# THE FORENSIC REPORT ON THE QUESTIONED 

## TRAVIS LOAN DOCUMENTS

By<br>Dr. James M. Kelley

August 15, 2016

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## Executive Summary

It is the Examiners opinion that the Questioned Promissory Note is a not the Note but is an altered copy as defined in the Uniform Commercial Code 3-407 for the following reasons:
(1) The purported signature of Elise Sari Travis on the questioned Note does not match her signature on the first copy of the Note faxed by JP Morgan Chase in March 2011. There are no indentations indicating pen use. There are indications that the indorsement was printed not stamped on the purported original note.
(2) The color of the ink in signature of the questioned Note does not match the color of the ink in her signatures on the two Notice of Right to Cancel forms retained by the Travis's from closing.
(3) The Cynthia Riley blank indorsement is a copy taken from another document and first placed on the questioned Note in 2012.

It is common sense that Cynthia Riley did not indorse the Note. Cynthia Riley was not an employee of Washington Mutual Bank or Washington Mutual Bank, FA after November 6, 2006 and did not have the authority to indorse the Note.
(4) No original loan documents were produced for examination. The only original loan documents are the Notice of Right to Cancel forms retained by Travis from escrow.

## The Case

The case is PENNYMAC Corp. vs. Elise Sari Travis; Bruce Robert Travis; Wailea Community Association; Wailea Kialoa Homesites Association; and Does 1 through 20; and Wailea Kialoa Homesites Association Crossclaimant vs. Elise Sari Travis, individually and as trustee under the Elise s. Travis trust dated November 5, 1990; Bruce Robert Travis in the Circuit Court of the Second Circuit, State of Hawaii, Civil Case No. 12-1-0527(1).

## The Document Examination

The Travis document examination took place beginning at 9 AM Friday August 12, 2016 at the Law Office of David B. Rosen 810 Richards St., Suite 880 Honolulu, Hawaii 96813.

A document examination embraces the entire document and all the objects thereon and is not limited to the comparison of a questioned signature with an unquestioned signature as is the case with handwriting analysis. The availability of archived digital images of the signatures on Loan documents renders handwriting analysis useless because a signature can be recreated from an archived digital image.

The examination included visual inspection and the capture of highresolution color scans of a document, and the collection of photographs by infrared and visual spectra microscopes.

## The Questioned Note

The most important document is the 6-page promissory Note that Rosen put forth as the original Note. This will be referred to as the "Questioned Note" or the "QNote" herein.

## Other Versions of the Questioned Note

Other black and white versions of the Questioned Note (QNote) have been presented in this case since 2011:
(1) The March 12, 2011 version of the QNote is not indorsed by Riley. This was faxed to the Travis's by JP Morgan Chase Bank, N.A. The Chase "worm stamp" is not present on page 1.
(2) The May 23, 2012 version of the QNote is indorsed by Riley. This version of the QNote is attached to the Complaint for Declaratory Relief.
(3) The Gutierrez Declaration version of the QNote is attached as exhibit B to the Summary Judgment Motion. ${ }^{1}$ The Gutierrez version is different that the Rosen version below in that it has two punch holes at the top, no staple holes at all, and no Worm Stamp. ${ }^{2}$

[^0](4)The Rosen version of the QNote is attached to the June 24, 2016 Summary Judgment Motion. It is different than the Gutierrez version of the QNote in that it has a Chase "Worm Stamp" at the top right of page 1, staples holes at the left top, and no top punch holes. The Cynthia Riley indorsement is pixelated ${ }^{3}$ showing that it was applied in two mismatched parts by a computer graphics program. This can be seen clearly at 2 X magnification. Therefore the indorsement was not applied by a stamp but was copied from another document and placed on the Note.

Exhibit 1 compares the signatures taken from the various versions of the original Note. The Examination QNote signature is a cleaned up version of the earlier copies of the QNOTE but it still does not match the original FAX copy sent by JP Morgan Chase Bank, N.A.

## The Unquestioned Notices of Right to Cancel

The Travis's were given three copies of the Notice of Right to Cancel ("NORTC") retained by them after escrow. Two Copies were signed by Bruce and Elise Travis. The pen and ink used by Elise Sari Travis to sign the NORTC's can be compared with the pen and ink used to sign the QNote.

Exhibit 2 compares an NORTC signature with the QNote signature based on scans made with an Epson V330 Photoscanner at 1200 pixels per inch in RGB color mode. The ink color is different. This is obvious to the naked eye by visual inspection of the signatures at 2 X . Further, the unquestioned

[^1]signature has pen indentations not found in the signature on the QNOTE during the examination.
Interestingly, the NORTC signatures and documents appear older and more worn than the QNote. The QNote, if genuine, would be the same age and should have a similar appearance. It appears much younger and less worn.

The preceding facts strongly support the conclusion that the signature of "Elise Sari Travis" on the QNote is a simulation and not her original signature.

## Copies of the Unquestioned Notices of Right to Cancel

Exhibit 3 and Exhibit 4 are high resolution scans of the Two Notices of Right to Cancel signed by the Travis's.

## Copies of the Various Versions of the Note

Exhibit 5 is a copy of the indorsements taken from the Fenton, Gutierrez and Rosen copies of the QNote. It shows the differences in the indorsements
That show that the indorsements were recreated several times.

Exhibit 6 is the examination copy of the Qnote. At this point then indorsement has been fixed and inked over. There is no evidence of an impression made by application of a stamp. The appearance of the indorsement is consistent with the use of an inkjet printer

Exhibit 7 is the first version of the Qnote faxed to the Travis's in March 2011.

Exhibit 8 is the second version of the QNote attached to the Fenton Complaint in May 2012.

Exhibit 9 is the third version of the QNote in the Gutierrez Declaration attached to the Summary Judgment motion in June 2016.

Exhibit 10 is the fourth version of the QNote in the attached by Rosen to the Summary Judgment motion in June 2016.

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


August 15, 2016

408 402-1915
jmadisonkelley@gmail.com


Fax Version
El ISE SARI TRAVIO

Complaint Version

"E" does not loop
through and under the signature line in any other version.

Summary Judgment Version 1


ELISE SARI TRAVIS

Gutierrez
Version

Summary Judgment
Version 2


ELISE SARI TRAVIS

The QNOTE signature does not match the original FAX Signature.

> No "i"s are dotted in


ELISE SARI TRAVIS

The ink color in the signature on the Retained NORTC does not match the signature on the Questioned Note. This is obvious to the naked eye.

Indentations are present in Elise Sari Travis Signature on the NORTC but not on her signature in the QNOTE.

The NORTC SIGNATURE


The three discrepancies found above are sufficient by themselves to conclude that the signature on the QNOTE is just an inked facsimile of Elise Sari Travis' signature.
notice of right to cancel
(Identification of Transaction)

## 1. Your Right to Cancel

You are entering into a transaction that will result in a (mortgage/lien/security interest) (on/in) your home. You have a legal right under federal law to cancel this transaction, without cost, within THREE BUSINESS DAYS from whichever of the following events occurs last:
(1) The date of the transaction, which is
or
(2) The date you received your Truth in Lending disclosures;
or
(3) The date you received this notice of your right to cancel.

(3) The date you received this notice of your right to cancel.

If you cancel the transaction, the (mortgage/lien/security interest) is also cancelled. Within 20 CALENDAR DAYS after we receive your notice, we must take the steps necessary to reflect the fact that the (mortgage/lien/security interest) (on/in) your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 CALENDAR DAYS of your offer, you may keep it without further obligation.

## 2. How to Cancel

If you decide to cancel this transaction, you may do so by notifying us in writing, at:
WASHINGTON MUTUAL BANK, FA
8954 RIO SAN DIEGO DRIVE \#304, SAN DIEGO, CA 92108 619/278-2500

You may use any written statement that is signed and dated by you and states your intention to cancel, and/or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.
If you cancel by mail or telegram, you must send the notice no later than MIDNIGHT of
(or MIDNIGHT of the THIRD BUSINESS DAY following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.
I WISH TO CANCEL

SIGNATURE

## DATE

The undersigned each acknowledge receipt of two copies of NOTICE of RIGHT TO CANCEL and one copy of the Federal Truth in Lending Disclosure Statement.
Each borrower/owner in this transaction has the right to cancel. The exercise of this right by one borrower/owner/shall be effective to all porrowers/owners.



