expenses, disbursements and advances incurred or made by the Custodian in accordance with any of the provisions of this Agreement (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ), except any such expense, disbursement or advance as may arise from its negligence or bad faith, to the extent that such cost or expense is indemnified by the Depositor pursuant to the Pooling and Servicing Agreement.

Section 3.5 Custodian May Resign; Trustee May Remove Custodian. The Custodian may resign from the obligations and duties hereby imposed upon it as such obligations and duties relate to its acting as Custodian of the Mortgage Loans. Upon receiving such notice of resignation, the Trustee shall either take custody of the Mortgage Files itself and give prompt notice thereof to the Depositor, the Master Servicer, the Servicers and the Custodian, or promptly appoint a successor Custodian by written instrument, in duplicate, one copy of which instrument shall be delivered to the resigning Custodian and one copy to the successor Custodian. If the Trustee shall not have taken custody of the Mortgage Files and no successor Custodian shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Custodian may petition any court of competent jurisdiction for the appointment of a successor Custodian.

The Trustee may remove the Custodian at any time with the consent of the Master Servicer. In such event, the Trustee shall appoint, or petition a court of competent jurisdiction to appoint, a successor Custodian hereunder. Any successor Custodian shall be a depository institution subject to supervision or examination by federal or state authority, shall be able to satisfy the other requirements contained in Section 3.7 and shall be unaffiliated with any Servicer or the Depositor.

Any resignation or removal of the Custodian and appointment of a successor Custodian pursuant to any of the provisions of this Section 3.5 shall become effective upon acceptance of appointment by the successor Custodian. The Trustee shall give prompt notice to the Depositor and the Master Servicer of the appointment of any successor Custodian. No successor Custodian shall be appointed by the Trustee without the prior approval of the Depositor and the Master Servicer.

Section 3.6 Merger or Consolidation of Custodian. Any Person into which the Custodian may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Custodian shall be a party, or any Person succeeding to the business of the Custodian, shall be the successor of the

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Custodian hereunder (provided such Person shall satisfy the requirements set forth in Section 3.7), without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 3.7 Representations of the Custodian. The Custodian hereby represents, and any successor Custodian hereunder shall represent, that it is a depository institution subject to supervision or examination by a federal or state authority, has a combined capital and surplus of at least $15,000,000 and is qualified to do business in the jurisdictions in which it will hold any Mortgage File.

ARTICLE IV
MISCELLANEOUS PROVISIONS

Section 4.1 Notices. All notices, requests, consents and demands and other communications required under this Agreement or pursuant to any other instrument or document delivered hereunder shall be in writing and, unless otherwise specifically provided, may be delivered personally, by telegram or telex, or by registered or certified mail, postage prepaid, return receipt requested, at the addresses specified on the signature page hereof (unless changed by the particular party whose address is stated herein by similar notice in writing), in which case the notice will be deemed delivered when received.

Section 4.2 Amendments. No modification or amendment of or supplement to this Agreement shall be valid or effective unless the same is in writing and signed by all parties hereto, and neither the Depositor, the Master Servicer nor the Trustee shall enter into any amendment hereof except as permitted by the Pooling and Servicing Agreement. The Trustee shall give prompt notice to the Custodian of any amendment or supplement to the Pooling and Servicing Agreement and furnish the Custodian with written copies thereof.

Section 4.3 GOVERNING LAW. THIS AGREEMENT SHALL BE DEEMED A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO ITS CONFLICT OF LAWS RULES (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, WHICH SHALL APPLY HERETO).

Section 4.4 Recordation of Agreement. To the extent permitted by applicable law, this Agreement is subject to recordation in all appropriate public offices for real property records in all the counties or other comparable jurisdictions in which any or all of the properties subject to the Mortgages are situated, and in any other appropriate public recording office or elsewhere, such recordation to be effected by the Depositor and at the Trust's expense on direction by the Trustee, but only upon direction accompanied by an Opinion of Counsel reasonably satisfactory to the Depositor to the effect that the failure to effect such recordation is likely to materially and adversely affect the interests of the Certificateholders.

For the purpose of facilitating the recordation of this Agreement as herein provided and for other purposes, this Agreement may be executed simultaneously in any number of

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counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument.

Section 4.5 Severability of Provisions. If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement or of the Certificates or the rights of the holders thereof.

[Signature page follows]

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IN WITNESS WHEREOF, this Agreement is executed as of the date first above written.

Address: 4 New York Plaza, 6th Floor New York, New York 10004 Attention: Worldwide Securities Services-Global Debt SAMI II Series 2005-AR2 Telecopy: (212) 623-5930	JPMORGAN CHASE BANK, N.A., as Trustee By:______________________________ Name: Title:
Address: 383 Madison Avenue New York, New York 10179	STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. By:______________________________ Name: Title:
Address: 9062 Old Annapolis Road Columbia, Maryland 21045	WELLS FARGO BANK, NATIONAL ASSOCIATION, as Master Servicer By:______________________________ Name: Title:
Address: 9062 Old Annapolis Road Columbia, Maryland 21045	WELLS FARGO BANK, NATIONAL ASSOCIATION, as Custodian By:______________________________ Name: Title:

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A 562

STATE OF NEW YORK)
: ss:
COUNTY OF NEW YORK)

On the 31st day of May 2005 before me, a notary public in and for said State, personally appeared _______________, known to me to be a ________________of JPMorgan Chase Bank, N.A., a banking association organized under the laws of the United States of America that executed the within instrument, and also known to me to be the person who executed it on behalf of said banking association and acknowledged to me that such banking association executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

____
Notary Public

[SEAL]

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A 563

STATE OF MARYLAND)
: ss:
COUNTY OF HOWARD)

On the 31st day of May 2005 before me, a notary public in and for said State, personally appeared _________________, known to me to be an _______ of Wells Fargo Bank, National Association, a national banking association that executed the within instrument, and also known to me to be the person who executed it on behalf of said national banking association, and acknowledged to me that such national banking association executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

[SEAL]

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A 564

STATE OF NEW YORK)
: ss:
COUNTY OF NEW YORK)

On the 31st day of May 2005 before me, a notary public in and for said State, personally appeared _________________, known to me to be a _________________ of Structured Asset Mortgage Investments II Inc., one of the corporations that executed the within instrument, and also known to me to be the person who executed it on behalf of said corporation, and acknowledged to me that such corporation executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

[Notarial Seal]

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A 565

STATE OF MARYLAND)
: ss:
COUNTY OF HOWARD)

On the 31st day of May 2005 before me, a notary public in and for said State, personally appeared ____________, known to me to be a ______________ of Wells Fargo Bank, National Association, one of the corporations that executed the within instrument, and also known to me to be the person who executed it on behalf of said corporation, and acknowledged to me that such corporation executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

____
Notary Public

[Notarial Seal]

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SCHEDULE 1

Mortgage Loans

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A 567

EXHIBIT ONE

FORM OF CUSTODIAN INITIAL CERTIFICATION

May 31, 2005

JPMorgan Chase Bank, N.A.
4 New York Plaza, 6th Floor
New York, New York 10004

Structured Asset Mortgage Investments II Inc.
383 Madison Avenue
New York, New York 10179

Attention: Structured Asset Mortgage Investments II Inc., Series 2005-AR2

Re: Custodial Agreement, dated as of May 31, 2005, by and among JPMorgan Chase Bank, N.A., Structured Asset Mortgage Investments II Inc. and Wells Fargo Bank, National Association relating to Structured Asset Mortgage Investments II Trust 2005-AR2, Mortgage Pass-Through Certificates, Series 2005-AR2

Ladies and Gentlemen:

In accordance with Section 2.3 of the above-captioned Custodial Agreement, and subject to Section 2.02 of the Pooling and Servicing Agreement, the undersigned, as Custodian, hereby certifies that it has received a Mortgage File (which contains an original Mortgage Note or lost note affidavit) to the extent required in Section 2.01 of the Pooling and Servicing Agreement with respect to each Mortgage Loan listed in the Mortgage Loan Schedule, with any exceptions listed on Schedule A attached hereto.

Capitalized words and phrases used herein shall have the respective meanings assigned to them in the above-captioned Custodial Agreement.

