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7
8 Attorneys for Creditor
9 Santa Barbara Bank & Trust

10
11 **IN THE UNITED STATES BANKRUPTCY COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA**

13 In re) CASE NO. ND11-15818RR
14 William Arthur Bookout,) (Chapter 13)
15 Debtor(s).)
16) **OBJECTION TO DEBTORS MOTION FOR**
17) **ORDER IMPOSING A STAY OR**
18) **CONTINUING THE AUTOMATIC STAY**
19) **FILED BY SECURED CREDITOR SANTA**
20) **BARBARA BANK & TRUST;**
21) **DECLARATIONS OF DOUGLAS LUTZ AND**
22) **KAREN L GRANT IN SUPPORT**
23)
24) Date: January 25, 2012
25) Time: 10:00 a.m.
26) Place: 1415 State St.
27) Santa Barbara, CA 93101
) Courtroom 201
) Judge: Robin L. Riblet

28
29 COMES NOW, SANTA BARBARA BANK AND TRUST, N.A., f/k/a PACIFIC
30 CAPITAL BANK dba SANTA BARBARA BANK AND TRUST (hereinafter "SBBT")
31 and hereby objects to the Motion For Order Imposing a Stay or
32 Continuing the Automatic Stay filed by Debtor William Arthur Bookout
33 ("the Debtor") as follows:

34 **I**

35 **INTRODUCTION**

36 This is the Debtor's second Chapter 13 case filed in this
37 Court. The Debtor's first Chapter 13 case was initiated by the

1 filing of a skeleton petition on September 15, 2011 in the United
2 States Bankruptcy Court, Central District of California, Northern
3 Division as Case No. ND11-14393 ("First Chapter 13 Case"). At the
4 confirmation hearing on December 16, 2011, the First Chapter 13 case
5 was dismissed by the Court due to the Debtor's failure to make his
6 December plan payment and failure to pay the December mortgage
7 payment due to SBBT on its secured loan. The Debtor's most recent
8 Chapter 13 case was filed 7 days after the order dismissing the
9 prior case.

10 As set forth in the attached Declaration of Douglas Lutz, the
11 Senior Vice President for the Loan Services Department of SBBT, SBBT
12 has had a rather tortured loan history with the Debtor. The Debtor
13 initially defaulted on his secured loan with SBBT in May of 2006.
14 Following this default, SBBT attempted to resolve the default
15 through the execution of a Forbearance Agreement, which rolled
16 certain arrearages into the principle of the loan and reduced the
17 interest rate under the Note. In January of 2010, the Debtor
18 defaulted on the terms of the Forbearance Agreement, which revoked
19 the benefits he had received under the Forbearance Agreement.

20 In December of 2010, SBBT began foreclosure proceedings
21 against the two properties securing its loan. The Debtor's response
22 to the Notice of Default was to barrage SBBT officials and staff
23 with repeated and duplicative telephone calls and communications
24 asserting unsubstantiated and unwarranted allegations of fraud by
25 SBBT in relation to the secured loan and Forbearance Agreement.
26 When mediation between the parties proved unsuccessful, the Debtor

1 continued with the harassing telephone calls and communications to
2 SBBT officials and staff to such a degree that SBBT was required to
3 obtain a restraining order against the Debtor.

4 Throughout his discussions with SBBT, the Debtor has demanded
5 that SBBT forgive the entire balance of its secured loan and make a
6 substantial cash payment to the Debtor. The Debtor has threatened a
7 very "public" lawsuit if SBBT does not concede to his demands. The
8 filing of the two successive Chapter 13 proceedings by the Debtor is
9 just another step in the Debtor's ongoing attempt to harass and
10 strong arm SBBT into making concessions on its secured loan.

11 Although not required to do so, SBBT has attempted to work with the
12 Debtor to resolve his defaults under his loan without success. SBBT
13 will not make further concessions. The Debtors Chapter 13 cases
14 have not been filed in good faith and were filed for the sole
15 purpose to harass and delay SBBT's legitimate foreclosure process.
16 As set forth herein, the Debtor's motion to re-impose the automatic
17 stay in his most recent Chapter 13 case should be denied.

18 II

19 STATEMENT OF FACTS

20 A. SBBT's Loan to Debtor:

21 On or about October 6, 2003, the Debtor obtained a loan from
22 First Bank of San Luis Obispo in the amount of \$450,000. The loan
23 was evidenced by a promissory note ("the Note") and was secured by a
24 First Trust Deed against commercial real property located at
25 1311/1341 Paso Robles Street in Oceano California ("Paso Robles
26 Property") and a Second Deed of Trust against commercial real

1 property located at 470 Price Street in Pismo Beach, California
2 ("Price Street Property"). SBBT became the successor in interest on
3 the loan pursuant to a merger with First Bank of San Luis Obispo.

4 In May of 2006, the Debtor defaulted on the secured loan. In
5 June of 2007, SBBT entered into a Forbearance and Workout Agreement
6 ("Forbearance Agreement") to resolve the default, which at that time
7 totaled fifteen (15) months in principal and interest payments due
8 under the Note. Copies of the Forbearance Agreement, the Note and
9 the Deeds of trusts to the Paso Robles Property and Price Street
10 Property are attached to the Proof of Claim filed by SBBT on January
11 9, 2012 attached to the Declaration of Karen L. Grant as Exhibit
12 "A".

13 The Forbearance Agreement required that the Debtor, among
14 other fees and costs, pay SBBT \$22,274.46, which would be applied to
15 pay off the principal and interest for five of the fifteen payments
16 that the Debtor had missed. The remaining ten missed payments on
17 the variable interest rate Loan, totaling \$45,171.20, would be
18 deferred by being added to and amortized into the total balance of
19 the Loan (the "Deferred Amount").

20 The Forbearance Agreement also modified the interest rate on
21 the Loan to a fixed rate of 6% as opposed to a variable interest
22 rate, which at the time of the Forbearance Agreement was well in
23 excess of 6%. This interest rate modification lowered the Debtor's
24 monthly payment amount. In the event of default, the Forbearance
25 Agreement specifically set forth that the entire Deferred Amount
26 would become due and payable within fifteen (15) days. Additionally

1 upon default, SBBT, at its election, could revoke all of the
2 benefits provided to the Debtor in the Forbearance Agreement.