BORROWERIOWNER
Bruce Robert Travis

BORROWERIOWNER
DATE

12/97
VMP Mortgage Solutions (800)521-7291

## （Identification of Transaction）

## ACCOUNT NO．

3014934784－868

## 1．Your Right to Cancel

You are entering into a transaction that will result in a（mortgage／lien／security interest）（on／in）your home，You have a legal right under federal law to cancel this transaction，without cost，within THREE BUSINESS DAYS from whichever of the following events occurs last：
（1）The date of the transaction，which is
or

（2）The date you received your Truth in Lending disclosures； or
（3）The date you received this notice of your right to cancel．
If you cancel the transaction，the（mortgage／lien／security interest）is also cancelled．Within 20 CALENDAR DAYS after we receive your notice，we must take the steps necessary to reflect the fact that the（mortgage／lien／security interest）（on／in）your home has been cancelled，and we must return to you any money or property you have given to us or to anyone else in connection with this transaction．

You may keep any money or property we have given you until we have done the things mentioned above，but you must then offer to return the money or property．If it is impractical or unfair for you to return the property，you must offer its reasonable value．You may offer to return the property at your home or at the location of the property．Money must be returned to the address below．If we do not take possession of the money or property within 20 CALENDAR DAYS of your offer，you may keep it without further obligation．

## 2．How to Cancel

If you decide to cancel this transaction，you may do so by notifying us in writing，at：
WASHINGTON MUTUAL BANK，FA
8954 RIO SAN DIEGO DRIVE \＃304，SAN DIEGO，CA 92108 619／278－2500

You may use any written statement that is signed and dated by you and states your intention to cancel，and／or you may use this notice by dating and signing below．Keep one copy of this notice because it contains important information about your rights．
 （or MIDNIGHT of the THIRD BUSINESS DAY following the latest of the three events listed above）．If you send or deliver Your written notice to cancel some other way，it must be delivered to the above address no later than that time．
I WISH TO CANCEL

## signature

## DATE

The undersigned each acknowledge receipt of two copies of NOTICE of RIGHT TO CANCEL and one copy of the Federal Truth in Lending Disclosure Statement．

Each borrower／owner in this transaction has the right to cancel．The exercise of this right by one bor／ower／owner shall be effective to all borrowers／owners．



BORROWERIOWNER Bruce Robert Travis

BORROWERIOWNER
DATE

12／97
VMP Mortgage Solutions（800）521－7291
EXHIBIT 4 NOTICE OF RIGHT TO CANCEL \＃2
DONS FAT PJP－25－074L

## Pay to the order of

 shape than the others. Combined with the "T" this indicates a different Indorsement.


Pay to the order of


THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN $115 \%$ OF THE ORIGINAL AMOUNT (OR \$_2, 137,562,50 ). MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THIS NOTE OR ANY RIDER TO THIS NOTE. A BALLOON PAYMENT MAY BE DUE AT MATURITY.


## 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ _ 1, 858, 750.00 plus any amounis added in accordance with Section $4(G)$ below, (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is WASHINGTON MUTUAL BANK, FA I will make all payments under this Note in the form of cash, check or money order. I understand that the Lender may Iransfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder".
2. INTEREST

Interest will be charged on unpaid Principal until the full amount has been paid. Up until the first day of the calendar month that precedes the first payment due date set forth in Section 3 of the Note, I will pay interest at a yearly rate of $7.763 \quad \%$. Thereafter, until the first Change Date (as defined in Section 4 of this Note) I will pay interest at a yearly rate of $\quad 7.763 \quad \%$. The interest rate required by this Section 2 and Section 4 of this Note is the Rate I will pay both before and after any default described in Section 7(B) of this Note.

## 3. PAYMENTS

(A) Time and Place of Payments

I will pay Principal and interest by making payments every month. In this Note, "payments" refer to Principal and interest payments only, although other charges such as taxes, insurance and/or late charges may also be payable with the monthly payment.

I will make my monthly payments on the 1ST day of each month beginning on FEBRUARY, 2008 $\qquad$ . I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied to interest before Principal. If, on JANUARY 01, 2038 $\qquad$ I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date".

I will make my monthly payments at P.O. BOX 78148 , PHOENIX, AZ 85062-8148 , or at a different place if required by the Note Holder.

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

The lowest payment I can make each month and not be in default under this Note is called my "minimum morithly payment". Each of my minimum monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 7 7, 105.00, unless adjusted at an earlier time under Section $4(\mathrm{H})$ of this Note. I understand and agree that this minimurn monthly payment may be based on an interest rate that is less than the interest rate set forth in Section 2 of this Note and, if that is the case, even during the first month of my loan, my minimum monthly payment may not be sufficient to pay all of
the interest that accrues on my loan during the month. In that case, the unpaid interest will be added to Principal as provided in Section $4(G)$ of this Note and interest will accrue on such amount as provided in Section 4(G) of this Note.
(C) Fayment Changes

My minimum monthly payment will be recomputed, according to Sections $4(\mathrm{E})(\mathrm{F})(\mathrm{G})(\mathrm{H})$ and (I) of this Note, to reflect changes in the principal balance and interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my minimum monthly payment in accordance with Section 4 of this Note.
(D) In addition to the minimum monthly payment, I may have up to three (3) other payment options each month. These payment options are 1) the interest only payment 2) the full principal and interest payment (based on the then current interest rate, the then outstanding Principal balance and the then remaining loan term (the "Full Principal and Interest Payment") and 3) if my loan has an original term of more than 15 years, a payment amount based on the then current interest rate and the then outstanding Principal Balance but determined as if my loan had an original term of fifteen (15) years. I understand and agree that one or more of these three payment options will not be available for any month in which the payment option is equal to or less than the minimum monthly payment. In addition, if my minimum monthly payment is past due by more than forty-five (45) calendar days, the Note Holder reserves the right to require me to make a Full Principal and Interest Payment.

## 4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

## (A) Change Dates

The interest rate 1 will pay may further change on the 1 day of FEBRUARY, 2008 , and on that day every month thereafter. Each such day is called a "Change Date".
(B) The Index

On each Change Date, my interest rate will be based on an Index. The "Index" is the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rales (H.15)" (the "Monthly Yields"). The Twelve-Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12.

The most recent Index figure available as of 15 days before each interest rate Change Date is called the "Current Index". If the Index is no longer available, the Note Holder will choose a new index which 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 $975 / 1000$ percentage points 2.975 \% ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-thousandth of one percentage point ( $0.001 \%$ ). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. In the event a new Index is selected, pursuant to paragraph 4(B), a new Margin will be determined. The new Margin will be the difference between the average of the old Index for the most recent three year period which ends on the last date the Index was available plus the Margin on the last date the old Index was available and the average of the new Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). This difference will be rounded to the next higher $1 / 8$ of $1 \%$.

## (D) Interest Rate Limit

My interest rate will never be greater than NINE AND 95/100
percentage points_ 9.950 \% ("Сар"), except that following any sale or transfer of the property which secures repayment of this Note after the first interest rate Change Date, the maximum interest rate will be the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of such sale or transfer.

Effective every year commencing FEBRUARY 01, 2009 and on the same date each twelfth month thereafter ("Payment Change Date"), the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the projected principal balance I am expected to owe as of the Payment Change Date in full on the Maturity Date at the interest rate in effect 45 days prior to the Payment Change Date in substantially equal payments. The result of this calculation is the new amount of my minimum monthly payment, subject to Section 4(F) below, and I will make payments in the new amount until the next Payment Change Date unless my payments are changed earlier under Section 4(H) of this Note.
(F) Monthly Payment Limitations

Unless Section $4(\mathrm{H})$ and $4(\mathrm{l})$ below apply, the amount of my new minimum monthly payment, beginning with a Payment Change Date, will be limited to $71 / 2 \%$ more or less than the amount I have been paying. This payment cap applies only to the principal payment and does not apply to any escrow payments Lender may require under the Security Instrument.
(G) Changes in My Unpaid Principal Due to Negative Amortization or Accelerated Amortization

Since my initial minimum monthly payment may not be based on the interest rate set forth in Section 2 of this Note, since the minimum monthly payment amount changes less frequently than the interest rate and since the minimum monthly payment is subject to the payment limitations described in Section 4(F), my minimum 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 ! owe at the monthly payment date in full on the maturity date in substantially equal payments. For each month that the minimum monthly payment is less than the interest portion and I choose to make only the minimum monthly payment, the Note Holder will subtract the minimum monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal balance, and interest will accrue on the amount of this difference at the current interest rate. For each month that the minimum monthly payment is greater than the interest portion, the Note Holder will apply the excess towards a principal reduction of the Note.
(H) Limit on My Unpaid Principal; Increased Minimum Monthly Payment

My unpaid principal can never exceed a maximum amount equal to $115 \%$ of the principal amount originally borrowed. In the event my unpaid Principal would otherwise exceed that $115 \%$ limitation, I will begin paying a new minimum monthly payment until the next Payment Change Date notwithstanding the $71 / 2 \%$ annual payment increase limitation. The new minimum monthly payment will be an amount which would be sufficient to repay my then unpaid Principal in full on the maturity date at my interest rate in effect the month prior to the payment due date in substantially equal payments.
(I) Required Full Monthly Payment

On the FIFTH anniversary of the due date of the first monthly payment, and on that same day every FIFTH__year thereafter, my minimum monthly payment will be adjusted without regard to the payment cap limitation in Section 4(F).

