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Court of Appeals Cause No. 51479-6-II  
Pierce County Superior Court Cause No. 17-2-05214-6

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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ROBERT C. TERHUNE, TARA TERHUNE, and  
EQUITY GROUP NWEST LLC,

Plaintiffs/Appellants

v.

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER  
PARTICIPATION TRUST, and CALIBER HOME LOANS, INC.

Defendants/Respondents

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APPELLANTS' BRIEF

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SKYLINE LAW GROUP PLLC  
Michele K. McNeill, WSBA No. 32052  
[michele@skylinelaw.com](mailto:michele@skylinelaw.com)  
2155 112<sup>th</sup> Ave NE  
Bellevue, WA 98004  
Phone: (425) 455-4307  
Fax: (800) 458-1184

Counsel for Plaintiffs/Appellants

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## **I. INTRODUCTION**

The Appellants, Robert C. Terhune, Tara Terhune, and Equity Group NWest, LLC (collectively the “Terhunes”), challenge the trial court’s orders in favor of U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust (“U.S. Bank”) and Caliber Home Loans, Inc. (“Caliber”). The trial court issued a finding of no genuine issue of material fact in dispute despite a genuine issue of material fact as to whether U.S. Bank and Caliber had standing to foreclose. There is also a genuine issue of material fact as to whether the loan had been accelerated. The trial court also denied the Terhunes’ motion for reconsideration despite the issues of material issue of fact.

For these reasons, as elaborated on below, this Court should reverse with instructions to the Pierce County Superior Court to vacate the summary judgment order.

## **II. ASSIGNMENTS OF ERROR**

1. The Superior Court erred in entering the Order granting U.S. Bank and Caliber Home Loan’s motion for summary judgment and finding “there is no genuine issue of material fact in dispute.”

2. The Superior Court erred in entering the Order granting U.S. Bank and Caliber Home Loan’s motion for summary judgment and concluding they were entitled to judgment as a matter of law with respect to Terhunes’ claim for injunctive relief.

3. The Superior Court erred in entering the Order granting U.S. Bank and Caliber Home Loan's motion for summary judgment and concluding they were entitled to judgment as a matter of law with respect to Terhunes' claim for quiet title.

4. The Superior Court erred in entering an Order denying the Terhunes' motion for reconsideration.

### **III. STATEMENT OF ISSUES**

1. Does the record support the trial court's finding "there is no genuine issue of material fact in dispute"? (Assignment of Error 1).

2. Does the record support the trial court's conclusion that U.S. Bank was entitled to judgment as a matter of law with respect to Terhune's claim for injunctive relief? (Assignment of Error 2).

3. Does the record support the trial court's conclusion that U.S. Bank was entitled to judgment as a matter of law with respect to Terhune's claim for quiet title? (Assignment of Error 3).

4. Does the record support the trial court's denial of the Terhunes' motion for reconsideration? (Assignment of Error 4).

## **IV. STATEMENT OF THE CASE**

### **A. Factual Background**

#### **1. The Terhunes Defaulted Because of the Market Crash**

The Terhunes purchased the subject Property in August of 2000. Two years later they invested over \$450,000 in cash to build a unique single-family residence on the Property which is their primary residence. (CP 476-477).

On or about January 8, 2008, the Terhunes refinanced a construction loan and executed an interest only adjustable rate Promissory Note ("Note) with Countrywide Bank, FSB ("Countrywide") which was secured by a Deed of Trust recorded with the Pierce County Auditor ("Deed of Trust"). The power of sale in the Deed of Trust was granted to Recontrust Company, N.A., as Trustee ("Recontrust"). (CP 477).

Mortgage Electronic Registration Systems, Inc. ("MERS") is listed in the Deed of Trust as a third-party corporation acting "solely as a nominee" for Countrywide, its successors and assigns. The Deed of Trust states that MERS is the beneficiary of the Note. (CP 496).