WELLS FARGO BANK, NATIONAL ASSOCIATION

By:_______________________________
Name: ________________
Title: ________________

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A 568

Schedule A to Exhibit One

Exceptions

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A 569

EXHIBIT TWO

FORM OF CUSTODIAN INTERIM CERTIFICATION

_______ __, 20__

JPMorgan Chase Bank, N.A.
4 New York Plaza, 6th Floor
New York, New York 10004

Structured Asset Mortgage Investments II Inc.
383 Madison Avenue
New York, New York 10179

Attention: Structured Asset Mortgage Investments II Inc., Series 2005-AR2

Re: Custodial Agreement, dated as of May 31, 2005, by and among JPMorgan Chase Bank, N.A., Structured Asset Mortgage Investments II Inc. and Wells Fargo Bank, National Association relating to Structured Asset Mortgage Investments II Trust 2005-AR2, Mortgage Pass-Through Certificates, Series 2005-AR2

Ladies and Gentlemen:

In accordance with Section 2.3 of the above-captioned Custodial Agreement, the undersigned, as Custodian, hereby certifies that it has received a Mortgage File to the extent required pursuant to Section 2.01 of the Pooling and Servicing Agreement with respect to each Mortgage Loan listed in the Mortgage Loan Schedule, and it has reviewed the Mortgage File and the Mortgage Loan Schedule and has determined that: all required documents have been executed and received and that such documents related to the Mortgage Loans identified on the Mortgage Loan Schedule, with any exceptions listed on Schedule A attached hereto.

Capitalized words and phrases used herein shall have the respective meanings assigned to them in the above-captioned Custodial Agreement.

WELLS FARGO BANK, NATIONAL ASSOCIATION

By:
Name:
Title:

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Schedule A to Exhibit Two

Exceptions

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A 571

EXHIBIT THREE

FORM OF CUSTODIAN FINAL CERTIFICATION

_______ __, 20__

JPMorgan Chase Bank, N.A.
4 New York Plaza, 6th Floor
New York, New York 10004

Structured Asset Mortgage Investments II Inc.
383 Madison Avenue
New York, New York 10179

Attention: Structured Asset Mortgage Investments II Inc., Series 2005-AR2

Re: Custodial Agreement, dated as of May 31, 2005, by and among JPMorgan Chase Bank, N.A., Structured Asset Mortgage Investments II Inc. and Wells Fargo Bank, National Association relating to Structured Asset Mortgage Investments II Trust 2005-AR2, Mortgage Pass-Through Certificates, Series 2005-AR2

Ladies and Gentlemen:

In accordance with Section 2.3 of the above-captioned Custodial Agreement, the undersigned, as Custodian, hereby certifies that it has received a Mortgage File to the extent required pursuant to the Pooling and Servicing Agreement with respect to each Mortgage Loan listed in the Mortgage Loan Schedule, and it has reviewed the Mortgage File and the Mortgage Loan Schedule and has determined that an original of each document related thereto required to be recorded has been returned from the related recording office with evidence of recording thereon, or a certified copy has been obtained from the related recording office, with any exceptions listed on Schedule A attached hereto.

Capitalized words and phrases used herein shall have the respective meanings assigned to them in the above-captioned Custodial Agreement.

WELLS FARGO BANK, NATIONAL
ASSOCIATION

By:
Name:
Title:

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EXHIBIT H-1

EMC MORTGAGE CORPORATION
AND
EVERHOME MORTGAGE COMPANY
SUBSERVICING AGREEMENT
DATED AS OF AUGUST 1, 2002

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EXHIBIT H-2

COUNTRYWIDE HOME LOANS, INC.
AND
EMC MORTGAGE CORPORATION
SELLER'S WARRANTIES AND SERVICING AGREEMENT,
DATED SEPTEMBER 1, 2002 AS AMENDED

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EXHIBIT H-3

WASHINGTON MUTUAL BANK
AND
EMC MORTGAGE CORPORATION
SERVICING AGREEMENT
DATED AS OF APRIL 1, 2005

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EXHIBIT H-4

EMC MORTGAGE CORPORATION
AND
STRUCTURED ASSET MORTGAGE INVESTMENTS II INC.
SERVICING AGREEMENT
DATED AS OF MAY 31, 2005

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confidential

EXHIBIT I

ASSIGNMENT AGREEMENTS

(Available upon request)

confidential

confidential

EXHIBIT J

MORTGAGE LOAN PURCHASE AGREEMENT

(Available upon request)

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EXHIBIT K

FORM OF TRUSTEE LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that JPMorgan Chase Bank, N.A., a banking association organized under the laws of the United States of America, having a place of business at 4 New York Plaza, 6th Floor, New York, N.Y. 10004, as Trustee (and in no personal or other representative capacity) under the Pooling and Servicing Agreement, dated as of May 1, 2005, by and among Structured Asset Mortgage Investments II Inc., the Trustee, Wells Fargo Bank, National Association and EMC Mortgage Corporation (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement"; capitalized terms not defined herein have the definitions assigned to such terms in the Agreement), relating to the Structured Asset Mortgage Investments II Trust 2005-AR2, Mortgage Pass-Through Certificates, Series 2005-AR2, hereby appoints _______________, in its capacity as a Servicer under the Agreement, as the Trustee's true and lawful Special Attorney-in-Fact, in the Trustee's name, place and stead and for the Trustee's benefit, but only in its capacity as Trustee aforesaid, to perform all acts and execute all documents as may be customary, necessary and appropriate to effectuate the following enumerated transactions in respect of any mortgage, deed of trust, promissory note or real estate owned from time to time owned (beneficially or in title, whether the Trustee is named therein as mortgagee or beneficiary or has become mortgagee or beneficiary by virtue of endorsement, assignment or other conveyance) or held by or registered to the Trustee (directly or through custodians or nominees), or in respect of which the Trustee has a security interest or other lien, all as provided under the applicable Agreement and only to the extent the respective Trustee has an interest therein under the Agreement, and in respect of which the Servicer is acting as servicer pursuant to the Agreement (the "Mortgage Documents").

This appointment shall apply to the following enumerated transactions under the Agreement only:

1. The modification or re-recording of any Mortgage Document for the purpose of correcting it to conform to the original intent of the parties thereto or to correct title errors discovered after title insurance was issued and where such modification or re-recording does not adversely affect the lien under the Mortgage Document as insured.

2. The subordination of the lien under a Mortgage Document to an easement in favor of a public utility company or a state or federal agency or unit with powers of eminent domain including, without limitation, the execution of partial satisfactions/releases, partial reconveyances and the execution of requests to trustees to accomplish same.

3. The conveyance of the properties subject to a Mortgage Document to the applicable mortgage insurer, or the closing of the title to the property to be acquired as real estate so owned, or conveyance of title to real estate so owned.

4. The completion of loan assumption and modification agreements in respect of Mortgage Documents.

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5. The full or partial satisfaction/release of a Mortgage Document or full conveyance upon payment and discharge of all sums secured thereby, including, without limitation, cancellation of the related note.

6. The assignment of any Mortgage Document, in connection with the repurchase of the mortgage loan secured and evidenced thereby.

7. The full assignment of a Mortgage Document upon payment and discharge of all sums secured thereby in conjunction with the refinancing thereof, including, without limitation, the assignment of the related note.

8. With respect to a Mortgage Document, the foreclosure, the taking of a deed in lieu of foreclosure, or the completion of judicial or non-judicial foreclosure or termination, cancellation or rescission of any such foreclosure, including, without limitation, any and all of the following acts:

   a. the substitution of trustee(s) serving under a deed of trust, in accordance with state law and the deed of trust;

   b. the preparation and issuance of statements of breach or non-performance;

   c. the preparation and filing of notices of default and/or notices of sale;

   d. the cancellation/rescission of notices of default and/or notices of sale;

   e. the taking of a deed in lieu of foreclosure; and

   f. the preparation and execution of such other documents and performance of such other actions as may be necessary under the terms of the Mortgage Document or state law to expeditiously complete said transactions in paragraphs 8(a) through 8(e), above.

9. Demand, sue for, recover, collection and receive each and every sum of money, debt, account and interest (which now is, or hereafter shall become due and payable) belonging to or claimed by the Trustee under the Mortgage Documents, and to use or take any lawful means for recovery thereof by legal process or otherwise.

10. Endorse on behalf of the Trustee all checks, drafts and/or negotiable instruments made payable to the Trustee in respect of the Mortgage Documents.

The Trustee gives the Special Attorney-in-Fact full power and authority to execute such instruments and to do and perform all and every act and thing necessary and proper to carry into effect the power or powers granted by this Limited Power of Attorney, subject to the terms and conditions set forth in the Agreement including the standard of care applicable to servicers in the Agreement, and hereby does ratify and confirm what such Special Attorney-in-Fact shall lawfully do or cause to be done by authority hereof.

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IN WITNESS WHEREOF, the Trustee has caused its corporate name and seal to be hereto signed and affixed and these presents to be acknowledged by its duly elected and authorized officer this ___ day of ___ , 2005.