## (J) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in the amount of my minimum 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.

## 5. BORROWER'S RIGHT TO PREPAY

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

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will apply all of my prepayments to reduce the amount of principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the principal amount of the Note. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial prepayment may have the effect of
reducing the amount of my monthly payments, but only after the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

## 6. LOAN CHARGES

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

## 7. BORROWER'S FAILURE TO PAY AS REQUIRED

## (A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any minimum monthly payment by the end of
$\qquad$ amount calendar days after the date interest. I will pay this late charge promptly but only once on each late payment.
(B) Default

If I do not pay the full amount of each minimum monthly payment on the date it is due, I will be in default.
(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 10 days after the date on which the notice is delivered or mailed to me (or, if the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation buys all or part of Lender's rights under the Security Instrument, in which case the notice will specify a date, not less than 30 days from the date the notice is given to the Borrower).

## (D) No Waiver By Note Holder

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

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

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

## 8. GIVING OF NOTICES

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

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section $3(\mathrm{~A})$ above or at a different address if 1 am given a notice of that different address.

## 9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

## 10. WAIVERS

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

## 11. UNIFORM SECURED NOTE

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

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) 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) the request to assume is made after one year following recordation of the Deed of Trust, (b) 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, (c) 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 or other obligations related to the Note or other loan document is acceptable to Lender, (d) Assuming party executes Assumption Agreement acceptable to Lender at its sole choice and discretion, which Agreement may include an increase to Cap as set forth below, and (e) payment of Assumption Fee if requested by 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 and Lender may increase the maximum rate limit to the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of the transfer. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender has entered into a written Assumption Agreement with transferee and formally releases Borrower.

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.

## 12. MISCELLANEOUS PROVISIONS

In the event the Note Holder at any time discovers that this Note or the Security Instrument or any other document related to this loan, called collectively the "Loan Documents," contains an error which was caused by a clerical or ministerial mistake, calculation error, computer error, printing error or similar error (collectively "Errors"), I agree, upon notice from the Note Holder, to reexecute any Loan Documents that are necessary to correct any such Errors and I also agree that I will not hold the Note Holder responsible for any damage to me which may resull from any such Errors.

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OSJnosey InOLHM
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## ADJUSTABLE RATE NOTE (12-MTA Index - Payment and Rate Caps)

3014834784-888
THIS NOTE GUNTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT, MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGNALLY BORROWED, BUT NOT MORE THAN $116 \%$ OF THE ORIGINAL AMOUNT (OR \$ 2, 137, 582,50_). MY INTEREGT RATE CAN NEVER EXCEED THE LIMIT 8TATED IN THIB NOTE OR ANY RIDER TO THIS NOTE, A BALLOON PAYMENT MAY BE DUE AT MATURITY.



## 1. BOR器OWER'A PROMISE TO PAY

In relum for' a loan that I have racoived, I prornize to pay U.S/s $\qquad$ plus any amounts added in accordance with section $4(\mathrm{G}$ ) below, (inis arivunt is called "Pinolpaly, plus inserest, to the ordar of the Lender. The Lende is WASHINGTOM MUTJAL BANK, FA $\qquad$ .1 Will make alf payments under thite Note in the fo m of cash, check or mednay order. I underaland that the Lender may iransfer thls Nole. The Lender or anlune who lakeg.thls Note by iranefer and who is enitited lo recelve payments under inls Note is called the "Note.Holder".
2. Intenest

Inlerest will be charged on unpald Filnelpal until the full amount has been paid. Up untll the first day of the calendap month that precedes the first payment due date sel forth In Section 3 of the Note, I will pay interent as a yearly rate of _7.763 \%. Thereatter, untll the first Change Date (as defined in Sectlon 4 of this Note) I will pay Interest at a yearly rate of $\quad 7,703 \ldots$. The interest rate requifed by this Section 2 and Beotion 4 of this Note is the Rate I will pay both before and after any default described In 8ection 7(E) of this Nole.
\$. PAYMENTA
(A) Time and Place of Paymenta

I will pay Principal and interest by making payments overy month. In this Note, "payments" refer to Principal and imerest payments only, allhough other charges such as laxes, insurance and/or late charges may also be payable wilt the monthly payment.

I will make my monthly paymenis on the 18 I ,__ day of each monih beginning on JANUARY, 2008 $\qquad$ . I will make these payments avery monit until I have pald all of the prinolpal and Inferest and any oither charges described below that I may owe under thla Nole. Each monthly payment will be applled to Interest before Pincipal, If, on DECEMBER 08, 2037 "Maturty Date".

I will make my monthly payments at P.O. BOX 78148, PHOENIX」AZ B5052=8148 or at a different place if required by the Note Holder.
(B) Amount of My Initial Minimum Monthly Paymente

The lowest payment I can make each month and not be in defaul under thls Note is called my "minimum monthly payment". Each of my mintmum monthly payments unill the first Payment Change Date will be in the amount of U.S. §...7,105,00, unless adjusted at an earlier ilme under Section $4(\mathrm{H})$ of this Note. I understand and agree that this minimum montinly payment may be based on an interest rale that is lass than the interest rate sat forth in Secilon 2 of thls Note and, if that is the case, even during the first monith of my loan, my minimum monthly payment may not be sufficient to pay all of
the Inserest that acorues on my !oen during the month. In that otase, the unpald Interest will be added to Principal as provided in Sectlon 4(O) of thle Note and linterest will acorve on such amount as provided in Seotion 4(G) of this Nole.
(C) Payment Changes

My minlmum monilily payment will be rocomputed, according to 80ations $4(C)(F)(C)(C)$ and (1) of Inis Nota, io rafled ohanges in the principal belance and Interest rate that I must pay, The Nole Moider will determine my new interest rate and the ohanged amound of my minimum monthly payment in accordence with Seotion 4 of this Note.
(D) In addition to the mindmum monthly payment, I may have up to three (3) other payment opllons each month. These payment optlone ane 1\} the Interest only payment 2) the full prinoipal and interest payment (based on the then ourrent interest rate, the then outstanding Prindpal balance and the then remaining loan term (the "Full Prinoipal and interesi Payment") and 3) if my loan has an original tern of more inan 15 years, a payment amourit based on the then current interest rate and the then outstanding Princlpal Balance but determined as if my loan had an original ierm of fifteen (15) yeare, I understand and agres that one or more of these three payment options will nol be avallable for any month in which the payment option is equal io or loss than the minimum monthly payment. In addifion, if my minimum monthly payment is past due by more than forty-five (45) calandar days, the Nole Holder resarves the right to require me to make a Full Principal and Interest Payment,

## 4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay mey furthar change on the 10 f day of JANUARY, 200B, and on that day evory month thereafter, Each such day is called a "Change Dule".
(B) The Index

On each Change Date, my inlesest rate will be based on an Index. The "Index" is the "twelve-Month Average, delermined as sel forth below, of the annual ylelds on actively fraded Untied States Treasury Securfitios adjusted to a constant maturliy of one year as publlshed by the Federal Reserve Board in the Federal Reserve Statlstical Release entiled "Selected Interasi Rates (H.15)" (the "Monthly Yields"). The Twelve-Month Average is determined by adding logether the Monthly Yields for the mosi reotmly avallable twelve months and dividing by 12.

The most recent Index figure avallable as of 15 days bafore each interest rate Change Date is oalled the "Current Index", if the index is no longer avallable, the Note Holder will choose a new index whioh la based upon comparable information. The Nose Holder will glve mie notice of thia cholce.

## (C) Calculation of Changes

Before each Change Date, the Note Holder will caloulate my new Intereat rate by adding TWO AND $878 / 1000$ percenlage points 2. $778 . \%$ ("Margin') to the Cument Index. The Noie Holder will then round the resull of thls addilion 10 the neareat one-thousandth of one percemage point $(0.001 \%$ ), Subject to the limilis stajed in Beation 4(D) below, thls rounded amouns will be my new interest rate unill the next Change Date, In the evenl a new Indax le selectad, punauanl to paragraph 4(B), a new Margln will be detarmined. The new Mangin will be the difference between the sverage of the old Index for the most recent itriee year period whleh ende on the fast date the Index was avallable plus the Margin on the last date the old index was avaliable and the average of the new Index for the most recen three year perlod which ends on that date (or If not avalliable for gych thres year pertod, for such time as it is avaliable). This difference will be rounded to the nexi higher 1/E of 4\%.