3 The Debtor defaulted on the Forbearance Agreement in January
4 of 2010 when he failed to make his January 2010 payment. In
5 December 2010, SBBT recorded a Notice of Default on the Loan. In
6 response, the Debtor began sending out mass communications to all of
7 SBBT's Board of Directors, along with numerous other SBBT employees,
8 making numerous unsubstantiated claims that SBBT had committed fraud
9 in relation to the Loan and the Forbearance Agreement. SBBT
10 investigated Bookout's accusations and determined that they were all
11 without merit. In attempt to resolve the dispute, SBBT engaged in a
12 mediation proceeding with the Debtor in May of 2011 at which time
13 the Debtor demanded that SBBT forgive the entire Note. SBBT
14 rejected the Debtor's proposal.

15 After the unsuccessful mediation, the Debtor once again began
16 to harass SBBT with telephone calls and mass communications to such
17 a degree, that on June 27, 2011, the Santa Barbara Superior Court
18 deemed that the Debtor's conduct was unlawful harassment and issued
19 a Restraining Order against the Debtor which precluded him from
20 contacting anyone at SBBT directly and that he was only to contact
21 SBBT through its attorneys, Reicker, Pfau, Pyle & McRoy, LLP. The
22 duration of the Restraining Order was set for three years (the
23 statutory maximum).

24 B. Debtor's First Chapter 11 Case:

25 The Debtor filed the First Chapter 13 Case to stop the SBBT's
26 pending foreclosure proceeding on September 15, 2011. The Debtor's

1 initial Chapter 13 Plan provided for monthly plan payments of
2 \$3,427.88, which provided for the payment in full of real property
3 taxes owed to the County of San Luis Obispo in the amount of
4 \$47,858.87 in Class 3 and arrearages to SBBT in Class 4 that the
5 Debtor asserted totaled \$107,185.12, as well as, a 6% distribution
6 to the Class 5 claim of general unsecured creditors. SBBT filed an
7 objection to the Chapter 13 Plan on the basis that the arrearages on
8 its secured note totaled \$127,333.39 pursuant to the Proof of Claim
9 it filed in the case. In addition, Union Pacific Railroad Company
10 ("Union Pacific") filed an objection to the Chapter 13 Plan
11 asserting that the plan failed to provide for the payment of its
12 secured claim in the amount of \$22,080.

13 On November 17, 2011, the Debtor filed a First Amended Chapter
14 13 Plan increasing his plan payment to \$4,421.09 and revising the
15 plan to provide for the arrearages claimed by SBBT and the payment
16 of Union Pacific's secured Class 3 claim, as well as, providing for
17 the 100% payment on the Class 5 unsecured claims. A true and
18 correct copy of the Debtor's First Amended Chapter 13 Plan in the
19 First Chapter 13 Case is attached to the Declaration of Karen L.
20 Grant as Exhibit "B". On November 16, 2011, the Debtor filed an
21 Amended Chapter 13 Statement of Current Monthly Income (Form 22C)
22 ("Amended Means Test") indicating monthly disposable income of
23 \$10,083.48. A copy of the Amended Means Test is attached to the
24 Declaration of Karen L. Grant as Exhibit "C".

25 The Debtor's Confirmation hearing on his First Chapter 13 case
26 was continued from November 18, 2011 to December 16, 2011 at 10:00

1 a.m. On December 15, 2011, the Debtor filed an objection to the
2 claim of SBBT. At the confirmation hearing on December 16, 2011 the
3 Debtor's Chapter 13 case was dismissed by the Court due to the
4 Debtor's failure to make his December plan payment and failure to
5 pay the December mortgage payment due to SBBT. An Order and Notice
6 of Dismissal was entered December 20, 2011.

7 C. The Debtor's Current Chapter 13 Case:

8 On December 27, 2011, the Debtor filed this most recent
9 Chapter 13 case, once again as a skeleton petition. The Debtor's
10 remaining schedules and Chapter 13 Plan are required to be filed by
11 January 10, 2012. The Debtor's Meeting of Creditors is set for
12 February 15, 2012 at 10:00 a.m. and the hearing on confirmation of
13 the plan is scheduled for April 13, 2012 at 10:00 a.m.

14 On January 10, 2012, the Debtor filed his schedules and
15 Chapter 13 Plan. Notwithstanding the Proof of Claim filed by SBBT
16 listing arrearages totaling \$131,324 (see Exhibit "A"), the Debtor's
17 most recent "plan" provides for the payment of arrearages to SBBT in
18 the amount of \$37,132.50. A copy of the Plan is attached to the
19 Declaration of Karen L. Grant as Exhibit "D". As of the date of
20 this pleading the Debtor has not made his mortgage payment in the
21 amount of \$4,077.32 due on January 1, 2012.

22 III

23 **THE DEBTOR HAS NOT REBUTTED THE PRESUMPTION OF BAD FAITH**

24 The Debtor's motion for an order imposing the stay provides on
25 page 5, section 4.2.C. that the secured creditor's interest can be
26 adequately protected "by making monthly payments on mortgages".

1 However, the Debtor has failed to make his mortgage payment due to
2 SBBT on January 6, 2011 (and failed to make his December 2011
3 payment). The Debtor states in his declaration in support of his
4 motion that he was unable to make his plan payment at the
5 confirmation hearing on December 16, 2011 because he contends that
6 the "amount of the proposed Plan payments were inaccurate; the
7 arrearage claimed by Santa Barbara is much higher than what actually
8 exists." The Debtor's plan payments are measured by his monthly
9 disposable income as set forth in his Amended Means Test. According
10 to the Debtor's Amended Means Test filed in his First Chapter 13
11 Case, he had monthly disposable income of \$10,083.48.¹ The Debtor's
12 statement that he was unable to make his proposed plan payment of
13 \$4,421.09 in his prior case simply does not ring true given the fact
14 that his monthly disposable income exceeded the plan payment
15 proposed.