From 2000 to 2008, the Terhunes had a large real estate development business with over 100 million in outstanding development loans. In the latter part of 2008, they suddenly and without warning lost all their primary contracts when the buyers pulled

out of all their development projects due to the downturn in the economy and real estate market. (CP 477).

On February 2, 2009, the Terhunes upon advice of an estate planning professional recorded a Quit Claim Deed with the Pierce County Auditor and thereby conveyed title in the Property over to their closely held limited liability company, Equity Group NWest LLC. The Terhunes are the sole members of Equity Group. Equity Group joined this action as the record owner of the Property. (CP 477, 517-518).

## **2. Holder of the Note is Unknown**

The identity of the holder of the Note is important in this case because the Note is endorsed in blank. (CP 479, 493). Whether U.S. Bank or Caliber have standing to foreclose is an issue raised in the Terhunes' complaint (CP 15), at the summary judgment hearing (RP 9), and again in Terhunes' motion for reconsideration (CP 610-612).

In October and November of 2009, the Terhunes received conflicting mortgage statements from BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loans Serving, LP ("BAC Home Loans"). One statement listed the amount of arrears at \$96,382 and another at \$8,290. (CP 479, 524-526). These statements also reflect that BAC Home Loans was acting only as a servicing agent "on behalf of the holder" of the Note. (CP 524-526).

On March 19, 2010, Recontrust, as an agent for BAC Home Loans, issued a Notice of Default to the Terhunes. BAC Home Loans

was only servicing the loan and there is nothing in the record to show it had authority to issue a notice of default on behalf of the holder of the Note. (CP 479,

In March 2010, a Corporate Assignment of the Deed of Trust was executed by the Assistant Secretary of MERS and recorded with the Pierce County Auditor. (CP 167). The Assignment purports to transfer and convey the beneficial interest in the Deed of Trust to BAC Home Loans but does not identify the holder of the Note. *Id.* MERS was not a legal beneficiary when it executed and recorded this instrument, and there is no evidence in the record that MERS was acting as a lawful agent of the beneficiary.

On August 25, 2010, Recontrust, acting on behalf of BAC Home Loans, issued a Notice of Trustee's Sale against the Property with a sale date of December 3, 2010. (CP 172-176). BAC Home Loans was only servicing the Note at the time (CP 524, 537), and there is nothing in the record that shows BAC Home Loans had any authority to initiate foreclosure proceedings against the Property.

In March 2015, the Terhune received a letter wherein they were told that their Note had been sold "LSF9 Master Participation Trust" with a mailing address c/o Caliber Home Loans, Inc. U.S. Bank is not mentioned in this letter. (CP 481, 551).

On May 6, 2015, Ocwen Loan Servicing sent a letter to the Terhunes informing them that Caliber was taking over the servicing of the Note.

On October 13, 2015, Caliber executed an Appointment of Successor Trustee as "Attorney in Fact" for U.S. Bank to appoint North Cascade as successor Trustee. (CP 553-554). U.S. Bank was not the beneficiary of the Terhune loan documents at the time. (CP 556-557). There is also nothing in the record that shows Caliber was U.S. Bank's attorney in fact when the Appointment was executed.

On December 8, 2015, an Assignment of Deed of Trust was recorded with the Pierce County Auditor. (CP 556-557). The Assignment was purportedly executed by Caliber as "Attorney in Fact" for Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP, F/K/A Countrywide Home Loans Servicing, LP. *Id.* The purpose of this Assignment was to convey the beneficial interest in the Terhunes' Deed of Trust to U.S. Bank. *Id.* There is nothing in the record that shows Caliber was Bank of America, N.A.'s attorney in fact when this Assignment was executed.

On December 9, 2015, the purported Appointment of North Cascade as successor trustee by U.S. Bank was recorded with the Pierce County Auditor. (CP 553-554). On October 11, 2016, North Cascade issued a Notice of Trustee's Sale with a nonjudicial foreclosure sale date of February 17, 2017. (CP 286-289).