## (D) Interast Rate Limil

My interest rate will never be greater than NINE AND gB/100
percentage points_0. 日SD \% ("Cap"), excopt that following any sale or transfer of the property which secures repaymant of this Note after the firat interost rate Chango Date, the maximum Interest rate will be the higher of the Cap or 5 percentage points greater than the Interest rate in effect al the time of such sale ar transfer.
(E) Payment Change Datev

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Effective every year commenoing JANUARY 01, 2001 , and on the same date each twalfth month thereafter ("Payment Change Date"), the Note Holder will detemntne the amount of the monthly payment that would be suffioient to repay the projected princlpal balance I am expected to owe as of the Payment Change Date In full on the Maturty Date at the interest rate In effoct 45 days prlor to the Payment Change Date in substantially equal payments. The resuth of this oaloulation is the new amount of my minimum monthly payment, subject to section 4(F) below, and I will make payments in the new amount unill the next Payment Change Date unless my payments are changed earlier under Section 4(H) of this Note.
(F) Monthly Payment L.lmitations

Unless Section $4(H)$ and $4(1)$ below apply, the amount of my now minimum monthly payment, beginning with a Payment Change Dale, will be limited to $71 / 2 \%$ more or less 1han the amount I have been paying. Thls payment oap applles only to the princlpal payment and does not apply to any bscrow payments Lender may require under the Eecurity Instrument.
(G) Changes in My Unpald Princlpal Due to Nagativo Amortization or Accelerated Amortization

Since my Initial minimum monthly payment may not be based on the interest rate set forth in Section 2 of thls Note, since the minimum monthly payment amount changes less frequently than the interest rate and since the minimum monihly payment is subject to the payment limillatlons desoribed in section 4(F), my minimum 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. For each month that the minimum monthly payment is less than the interest portion and I choose 10 make only the minimum monthly payment, the Note Holder will subiract the minlmum monthly payment from the amount of the interest portion and will add the difference to my unpald Prinolpal balanoe, and intarest will acorua on the amount of this difference at the current interest rate. For each month that the minimum monthly payment is greater than the interesl portion, the Note Holder will apply the excess towards a princlpal reduction of the Note.
(H) Limit on My Unpald Princlpal; Increassed Minimum Nonthly Payment

My unpald principal can never exceed a maximum amount equal 10 . $116 \%$ of the pincipal amount originally borrowed. In the ovent my unpaid Principal would otherwise exceed that _1158 Ifmitatlon, I will begin paying a new minlmum monthly payment unth the next Payment Change Date notwithstanding the $71 / 2 \%$ annual payment increase limitation. The now minfmum monthly paymant will be an amount whloh would be sufficient to repay my then unpaid Prinolpal In full on the maturity deie at my Interest rale in effect the month prior to the payment due date in substantially equal payments,
(l) Requined Full Monthly Paymant

On the FIFTH annlversary of the due date of the first monility payment, and on that same day every FIFTH year thereafler, my minimum monilhly payment will be edjusted withoul regard to the payment oap limitation in Seotion 4(F).
(J) Notlce of Changes

The Note Holder will dellver or mall to me a notice of any ahanges in the amount of my minlmurn 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 dille and solephone number of a person who will answer any quesition I may have regarding the noilice.

## 5. BORROWER'8 RIGHT TO PREPAY

I have the right to make payments of Principal at any Ilma before they are due. A payment of Principal only ls known as a "Prepayment". When I make a Prepayment, I will toll the Note Holdar in writing that I arn doing so. I may not dealgnate a payment as a Prepayment If I have nol made all the monthly payments due under the Nose.

I msy make a full prepayment or partal prepayments wilhout paying any prepayment charoe. The Note Holder will apply all of my prepayments to reduce the amount of prinolpal that I owe under thls Note, Howover, the Note Holder may apply my Propayment to the acorued and unpald interest on the Prepayment amount, before applying my Prepayment to reduos the princlpal amount of the Note. If I make a partal prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in wriling to those changes. My partal ppopayment may have the effecl of
reducing the amount of my monthly payments, but only after the flrst Payment Change Date following my partial Prapayment, However, any reduction due to my partlal Prepaymem may be offsel by an interarl rate increase.

## B. LOAN CHAROES

If a law, whioh applles to this Joan and which sets maximum loan oharpes, is finally lnterpreted so that the interest or other loan charges collaciad or to be ablieded In oonneation with this foan exceed the permilted limits, then: (a) any such loan oharge shall be reduced by the amount necessary to reduce the charge to the permilted limit; and (b) any sums already collected from mo whtch exceeded permitted lirnits will be refunded to me. The Note Holder may choose to make thls refund by reducing the Pincipal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduotion will be treated as a partal Prapayment,

## 7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Chargas for Overdue Payments

If the Nois Holder has not recelved ine full emouni of any minimum monthly payment by the end of FIPTEEN oalendar days after the dale it is due, I will pay a lale oharge 10 the Note Holder. The amount of the oharge wild b. DDD \% of my ovardue payment of Prinalpal (It applicable) and linterosh. I will pay tha late oharga prompily bul only once on oach late payment,
(B) Dotault

If i do not pay the fuil amount of each minimum monithly payment on the date it is due, I will be in default,
(C) Notice of Default

If I am in default, the Note Holdar may send me a written nolve telling me that If I do nol pay the overdue amount by a certain dale, the Note Holder may raquire me to pay Immedjately the full amount of Principal which has not beon paid and all the linereat that I owe on that amount. That date mud be at least 10 days after the date on whloh the novice is dellvered or mailed to me for, If the Pederal National Mongage Aesoclation or the Federial Home Loan Mongage Corporatlon buys all or part of Lenders riphts under the Eecurty Insirument, In whioh case the notioe will specify a date, nol lass than 30 days from the date the nolled is given ta the Borrowar).
(D) No Walvar By Nota Holdar

Even If, at a time when I am In dofalt, the Note Holder does not require me to pay Immediately in full as desaribed above, the Note Holder will sull have the dight to do 30 if I am in delauth al a fater llme.
(E) Paymant of Note Halders Costs and Expenses

If the Note Holder has required me to pay Immediately In full as desoribed above, the Note Holder will have the right to be paid back by me for all of his costs and expenseas in enforoing thls Note, whether or not a lawsuil is brought, to the extent not prohlbled by Applloable Lew. Those expenses Inolude, for example, reasonable aliomeys' fees.

## 8. CNING OF NOTICE

Unloss Appl|cable Law requires a different method, any notice that must be given to ma under this Note will be glven by delivering it or by mailing il by fras alass mall to me at the Propenty Address above or at a different addrass If I glve the Note Holder a notioe of my different address,

Any notice that must be glven to the Note Holder under ithls Note will be glven by malling in by first class mall to the Note Holder at the address stated In Section 3(A) above or at a different address if 1 am given a notloe of that different address.

## 9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in thls Note, including the promise fo pay the full amount owed. Anty person who is a guaranior, surety, or endorsar of this Note is also obligated to do these things. Any person who takes over these obligallons, including the obllgations of a guarantor, surefy, or endorser of this Note, is also oblgated to keep all of the promises made in this Note. The Note Holder may enforoe tis fights under this Nute against each person individually or agalnst all of us 1odether. Thls means that any one of us may be required to pay all of the amounts owed under thls Nole,

## 10. WAIVERE

I and any other person who has obllgations under this Note walve the rights of presentment and notice of dishonar, "Fresentment" means the right to require the Note Holder to demand payment of amounis due. "Notlce of Dishonort means the right to require the Note Holder to give notice to other parsone that amounte due have not baen paid.