JPMorgan Chase Bank, N.A., as Trustee

By:____________________________
Name:
Title:

WITNESS:

____
Name:
Title:

WITNESS:

____
Name:
Title:

STATE OF NEW YORK
SS
COUNTY OF NEW YORK

On ______________, 2005, before me, the undersigned, a Notary Public in and for said state, personally appeared __________________, personally known to me to be the person whose name is subscribed to the within instrument and to be a duly authorized and acting Senior Vice President of JPMorgan Chase Bank, N.A., and such person acknowledged to me that such person executed the within instrument in such person's authorized capacity as a Senior Vice President of JPMorgan Chase Bank, N.A., and that by such signature on the within instrument the entity upon behalf of which such person acted executed the instrument.

WITNESS my hand and official seal.

____
Notary Public

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7 *IN THE SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY*

JEFFREY R. ABRAMS, a married person, *Plaintiff,* *vs.* *TWIN FALLS, INC., a Washington Corporation,* *Defendant.*	*NO.* 15 2 04710 6 *COMPLAINT FOR QUIET TITLE TO TIMBER; DECLARATORY JUDGMENT RE: VIEW EASEMENT RIGHTS; AND FOR MODIFICATION OR RESCISSION OF BOUNDARY LINE ADJUSTMENT AGREEMENT*

COMES NOW the plaintiff, Jeffrey R. Abrams (herein "Abrams") by and through his attorney, Larry M. Trivett, and for a cause of action against the defendant, Twin Falls, Inc. (herein "Twin Falls"), states and alleges as follows:

I. PARTIES AND JURISDICTION

1.1 The plaintiff, Abrams, is the title owner of the real property and appurtenant improvements generally located at 16615 155th Avenue. NE, Arlington, Snohomish County, Washington 98223, and legally described in attached *Exhibit "A"* (herein

ORIGINAL

LARRY M. TRIVETT
Attorney At Law
1031 State Ave., Ste. 103
Marysville, Washington 98270
(360) 659-8282 / (360) 653-2525

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2 "Abrams Parcel").
3 1.2 Upon information and belief, and therefore it is
4 alleged, the defendant, Twin Falls, is a Washington
5 corporation, and at all times herein relevant, has been and now
6 operates and conducts business in Snohomish County, State of
7 Washington.
8 1.3 Upon information and belief, and therefore it is
9 alleged, the defendant, Twins Falls, is the title owner of the
10 undeveloped real property legally described in attached *Exhibit*
11 *"B"* (herein "Twin Falls Parcel").
12 1.4 The above-entitled Court has jurisdiction, and venue
13 is proper in this cause in that the real property, herein
14 described, is situated within Snohomish County, State of
15 Washington.
16 ***II. FACTUAL ALLEGATIONS***
17 2.1 Abrams re-alleges paragraphs 1.1 through 1.4 above,
18 which, by this reference, are made a part hereof as though set
19 out in full.
20 2.2 On or about February 4, 1993, Twin Falls caused to be
21 filed a "20 Acre Segregation" map comprising some 160 acres,
22 which segregation created 8 individual parcels and/or lots
23 (herein "Twin Falls Development").
24 2.3 At the time of filing the segregation, Todd Stafne
25 and his brother, Scott Stafne, were the sole shareholders of
26

LARRY M. TRIVETT
Attorney At Law
1031 State Ave., Ste. 103
Marysville, Washington 98270
(360) 659-8282 / (360) 653-2525
28

Twin Falls. Scott Stafne is an attorney, who at all times relevant herein, was licensed to practice law in Washington.

2.4 On or about the date of filing of the segregation map, Twin Falls undertook and began marketing for sale a number of the Lots within the Twin Falls development.

2.5 Through Twin Falls' marketing efforts, Abrams viewed the Twin Falls Development. Upon viewing Lots within the Development, Abrams was interested in the Abrams' Parcel. The Abrams' Parcel was some 20 acres in size, included a mountain top, and a portion of King Lake. Additionally, the Abrams' Parcel contained one or more sites upon which Abrams believed he could build a residence, without observing any other human development.

2.6 On or about February 7, 1994, Abrams and Twin Falls entered into a Real Estate Purchase and Sale Agreement, wherein Twin Falls agreed to sell to, and Abrams agreed to purchase the Abrams Parcel.

2.7 In or about mid-1995, Abrams commenced construction of a single family residence in and upon the Abrams Parcel. Abrams chose to place his residence in such a location upon the Abrams Parcel, that no improvements upon any other property were observable.

2.8 In or about the date Abrams began construction of his residence, the Stafnes proposed that Abrams transfer, and/or

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1
2 exchange the "mountain top" area of the Abrams Parcel to either
3 Twin Falls, or themselves. In return, Twins Falls would convey
4 to Abrams lands located on the opposite side of King Lake,
5 which Twin Falls had acquired. Additionally, it was represented
6 to Abrams that, if he agreed to their proposal, Twin Falls
7 would grant to Abrams an affirmative view easement that would
8 insure the view from Abrams' residence would always remain in
9 a natural, pristine state, and that no improvements would be
10 constructed, or placed upon Twin Falls' property that was
11 observable from Abrams' residence. Based upon the
12 representations made to him, Abrams agreed to the Stafnes'
13 proposed exchange of property.
14 2.9 The Stafnes' representations made to Abrams were
15 material. At all times relevant, Abrams reasonably relied upon
16 the representations made to him by both Scott Stafne and Todd
17 Stafne, that the view from a residence Abrams intended to
18 construct on the Abrams Parcel would always remain in a
19 pristine natural state.
20 2.10 At all times herein relevant, the representations
21 made by Scott Stafne and/or Todd Stafne were made on behalf of
22 Twin Falls, and themselves individually, for the purpose of
23 inducing Abrams to act, or refrain from acting.
24 2.11 On or about November 15, 1995, Abrams and Twin Falls
25 entered into a "View Easement For Privacy And Landscaping And
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Marysville, Washington 98270
(360) 659-8282 / (360) 653-2525

1
2 Maintenance Agreement" (herein "View Agreement", wherein Twin
3 Falls granted to Abrams "*...an affirmative view easement for*
4 *privacy...*", which, among other terms, provided:

5 *"1. Grantor grants to Grantee a view easement for*
privacy to ensure that Grantees will not observe from
6 *the Abrams residential structure currently being*
constructed on Exhibit 1 ("Grantees Residence") any
7 *residential structure or improvement on Exhibit 2..."*

8 2.12 On or about August 3, 1998, Twin Falls sold the
9 merchantable timber, standing and down, on its Lots within the
10 Development to A.L.R.T Corporation (herein "A.L.R.T.) for the
11 sum of $570,000.00. Twin Falls' sale of the timber to A.L.R.T
12 was evidenced by terms of a Timber Deed, dated August 3, 1998,
13 and recorded with the Snohomish County Auditor's Office on
14 August 14, 1998, under Auditor's File No. 9808140547.

15 2.13 In or about October 1998, Scott Stafne and Todd
16 Stafne contacted and informed Abrams that they had sold Twin
17 Falls' timber on the opposite side of King Lake from the Abrams
18 Parcel, which comprised part of Abrams' pristine view, to
19 A.L.R.T. The Stafne brothers advised Abrams that A.L.R.T.
20 intended to cut, and remove all of the merchantable timber from
21 Twin Falls' property. The Stafne brothers, further,
22 represented to Abrams that, in order for Abrams to protect his
23 pristine and natural view, he would be required to purchase a
24 portion of the timber from A.L.R.T.
25
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LARRY M. TRIVETT
Attorney At Law
1031 State Ave., Ste. 103
Marysville, Washington 98270
(360) 659-8282 / (360) 653-2525

2.14 Relying wholly upon the representations made by Scott Stafne and Todd Stafne to him, Abrams paid A.L.R.T. $50,000.00 for the timber. On its part, A.L.R.T. granted to Abrams a Timber Deed, dated November 19, 1998, which, among other terms, provided, that Abrams had purchased:

> *"...all of the merchantable timber, both standing and down of all species (the "Timber") located in an area of Section 27, Township 31 North, Range 6 East; Snohomish County, Washington, flagged and agreed upon by Bill Westergreen of A.L.R.T Corporation, Jeff Abrams and representative of Twin Falls, Inc. And lying easterly of the Abrams lake property and adjoining the Abrams existing property."*

2.15 After November 19, 1998, A.L.R.T undertook and logged that portion of the Twin Falls Development included within the Twin Falls/A.L.R.T. Timber Deed identified in paragraph 2.10, leaving standing that timber sold to Abrams.