### **3. Acceleration of the Loan**

In November of 2008, the Terhunes were no longer able to meet their financial obligations through no fault of their own and defaulted on the Note. (CP 477).

On December 17, 2008, Countrywide issued a Notice of Intent to Accelerate to the Terhune. (CP 158-159). The amount required to cure the default and avoid acceleration was \$17,062.48, which included a past due payment for November 2008 plus a late charge. (CP 158).

On January 16, 2009, Countrywide issued a Notice of Intent to Accelerate to the Terhunes. (CP 161-162). The amount required to cure the default and avoid acceleration was \$17,068.73, which included a past due payment for December 2008 plus a late charge. (CP 161).

On February 17, 2009, Countrywide issued a third and final Notice of Intent to Accelerate to the Terhunes. (CP 164-165). The amount required to cure the default and avoid acceleration was \$17,474.98, which included a past due payment for January 2009 and another late charge. (CP 164).

The last payment made on the Note was on January 22, 2009 in response to the January 16, 2009 acceleration notice. (CP 478). Under the express terms of the parties' loan documents and the acceleration notices, the Terhune loan was accelerated on February

16, 2009 for failure to cure the default as demanded where no additional payments were made or accepted thereafter by the lender.

The January 16, 2009 acceleration notice states in relevant part as follows:

If the default is not cured on or before February 15, 2009, the mortgage payments **will be accelerated** with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time.

...

Failure to bring your loan current or to enter into a written agreement by February 15, 2009 as outlined above will result in the acceleration of your debt.”

(bold type in original). (CP 520-521). The Notice also states:

You may, if required by law or your loan documents, have the right to cure the default after the acceleration of the mortgage payments and prior to the foreclosure sale of your property if all amounts past due are paid within the time permitted by law.

(CP 520). This language comports with Section 19 of the Deed of Trust that allows the discontinuance of a foreclosure sale with payment of “all sums due *as if no acceleration had occurred.*” (CP 502) (emphasis added).

The default was not cured on or before February 15, 2009. No payments were made or accepted by the lender after the January 22, 2009 payment. (CP 478). Under the express terms of the Notice of Intent to Accelerate, the Terhunes considered the mortgage

payments accelerated with “the full amount remaining accelerated and becoming due and payable in full” as set forth in the January 2009 Notice. (CP 478-479, 520).

On or about July 6, 2011, BAC Home Loans sent the Terhunes a letter which provides: 1) the servicing of the Note has been transferred; 2) the total amount the Terhunes owed on the Note was the full balance of the loan; and 3) the full balance “to whom the debt is owed” was not BAC Home Loans. (CP 481, 537-539).

Because the Deed of Trust contract grants the Terhunes the right to reinstate the loan “as if no acceleration has occurred,” any letters or statements that set out what is required to reinstate the loan does not, without something more, de-accelerate the loan or indicate the loan was never accelerated. (CP 502).

### **3. Statute of Limitations Expired**

On August 25, 2010, Recontrust, acting on behalf of BAC Home Loans, issued a Notice of Trustee’s Sale against the Property with a sale date of December 3, 2010. (CP172-176). Recontrust and BAC Home Loans were wholly owned subsidiaries of Bank of America, N.A. when this notice was recorded. (CP 9).

On November 19, 2010, because of their concerns regarding the accounting irregularities, the uncertain identity of the beneficiary, and the role of MERS in assigning an interest in their Note, the

Terhunes commenced a lawsuit to halt the pending foreclosure sale of the Property. (CP 480).

On December 2, 2010, the Terhunes were granted an Order restraining the foreclosure sale ("TRO"). (CP 528-531). The TRO was dissolved on February 18, 2011. (CP 533-535).

On March 2, 2012, the Terhunes obtained a voluntary Order of dismissal of their former case without prejudice. No counterclaims were ever filed against them, and the case closed. (CP 481, 545-546).