## 11. UNIFORM 8ECURED NOTE

This Note ls a uniform Instrument with Ilmited variations in some Jutisdiotions. In addition to the protections given to the Note Holder under thls Note, a Mortgage, Dasd of Trust or Sacurlty Deed (the "Seourity Instrument'\%, dated the same date as thls Note, prolenis the Note Holder from possible losses whioh milght resull if I do not keep the promlses whloh I maks in thls Note. That Security Instrument descrites how and under what condilons I may bo required to make immediate payment in full of all amounts I owe under this Note, Some of thase condilions are described as follows:

Tranafer of the Property or a Benafinflal Interest in Borrower.
If all or any part of the Property or any Interest In the Property bs eold or transferrod (or if a beneficial Inferest in Borrower is sold or transferred and Borrower is not a natural person) wilhoul Lender's pritor written consent, Lender may require immedlale payment in full of all sums secured by this Security Instrument. However, thls option shall nol be exercised by Lander If such exeroise Is prohibited by Applloable Law. Lender also shall not exerodee this opllon It: (a) Ihe request to assume is made afler one year following recordation of the Deed of Trust, (b) Borrower causes to be submifted to Lender information required by Lender to evaluate the intended transferee as if a now loan were boing made to the ransforee, (c) Lendor reasonably determines that Lerider's security will not be Impalred by the loan assumption and that the risk of a breach of any covenant or agreement In this Securfity Insirument or other obllgations related to the Note or other toan document is acceptable to Lendor, (d) Absuming party exeoules Assumptian Agreament acceptable to Lender at lis sole cholee and disurellon, which Agreement may melude an increase to Cap as set forth below, and (e) payment of Assumpilon Fae If requested by Lenider.

To the extent permilied by Appllcabte Law, Lender may charge a reasonable fee as a condilion to Lender's consent to the loan assumpition and Lender may increase the maximum rate Ilmil to the higher of the Cap or 5 peroentage points greater than the Interest rate in effect at the time of the transfer. Lender may also require the transforee to slgn an assumption agreement that is acoeptable to Lender and that obllgales ithe iransferee to keep all the promises and agreemants made In the Note and In thls Security Instrument. Borrower will conitnue to be obligaled under the Note and this Seourity Insirument unless Lencier has entered into a wilten Assumpiton Agreement with transferee and formally releases Borrower.

If Lender exercises thls optlon, Lender shall olve Borrower notice of acceleration. The notice shall provide a period of nol less than 30 days from the date the notioe is given In accordance with soolon 16 whiln whiloh Borrower must pay all sums securad by this Security Insirument. If Borrower fails to pay these sums prior to the explration of thls period, Lender may Invoke any remedias permilted by this Seourty Insirument whthout further noliae or demand on Borrower.

## 12. MIGCELLANEOUS PROVIBIONS

In the event the Note Holder at any time dishovers that this Note or the Security Instrument or any other dooument related to thls loan, called collectivaly the "Loan Doouments," contains an error whioh wes caused by a olerloal or minisierial mistake, calculation error, computer error, printing error or similar error (collectively "Errors"), I agree, upon notice from the Note Fiolder, to reexecute any Loan Doouments that are necessary to correot any such Errors and I also agote thai I will not hold the Note Holder responalble for any damage to me which may result from any such Errors.

If any of the Loan Documents are lost, stolen, mutiated or destroyed and the Note Holder delivers to me an Indemnificallon In my favor, signed by the Note Holder, then I will sign and deliver to the Note Holdar a Loan Dooument Identical In form and content which will have the effect of the original for all purposes.

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THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINGIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN $115 \%$ OF THE ORIGINAL AMOUNT (OR \$ 2, 137.5日2,50_). MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THIS NOTE OR ANY RIDER TO THIS NOTE. A BALLOON PAYMENT MAY BE DUE AT MATURITY.


## 1. BORROWER'S PROMISE TO PAY

In retum for a loan that I have received, I promise to pay U.S. \$ $1,858,750,00$ plus any amounts added In accordance with Seation 4(G) below, (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is WASHINGTON MUTUAL BANK. FA I wll make all payments under this Note in the form of oash, cheok or money order. I understand that the Lender may transfer thls Note. The Lender or anyone who takes this Note by transfer and who is enititled to reaelve payments under this Note is called the "Note Holder".

## 2. INTEREST

Interest will be charged on unpaid Princlpal until the full amount has been paid. Up until the first day of the calendar month that precedes the first payment due date set forth in Sealion 3 of the Note, I will pay interest at a yearly rate of $\quad 7,763$ \%. Thereafter, until the first Change Date (as defined in Section 4 of this Note) I wlll pay interest at a yearly rate of 7.783 _\% . The interest rale required by this Section 2 and Section 4 of this Note is the Rate I will pay both before and after any default described in Section 7(B) of this Note.
3. PAYMENTS
(A) Time and Place of Payments

I will pay Principal and interest by making payments every month. In this Note, "payments" refer to Principal and interest payments only, although other charges such as taxes, insurance and/or late charges may also be payable with the monthly payment.

1 will make my monthly payments on the 1ST day of each month beginning on FEBRUARY, 200B $\qquad$ 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 JANUARY 01, 2038 il still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date".

I will make my monthly payments at P. O, BOX 78148, PHOENIX, AZ 85062-8148 , or at a different place if required by the Note Holder.

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

The lowest payment I can make each month and not be In default under this Note is called my "minimum monthly payment". Each of my minimum monthly payments until the first Payment Change Date will be in the amount of U.S. \$_7,105,00, unless adjusted at an earlier time under Section $4(\mathrm{H})$ of this Note. I understand and agree that this minimum monthly payment may be based on an Interest rate that is less than the interest rate set forth in Section 2 of this Note and, if that is the case, even during the first month of my loan, my minimum monthly payment may not be sufficient to pay all of
the interest that accrues on my loan durng the month. In that case, the unpald interest will be added to Prinolpal as provided in Section 4(G) of this Note and Interest will accrue on such amount as provided in Section $4(G)$ of this Note.
(C) Payment Changes

My minimum monthly payment will be recomputed, according to Sections $4(\mathrm{E})(\mathrm{F})(\mathrm{G})(\mathrm{H})$ and (I) of this Note, to reflect changes in the principal balance and interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my minimum monthly payment in accordance with Section 4 of this Note.
(D) In addition to the minimum monthly payment, I may have up to three (3) other payment options each month. These payment options are 1) the interest only payment 2) the full principal and interest payment (based on the then current Interest rate, the then outstanding Principal balance and the then remaining loan term (the "Full Principal and Interest Payment") and 3) if my loan has an original term of more than 15 years, a payment amount based on the then current interest rate and the then outstanding Principal Balance but determined as if my loan had an orlginal term of fifleen (15) years. I understand and agree that one or more of these three payment options will not be avallable for any month in which the payment option is equal to or less than the minimum monthly payment. In addition, if my minimum monthly payment is past due by more than forty-five (45) calendar days, the Note Holder reserves the right to require me to make a Full Principal and Interest Payment.
4. INTEREST RATE AND MONTHLY PAYMENT CHANGES
(A) Change Dates

The Interest rate I will pay may further change on the 1sT day of FEgRUARY, 2008 "Change Date".
(B) The Index

On each Change Date, my interest rate will be based on an Index. The "Index" Is the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securitles adjusted 10 a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitiled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve-Month Average is determined by adding together the Monthly Yleids for the most recently avallable twelve months and dividing by 12.

The most recent Index flgure available as of 15 days before each Interest rate Change Date is called the "Curient Index". If the Index is no longer avallable, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this cholce.
(C) Calculation of Changes

Before each Change 'Date, the Note Holder will calculate my new interest rate by adding TWO AND 975/1000 percentage polnts 2.078 \% ("Margin') to the Current Index. The Note Holder will then round the result of this addition to the nearest one-thousandth of one percentage point ( $0.001 \%$ ). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. In the event a new Index is selected, pursuant to paragraph 4(B), a new Margin will be determined. The new Margin will be the difference between the average of the old Index for the most recent three year period which ends on the last date the Index was avallable plus the Margin on the last date the old Index was available and the average of the new Index for the most recent three year period which ends on that date (or if not available for such three year period, for suoh time as it is available). This difference will be rounded to the next higher $1 / 8$ of $1 \%$.