2.16 At all times herein relevant, based upon the Stafne brothers representations made to him, and the Timber Deed he received from A.L.R.T, Abrams believed, and continues to believe, that he is the rightful owner of all merchantable timber agreed upon by Twin Falls, A.L.R.T., and himself.

2.17 From 1993 and continuing through 2010, Twin Falls has caused to be filed numerous Boundary Line Adjustments (herein "BLA") of Lots within the Twin Falls Development. Many of the BLA's have involved the Abrams Parcel. Prior to each BLA involving the Abrams Parcel, Scott Stafne and/or Todd Stafne

LARRY M. TRIVETT
Attorney At Law
1031 State Ave., Ste. 103
Marysville, Washington 98270
(360) 659-8282 / (360) 653-2525

1
2 represented to Abrams that a proposed BLA was in his best
3 interest, and would either increase the fair market value of
4 the Abrams Parcel, or serve to protect and re-enforce his view
5 easement.
6 2.18 Prior to November 1, 2009, Stafne approached Abrams,
7 again, advising that another BLA was in order, and that the
8 adjustment of the then existing boundary lines of the Abrams
9 and Twin Falls Parcels would be in Abrams' best interests.
10 Thereafter, Stafne and Abrams discussed, and otherwise
11 negotiated the location of proposed boundary lines as between
12 Abrams and Twin Falls Parcels.
13 2.19 During their negotiations for the proposed BLA,
14 Abrams made clear to Stafne that, if he agreed to another BLA,
15 the Southwest corner and driveway entrance of the Abrams Parcel
16 was to be located so that said corner was to abut the edge of
17 the Twin Falls' Easement Roadway. Further, Abrams made clear
18 to Stafne that the South boundary line of the Abrams Parcel
19 must extend East from the Southwest corner of the Abrams'
20 Parcel parallel with the East-West quarter line to the West
21 margin line of the Twin Falls Easement Roadway located on the
22 East side of Kings Lake. To this end, a number of drawings
23 were prepared, and discussed as between Abrams and Stafne.
24 2.20 In all respects, Stafne informed Abrams that the
25 adjusted lines of the Abrams Parcel would conform to Abrams
26
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2 requirements identified within paragraph 2.19 above.
3 Additionally, Stafne confirmed to Abrams that no development
4 would take place upon the Twin Falls Parcel, which would
5 violate Abrams' existing view rights.
6 2.21 In all respects, Stafne's representations to Abrams
7 concerning the proposed adjusted boundary line between the
8 Abrams and Twin Falls Parcels were material, and relied upon by
9 Abrams.
10 2.22 On or about April 21, 2010 Stafne presented Abrams
11 with a document entitled "RCW 58.04.001(1) Boundary Line
12 Agreement" (herein "*2010 BLA Agreement*"), and represented to
13 Abrams that the adjusted boundary lines of the Abrams and Twin
14 Falls Parcels would be in conformance with their agreements
15 identified in paragraph 2.19 above. Again, each of Stafne's
16 representations were material to obtaining Abrams' agreement to
17 the 2010 BLA Agreement, and were reasonably relied upon by
18 Abrams. As a result of Stafne's representations, Abrams agreed
19 to sign the 2010 BLA Agreement on April 21, 2010.
20 2.23 The 2010 BLA Agreement did not adjust the boundary
21 lines to the Abrams and Twin Falls Parcel as represented by
22 Stafne and agreed upon by Abrams. In truth and fact, the BLA
23 Agreement did not establish the Southwest corner and South
24 boundary of the Abrams Parcel as represented by Stafne, and
25 agreed upon by Abrams.
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2
3 2.24 At the time Stafne presented the 2010 BLA Agreement
4 to Abrams for his signing, Stafne knew, or should have known,
5 that his representations were false, and not in conformance
6 with the agreement reached with Abrams.
7 2.25 At the time Abrams signed the 2010 BLA Agreement,
8 Stafne knew, or should have known, that Abrams was relying upon
9 his representations, and that Abrams did not know Stafne's
10 representations were untrue.
11 2.26 In or about October 2012, Stafne advised and claimed
12 to Abrams that Abrams did not own the timber situated in and
13 upon the Twin Falls Parcel. Further, Stafne claimed that Twin
14 Falls had the right to cut and remove timber from the Twin
15 Falls Parcel, if it chose to do so. Stafne's claims were
16 wholly contrary to the representations and inducements made to
17 Abrams at the time he purchased the timber from A.L.R.T.
18 2.27 In or about October 2012, Abrams, also, learned that
19 the 2010 BLA Agreement submitted by Stafne was not in
20 accordance with the representations made to him, both prior to
21 and at the time he signed the Agreement. Specifically, Abrams
22 learned that the BLA Agreement conveyed portions of the Abrams
23 Parcel to Twin Falls, which provided a "site" to permit the
24 construction of a residence, or other improvements on the Twin
25 Falls Parcel, which would be within Abrams' view corridor.
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2 2.28 Twin Falls, through Stafne, has advised Abrams that
3 it owns the timber Abrams purchased from A.L.R.T., and that it
4 has the right to cut and remove the timber, if it so elects.
5 2.29 Prior to this date, Abrams has made due demand upon
6 Twin Falls to acknowledge Abrams' ownership of the timber which
7 he purchased from A.L.R.T.; to modify the 2010 BLA Agreement to
8 conform with Stafne's representations and agreements reached
9 between Abrams, Twin Falls and Stafne; and to acknowledge the
10 existence and validity of Abrams' view rights. Twin Falls and
11 Stafne have refused to comply with Abrams' demands.
12 2.30 Abrams did not learn, nor could he have reasonably
13 discovered, that the misrepresentations made to him, as herein
14 alleged, were untrue until in or on October 1, 2012.
15 2.31 As a result of the actions of Twin Falls, acting by
16 and through its authorized representative(s), Abrams has been
17 damaged, all in amount to be proven at time of trial.
18 ***III. FIRST CAUSE OF ACTION FOR QUIET TITLE TO TIMBER***
19 3.1 Abrams re-alleges paragraphs 1.1 through 2.31 above,
20 which, by this reference, are made a part of this cause as
21 though set out in full.
22 3.2 Pursuant to the representations on the part of
23 Stafne, individually and on behalf of Twin Falls, relating to
24 Abrams purchase of such timber; the agreements reached between
25 Twin Falls and Abrams; and in accordance with the Timber Deed
26
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28

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granted by A.L.R.T. to Abrams, all right, title and interest in and to the timber described within the Timber Deed should be quieted in Abrams, free and clear of any claim on the part of Twin Falls.

IV.

SECOND CAUSE OF ACTION - FOR DECLARATORY RELIEF

4.1 Abrams re-alleges paragraphs 1.1 through 3.2 above, which, by this reference, are made a part of this cause as though set out in full.

4.2 As a result of Stafne's claims that he has the right to cut and remove timber in and upon Twin Falls Parcel, and based upon earlier claims made by Stafne, as the agent for Twin Falls, as to Abrams lack of view rights, the Court should declare and decree that the right, title, and ownership of the Twin Falls Parcel is subject to the view rights, herein-above alleged, for the benefit of the Abrams Parcel.

V. ***THIRD CAUSE OF ACTION - MISREPRESENTATION***

5.1 Abrams re-alleges paragraphs 1.1 through 4.2 above, which, by this reference, are made a part of this cause as though set out in full.

5.2 As a result of Twin Falls' representations, through its authorized agent, Stafne, which were either actually known, or should have been known, by Stafne to be false; intentionally or negligently made by Stafne with the intent to deceive

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Abrams; reasonably relied upon, and the falsity of such representations were unknown to Abrams; made for the sole purpose of inducing Abrams to sign the 2010 BLA Agreement; and not in conformance with the parties' agreement, the 2010 BLA Agreement should be either modified or reformed to comply with the parties' agreement, or rescinded.

5.3 As a result of Twin Falls' misrepresentations as herein alleged, Abrams has suffered damage, all in amount to be proven at time of trial.