16 If a debtor who is an individual in a case under chapter 7,
17 11, or 13 has had a case pending within the preceding 1-year period
18 but was dismissed, the stay under subsection (a) will terminate with
19 respect to the debtor on the 30th day after the filing of the later
20 case. (11 U.S.C. § 362(c)(3)(A)). Pursuant to subparagraph (B) of
21 this code section, a party in interest may file a motion to extend
22 the stay only if the party in interest "demonstrates that the filing
23 of the later case is in good faith as to the creditors to be
24 stayed". Furthermore, 11 U.S.C. § 362(c)(3)(C)(i)(III) provides
25 that

26 ¹ The Debtor's most recent Chapter 13 Statement of Current Monthly Income filed January 10, 2012 provides

1 (C) for purposes of subparagraph (B), a case is presumptively
2 filed not in good faith (but such presumption may be rebutted by
3 clear and convincing evidence to the contrary) -

4 (III) there has not been a substantial change in the
5 financial or personal affairs of the debtor since the dismissal of
6 the next most previous case under chapter 7, 11 or 13 or any other
7 reason to conclude that the later case will be concluded -

8 (aa) if a case under chapter 7, with a discharge; or

9 (bb) if a case under chapter 11 or 13, with a
10 confirmed plan that will be fully performed.

11 The Debtor has failed to rebutt by clear and convincing
12 evidence to the contrary the presumption that this case has not been
13 filed in good faith. There is no evidence provided to this court
14 that there has been a substantial change in the financial or
15 personal affairs of the debtor since the dismissal of his prior
16 Chapter 13 case. As set forth in the Declaration of Douglas Lutz,
17 there is no "arrearage issue" with respect to the SBBT claim other
18 than the Debtor's unreasonable and misguided attempts to pressure
19 the bank into a modification of its loan. SBBT has previously
20 attempted to negotiate a workout of the Debtor's loan arrearages,
21 which proved unsuccessful. SBBT is not willing to go down this road
22 further with Debtor.

23 WHEREFORE, Creditor prays as follows:

- 24 1. Deny the Debtor's motion for an order imposing a stay or
25 continuing the automatic stay.

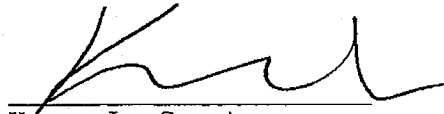
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27 that the Debtor's monthly disposable income is \$9,513.45.

2. For such other relief as this Court deems proper.

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3 DATED: January 11, 2012

LAW OFFICES OF KAREN L. GRANT

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5 By:


Karen L. Grant
Attorneys for Creditor Santa
Barbara Bank & Trust

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DECLARATION OF DOUGLAS LUTZ

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I, DOUGLAS LUTZ, declare as follows:

1. I am the Senior Vice President for the Loan Services Department of Santa Barbara Bank & Trust, N.A. ("SBBT"). I am currently the executive at SBBT in charge of handling the loan made by SBBT to Debtor William Bookout ("Bookout"). I have personal knowledge of the matters set forth below, except as to matters stated on information and belief, and as to those matters I believe them to be true.

2. In 2003, SBBT's predecessor in interest issued a Small Business Administration ("SBA") loan to Bookout (the "Loan"). The Loan is the subject of SBBT's Proof of Claim in this Chapter 13 Petition, a true and correct copy of which is attached hereto as Exhibit "A". The Loan is secured by liens held by SBBT against two properties owned by Bookout.

3. In May 2006, Bookout defaulted on the Loan. After Bookout missed 15 consecutive monthly payments on the Loan, SBBT, although not required to and as a gesture of good faith, entered into a Forbearance Agreement with Bookout in July 2007, modifying the terms of the Loan.

4. The Forbearance Agreement required that Bookout, among other fees and costs, pay SBBT \$22,274.46, which would be applied to pay off the principal and interest for five of the 15 payments that Bookout had missed. The remaining 10 missed payments on the variable interest rate Loan, totaling \$45,171.20, would be deferred

1 by being added to and amortized into the total balance of the Loan
2 (the "Deferred Amount").

3 5. The Forbearance Agreement also modified the interest rate
4 on the Loan to a fixed rate of 6% as opposed to a variable interest
5 rate, which at the time of the Forbearance Agreement was well in
6 excess of 6%. This interest rate modification lowered Bookout's
7 monthly payment amount.

8 6. In the event of default, the Forbearance Agreement
9 specifically set forth that the entire Deferred Amount would become
10 due and payable within fifteen (15) days. Additionally upon
11 default, SBBT, at its election, could revoke all of the benefits
12 provided to Bookout in the Forbearance Agreement.

13 7. Bookout defaulted on the Forbearance Agreement in January
14 of 2010 when he failed to make his January 2010 payment. Bookout
15 failed to make any payments on the Loan between January 2010 and
16 October 2011 (the only reason Bookout commenced making payments in
17 October 2011 was that he was required to do so after filing his
18 first Chapter 13 Bankruptcy Petition with this Court).

19 8. In December 2010, SBBT recorded a Notice of Default on
20 the Loan. In response, Bookout began contacting various SBBT
21 officials in response to the Notice of Default. Although Bookout on
22 countless occasions was instructed by SBBT to only contact SBBT's
23 attorneys regarding the Loan, Bookout sent mass communications to
24 all of SBBT's Board of Directors, along with numerous other SBBT
25 employees. During these communications, Bookout made numerous
26 unsubstantiated claims that SBBT committed fraud in relation to the

1 Loan and the Forbearance Agreement. SBBT investigated Bookout's
2 accusations and determined that they were all without merit.
3 Nonetheless, SBBT attempted to negotiate with Bookout and find a
4 solution in which Bookout could cure his default. On behalf of
5 SBBT, I attended a mediation session with Bookout in May 2011.
6 Again, SBBT was not required to participate in any of these
7 negotiations and could have immediately foreclosed upon Bookout's
8 properties. At all times, Bookout's position has been that SBBT
9 must forgive the entire balance of the Loan and make a substantial
10 cash payment to the Debtor, while providing no consideration in
11 return even though the principal balance of the Loan has at all
12 material times been in excess of \$400,000. Bookout has prefaced his
13 position with the threat that if SBBT did not forgive the entire
14 Loan, he would bring a very "public" lawsuit against SBBT. Since
15 there were no grounds for Bookout to take such an extreme and
16 unreasonable position, SBBT rejected this proposal.