## (D) Interest Rate Limit

My interest rate will never be greater than NINE AND $96 / 100$ percentage points $9,050 \%$ ("Cap"), except that following any sale or 'transfer of the property which secures repayment of this Note after the first interest rate Change Date, the maximum interest rate will be the higher of the Cap or 5 percentage points greater than the interest rate In effect at the time of such sale or transfer.
(E) Payment Change Dates

Effective every year commencing FEBRUARY 01, 2009 , and on the same date each twelfih month thereafier ("Payment Change Date"), the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the projected principal balance I am expected to owe as of the Payment Change Date in full on the Maturity Date at the interest rate in effect 45 days prior to the Payment Change Date in substantially equal payments. The result of this calculation is the new amount of my minimum monthly payment, subject to Section $4(\mathcal{F})$ below, and I will make payments in the new amount until the next Payment Change Date unless my payments are changed earlier under Section $4(\mathrm{H})$ of this Note.
(F) Monthly Payment Limitations

Unless Sectlon $4(\mathrm{H})$ and $4(\mathrm{I})$ below apply, the amount of my new minimum monthly payment, beginning with a Payment Change Date, will be limited to $71 / 2 \%$ more or less than the amount I have been paying. This payment cap applies only to the principal payment and does not apply to any escrow payments Lender may require under the Seourity Instrument.
(G) Changes in My Unpaid Principal Due to Negative Amortization or Accelerated Amortization

Since my Inillal minimum monthly payment may not be based on the interest rate set forth in Section 2 of this Note, since the minimum monthly payment amount changes less frequently than the interest rate and since the minimum monthly payment is subject to the payment limitations deseribed in Section $4(\mathrm{~F})$, my minimum monthly payment could be less than the amount of the interest portlon of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in fulf on the maturity date in substantially equal payments. For each month that the minimum monthly payment is less than the interest portion and I choose to make only the minimum monthly payment, the Note Holder will subtract the minimum monthly payment from the amount of the interest portion and will add the difference to my unpald Principal balance, and interest will accrue on the amount of this difference at the current interest rate. For each month that the minimum monthly payment is greater than the interest portion, the Note Holder will apply the excess towards a principal reduction of the Note.
(H) Limit on My Unpaid Principal; Increased Minimum Monthly Payment

My unpaid principal can never exceed a maximum amount equal to $115 \%$ of the principa amount originally borrowed. In the event my unpaid Principal would otherwise exceed that 115\% limitation, I will begin paying a new minimum monthly payment unill the next Payment Change Date notwithstanding the $71 / 2 \%$ annual payment increase limitation. The new minimum monthly payment will be an amount which would be sufficient to repay my then unpaid Principal in full on the maturity date at my interest rate in effect the month prior to the payment due date in substantially equal payments.
(i) Required Full Monthly Payment

On the FIFTH anniversary of the due date of the first monthly payment, and on that same day every FIFTH year thereafter, my minimum monthly payment will be adjusted without regard to the payment cap limitation in Section 4(F).
(J) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in the amount of my minimum 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 notloe.

## 6. BORROWER'S RIGHT TO PREPAY

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

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will apply all of my prepayments to reduce the amount of principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unipaid interest on the Prepayment amount, before applying my Prepayment to reduce the principal amount of the Note. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in 'writing to those changes. My partial prepayment may have the effect of
reducing the amount of my monthly payments, but only after the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an Interest rate increase.

## 6. LOAN CHARGES

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

## 7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any minimum monthly payment by the end of FIFTEEN cal amount of the charge will be $5.000 \quad \%$ of my overdue payment of Principal (ff applicable) and interest. I will pay this late charge promptly but only once on each late payment.
(B) Default

If I do not pay the full amount of each minimum monthly payment on the date it is due, I will be in default.
(C) Notice of Default

If I am In default, the Note Holder may send me a written notioe telling me that If I do not pay the overdue amount by a certain date, the Note Holder may require me to pay Immedlately the full amount of Principal which has not been paid and all the interest that l owe on that amount. That date must be at least 10 days after the date on which the notice is delivered or malled to me (or, if the Federal National Mortgage Assoclation or the Federal Home Loan Mortgage Corporation buys all or part of Lender's rights under the Security Instrument, in which case the notice will speclfy a date, not less than 30 days from the date the notice is given to the Borrower).
(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder wiil still have the right to do so If I am In default at a later time.
(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder Wlll have the right to be paid back by me for all of its costs and expenses in enforcing this Note, whether or not a lawsult is brought; to the extent not prohibited by Applicable Law. Those expenses Include, for example, reassonable attomeys' fees.

## B. GIVING OF NOTICES

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

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mall to the Note Holder at the address stated in Section $3(A)$ above or at a different address if 1 am given a notioe of that different address.

## 9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

## 10. WAIVERS

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

## 11. UNIFORM SECURED NOTE

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

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if a beneficlal Interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may require Immedlate 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 optlon if; (a) the request to assume is made after one year following recordation of the Deed of Trust, (b) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a now loan were being made to the transferee, (c) 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 or other obligations related to the Note or other loan document is acceptable to Lender, (d) Assuming party executes Assumption Agreement acceptable to Lender at its sole cholce and discretion, which Agreement may include an increase to Cap as set forth below, and (e) payment of Assumption Fee if requested by Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condltion to Lender's consent to the loan assumption and Lender may increase the maximum rate Ilmit to the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of the transfer. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obllgated under the Note and this Security Instrument unless Lender has entered into a written Assumption Agreement whth transferee and formally releases Borrower.

If Lender exercises thls 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 falls to pay these sums prior to the expiratlon of this period, Lender may invoke any remedies permilted by this Security Instrument without further notice or demand on Borrower.

## 12. MISCELLLANEOUS PROVISIONS

In the event the Note Holder at any time discovers that this Note or the Security Instrument or any other document related to this loan, called collectively the "Loan Documents," contains an error which was caused by a clerical or ministerial mlstake, calculation error, computer error, printing error or similar error (collectlvely "Errors"), I agree, upon notice from the Note Holder, to reexecute any Loan Documents that are necessary to correct any such Errors and I also agree that I will not hold the Note Holder responsible for any damage to me which may result from any such Errors.

If any of the Loan Documents are lost, stolen, mutilated or destroyed and the Note Holder dellivers to me an Indemnification in my favor, slgned by the Note Holder, then I will sign and deliver to the Note Holder a Loan Document identical in form and content which will have the effect of the original for all purposes.

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

$\qquad$
Pay to the order of
Without Recourse
WASHINGTON MUTUAL BANK, EA -


THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN $115 \%$ OF THE ORIGINAL AMOUNT (OR \$ 2, 137,562,50 ). MY INTEREST RATE CAN NEVER exceed the limit stated in this note or any rider to this note. a balloon PAYMENT MAY BE DUE AT MATURITY.


## 1. BORROWER'S PROMISE TO PAY

In retum for a loan that I have received, I promise to pay U.S. $\$ \ldots 1,858,750,00$ plus any amounts added in accordance with Section $4(\mathrm{G})$ below, (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is WASHINGTON MUTUAL BANK, FA will make all payments under this Note in the form of cash, check or money order. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder".

## 2. INTEREST

Interest will be charged on unpaid Principal until the full amount has been paid. Up until the first day of the calendar month that precedes the first payment due date set forth in Section 3 of the Note, I will pay interest at a yearly rate of $7.763 \quad \%$. Thereafter, until the first Change Date (as defined in Section 4 of this Note) I will pay interest at a yearly rate of $7.763 \quad \%$. The interest rate required by this Section 2 and Section 4 of this Note is the Rate I will pay both before and after any default described in Section $7(B)$ of this Note.

## 3. PAYMENTS

(A) Time and Place of Payments

I will pay Principal and interest by making payments every month. In this Note, "payments" refer to Principal and interest payments only, although other charges such as taxes, insurance and/or late charges may also be payable with the monthly payment.

I will make my monthly payments on the 1ST__ day of each month beginning on FEBRUARY, 2008 . I will make these payments every month until I have paid all of the principal and Interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied to interest before Principal. If, on JANUARY 01, 2038 still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date".

I will make my monthly payments at P.O, BOX 78148 , PHOENIX, AZ 85062-8148 ,or at a different place if required by the Note Holder.

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

The lowest payment I can make each month and not be in default under this Note is called my "minimum monthly payment". Each of my minimum monthly payments until the first Payment Change Date will be in the amount of U.S. \$ $\qquad$ 7,105,00, unless adjusted at an earlier time under Section $4(\mathrm{H})$ of this Note. I understand and agree that this minimum monthly payment may be based on an interest rate that is less than the interest rate set forth in Section 2 of this Note and, if that is the case, even during the first month of my loan, my minimum monthly payment may not be sufficient to pay all of
the interest that accrues on my loan during the month. In that case, the unpaid interest will be added to Principal as provided in Section $4(G)$ of this Note and interest will accrue on such amount as provided in Section 4(G) of this Note.
(C) Payment Changes

My minimum monthly payment will be recomputed, according to Sections $4(E)(F)(G)(H)$ and (I) of this Note, to reflect changes in the principal balance and interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my minimum monthly payment in accordance with Section 4 of this Note.
(D) In addition to the minimum monthly payment, I may have up to three (3) other payment options each month. These payment options are 1) the interest only payment 2 ) the full principal and interest payment (based on the then current interest rate, the then outstanding Principal balance and the then remaining loan term (the "Full Principal and Interest Payment") and 3) if my loan has an original term of more than 15 years, a payment amount based on the then current interest rate and the then outstanding Principal Balance but determined as if my loan had an original term of fifteen (15) years. I understand and agree that one or more of these three payment options will not be available for any month in which the payment option is equal to or less than the minimum monthly payment. In addition, if my minimum monthly payment is past due by more than forty-five (45) calendar days, the Note Holder reserves the right to require me to make a Full Principal and Interest Payment.