On December 31, 2014, Washington's six-year statute of limitation under RCW 4.16.040 to enforce the missed installment payments started to expire. (CP 11). Because the loan was accelerated on February 16, 2009, the statutory period to commence an action on all payments owed under the Note thereafter expired on February 16, 2015. (CP 461).

Because the 2010 notice of trustee's sale was unlawfully issued, no tolling occurred. But, even if tolling did occur, it would have tolled only from August 25, 2010 to April 1, 2011 or 220 days. *RCW 61.24.100, .040(6); Bingham v. Lechner*, 111 Wn.App 118 (2002). (CP 461).

The TRO was in place from December 2, 2010 to February 18, 2011 but overlaps the notice of trustee's sale. (CP 461). The TRO also did not prevent an action on the Note or Deed of Trust, therefore no tolling occurred. *Id.*

The Terhunes' 2010 legal action likewise did not prevent an action on the Note or Deed of Trust, but no counterclaim was ever filed, and the case was voluntarily dismissed without prejudice. (CP 481).

The statutory window to commence an action on all payments owed on the Note from February 16, 2009 forward expired on February 16, 2015. If tolling is included from the 2010 notice of trustee's sale, the statutory window would have expired on September 25, 2015. (CP 472).

On October 11, 2016, Caliber issued a notice of trustee's sale on U.S. Bank's behalf. (CP 286-289).

## **B. Procedural History**

### **1. The Terhunes Commenced an Action Based on Genuine Issues as to Whether the Statutory Period to Enforce the Loan Had Expired and Whether the Defendants Had Standing**

On February 7, 2017, the Terhunes filed the current action based on genuine issues as to whether the statute of limitations to enforce the Note and Deed of Trust had expired and whether U.S. Bank was the current holder of the Note which was endorsed in blank. (CP 5-13).

As set out above, the records are anything but clear as to whether Caliber had any authority to assign the Deed of Trust or appoint a trustee on behalf of Bank of America, N.A. or whether Bank

of America, N.A. was even in a position to convey any beneficial interest in the loan documents in December of 2015.

The parties' contracts and notice of acceleration language also support acceleration of the Note by Countrywide in February of 2009, making the October 2016 nonjudicial foreclosure proceeding untimely.

## **2. U.S. Bank and Caliber Moved for Summary Judgment Against the Complaint**

On October 4, 2017, U.S. Bank and Caliber filed a joint motion for summary judgment. (CP 57-84). U.S. Bank's motion is supported only by a declaration from an employee of Caliber, Nathaniel Mansi. (CP 57-84, CP 85). Mr. Mansi does not identify Caliber as ever being an attorney in fact for Bank of America, N.A. or U.S. Bank. (CP 85-92). There is no evidence that such a relationship ever existed between Caliber and Bank of America, N.A. or between Caliber and U.S. Bank.

Mr. Mansi does not state in his declaration on behalf of Caliber that he is employed by U.S. Bank. (CP 85-92). As such, he lacked personal knowledge as to whether U.S. Bank is holding the Note or not. There is nothing in the record that shows U.S. Bank is the actual holder of the Note, and the Terhunes raised this issue in response to the summary judgment motion. (CP 467-469, RP 9). The trial court

granted U.S. Bank and Caliber's joint summary judgment motion on December 15, 2017. (CP 597-599).

### **3. The Terhunes Moved for Reconsideration**

On December 20, 2017, the Terhunes timely filed a motion for reconsideration of the summary judgment order. (CP 602-614). In their motion the Terhunes argued that the Countrywide notice of acceleration was that of a certain future event, and at a minimum the installment payments on the Terhune loan that were not paid from January 1, 2009 to October 1, 2010 were still rendered unenforceable by the statute of limitations even if acceleration had not occurred. (CP 607-610).

The Terhunes also argued that issues of material fact remained as to whether U.S. Bank had standing to foreclose as the actual holder of the Note. (CP 610-612).