VI. PRAYER FOR RELIEF

WHEREFORE, Abrams prays the Court to enter judgment, in his favor, against Twin Falls as follows:

1.) To quiet title in Abrams as against Twin Falls to all of the timber situated in and upon the Twin Falls Parcel, which Abrams purchased from A.L.R.T.; and

2.) To declare, hold, and/or decree that Abrams holds the right to have maintained a pristine and natural view over and across the Twin Falls Parcel, in perpetuity;

3.) To reform or modify, the 2010 BLA Agreement to conform with the representations made to Abrams by Stafne on behalf of Twin Falls;

4.) In the alternative, that the 2010 BLA Agreement be rescinded and be held of no force or effect whatsoever; and

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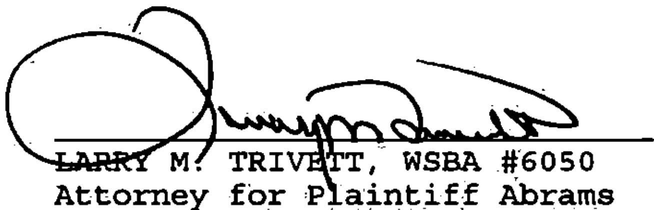
3 5.) For an award of Abrams' costs, disbursements and
4 attorney's fee in this cause; and
5 6.) For such other and further relief that the Court may
6 deem just and equitable, including an award of damages as may
7 be established by Abrams at the time of trial.
8 ***DATED*** at Marysville, Washington, this 29th day of June,
9 2015.



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11 LARRY M. TRIVETT, WSBA #6050
Attorney for Plaintiff Abrams
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EXHIBIT "A"

EXHIBIT "A"

Section 27, Township 31, Range 06 Quarter NE - Lot 5 of Record of Survey, recorded under Auditor's File No. 200900075005 and Boundary Line Agreement recorded under Auditor's File No. 2001004270360 and corrected by No. 201008040366 being portions of the NE 1/4 of Said Section 27. Situate in Snohomish County, State of Washington

Snohomish County Tax Parcel No. 31062700100200

EXHIBIT "B"

EXHIBIT "B"

Section 27 Township 31 Range 06 Quarter NE - PAR 1 OF SSE NO 13-110368 REC UND AFN 201312170725 DAF ALL TH PTN LOT 14 AS SHOWN ON ROS REC UND AFN 200911175005 & LY WHN NE1/4 SD SEC 27 DAF (BASIS OF BEAR FOR THIS DESC IS S00*37 55W AS MEAS BTW NE COR SD SEC 27 & E1/4 COR SD SEC AS SHOWN ON SD ROS) COM NE COR SD SEC 27 TH S00*37 55W ALG E LN SD SEC 1253.17FT TO SE COR OF NE1/4 NE1/4 SD SEC 27 TH N88*01 39W ALG S LN SD NE1/4 NE1/4 DIST 166.02FT TO TPB TH S35*38 05E 213.16FT TH S28*19 19W 280.17FT TH S42*31 23E 209.32FT TH S13*48 56W 545.86FT TH N71*10 11W 49.05FT TH N71*23 54W 79.72FT TH N68*28 54W 60.33FT TH N61*24 44W 58.19FT TH N60*59 04W 82.21FT TH N58*06 40W 48.41FT TH N46*33 10W 41.97FT TH N46*19 12W 73.50FT TH N53*43 39W 83.48FT TH N57*42 44W 110.59FT TH N56*59 40W 100.34FT TH N57*24 02W 70.89FT TH N47*24 59W 61.02FT TH N42*08 54W 140.25FT TN N53*02 15W 49.02FT TH N79*49 19W 40.77FT TH N79*33 50W 55.93FT TH S88*15.47W 35.96FT TH S61*10 31W 48.75FT TH S49*01 13W 68.35FT TH S58*07 18W 31.34FT TAP ON W LN SE1/4 NE1/4 SD SEC 27 TH CONT S58*07 18W 22.77FT TH S80*52 37W 63FT TH N89*05 18W 9.95FT TH N25*41 40W 85.44FT TH N77*55 48E 51.78FT TH ALG NON-TANG CRV CONC TO SW HAVG RAD 87.80FT C/A OF 108*19 48 ARC LENGTH 166.01FT CHORD BEAR N03*40 59W & CHORD LENGTH 142.36FT TH N75*21 32W 34.66FT TH N54*39 29W 69.14FT TH N47*37 43W 56.48FT TH N06*21 49W 9.23FT TH S90*00 00E 222.84FT TAP ON W LN SE1/4 NE1/4 SD SEC 27 TH N78*58 34E 249.86FT TH N51*28 30E 369.39FT TAP ON S LN NE1/4 NE1/4 SD SEC 27 TH S88*01 39E ALG SD S LN 621.31FT TO TPB (DF-2003 - 21.00AC)

Situate in Snohomish County, State of Washington
Snohomish County Tax Parcel No. 31062700100800

APPENDIX 55
A 598

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF NEW YORK MELLON, a Delaware corporation, as trustee for STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-AR2, PLAINTIFF, v. SCOTT STAFNE, an individual; TODD STAFNE, an individual; and REAL TIME RESOLUTIONS, Inc., a Texas corporation, DEFENDANTS.	CASE NO. 2:16-cv-00077-TSZ DEFENDANT SCOTT STAFNE'S REPLY TO DAVIS, WRIGHT TREMAIN'S OPPOSITION TO STAFNE'S 2ND FRCP 12(b)(1) MOTION

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A 599

I. Introduction

Scott Stafne will establish in Part II of this Reply that the Fed. R. Civ. Pro 12(b)(1) motion presently before this Court involves a "factual attack" on the complaint which must be resolved pursuant to summary judgment standards based on the admissible evidence in the record.

Part III will demonstrate Davis Wright Tremaine (DWT) and Nationstar have not established by a preponderance of the evidence that this Court has subject matter jurisdiction of this action. Section A will substantiate there is no admissible evidence that any BNY Mellon entity has standing to bring this action. Section B will demonstrate Nationstar is the only entity which has an economic interest in this case sufficient to confer standing to bring this action against Stafne. Section C will explain why Nationstar cannot bring this action against Stafne pursuant to this Court's 28 USC 1332 and 1359.

In Part IV Stafne will document neither DWT nor Nationstar has presented any evidence or law to rebut the presumption the POA in this case is being improperly or collusively used by DWT and Nationstar to invoke the jurisdiction of this Court.

Finally, Stafne will explain in Section V why this Court must first determine whether it has jurisdiction, rather than resolve the currently pending motions before it on a piecemeal basis.

II. Stafne's motion under Fed. R. Civ. Pro. 12(b)(1) involves a factual attack on this Court's jurisdiction which must be resolved pursuant to summary judgment standards.

DWT erroneously argues Stafne's Fed. R. Civ. Pro. 12(b)(1) motion is a facial attack which "assumes the allegations alleged in the complaint are true." Dkt. 53, 2:24-3:4. Stafne's motion indicates it is a *factual attack* on the complaint based on referenced pleadings, evidence, and admissions which were before this Court when his 12(b)(1) motion was filed. *See* Dkt. 42, 2:12-16. 8:9-20 (defining evidence which Stafne relied upon in making his 12(b)(1) factual challenge.); *see also* 8:9-10:17 (explaining the distinction between a facial and factual attack).

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1 This reply continues Stafne's factual attack on this Court's subject matter jurisdiction over
2 DWT's complaint and hereby incorporates all the pleadings and declarations submitted since
3 Stafne's 12(b)(1) motion was filed, including Docket entries 43, 44, 45 46, 47, 48, 49, 50, 51 and
4 52. Additionally Stafne relies upon the declaration of Cyndee Rae Estrada and his own declaration
5 in support of this reply as part of his factual challenge.
6
7 In response to Stafne's factual attack, DWT must support its jurisdictional allegations with
8 "competent proof," *Hertz Corp. v. Friend,* 559 U.S. 77, 96–97, 130 S.Ct. 1181, 175 L.Ed.2d 1029
9 (2010), <u>under the same evidentiary standard that governs in the summary judgment context.</u> *Leite v.*
10 *Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014), *cert. denied,* 135 S. Ct. 361, 190 L. Ed. 2d 252
11 (2014). Accordingly, DWT bears the burden of proving by a preponderance of the evidence pursu-
12 ant to summary judgment standards that each of the requirements for subject-matter jurisdiction has
13 been met. *Cabalce v. Thomas E. Blanchard & Associates, Inc.*, 797 F.3d 720, 732-33 (9th Cir.
14 2015); *Harris v. Rand,* 682 F.3d 846, 850–51 (9th Cir.2012). DWT concedes it must establish
15 jurisdiction by a preponderance of the evidence. Dkt. 53, 4:3-4.
16
17 **III. DWT has not Proved by a Preponderance of the Evidence that BONY has Standing and is the Real Party in Interest to Bring this Action Against Stafne**
18
19 *A. There is no admissible evidence any BNY Mellon entity has standing.*
20 <u>i. BNY Mellon states if has no interest in Stafne's Property</u>
21
22 Stafne asked a housing counselor to contact BNY Mellon to obtain information about any
23 "debt" he may owe to BNY Mellon as trustee. BNY Mellon includes The Bank of New York
24 Mellon Corporation and its consolidated subsidiaries. Dkt. 38. BNY Mellon responded:
25
26 After researching our database, we do not show any record of the address(es) listed in your email. If you have documents which show we are the Trustee, please send it to this mailbox so that it can be researched further. All applicable documents should be sent to me via email. However, please note that BNY Mellon is solely the trustee and any property preservation, release, assignment, etc. would be handled by the applicable servicer. If you know the appli-

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cable servicer, please contact them directly. If not, please send any documentation you have showing BNY Mellon as trustee so that we can direct your email to the appropriate party.