## 4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may further change on the $15 T$ day of FEBRUARY, 2008 , and on that day every month thereafter. Each such day is called a "Change Date".
(B) The Index

On each Change Date, my interest rate will be based on an Index. The "Index" is the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve-Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12.

The most recent Index figure available as of 15 days before each interest rate Change Date is called the "Current Index". If the Index Is no longer available, the Note Holder will choose a new index which 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 $975 / 1000$ percentage points
2.876 \% ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-thousandth of one percentage point $(0.001 \%)$. Subject to the limits stated in Section 4(D) below, this rounded amount will be my new Interest rate untll the next Change Date. In the event a new Index is selected, pursuant to paragraph 4(B), a new Margin will be determined. The new Margin will be the difference between the average of the old Index for the most recent three year period which ends on the last date the Index was available plus the Margin on the last date the old Index was available and the average of the new Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). This difference will be rounded to the next higher $1 / 8$ of $1 \%$.
(D) Interest Rate Limit

My interest rate will never be greater than NINE AND 95/100 percentage points $9.950 \quad \%$ ("Cap"), except that following any sale or transfer of the property which secures repayment of this Note after the first interest rate Change Date, the maximum interest rate will be the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of such sale or transfer.

## (E) Payment Change Dates

Effective every year commencing FEBRUARY 01, 2009
 date each twelth month thereafter (Payment Change Date, , , Nole Hold of the monthly payment that would be sufficient to repay the projected principal balance I am ere amount owe as of the Payment Change Date in full on the Maturity Date at the interest rate in effect 45 days prior to the Payment Change Date in substantially equal payments. The result of this calculation is the new amount of my minimum monthly payment, subject to Section $4(\mathrm{~F})$ below, and I will make payments in the new amount until the next Payment Change Date unless my payments are changed earlier under Section 4(H) of this Note.
(F) Monthly Payment Limitations

Unless Section $4(\mathrm{H})$ and $4(\mathrm{I})$ below apply, the amount of my new minimum monthly payment, beginning with a Payment Change Date, will be limited to $71 / 2 \%$ more or less than the amount I have been paying. This payment cap applies only to the principal payment and does not apply to any escrow payments Lender may require under the Security Instrument.
(G) Changes in My Unpaid Principal Due to Negative Amortization or Accelerated Amortization

Since my initlal minimum monthly payment may not be based on the interest rate set forth in Section 2 of this Note, since the minimum monthly payment amount changes less frequently than the interest rate and since the minimum monthly payment is subject to the payment limitations described in Section $4(\mathrm{~F})$, my minimum 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. For each month that the minimum monthly payment is less than the interest portion and I choose to make only the minimum monthly payment, the Note Holder will subtract the minimum monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal balance, and interest will accrue on the amount of this difference at the current interest rate. For each month that the minimum monthly payment is greater than the interest portion, the Note Holder will apply the excess towards a principal reduction of the Note.
(H) Limit on My Unpaid Principal; Increased Minimum Monthly Payment

My unpaid principal can never exceed a maximum amount equal to $115 \%$ of the principal amount originally borrowed. In the event my unpaid Principal would otherwise exceed that $115 \%$ limitation, I will begin paying a new minimum monthly payment until the next Payment Change Date notwithstanding the $71 / 2 \%$ annual payment increase limitation. The new minimum monthly payment will be an amount which would be sufficient to repay my then unpaid Principal in full on the maturity date at my interest rate in effect the month prior to the payment due date in substantially equal payments.
(I) Required Full Monthly Payment

On the FIFTH anniversary of the due date of the first monthly payment, and on that same day every. FIFTH year thereafter, my minimum monthly payment will be adjusted without regard to the payment cap limitation in Section 4(F).
(J) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in the amount of my minimum 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 1 may have regarding the notice.

## 5. BORROWER'S RIGHT TO PREPAY

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

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will apply all of my prepayments to reduce the amount of principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the principal amount of the Note. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial prepayment may have the effect of
reducing the amount of my monthly payments, but only after the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

## 6. LOAN CHARGES

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

## 7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

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

If I do not pay the full amount of each minimum monthly payment on the date it is due, I will be in default.
(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 10 days after the date on which the notice is delivered or mailed to me (or, if the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation buys all or part of Lender's rights under the Security Instrument, in which case the notice will specify a date, not less than 30 days from the date the notice is given to the Borrower).
(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if 1 am in default at a later time.
(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note, whether or not a lawsuit is brought, to the extent not prohibited by Applicable Law. Those expenses include, for example, reasonable attomeys' fees.

## 8. GIVING OF NOTICES

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

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if 1 am given a notice of that different address.

## 9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

## 10. WAIVERS

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

## 11. UNIFORM SECURED NOTE

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

Transfer of the Property or a Beneficial Interest in Borrower.
If all or any part of the Property or any Interest in the Property is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) 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 Appicable Law. Lender also shall not exercise this option if: (a) the request to assume is made after one year following recordation of the Deed of Trust, (b) 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, (c) 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 or other obligations related to the Note or other loan document is acceptable to Lender, (d) Assuming party executes Assumption Agreement acceptable to Lender at its sole choice and discretion, which Agreement may include an increase to Cap as set forth below, and (e) payment of Assumption Fee if requested by 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 and Lender may increase the maximum rate limit to the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of the transfer. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender has entered into a written Assumption Agreement with transferee and formally releases Borrower.

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 falls 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.

## 12. MISCELLANEOUS PROVISIONS

In the event the Note Holder at any time discovers that this Note or the Security Instrument or any other document related to this loan, called collectively the "Loan Documents," contains an error which was caused by a clerical or ministerial mistake, calculation error, computer error, printing error or similar error (collectively "Errors"), I agree, upon notice from the Note Holder, to reexecute any Loan Documents that are necessary to correct any such Errors and I also agree that I will not hold the Note Holder responsible for any damage to me which may result from any such Errors.

If any of the Loan Documents are lost, stolen, mutilated or destroyed and the Note Holder delivers to me an indemnification in my favor, slgned by the Note Holder, then I will sign and deliver to the Note Holder a Loan Document identical in form and content which will have the effect of the original for all purposes.

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


Pay to the order of
Without Recourse
WASHINGTON MUTUAL BANK, EA.


THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN $\mathbf{1 1 5 \%}$ OF THE ORIGINAL AMOUNT (OR \$ $2,137,562.50$ ). MY INTEREST RATE CAN NEVER exceed the limit stated in this note or any rider to this note. a balloon PAYMENT MAY BE DUE AT MATURITY.

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DECEMBER 01, 2007
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214 HELEUMA PLACE, KIHEI, HI 96753

## 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have recelved, I promise to pay U.S $\qquad$ plus any amounts added in accordance with Section $4(G)$ below, (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is WASHINGTON MUTUAL BANK, FA will make all payments under this Note in the form of cash, check or money prder. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder".

## 2. INTEREST

Interest will be charged on unpaid Principal until the full amount has been paid. Up until the first day of the calendar month that precedes the first payment due date set forth in Section 3 of the Note, I will pay interest at a yearly rate of $7.763 \ldots \%$. Thereafter, until the first Change Date (as defined in Section 4 of this Note) I will pay interest at a yearly rate of $\quad 7.763 \%$. The interest rate required by this Section 2 and Section 4 of this Note is the Rate I will pay both before and after any default described in Section 7(B) of this Note.

## 3. PAYMENTS

(A) Time and Place of Payments

I will pay Principal and interest by making payments every month. In this Note, "payments" refer to Principal and interest payments only, although other charges such as taxes, insurance and/or late charges may also be payable with the monthly payment.

1 will make my monthly payments on the $15 \boldsymbol{S Y}$ day of each month beginning on FEBRUARY, 2008 $\qquad$ . I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied to interest before Principal. If, on JANUARY 01, 2038 1 still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date".