17 9. After the May 2011 mediation, Bookout continued to send
18 barrages of emails and telephone calls to numerous SBBT officials,
19 on many occasions numbering more than five per day to the same
20 person. Most of the communications were repetitive and duplicative
21 and it became apparent that Bookout was simply attempting to harass
22 SBBT employees and directors until SBBT appeased his unreasonable
23 demands. All of the communications were replied with statements
24 from SBBT's employees and directors and its general counsel that the
25 SBBT employees and directors were not authorized to respond directly
26 to Bookout and that all communications by Bookout were to be

1 directed to SBBT's counsel only. Bookout did not respect these
2 requests and the constant bombardment continued. After Bookout sent
3 over 200 separate correspondences to SBBT directors and employees in
4 a short time span, SBBT sought a restraining order against Bookout
5 to cease his unlawful harassment. On June 27, 2011, after a noticed
6 hearing at which Bookout appeared, the Santa Barbara Superior Court
7 deemed that Bookout's conduct was unlawful harassment and issued a
8 Restraining Order against Bookout which precluded him from directly
9 contacting anyone at SBBT and that he was only to contact SBBT
10 through its attorneys, Reicker, Pfau, Pyle & McRoy LLP. The
11 duration of the Restraining Order is for three years (the statutory
12 maximum).

13 10. After the issuance of the Restraining Order, Bookout
14 began bombarding SBBT's counsel with the same unsubstantiated
15 allegations of fraud, which he had previously sent to SBBT's
16 directors and officers. These correspondences routinely numbered in
17 excess of five or more per day. Just as before, these
18 communications were for the most part repetitive and did not include
19 any new information or allegations. The communications merely
20 repeated the same allegations over and over. Nonetheless, SBBT's
21 counsel repeatedly worked with Bookout to come to an amicable
22 resolution and, although there was nothing improper with SBBT's
23 handling of the Loan or the Forbearance Agreement, SBBT made
24 numerous generous offers to assist Bookout in curing his default.
25 Bookout rejected all offers and maintained his unreasonable position
26 that the entire Loan must be forgiven by SBBT.

1 11. Seeing that discussions with Bookout were futile, SBBT
2 proceeded with its foreclosure proceeding on the properties which
3 secure the Loan. On September 15, 2011 and several days prior to
4 the scheduled trustee sale, Bookout filed his first Chapter 13
5 Bankruptcy Petition in this Court (the "First Petition").

6 12. In the First Petition, SBBT filed a Proof of Claim which
7 set forth that Bookout owed arrearages in the amount of \$127,333.99
8 and that his monthly mortgage payment to SBBT is \$4,077.32. Bookout
9 made his post petition monthly mortgage payments to SBBT for the
10 months of October and November 2011. After Bookout failed to make
11 his December 2011 payment to SBBT, as well as his Chapter 13 Plan
12 payment due in December, this Court dismissed the First Petition.

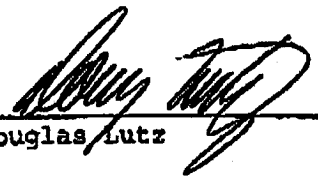
13 13. The arrearage amount set forth in the SBBT's Proof of
14 Claim filed in the First Petition was correct. Bookout's
15 unsubstantiated contention that the arrearage amount is incorrect is
16 without any merit. Additionally, Bookout's claim that he is
17 "attempting to resolve the arrearage issue with SBBT" is also
18 incorrect. Since there was nothing wrong with the arrearage amount
19 set forth in the First Petition, SBBT has never entertained, nor
20 will it ever entertain, any of Bookout's claims that the arrearage
21 amount is incorrect and should be adjusted. As a result, there has
22 been no change as to the calculation of the arrearage amount since
23 the First Petition was dismissed, other than the fact that it is now
24 larger in size because Bookout has missed additional payments and
25 additional interest has accrued.

1 14. Bookout's claim that he "has made mortgage payments
 2 exceeding that which was agreed to with SBBT" is a problem of his
 3 own making. SBBT's First Petition Proof of Claim explicitly set
 4 forth that the monthly payments were to be \$4,077.32. This amount
 5 was also confirmed and communicated to Bookout's bankruptcy counsel
 6 by SBBT's corporate counsel, Robert Forouzandeh of Reicker, Pfau,
 7 Pyle & McRoy LLP and by SBBT's bankruptcy counsel Karen Grant. As a
 8 result, it is unknown why Bookout tendered his October and November
 9 2011 monthly payments in the amount of \$4,121.06. Neither SBBT nor
 10 its counsel requested this amount. The additional amounts paid by
 11 Bookout for the October and November 2011 payments have been
 12 credited against the accrued unpaid interest on the Loan. In SBBT's
 13 Proof of Claim filed in this Petition, the monthly payment amount
 14 has again been stated as being \$4,077.32. There has been no change
 15 to the monthly payment amount since the dismissal of the First
 16 Petition.

17 15. As of the date of this declaration, the Debtor has not
 18 made his mortgage payment due January 1, 2012.

19
 20 I declare under penalty of perjury pursuant to the laws of the
 21 United States of America that the foregoing is true and correct.

22 Executed this 11 day of January, 2012, at Santa Barbara,
 23 California.

24
 25 
 26 Douglas Lutz

DECLARATION OF KAREN L. GRANT

1
2 I, KAREN L. GRANT, state and declare as follows:

3 1. I am an attorney at law duly licensed to practice before
4 the United States District Court for the Central District of
5 California, and am the attorney of record for SANTA BARBARA BANK AND
6 TRUST, N.A., f/k/a PACIFIC CAPITAL BANK dba SANTA BARBARA BANK AND
7 TRUST (hereinafter "SBBT").