On January 3, 2018, U.S. Bank and Caliber filed a response wherein they argued the summary judgment order was warranted because there was no acceleration of the loan, their foreclosure can be based on any default even if some payments are barred under the statute of limitations, and the Terhunes' prior action against third parties in 2010 established U.S. Bank and Caliber had standing to enforce the Note in October of 2016. (CP 617-633).

On January 22, 2018, the Pierce County Superior Court entered an Order denying the Terhunes' motion for reconsideration without oral argument. (CP 634).

The Terhunes filed a timely notice of appeal on February 20, 2018 (CP 635-637).

#### **V. STATEMENT OF APPEALABILITY**

RAP 2.2(a)(1) authorizes an appeal from the "final judgment entered in any action or proceeding," and RAP 2.2(a)(3) authorizes an appeal from "[a]ny written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action." The right to appeal extends to any "aggrieved party" whose "proprietary, pecuniary, or personal rights are substantially effected." *Harris v. Griffith*, 2 Wn.App.2d 638, 646, 413 P.3d 51 (2018), citing *In re Guardianship of Lasky*, 54 Wn. App. 841, 848-50, 776 P.2d 695 (1989) and RAP 3.1.

In this case, the trial court Orders are appealable orders because they effectively determined and discontinued the action. RAP 2.2(a)(3). The Terhunes are aggrieved because their propriety, pecuniary, and/or personal rights in the real property at issue has been substantially effected by giving U.S. Bank and Caliber the ability to re-commence foreclosure proceedings on the Terhunes' home.

## VI. ARGUMENT

### A. Standard of Review

“The standard of review of an order of summary judgment is *de novo*, and the appellate court performs the same inquiry as the trial court.” *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300–01, 45 P.3d 1068, 1073 (2002) (citation omitted). “The court considers the facts and the inferences from the facts in a light most favorable to the nonmoving party.” *Id.* (citation omitted). However, “where the record consists only of affidavits, memoranda of law, and other documentary evidence”, then “the reviewing court is not bound by the trial court's findings on disputed factual issues.” *Progressive Animal Welfare Soc. v. Univ. of Washington*, 125 Wn.2d 243, 252–53, 884 P.2d 592 (1994) (citation omitted). Questions of law are likewise reviewed *de novo*. *Mains Farm Homeowners Ass'n v. Worthington*, 121 Wn.2d 810, 813, 854 P.2d 1072 (1993) (citation omitted).

### B. The Trial Court Erred in Granting Summary Judgment to U.S. Bank and Caliber on Terhunes' Injunction Claim

U.S. Bank and Caliber were not entitled to summary judgment on the Terhunes' injunction claim because there is a genuine issue of material fact as to whether U.S. Bank or Caliber is the holder of the Terhunes' Note, which is endorsed in blank. (CP 493).

Only the holder of the Terhunes' Note has the power to enforce the Deed of Trust because a deed of trust follows the note by operation of law. *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83, 104, 285 P.3d 34 (2012). Here, there is no evidence the Deed of Trust is enforceable by U.S. Bank or Caliber:

In Washington, only the holder of the obligation secured by the deed of trust is entitled to foreclosure. RCW 61.24.005(2) defines "beneficiary" under a deed of trust as the holder of the instrument or document evidencing the obligations secured by the deed of trust.[ ] . . . Having an assignment of the deed of trust is not sufficient, . . . because the security follows the obligation secured, rather than the other way around. This principle is neither new nor unique to Washington.