I will make my monthly payments at P.O. BOX 78148, PHOENIX, AZ 85062-8148 , or at a different place if required by the Note Holder.
(B) Amount of My Initial Minimum Monthly Payments

The lowest payment I can make each month and not be in default under this Note is called my "minimum monthly payment". Each of my minimum monthly payments until the first Payment Change Date will be in the amount of U.S. \$ $\qquad$ 7,105.00, unless adjusted at an earlier time under Section $4(\mathrm{H})$ of this Note. I understand and agree that this minimum monthly payment may be based on an interest rate that is less than the interest rate set forth in Section 2 of this Note and, if that is the case, even during the firsi month of my loan, my minimum monthly payment may not be sufficient to pay all of
the interest that accrues on my loan during the month. In that case, the unpaid interest will be added to Principal as provided in Section $4(G)$ of this Note and interest will accrue ori such amount as provided in Section $4(G)$ of this Note.
(C) Payment Changes

My minimum monthly payment will be recomputed, according to Sections $4(\mathrm{E})(\mathrm{F})(\mathrm{G})(\mathrm{H})$ and $(\mathrm{I})$ of this Note, to reflect changes in the principal balance and interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my minimum monthly payment in accordance with Section 4 of this Note.
(D) In addition to the minimum monthly payment, I may have up to three (3) other payment options each month. These payment options are 1) the interest only payment 2) the full principal and interest payment (based on the then current interest rate, the then outstanding Principal balance and the then remaining loan term (the "Full Principal and Interest Payment") and 3) if my loan has an original term of more than 15 years, a payment amount based on the then current interest rate and the then outstanding Principal Balance but determined as if my loan had an original term of fifteen (15) years. I understand and agree that one or more of these three payment options will not be available for any month in which the payment option is equal to or less than the minimum monthly payment. In addition, if my minimum monthly payment is past due by more than forty-five (45) calendar days, the Note Holder reserves the right to require me to make a Full Principal and Interest Payment.

## 4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate 1 will pay may further change on the $15 T$ day of FEBRUARY, 2008 , and on that day every month thereafter. Each such day is called a
"Change Date".
(B) The index

On each Change Date, my interest rate will be based on an Index. The "Index" is the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve-Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12.

The most recent Index figure available as of 15 days before each interest rate Change Date is called the "Current Index". If the Index is no longer available, the Note Holder will choose a new index which 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 $975 / 1000$ percentage points $2.975 \%$ ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-thousandth of one percentage point ( $0.001 \%$ ). Subject to the limits stated in Section 4(D) below, this rourided amount will be my new interest rate until the next Change Date. In the event a new Index is selected, pursuant to paragraph 4(8), a new Margin will be determined. The new Margin will be the difference between the average of the old Index for the most recent three year period which ends on the last date the Index was available plus the Margin on the last date the old Index was available and the average of the new Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). This difference will be rounded to the next higher $1 / 8$ of $1 \%$.

## (D) Interest Rate Limit

My interest rate will never be greater than NINE AND 95/100
percentage points $9.950 \%$ ("Cap"), except that following any sale or transfer of the property which secures repayment of this Note after the first interest rate Change Date, the maximum interest rate will be the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of such sale or transfer.

## (E) Payment Change Dates

Effective every year commencing FEBRUARY 01, 2009 , and on the same date each twelfth month thereafter ("Payment Change Date"), the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the projected principal balance I am expected to owe as of the Payment Change Date in full on the Maturity Date at the interest rate in effect 45 days prior to the Payment Change Date in substantially equal payments. The result of this calculation is the new amount of my minimum monthly payment, subject to Section 4(F) below, and I will make payments in the new amount until the next Payment Change Date unless my payments are changed earlier under Section 4(H) of this Note.
(F) Monthly Payment Limitations

Unless Section $4(H)$ and $4(I)$ below apply, the amount of my new minimum monthly payment, beginning with a Payment Change Date, will be limited to $71 / 2 \%$ more or less than the amount I have been paying. This payment cap applies only to the principal payment and does not apply to any escrow payments Lender may require under the Security Instrument.
(G) Changes in My Unpaid Principal Due to Negative Amortization or Accelerated Amortization

Since my initial minimum monthly payment may not be based on the interest rate set forth in Section 2 of this Note, since the minimum monthly payment amount changes less frequently than the interest rate and since the minimum monthly payment is subject to the payment limitations described in Section $4(F)$, my minimum 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. For each month that the minimum monthly payment is less than the interest portion and I choose to make only the minimum monthly payment, the Note Holder will subtract the minimum monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal balance, and interest will accrue on the amount of this difference at the current interest rate. For each month that the minimum monthly payment is greater than the interest portion, the Note Holder will apply the excess towards a principal reduction of the Note.
(H) Limit on My Unpaid Principal; Increased Minimum Monthly Payment

My unpaid principal can never exceed a maximum amount equal to $115 \%$ of the principal amount originally borrowed. In the event my unpaid Principal would otherwise exceed that $115 \%$ limitation, I will begin paying a new minimum monthly payment until the next Payment Change Date notwithstanding the $71 / 2 \%$ annual payment increase limitation. The new minimum monthly payment will be an amount which would be sufficient to repay my then unpaid Principal in futl on the maturity date at my interest rate in effect the month prior to the payment due date in substantially equal payments.

## (I) Required Full Monthly Payment

On the FIFTH anniversary of the due date of the first monthly payment, and on that same day every FIFTH year thereafter, my minimum monthly payment will be adjusted without regard to the payment cap limitation in Section 4(F).
(J) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in the amount of my minimum 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 tille and telephone number of a person who will answer any question I may have regarding the notice.

## 5. BORROWER'S RIGHT TO PREPAY

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

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will apply all of my prepayments to reduce the amount of principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the principal amount of the Note. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial prepayment may have the effect of
reducing the amount of my monthly payments, but only after the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

## 6. LOAN CHARGES

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

## 7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any minimum monthly payment by the end of FIFTEEN calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5,000 \% of my overdue payment of Principal (if applicable) and interest. I will pay this late charge promptly but only once on each late payment.
(B) Default

If I do not pay the full amount of each minimum monthly payment on the date it is due, I will be in default.
(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Noto Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that l owe on that amount. That date must be at least 10 days after the date on which the notice is delivered or mailed to me (or, if the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation buys all or part of Lender's rights under the Security Insirument, in which case the notice will specify a date, not less than 30 days from the date the notice is given to the Borrower).

## (D) No Waiver By Note Holder

Even if, at a time when 1 am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.
(E) Payment of Note Holder's Costs and Expenses

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

## 8. GIVING OF NOTICES

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

Any notice that must be given to the Note Holder under this Nole will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if 1 am given a notice of that different address.

## 9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

## 10. WAIVERS

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

## 11. UNIFORM SECURED NOTE

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

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if a
beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) 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) the request to assume is made after one year following recordation of the Deed of Trust, (b) 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, (c) 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 or other obligations related to the Note or other loan document is acceptable to Lender, (d) Assuming party executes Assumption Agreement acceptable to Lender at its sole choice and discretion, which Agreement may include an increase to Cap as set forth below, and (e) payment of Assumption Fee if requested by 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 and Lender may increase the maximum rate limit to the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of the transfer. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Nole and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender has entered into a written Assumption Agreement with transferee and formally releases Borrower.

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.

## 12. MISCELLANEOUS PROVISIONS

In the event the Note Holder at any time discovers that this Note or the Security Instrument or any other document related to this loan, called collectively the "Loan Documents," contains an error which was caused by a clerical or ministerial mistake, calculation error, computer error, printing error or similar error (colleotively "Errors"), I agree, upon notice from the Note Holder, to reexecute any Loan Documents that are necessary to correct any such Errors and I also agree that I will not hold the Note Holder responsible for any damage to me which may result from any such Errors.


If any of the Loan Documents are lost, stolen, mutilated or destroyed and the Note Holder delivers to me an Indemnification in my favor, signed by the Note Holder, then I will sign and deliver to the Note Holder a Loan Document identical in form and content which will have the effect of the original for all purposes.

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

$\qquad$
$\qquad$
$\qquad$
Pay to the order of
Without Recourse
WASHINGTON MUTUAL BANK, FA
By
CYNTHIARAEEY
VICE PRESIDENT


[^0]:    ${ }^{1}$ Plaintiff Motion for Summary Judgment (June 23, 2016) /Declaration of Jeffrey Gutierrez-Exhibit B- (June 20, 2016). ${ }^{1}$
    ${ }^{2}$ Notably, Gutierrez states that the original "wet ink" Note was sent to Plaintiff counsel on March 7, 2016. This statement shows that Gutierrez did not inspect the purported original Note and his declaration should be disregarded.

[^1]:    ${ }^{3}$ In computer graphics, pixelation is caused by displaying a bitmap or a section of a bitmap at such a large size that individual pixels, small single-colored square display elements that comprise the bitmap, are visible.