Declaration of Cyndee Rae Estrada in support of this Reply.

ii. DWT and Nationstar have not submitted admissible evidence that any BNY Mellon entity, including "BONY," owns Stafne's mortgage loan for 17207 155th Ave. N.E. in Arlington, Washington or that any POA was in effect when this action was filed.

After Stafne submitted substantial evidence that "Bank of New York Mellon, a Delaware Corporation" did not owe his loan, see Dkt, 21, 29, & 34, DWT and Nationstar admitted this was true. *See* Dkts. 36 & 38. DWT attorney Burnside's declaration admitted (1) the purported plaintiff originally identified in the complaint did not own Stafne's loan as trustee and (2) that DWT, Burnside and Bugaighis did not represent any BNY Mellon entity. Dkt 38

In order to rebut Stafne's evidence that there was nothing filed with the SEC showing that Stafne's loan had ever been transferred from JP Morgan as trustee, pursuant to terms set forth in the Pooling and Servicing Agreement[1] (PSA), DWT filed the declarations of "litigation analyst" Fay Janati, who is employed by Nationstar. Dkt 39. It will be recalled that Janati is the same litigation analyst who originally signed a judicial foreclosure notice which identified Bank of New York Mellon as the trustee. Dkt. 34-1. Now she has changed her story. Paragraph 2 of Janati's recently filed declaration states: "I am duly authorized to make this declaration on behalf of Nationstar and BONY, as successor trustee of the SAMI trust." (Dkt 39) Stafne objects to this testimony because BONY is not the name of any specific entity within BNY Mellon's universe of consolidated subsidiaries. Further, Janati's testimony that she is authorized to make this declaration on behalf of "BONY" constitutes an impermissible legal conclusion and/or expert testimony by a lay person. *See*

[1] Stafne produced a copy of an SEC disclosure form which documented that when trust status of another SAMI trust had changed from JPMorgan Chase as trustee to Bank of New York as trustee (then its own entity not a part of BNY Mellon) in 2005 the parties created an SEC filing documenting the change of transfer of trustees had been carried out in accordance with the PSA. Dkt 34-6. Stafne showed there was no such filing in his case. Dkt 34. Further, Stafne argued JP Morgan Chase had no authority to sell its trustee status, because it had no ownership interest in the trust. Id. & Dkt 33.

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1 FRE 702, 703, 705. Whether Janati has authority, what authority she has, and on whose behalf it can
2 be exercised are questions of New York law. *See e.g.* POA, Dkt. 39-1, p. 2 ("This agreement shall
3 be governed by, and construed in accordance with, the laws of New York without regards to its
4 conflict of laws principles.")

5 Stafne also objects to Janati's testimony that Exhibit A is a copy of "BONY's operative lim-
6 ited power of attorney appointing Nationstar as its "Attorney-In-Fact" because the document speaks
7 for itself. (Dkt 39) Exhibit A states "Bank of New York Mellon, f/k/a the Bank of New York" is the
8 principal. BONY appears to be an acronym for the old bank, Bank of New York, which this POA
9 clearly indicates no longer exists and did not become a part of BNY Mellon until approximately
10 2008. Given that Janati testifies this same language refers to Bank of New York Mellon as the
11 principal in Dkt. 34-1 and to BONY as principal in Dkt. 39 there are both credibility and legal issues
12 with regard to Janati's change in position. Stafne objects to Janati's testimony that BONY is the
13 principal under the POA because this constitutes a legal conclusion, which she is not entitled to
14 make under the facts of this case. *See* FRE 702, 703, 705. Similarly, Stafne objects to Janati's
15 testimony that she ratified "Bank of New York Mellon, a Delaware corporation" lawsuit against
16 Stafne on behalf of BONY because it impermissibly constitutes a legal conclusion the POA gives
17 her this power and with regard to POA's meaning. *Id.*

18 Stafne also objects and moves to strike all of Janati's testimony, particularly with regard to
19 her attempts to authenticate exhibits D, E, F, and G attached to her declaration, because she has not
20 established that she has the requisite personal knowledge necessary to testify. Although Janati
21 testifies she has "personal knowledge" she defines personal knowledge to include undefined hear-
22 say:

23 Except as otherwise indicated, all facts set forth in this declaration are based on my per-
24 sonal knowledge, which is based on my experience, my review of relevant documents,
25
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1 including Nationstar's loan servicing records for Scott Stafne, *and my discussions with appropriate personnel.*

2 Dkt 39.

3

4 Stafne also objects to paragraph 11 of Mr. Burnside's declaration (Dkt 38) as constituting a

5 legal conclusion. *See* FRE 702, 703, 705; s*ee also* RPC 3.7(a)(1)[2]. Stafne does not object to this

6 Court's consideration of Mr. Burnside's declaration for purposes of substantiating he is an attorney

7 for Nationstar, who did not confirm any of the allegations of the original complaint he authored

8 pursuant to his appearance for Bank of New York Mellon with any BNY Mellon entity before filing

9 it with this Court. However, Stafne does object to Mr. Burnside's declaration generally because it is

10 not based on personal knowledge. Additionally, it is inappropriate for Burnside to attempt to testify

11 as an expert witness in a case in which Burnside is acting as an attorney for Nationstar while claim-

12 ing to be appearing as counsel for various BNY Mellon entities. *See* FRE 702, 703, 705; s*ee also*

13 RPC 3.7(a)(1).

14

15 Under New York law even a true "agent/attorney" acting pursuant to a valid POA cannot offer

16 testimony on behalf of the principal based upon personal knowledge the attorney-in-fact does not

17 have. *US Bank v. Zafar*, 24 Misc. 3d 1210(A) (N.Y. Sup. Ct. 2009) (citing *Cymbol v. Cymbol*, 122

18 A.D.2d 771, 772, 505 N.Y.S.2d 657, 658-59 (1986)). "'[A]n attorney in fact may not swear to the

19 truth of allegations which are made by a principal from the principal's own personal knowledge and

20 which are not personally known to the attorney in fact' (1 N.Y. Jur 2d, *Acknowledgments, Affidavits,*

21 *Oaths, Notaries, and Commissioners,* § 41)." *Id.* There is nothing in Ms. Janati's or Mr. Burnside's

22 declarations to suggest they have personal knowledge of exhibits D, E, F, and G attached to Janati's

23 declaration. Yes, DWT attorney Burnside states in his declaration (Dkt 38, 3:19-25) that he obtained

24

25

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[2] RPC 3.7(a)(1) which states in pertinent part: "(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless: (1) the testimony relates to an uncontested issue". The question as to which, if any, BNY Mellon entity, if any, is the trustee of a securitized trust owning Stafne's loan is hotly disputed.

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1 the Assignment and Assumption Agreement effectuating the transfer of the Acquired Corporate
2 Trust Contracts from "Bank of New York's legal department" (Burnside's words) he understandably does not attach them to his declaration. The reason for this is most likely DWT wanted to plant
4 these records in Janati's declaration so she could attempt to get them admitted into evidence based
5 on her "discussions with appropriate personnel[3]." See Dkt. 39.
6
7 Black's Law Dictionary defines personal knowledge to mean: "Knowledge gained through firsthand observations or experience, as distinguished from a belief on what some else has said."
8 Black's Law Dictionary, Ninth Edition, (2009). Accordingly, Stafne objects to the testimony of both
9 Janati and Burnside because neither has made the requisite showing personal knowledge upon
10 which to base their testimony.
11
12 Once exhibits D, E, F, and G are stricken there is no evidence that JP Morgan Chase as trustee transferred or sold Stafne's loan to BONY in 2006. That such a transfer never occurred is consistent with all the other evidence in the record before this Court, including, without limitation (1)
15 Bank of America's recorded transfer of its interest in the Note and Deed of Trust to Nationstar in
16 2013, (Dkt 29, ¶ 11 & ex. 5); (2) Nationstar's report to Stafne in 2014 that JP Morgan Chase was the
17 trustee (Dkt 21-2); (3) Nationstar's recorded transfer to the note back to Bank of New York Mellon
18 in 2015 (Dkt. Dkt 29, ¶ 11 & ex. 6); and (4) BNY Mellon's negative response to an inquiry as to
19 whether any of the entities in its universe owned Stafne's loan. Estrada's decl.
20
21 Finally Stafne objects and moves to strike the POA attached to DWT's opposition as Exhibit
22 1. (Dkt 53, 3:19-21) Stafne asserted in his opening motion that Nationstar's POA attached to the
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[3] The law in New York is that an a debt buyers records custodian "almost always lacks the requisite knowledge to lay the proper foundation to establish the documents ... are business records of the original creditor." See also *Midland Funding LLC v. Valentin*, 40 Misc.3d 266, 966 N.Y.S.2d 656, 659 (2013). Just this week Division One of Washington's Court of Appeals surveyed the law in Washington and other jurisdictions with regard to when the employees of debt buyers can testify with regard to their predecessors business records. *See* Unifund, CCR, LLC v Elyse, No. 73510-1-1 note 14 (July 18, 2016) New York law is in line with the majority of cases the Court of Appeals identified.