8 2. I have personal knowledge of the matters set forth
9 herein. If called as a witness in this action, I could and would
10 testify competently to the matters contained herein from my personal
11 knowledge or from information communicated to me in the ordinary
12 course of business.

13 3. On or about October 6, 2003, the Debtor obtained a loan
14 from First Bank of San Luis Obispo in the amount of \$450,000. The
15 loan was evidenced by a promissory note ("the Note") and was secured
16 by a First Trust Deed against commercial real property located at
17 1311/1341 Paso Robles Street in Oceano California ("Paso Robles
18 Property") and a Second Deed of Trust against commercial real
19 property located at 470 Price Street in Pismo Beach, California
20 ("Price Street Property"). SBBT became the successor in interest on
21 the loan pursuant to a merger with First Bank of San Luis Obispo.

22 4. In May of 2006, the Debtor defaulted on the secured loan.
23 In June of 2007, SBBT entered into a Forbearance and Workout
24 Agreement ("Forbearance Agreement") to resolve the default, which at
25 that time totaled fifteen (15) months in principal and interest
26 payments due under the Note. Copies of the Forbearance Agreement,
the Note and the Deeds of trust are attached to the Proof of Claim

1 filed by SBBT on January 9, 2012 attached hereto as Exhibit "A".

2 The Proof of Claim provides that as of December 27, 2012, the
3 principal and interest owed on SBBT secured loan totaled
4 \$434,589.19. The past due arrearages totaled \$131,323.83.

5 5. The Debtor's initial Chapter 13 Plan in his First Chapter
6 13 case filed on September 15, 2011 provided for monthly plan
7 payments of \$3,427.88, which provided for the payment in full of
8 real property taxes owed to the County of San Luis Obispo in the
9 amount of \$47,858.87 in Class 3 and arrearages to SBBT in Class 4
10 that the Debtor asserted totaled \$107,185.12, as well as, a 6%
11 distribution to the Class 5 claim of general unsecured creditors.
12 SBBT filed an objection to the Chapter 13 Plan on the basis that the
13 arrearages on its secured note totaled \$127,333.39 pursuant to the
14 Proof of Claim it filed in that case. In addition, Union Pacific
15 Railroad Company ("Union Pacific") filed an objection to the Chapter
16 13 Plan asserting that the plan failed to provide for the payment of
17 its secured claim in the amount of \$22,080.

18 6. On November 17, 2011, the Debtor filed a First Amended
19 Chapter 13 Plan increasing his plan payment to \$4,421.09 and
20 revising the plan to provide for the arrearages claimed by SBBT and
21 the payment of Union Pacific's secured Class 3 claim, as well as,
22 providing for the 100% payment on the Class 5 unsecured claims. A
23 true and correct copy of the Debtor's First Amended Chapter 13 Plan
24 in the First Chapter 13 Case is attached hereto as Exhibit "B". On
25 November 16, 2011, the Debtor filed an Amended Chapter 13 Statement
26 of Current Monthly Income (Form 22C) ("Amended Means Test").

1 indicating monthly disposable income of \$10,083.48. A copy of the
2 Amended Means Test is attached hereto as Exhibit "C".

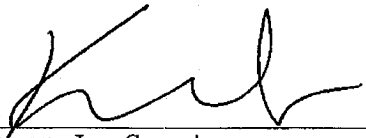
3 7. The Debtor's Confirmation hearing on his First Chapter 13
4 case was continued from November 18, 2011 to December 16, 2011. On
5 or about December 12, 2011, I spoke with the Debtor's counsel
6 Richard Rossi and indicated to him that the Debtor's current
7 mortgage payment was \$4,077.32 as indicated by the SBBT's Proof of
8 Claim filed on October 31, 2011. At the confirmation hearing on
9 December 16, 2011 the Debtor's Chapter 13 case was dismissed by the
10 Court due to the Debtor's failure to make his December plan payment
11 and failure to pay the December mortgage payment due to SBBT. An
12 Order and Notice of Dismissal was entered December 20, 2011.

13 8. On December 27, 2011, the Debtor filed this most recent
14 Chapter 13 case, once again as a skeleton petition. The Debtor's
15 Meeting of Creditors is set for February 15, 2012 at 10:00 a.m. and
16 the hearing on confirmation of the plan is scheduled for April 13,
17 2012 at 10:00 a.m.

18 9. On January 10, 2012, the Debtor filed his schedules and
19 Chapter 13 Plan in his most recent case. Notwithstanding the Proof
20 of Claim filed by SBBT listing arrearages totaling \$131,324 (see
21 Exhibit "A"), the Debtor's most recent "plan" provides for the
22 payment of arrearages to SBBT in the amount of \$37,132.50. A copy
23 of the Plan is attached hereto as Exhibit "D".
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I declare under penalty of perjury pursuant to the laws of the
United States of America that the foregoing is true and correct.
Executed this 11th day of January, 2012, at Santa Barbara,
California.



Karen L. Grant

EXHIBIT "A"

Central District Of California

Notice of Electronic Claims Filing

The following transaction was received from Grant, Karen on 1/9/2012 at 12:05 PM PST

File another claim

Case Name: William Arthur Bookout
Case Number: 9:11-bk-15818-RR
 Santa Barbara Bank & Trust successor by merger to
 First Bank of San Luis Obispo
Creditor Name: Attn: Doug Lutz
 490 South Fairview Suite 110
 Goleta CA 93117
Claim Number: 1 Claims Register
Amount Claimed: \$434,589.00
Amount Secured: \$434589.00
Amount Priority:

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

Document description:Main Document**Original filename:**1ProofofClaim.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=1106918562 [Date=1/9/2012] [FileNumber=52371556-0]
] [5238d9cf67ebbc262a84e22aed7bb033e908563dfbeda686d3247ffa3438c8934a8
 dfd9fea51fed9549ef482318e14daf6d7fcc9570166a30dc95ecfa6a5a1f8]]