*In re Jacobson*, 402 B.R. 359, 367 (Bankr. W.D. Wash. 2009), citing *Fidelity & Deposit Co. of Maryland v. Ticor Title Ins. Co.*, 88 Wn. App. 64, 68-69, 943 P.2d 710 (1997). A borrower has "[a] duty at his peril to see that the person to whom he pays as agent is either (a) in possession of the instrument, or (b) has special authority to receive payment, or (c) has been represented by the owner and holder of the security to have such authority." *Ross v. Johnson*, 171 Wash. 658, 664, 19 P.2d. 101 (1933). "[T]he burden of proving such agency must be borne by the party who asserts it." *Id.* In Washington, possession of a *copy* of the note does not establish possession of the original for purpose of enforcement of a deed of trust securing the same. *Lyons v. U.S. Bank Nat. Ass'n*, 181 Wn. 2d 775, 791, 336 P.3d 1142 (2014); *Bain*, 175 Wn.2d at 104 (in order

to foreclose, “the beneficiary must either actually possess the note or be the payee.”). There is nothing in the record that shows U.S. Bank or Caliber are the beneficiary in fact of the Terhunes’ Note.

On October 13, 2015, Caliber executed an Appointment of Successor Trustee as “Attorney in Fact” for U.S. Bank. (CP 553-554). There is no record of U.S. Bank appointing Caliber as its attorney in fact despite discovery requests that required production of such a document. (CP 481-482).

On December 8, 2015, an Assignment of Deed of Trust was recorded with the Pierce County Auditor. (CP 556-557). The Assignment was purportedly executed by Caliber as “Attorney in Fact” for Bank of America, N.A. *Id.* The purpose of this Assignment was to convey the beneficial interest in the Terhunes’ Deed of Trust to U.S. Bank. *Id.* Bank of America, N.A. and BAC Home Loans have repeatedly acknowledged they “only” serviced the Note on behalf of the Noteholder (CP 481-482), and there is no record of Bank of America, N.A. appointing Caliber as its attorney in fact despite discovery requests that should have produced such a record. (CP 482).

The only record the Terhunes received from U.S. Bank in response to discovery requests concerning U.S. Bank’s status as a holder of the Note is a Declaration of Beneficiary signed by an

individual on October 7, 2015 who identifies herself as an “authorized signatory” for Caliber. (CP 482, 559). Not only does this person lack personal knowledge as to whether U.S. Bank, a separate and distinct entity, is the actual holder of the Note, but the declaration itself is insufficient to establish U.S. Bank as the holder of the Note.

In *Lyons*, the Court held that a declaration which states the named beneficiary is the “actual holder of the promissory note or other obligation secured by the deed of trust” is insufficient to establish the named beneficiary as the actual beneficiary of the note. *Lyons v. U.S. Bank Nat. Ass’n*, 181 Wn. 2d at 791. Here, we have a declaration with the same ambiguous language. (CP 559).

Rather than produce evidence that U.S. Bank does in fact hold the Note (a fact they fail to even state in their motion for summary judgment or reply briefs), U.S. Bank and Caliber simply argue that the standing issue is precluded as a result of the Terhunes 2010 lawsuit that was dismissed without prejudice. (CP 545). But, the 2010 case did not involve U.S. Bank or Caliber, and the alleged assignment of the Deed of Trust to U.S. Bank did not occur until 2015. (CP 545, 556). The person who is entitled to enforce the Terhunes’ promissory note is:

- (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3–309 or 62A.3–418(d). A

person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

RCW 62A.3–301. A “holder” is “[t]he person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession.” RCW 62A.1–201(b)(21)(A).

There is no evidence that U.S. Bank (or Caliber for that matter) is the holder of the Note, and the Terhunes’ position is that they are not. (CP 15, 482). This is sufficient to create a genuine issue of material fact as to whether U.S. Bank and Caliber are entitled to enforce the Note through the Deed of Trust which follows the Note.

Accordingly, the trial court erred in dismissing the Terhunes’ claim for injunctive relief on summary judgment.

### **C. The Trial Court Erred in Granting Summary Judgment to U.S. Bank and Caliber on Terhunes’ Quiet Title Claim**

U.S. Bank and Caliber were not entitled to summary judgment on the Terhunes’ quiet title claim because the statute of limitations had expired on all or some of the installment payments.