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1 complaint was limited to one year and not in effect when the complaint was filed against him. Dkt
2 42, 11:19-12:8. DWT and Nationstar did not dispute each POA is limited to a one year period;
3 rather they argued that Exhibit 1 attached to its response was in effect. However, because there is no
4 testimony to authenticate this exhibit, Stafne objects to its admission and moves to strike that POA.

5 *C. Nationstar is the real party in interest but cannot bring this case pursuant to 28 USC 1332 and*
6 *1359 because both Nationstar and defendant Real Time resolutions are Texas citizens.*

7 The Pooling and Servicing Agreement (PSA) attached to the complaint identifies JP Morgan
8 Chase as the trustee. Dkt. 1, Complaint, attachment F. The PSA requires the servicers to pay all of
9 Stafne's payments under the loan to the trust as they become due. Dkt. 1-7, PSA, pp. 116-7, Section
10 6.06. See also Stafne's decl. Thus, the PSA prevented the trust from sustaining any injury by reason
11 of Stafne failing to make payments because the servicers advanced those payments. *Id.*

12
13 In this case, the evidence demonstrates only the "servicers" are actually out of pocket the
14 advances they have made to the trust. Thus, Nationstar as the last servicer standing is the only entity
15 which has sustained any concrete economic injury sufficient to establish standing. In other words,
16 because Nationstar and previous servicers unwisely paid money into the trust notwithstanding
17 Stafne's refusal to make payments to them because of his claim Countrywide's force placed insur-
18 ance contracts insuring the full amount of the loan breached the Note and Deed, Dkt. 43, the trust
19 was not injured by this dispute. Thus, when Janati writes Stafne as of September 18, 2015 that he
20 owes $344,571.81 to the trust, *see* Dkt. 34-1, p. 3 (Janati's Statement re: Judicial Foreclosure), this
21 is not true because the servicers had already paid most of this money into the trust for the benefit of
22 investors. It is only the servicers who have been damaged by not promptly bringing a breach of
23 contract action against Stafne when he breached the contract and refused to pay on the note and
24 deed.
25
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1 Given that Stafne's property is appraised at less than $200,000 because of construction de-
2 fects, it is likely that Nationstar (not any trust or investors) will be the only entity which can recover
3 anything as a result of foreclosure because the property is worth far less than the servicing advances.
4 Dkt. 52, Ex. 1 (Snohomish County Appraisal of Stafne's Property). In fact, the legal fees associated
5 with this litigation will likely exceed the value of Stafne's property. So the only entities with an
6 actual economic stake in obtaining a recovery as a result of this controversy are Nationstar and
7 DWT. *See* Stafne declaration in support of this motion.
8
9 If Nationstar is the real party in interest with regard to this lawsuit, it cannot invoke this
10 Court's diversity jurisdiction. This is because Nationstar is a citizen of Texas. So is defendant Real
11 Time Resolutions. Dkt. 1. Because the relief sought seeks to foreclose on Real Times Resolutions
12 interests in Stafne's property it is a necessary party.
13
14 This case is much like *Young v. Vrechek*, CIV. 09-00403 SOM, 2013 WL 5532827, (D.
15 Haw. Oct. 7, 2013), *aff'd,* 615 Fed. Appx. 429 (9th Cir. 2015) and *Zapata v. Flintco, Inc.*, 2:09-CV-
16 03555 GEB, 2011 WL 3583401, at *6-14 (E.D. Cal. Aug. 12, 2011), *report and recommendation*
17 *adopted* (Sept. 7, 2011). In those cases the plaintiffs entered into agreements in order to allow them
18 to bring state causes of action into federal court. Such agreements were found to be collusive and
19 improper. This issue will be further discussed in the context of this case in Part IV, *infra*.

20 **IV. Nationstar has not presented any facts sufficient to rebut the presumption that the POA in**
21 **this case is being used to improperly or collusively invoke the jurisdiction of such court."**

22 DWT argued in reply to Stafne's assertions in Dkt. 46 that Nationstar and DWT are
23 improperly utilizing the POA to create diversity jurisdiction as well as evidentiary and
24 procedural advantages inconsistent with Article III standing that:
25
26 Stafne's authorities are distinguishable. A power of attorney is not an assignment of a claim. Thus, Stafne's citation to *Dweck v Japan CBM Corp.*, 877 F 2d 790, 792-93 (9th Cir. 1989) and *Dobyns v Trautner*, 552 F. Supp 2d 1150, 1153 (W.S. 2008) are inapposite.

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Dkt. 49, 6:5-12.

But 28 USC § 1359, which *Dweck* is based upon is not limited to Assignments. This statute provides: "A district court shall not have jurisdiction of a civil action in which any party, by assignment ***or otherwise***, has been improperly or collusively made or joined to invoke the jurisdiction of such court." 28 USC § 1359 (emphasis added); *see e.g., W. Farm Credit Bank v. Hamakua Sugar Co., Inc.,* 841 F. Supp 976, 980 (D.Haw.1994), *aff'd,* 87 F.3d 1326 (9th Cir.1996). This federal anti-collusion statute is aimed at preventing parties from manufacturing diversity jurisdiction to inappropriately channel ordinary litigation over which the States usually have jurisdiction into the federal courts. *Yokeno v. Mafnas,* 973 F.2d 803, 809 (9th Cir.1992) (citing *Kramer v. Caribbean Mills, Inc.,* 394 U.S. 823, 828–29 (1969)). "[T]he statute is to be construed broadly to bar any agreement whose primary aim is to concoct federal diversity jurisdiction." *Zee Med. Distrib. Ass'n v. Zee Med., Inc.,* 23 F.Supp.2d 1151, 1158 (N.D.Cal.1998). "A party may not create diversity jurisdiction by the use of an improper or collusive assignment," and "[t]he party asserting jurisdiction has the burden of proof" in showing that jurisdiction has not been manufactured. *Dweck,* 877 F.2d at 792.

The Ninth Circuit Court of Appeals has held that certain types of agreements are presumptively ineffective to create diversity jurisdiction. *See Yokeno,* 973 F.2d at 809–10; *see also Nike, Inc. v. Comercial Iberica de Exclusivas Deportivas, S.A.,* 20 F.3d 987, 991 (9th Cir.1994). Included among such arrangements are those where the real party in interest is not named as party to the litigation and the named plaintiff is just a strawman, as appears to be the case here. *See Attorneys Trust v. Videotape Computer Prods., Inc.,* 93 F.3d 593, 597 (9th Cir.1996) ("... is the assignee truly a real party in interest or just a strawman for all practical purposes? If the latter, an assignment which creates jurisdiction will be dubbed improper.) "To overcome this presumption, the party asserting diversity must show a legitimate business reason for the transfer." *Yokeno,* 973 F.2d at 810 ("Simply articulating a business reason is insufficient; the burden of proof is with the party asserting

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1 diversity to establish that the reason is legitimate and not pretextual."); *accord Dweck,* 877 F.2d at
2 792.