Document description: 2POC**Original filename:**2ProofofClaim.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=1106918562 [Date=1/9/2012] [FileNumber=52371556-1]
] [1290260f1352a9721355b4df29b13ba5d8f9205959e4aee1ef7d450361c9b313cf0
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Document description: 3POC**Original filename:**3ProofofClaim.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=1106918562 [Date=1/9/2012] [FileNumber=52371556-2]
] [b7a15a4a35d741379748eac582a4e0b5ab11bb10384d7b30b57378bef9ab32a3d2e
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A-21

UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA		PROOF OF CLAIM
Name of Debtor: William Arthur Bookout aka Bill Bookout; DBA Oceano Nursery; DBA Pismo Beach Dive Shop; DBA Plumerias Garden & Gift; DBA Pismo Beach Surf Shop; DBA Big Kahuna Surf Shop		Case Number: ND11-15818
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Santa Barbara Bank & Trust, successor by merger to First Bank of San Luis Obispo		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where notices should be sent: Santa Barbara Bank & Trust Attn: Doug Lutz 490 South Fairview Suite 110 Goleta, CA 93117 Telephone number: _____		
Name and address where payment should be sent (if different from above): Santa Barbara Bank & Trust Attn: Doug Lutz 490 South Fairview Suite 110 Goleta, CA 93117 Telephone number: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ <u>434,589</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business whichever is earlier - 11 U.S.C. §507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507(a)(5) <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507(a) (_____). Amount entitled to priority: \$ _____ *Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
2. Basis for Claim: <u>Loan</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: <u>3501</u> 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: <u>1st Deed of Trust 1311/1341 Paso Robles St. Oceano CA</u> <u>2nd Deed of Trust 470 Price St. Pismo Beach, CA</u> Value of Property: \$ <u>265,000 / \$470,000</u> Annual Interest Rate <u>5.25</u> % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ <u>131,324</u> Basis for perfection: <u>Deeds of Trust</u> Amount of Secured Claim: \$ <u>434,589</u> Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)		
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date: <u>1/6/12</u>	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <u>Doug Lutz, Senior Vice-President</u>	FOR COURT USE ONLY

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Schedule of Amounts Owning
Loan # 100983501 - Bookout

Rate	Rate Change Date	Payment Due Date	Principal Balance	Amort payment	Amount paid	Late Fees
5.25%	12/01/09	01/06/10	\$400,962.89	\$3,743.71	\$0.00	\$187.19
5.25%	01/01/10	02/06/10	\$400,962.89	\$3,816.71	\$0.00	\$190.84
5.25%	02/01/10	03/06/10	\$400,962.89	\$3,816.71	\$0.00	\$190.84
5.25%	03/01/10	04/06/10	\$400,962.89	\$3,816.71	\$0.00	\$190.84
5.25%	04/01/10	05/06/10	\$400,962.89	\$3,816.71	\$0.00	\$190.84
5.25%	05/01/10	06/06/10	\$400,962.89	\$3,816.71	\$0.00	\$190.84
5.25%	06/01/10	07/06/10	\$400,962.89	\$3,816.71	\$0.00	\$190.84
5.25%	07/01/10	08/06/10	\$400,962.89	\$3,816.71	\$0.00	\$190.84
5.25%	08/01/10	09/06/10	\$400,962.89	\$3,816.71	\$0.00	\$190.84
5.25%	09/01/10	10/06/10	\$400,962.89	\$3,816.71	\$0.00	\$190.84
5.25%	10/01/10	11/06/10	\$400,962.89	\$3,816.71	\$0.00	\$190.84
5.25%	11/01/10	12/06/10	\$400,962.89	\$3,816.71	\$0.00	\$190.84
5.25%	12/01/10	01/06/11	\$400,962.89	\$3,816.71	\$0.00	\$190.84
5.25%	01/01/11	02/06/11	\$400,962.89	\$4,077.32	\$0.00	\$203.87
5.25%	02/01/11	03/06/11	\$400,962.89	\$4,077.32	\$0.00	\$203.87
5.25%	03/01/11	04/06/11	\$400,962.89	\$4,077.32	\$0.00	\$203.87
5.25%	04/01/11	05/06/11	\$400,962.89	\$4,077.32	\$0.00	\$203.87
5.25%	05/01/11	06/06/11	\$400,962.89	\$4,077.32	\$0.00	\$203.87
5.25%	06/01/11	07/06/11	\$400,962.89	\$4,077.32	\$0.00	\$203.87
5.25%	07/01/11	08/06/11	\$400,962.89	\$4,077.32	\$0.00	\$203.87
5.25%	08/01/11	09/06/11	\$400,962.89	\$4,077.32	\$0.00	\$203.87
5.25%	09/01/11	10/06/11	\$400,962.89	\$4,077.32	\$0.00	\$203.87
		10/11/11	Debtor Payment		(\$4,121.06)	
		11/04/11	Debtor Payment		(\$4,121.06)	
5.25%	10/01/11	11/06/11	\$400,962.89	\$4,077.32	\$0.00	\$203.87
5.25%	11/01/11	12/06/11	\$400,962.89	\$4,077.32	\$0.00	\$203.87

Regular payments past due \$86,152.63

Deferred and defaulted payments past due* \$45,171.20

Total arrearage past due \$131,323.83

Total due at 12/27/11 \$434,589.19
726 days @ \$57.67
(1/1/10 - 12/27/11)
Less PPP of \$8,242.12

* Oct 2006 - July 2007 per Forbearance & Workout Agreement of July 2007

A-23

FORBEARANCE AND WORKOUT AGREEMENT

THIS FORBEARANCE AND WORKOUT AGREEMENT ("Agreement") is made as of June 30, 2007, by and among Pacific Capital Bank, successor by merger to First Bank of San Luis Obispo, (hereinafter "Bank") and William A. Bookout ("Borrower") based upon the following recitals:

Recitals

A. On or about October 6, 2003, Bank made a loan (the "Loan") to Borrower in the original principal amount of Four Hundred Fifty Thousand Dollars (\$450,000.00), which was represented by a note (the "Note") in the same amount. The loan was made pursuant to a program of the Small Business Administration ("SBA"). The Note currently has an interest rate of prime plus 2.0%.