3 This court should consider several factors in determining whether the party attempting to
4 support the assignment has met his or her burden to demonstrate a sufficient business purpose under
5 the "totality of the circumstances." *See Yokeno,* 973 F.2d at 810. These factors include: "(1) did the
6 assignee have a prior interest in the item or was the assignment timed to coincide with the com-
7 mencement of litigation; (2) was any consideration given by the assignee; (3) was there an admis-
8 sion that the motive was to create jurisdiction; (4) was the assignment partial or complete; and (5)
9 were there good business reasons for the assignment." *Dae Poong Co. v. Deiss,* No. C–05–01470
10 RMW, 2005 WL 2000936, at *2 (N.D.Cal. Aug. 16, 2005) (unpublished) (citing *Attorneys Trust,* 93
11 F.3d at 595–96). Also relevant in this inquiry are factors such as the assignor's continued involve-
12 ment in the litigation, the assignor's contemplation of instituting a lawsuit prior to assignment, and
13 the advantages of gaining a federal forum. *See Yokeno,* 973 F.2d at 810. This Court cannot perform
14 these inquiries because DWT has not provided this Court or Stafne with any evidence related to
15 these standards.

16 Notwithstanding evidence Bank of America recorded an interest selling Stafne's note and
17 deed of trust to Nationstar in 2013 (Dkt 29-5) and Nationstar recorded an assignment of its interest
18 in Stafne's land to the Bank of New York Mellon as trustee in 2015, Dkt 29-6, DWT and Nationstar
19 have chosen not to offer any evidence of any legitimate business purpose for these transfers and
20 this POA, which allows Nationstar, the real party in interest, to bring this action in the name of
21 BNY Mellon entities which claim they have no interest in the loan.

22 The evidence in the record substantiates the POA between Nationstar and "Bank of New York
23 Mellon" is not between any properly named entity in the BNY Mellon universe, i.e. The Bank of
24 New York Mellon Corporation and its consolidated subsidiaries. This allows Nationstar to pick and

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choose the entity it claims has standing without any consideration of anything but what is best for Nationstar, without regard to the truth and/or interests of the trustee and trust. Further, Nationstar asserts (but Stafne disputes) the POA gives it authority to decide without consultation with Bank of New York Mellon (an entity which does not exist or any of those BNY Mellon entities, which actually do exist) whether it wants to assert diversity jurisdiction (or in the Robertson case consents to removal jurisdiction, see Dkt 45 & 46.) Further, Nationstar asserts (but Stafne disputes) the POA gives Nationstar unfettered discretion to ratify Nationstar's mistake in originally alleging that same non-existent principal on the POA, i.e. Bank of New York, was the plaintiff in this action.

What is excruciatingly apparent from DWT's silence in the face of Stafne's evidence is DWT's expectation this Court will continue to allow them to manipulate this Court's diversity jurisdiction by simply making jurisdictional allegations on behalf of BNY Mellon without ever having to verify with that entity whether such allegations are true. See e.g. Dkt. 21 & 21-8. DWT's inability or failure to access an BNY Mellon entity on behalf of which it has appeared raises the same types of procedural and evidentiary concerns which led the courts in *Smith v. Ayres,* 977 F.2d 946, 949-50 (5th Cir. 1992) and *In re BP, PLC Securities Litigation*, 4:10-MD-2185, 2016 WL 29300, at 8 (S.D. Tex. Jan. 4, 2016) to deny standing. *Dobyns v Trautner*, 552 F. Supp 2d 1150, 1153 (W.D Wa. 2008) is also applicable here given the assertion that DWT and Nationstar are dragging Stafne through Federal Court in order to punish him for representation of homeowners and his political speech favoring homeowners. Dkt 47, 48, & 52.

New York law makes very clear that Limited POAs cannot be used when conflicts of interest exist. *In re Kover*, 134 A.D.3d 64, 81, 19 N.Y.S.3d 228, 241 (N.Y. App. Div. 2015);*In re Watson*, 121 A.D.3d 1158, 1158, 992 N.Y.S.2d 913 (N.Y. App. Div. 2014). *See also Lasalle Bank N.A. v. Smith*, 26 Misc. 3d 1239(A), 907 N.Y.S.2d 438 (N.Y. Sup. Ct. 2010). DWT and Nationstar simply do not respond to Stafne's arguments that inherent conflicts of interests between servicers and

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1 trustees make the use of the POA in this type of case inappropriate. Dkt 42. Here, the evidence
2 establishes a likely conflict between Nationstar, DWT, and the investors in any securitized trust
3 which may own Stafne's loan. Stafne's house is worth far less than the servicer's advances. None-
4 theless DWT attempts to bring this action on behalf of its client Nationstar in the names of BNY
5 Mellon entities in order to recoup Nationstar's servicing fees, expecting that its attorney fees will be
6 paid by the trust.
7
8 DWT and Nationstar also do not respond factually or legally to Stafne's evidence and argu-
9 ment the limited POA does not grant Nationstar and/or DWT the power to invoke diversity jurisdic-
10 tion on behalf of BNY Mellon entities or with regard to ratifying a change of the real party in inter-
11 est pursuant to Fed. R. Civ. Pro. 17(a)(3). The failure to present any responsive argument in this
12 regard concedes this point. *See Mariscal v. Graco, Inc.,* 52 F.Supp.3d 973, 984 (N.D. Cal. 2014).
13
14 **V. This Court must decide whether it has jurisdiction first pursuant to Stafne's factual challenge to the complaint because it has no authority to resolve any other motions until it concludes it has jurisdiction over this case pursuant to U.S. Const. Art III, § 2.**
15
16 DWT urges this Court should resolve whether it has jurisdiction in the context of those other
17 motions which are currently pending before this Court. Stafne disagrees. This Court has a Constitu-
18 tional duty, as set forth Fed. R. Civ. Pro. 12(b)(1), *see supra*., and 12(h)(3) to review the pleadings,
19 evidence, and admissions Stafne has brought to this Court's attention to determine if anyone has
20 standing to bring this case against Stafne in this Court. *See Arbaugh v. Y&H Corp.,* 546 U.S. 500,
21 506-7 (2006) citing Fed. R. Civ Pro 12(h). This Court must perform this Constitutional inquiry
22 before it resolves any other merits or procedural issues. *Steel Co. v. Citizens for a Better Env't*, 523
23 U.S. 83, 93-95, 118 S. Ct. 1003, 1012-13, 140 L. Ed. 2d 210 (1998).
24
25 CONCLUSION

26 For the reasons states herein, this Court should grant Stafne's 12(b)(1) motion.

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A 611

DATED this 22ND day of July 2016, at Arlington, Washington.

By: /s Scott E. Stafne
SCOTT E. STAFNE, WSBA#6964

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The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE BANK OF NEW YORK MELLON, a New York corporation, as trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2,

Plaintiff,

v.

SCOTT STAFNE, an individual; TODD STAFNE, an individual,

Defendants.

No. 2:16-cv-00077 TSZ

REPLY TO TODD STAFNE'S RESPONSE TO THE PROPOSED AMENDED PARTIAL JUDGMENT

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I. RESPONSE

1
2 Defendant Todd Stafne's response to Plaintiff The Bank of New York Mellon's ("BONY")
3 proposed amended judgment is prolix, but makes one, short argument—the abbreviated legal
4 description in the proposed amended judgment refers to different boundaries than the full legal
5 description in the Deed of Trust and proposed amended judgment. BONY concedes that this may
6 be true—Todd and Scott Stafne have changed the boundary lines enough times that it is unclear if
7 the abbreviated legal description and the full legal description are the same.[1] BONY stipulates
8 that the Court can revise the abbreviated legal description in the proposed amended judgment to
9 repeat the full legal description contained in the Deed of Trust, which is senior (and thus
10 controlling) as to any subsequent boundary line adjustments:

11 LOT 11, SURVEY FOR TWIN FALLS, INC., AS RECORDED UNDER RECORDING NO. 200110105002, RE-RECORDED TO CORRECT
12 SURVEY RECORDED UNDER RECORDING NO. 200111275007, RECORDS OF SNOHOMISH COUNTY, BEING A PORTION OF THE
13 SOUTHEAST QUARTER OF SECTION 22 AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 27 ALL IN TOWNSHIP 31 NORTH,
14 RANGE 6 EAST, W.M.; (ALSO KNOWNS AS LOT 11, THE PLAT OF TWIN FALLS), TOGETHER WITH A NON EXCLUSIVE EASMENT FOR
15 INGRESS, EGRESS AND UTILITIES AS ESTABLISHED BY INSTRUMENT RECORDED UNDER RECORDING NO. 9212160154;
16 SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

17 APN 31062200400400.

18
19 DATED this 26th day of May, 2017.

Davis Wright Tremaine LLP
Attorneys for Bank of New York Mellon

By *s/Fred B. Burnside*
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Zana Z. Bugaighis, WSBA #43614
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[1] BONY obtained the abbreviated legal description from the Snohomish County On-line Property Information website.
https://www.snoco.org/proptax/(el5rlabqrvjqet45gkpfgx2i)/search.aspx?parcel_number=31062200400400