B. Repayment of the Note was secured by:

1. A first deed of trust (recorded as Document No. 2003119487 in the Official Records of the County of San Luis Obispo) on real property located at 1341 Paso Robles Street, Oceano, California, which is improved as a commercial property, with a residential apartment unit located thereon.

2. A deed of trust (recorded as Document No. 2003119485 in the Official Records of the County of San Luis Obispo) on real property located at 470 Price Street, Pismo Beach, California, which is improved as a commercial property, with a residential apartment unit located thereon, which is presently in third position after being subordinated to the lien of a private lender.

3. A security agreement granting a first security interest pursuant to Article 9 of the Uniform Commercial Code on personal property of the Borrower, which security interest was perfected by a Financing Statement filed with the Secretary of State as Document No. 0329760331.

C. Borrower is in default on the principal and interest payments due on the Note for May, 2006, and the 13 months thereafter (14 monthly payments) (the "Payment Default").

D. As a result of the Payment Default, Bank recorded Notices of Default, which were recorded as Document Nos. 2007009284 and 2007009285. Notices of Sale were recorded and foreclosure sales are set for July 9, 2007, as to the Pismo Beach property, and July 12, 2007, as to the Oceano property.

E. Borrower's business has been adversely affected by a recurring flood problem. A lawsuit has been filed against San Luis Obispo County, CalTrans, Union Pacific, OCS and Pismo Oceano Vegetable Exchange seeking compensation and injunctive relief, being Case No.

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006038 (the "Litigation"). The flood problem has caused Borrower to lose revenue. Borrower has requested that Bank grant concessions which would allow the foreclosure sales to be avoided and to permit him to begin monthly payments without having the obligation to cure the outstanding Payment Default.

F. Bank is willing to grant conditional concessions, as it set forth in this Agreement, on the terms and conditions set forth herein. Borrower acknowledges that the concessions granted by Bank are conditioned on full and complete performance of Borrower's obligations as set forth herein, and that upon a default under the terms of this Agreement or the loan documents, Bank has the right, in its sole and absolute discretion, to reinstate the original Loan terms, including the interest rate set forth in the Note, as if this Agreement had never been entered into and that Borrower shall have no right to demand return of any consideration provided for this Agreement including, but not limited to, the additional collateral.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements, covenants, warranties and representations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties, IT IS AGREED AS FOLLOWS:

1. Additional Collateral: In conjunction with the execution of this Agreement, Borrower will provide as additional collateral securing repayment of the Note a security interest in real property owned by Borrower located at 631 Lake Street, Oceano, California 93445 (the "Residence"), which is Borrower's residence. With respect to the additional collateral, Borrower represents and agrees as follows:

a. Borrower's interest in the Residence is free and clear of all interests, claims, liens and charges, except for a first deed of trust in favor of Flagstar Bank in the original principal amount of \$273,000. Borrower is the sole owner of the Residence. The approximate principal balance of the first deed of trust is \$273,000.00. All payments due under the first deed of trust are current and there are no outstanding non-payment defaults.

b. The real property taxes assessed against the Residence are current and there are no outstanding delinquencies in the payment of any of the property taxes owed on the Residence.

c. Concurrent with the execution of this Agreement, Borrower will execute and submit to Bank a deed of trust in a form acceptable to Bank creating a second priority lien and security in the Residence. Bank will have the deed of trust recorded through a title company, from which Bank will acquire an ALTA title policy insuring the lien of the deed of trust against the Residence in second position. The costs of recording the deed of trust, for issuance of the title policy, and any other charges incident to the perfection of Bank's security interest in the Residence shall be paid by Borrower.

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d. Bank will release its security interest in the Residence upon a sale of the Residence to a third party in conjunction with a payment to Bank in the minimum amount of One Hundred Thousand (\$100,000) Dollars from the proceeds of such a sale. The sale proceeds shall be applied as a principal reduction, and not for payment of interest, late fees or other charges which might be owing under the Note or other Loan documents. This provision applies only to a voluntary sale, and not to a foreclosure sale, forced sale, or sale in bankruptcy.

e. Any of the following shall be deemed a default under this Agreement:

i. Borrower's default under the terms of the deed of trust in favor of Flagstar Bank.

ii. Borrower's failure to pay, when due, the real property taxes assessed against the Residence.

iii. Borrower's default under the terms of the deed of trust in favor of Bank.

iv. Borrower's default on the Note.

2. Payments in Conjunction with Agreement: On or before July 6, 2007, Borrower shall deposit into an account to be created at Bank in Borrower's name, but under Bank's control (the "Suspense Account") the sum of \$48,199.46. The amount so deposited shall be held and distributed as follows:

a. Borrower hereby grants Bank a security interest in the Suspense Account to secure payment of amounts owing on the Note.

b. Upon the Effective Date, Bank will make the following distributions from the Suspense Account:

i. \$22,274.46 to pay the monthly principal and interest payments owing on Note for the earliest five past due monthly payments (May, 2006, June, 2006, July 2006, August, 2006 and September, 2006).

c. Upon being invoiced or upon the Effective Date, whichever is later, Bank may make the payments for the following costs and expenses from the Suspense Account:

i. The amounts necessary to pay for the perfection of the deed of trust on the Residence, including recording costs and title insurance fees.

ii. The costs of the appraisals of the property located at 1341 Paso Robles Street and 470 Price Street.

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iii. The costs of the environmental examination of the property located at 1341 Paso Robles Street and 470 Price Street.

iv. The costs of the appraisal of the Borrower's personal property subject to the Bank's security interest.

v. The fees charged by the trustee for foreclosure of the deeds of trust on the properties located at 1341 Paso Robles Street and 470 Price Street.

vi. The attorney's fees and costs incurred by Bank as a result of the default, including but not limited to the fees and costs incurred in the preparation of this Agreement.

d. In the event that funds remain in the Suspense Account after payment of all the obligations specified in subsections (b) and (c), the balance will be returned to Borrower and the account closed. In the event that the funds in the Suspense Account are not sufficient to pay the costs and expenses described in subsection (c) in full, Borrower will promptly deposit such additional funds as are required to pay the costs and expenses. Failure to make the required deposit within ten (10) business days after Borrower's receipt of demand for such deposit shall be deemed a default under the terms of this Agreement.

e. Borrower acknowledges and agrees that the payments made pursuant to this section 2 are pursuant to Borrower's direction and do not constitute an "action" by Bank or a foreclosure of any security interest. Borrower warrants and represents that the sums deposited into the Suspense Account are not proceeds, profits or rents from real property collateral in which Bank has a security interest, except to the extent of certain insurance proceeds, which Borrower agrees and directs should be used in accordance with this section 2.

3. Modified Payment: Commencing on July 6, 2007, and provided that thereafter there is no default under this Agreement or the following documents (the "Applicable Loan Documents") the Note, the deeds of trust recorded against the property at 1341 Paso Robles Street and 470 Price Street and the Residence, or the security agreement regarding Borrower's personal property:

a. Borrower will be entitled to make monthly payments of principal and interest (the "Modified Payment Amount") based upon a contingent interest rate of six percent (6%) per annum Bank (the "Contingent Interest Rate") rather than the Note rate of interest. The Modified Payment Amount will be calculated so as to amortize payment of the outstanding principal and the current unpaid interest (after application of the funds from the Suspense Account) at the Contingent Interest Rate over the remaining life of the loan. Only so long as there is no default under this Agreement or any of the Applicable Loan Documents will Borrower be able to make payments at the Modified Payment Amount. The maturity date for the Note shall not be modified by this Agreement.

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b. In the event of a default under this Agreement or any of the Applicable Loan Documents, Bank shall be entitled to terminate this Agreement, cancel Borrower's right to make payments at the Modified Payment Amount, and shall additionally be entitled to demand that Borrower (a) make all further payments on the Note at the interest rate set forth in the Note and (b) within fifteen (15) business days of the demand, pay to Bank in full the amount representing the difference between (i) the monthly payments that would have been due under the Note in the absence of this Agreement from July 6, 2007 until termination of the Agreement and (ii) the payments actually made by Borrower from July 6, 2007 until termination of the Agreement. Failure to pay the amount so owing, or the amount owing under subsection 4(b)(ii) with the fifteen day period set forth in this subsection (b) shall be deemed a default under this Agreement and under the deeds of trust which secure the Note.

c. The provisions of this Section 3 modify the monthly payment only, and not the terms of the Note, provided, however, that so long as Borrower has not defaulted under the terms of this Agreement or any Applicable Loan Document at the time of payment in full of the outstanding principal and unpaid interest, Borrower will owe no additional interest other than that interest paid as part of the Modified Payment Amounts.

4. Forbearance: Provided that there is no default under this Agreement or the Applicable Loan Documents and so long as Borrower makes all payments required under the Applicable Loan Documents, Banks agrees to forbear as follows:

a. Bank will not authorize a sale under the deeds of trust in Bank's favor recorded against the property located at 1341 Paso Robles Street and 470 Price Street on the following terms and conditions:

i. In the event of default under this Agreement or the Applicable Loan Documents, Bank shall have the right to instruct the trustee under any deed of trust to conduct a foreclosure sale without further notice to Borrower, other than as may be required by law.

ii. In the event of default under this Agreement or the Applicable Loan Documents, Bank shall have the right to record a notice of default with regard to the deed of trust in Bank's favor on the Residence and to conduct a foreclosure sale in the event that the Note is not reinstated in full.

iii. This agreement constitutes Borrower's consent to Bank's continuance of the presently-noticed foreclosure sales from time to time in Bank's sole discretion.

iv. In the event that Borrower makes twelve monthly payments on the Note, without default, after the Effective Date and is not in default for payment of property taxes or the providing of insurance under any deed of trust which secures the Note, Bank will, upon request to Bank in writing, rescind the notices of

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default recorded against the property located at 1341 Paso Robles Street and 470 Price Street.

b. Bank will not require Borrower to pay immediately the ten accrued but unpaid monthly payments of principal and interest due for the months from October 2006 through July 2007 (the "Deferred Payments") nor any accrued but unpaid late charges, including but not limited to the late charges assessed on the Deferred Payments (the "Deferred Late Charges") on the following terms and conditions:

i. Bank will amortize the Modified Payment Amount, as defined above, so as to collect the Deferred Payments over the remaining life of the Loan.

ii. In the event of default under this Agreement or the Applicable Loan Documents, Bank shall be entitled to cancel the forbearance applicable to the Deferred Payments and shall be entitled to demand that Borrower within fifteen (15) business days of the demand, pay to Bank in full (i) the Deferred Payments and (ii) the Deferred Late Charges, less any payments actually received on account of such deferred obligations. Failure to pay the amount so owing within the fifteen day period set forth in this subsection (b) shall be deemed a default under this Agreement and under the deeds of trust which secure the Note.

5. Acknowledgement of and Grant of Security Interest in Litigation. Borrower acknowledges and agrees that the Litigation, to the extent that it seeks damages based upon inverse condemnation, involves a potential recovery which is subject to the Bank's security interest in the property described in the Litigation. Borrower acknowledges and agrees that Bank has a security interest in any inverse condemnation damages actually payable to Borrower and that Bank may record a UCC financing statement evidencing this security interest in the Litigation and the inverse condemnation proceeds, and that Bank may advise the parties to the Litigation of its interest.

6. Representations and Waivers:

a. Borrower represents as follows:

i. Borrower is the sole owner of the Residence and the only consensual lien recorded against the Residence is the deed of trust in favor of Flagstar Bank in the original principal amount of \$273,000 (the "Senior Lien"). There are no non-consensual liens against the Residential Property known to Borrower, after reasonable investigation. Borrower will grant no consensual lien against the Residence prior to August 31, 2007. (This provision does not waive any "due on sale" provision found in any applicable deed of trust.).

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