#### **1. The Note Accelerated**

The Terhunes’ Note is illustrative of how the Countrywide notice of acceleration should be interpreted. The Note states that in

the event of a default the lender may send the borrower written notice that failure to pay the overdue amount by a certain date “may” require immediate payment of the full amount of principal and interest owed. (CP 40, § 7(C)). Requiring immediate payment of the full amount of principal and interest owed is an acceleration of the loan agreement’s maturity date. See Acceleration, Black’s Law Dictionary (10th ed. 2014). If Countrywide had intended to merely preserve the right to accelerate it would have used the word “may” as contemplated by the contract; Instead, they elected to use the word “will” to exercise the option to require immediate payment in full if the default was not cured on or before the date given.

The Note also provides that if the Note Holder has required the borrower to pay immediately in full as described in Section 7(C), “the Note Holder will have the right to be paid back by [the borrower] all of its costs and expenses in enforcing this Note . . . [including] reasonable attorneys’ fees.” (CP 490, § 7(E)). Therefore, before it could recover its costs, expenses and reasonable attorneys’ fees, Countrywide first needed to accelerate the loan.

The Countrywide Deed of Trust specifies that a notice of acceleration shall specify the following:

- (a) the default;
- (b) the action required to cure the default;
- (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured;
- and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of

the sums secured by this Security Instrument and sale of the Property at public auction . . .

(CP 503, § 22). This same section also provides that “[i]f the default is not cured on or before the date specified in the notice [of acceleration], Lender at its option, may require immediate payment in full of all sums . . . *without further demand* and may invoke the power of sale and/or any other remedies permitted by Applicable Law.” (CP 503, § 22) (emphasis added). Accordingly, Countrywide was not required to send the Terhunes a second notice to trigger the acceleration because it had already exercised the option to require immediate payment “in full” in the January 2009 notice if the default was not cured on or before the date specified. (CP 520).

Countrywide’s January 16, 2009 notice of acceleration is a self-executing conditional offer: either cure the default on or before February 15, 2009, or the debt will automatically be accelerated. The notice speaks in mandatory terms with language that is different from what was contemplated by the parties’ contracts. The notice states that “[i]f the default is not cured on or before February 15, 2009, the mortgage payments **will be accelerated** with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time.” (emphasis in original) (CP 520). The notice states on page two that “[f]ailure to bring your loan current or to enter into a written agreement by

February 15, 2009 as outlined above will result in the acceleration of your debt.” (CP 521).

The notice also states: “[y]ou may, if required by law or your loan documents, have the right to cure the default *after the acceleration* of the mortgage payments and prior to the foreclosure sale of your property.” (CP 520) (emphasis added). Use of the phrase “after the acceleration” is present tense and refers to the acceleration in the notice that will occur upon failure to cure as demanded. This same Countrywide notice of acceleration language has been held by other courts to have accelerated the loan for similar reasons. See *Umouyo v. Bank of Am., N.A.*, No. 2:16-CV-01576-RAJ, 2017 WL 1532664, at \*4 (W.D. Wash. Apr. 28, 2017) (court order); *Fujita v. Quality Loan Serv. Corp. of Washington*, No. C16-925 TSZ 2016 WL 4430464, at \*2 (W.D. Wash. Aug. 22, 2016) (court order).

Like the Note, the parties’ Deed of Trust contract allows use of the phrase “may result in acceleration” in a notice of acceleration, which Countrywide elected not to use. (CP 503). The only reasonable inference for use of the phrase “**will be accelerated**” set out in bold type instead of the discretionary “may result in acceleration” as contemplated by the contract is that Countrywide intended to accelerate the loan without any further notice the moment the amount demanded remained unpaid by the deadline given. (CP 503, 520) (emphasis in original). This would in turn trigger recovery

of legal fees pursuant to the Note. (CP 490, § 7(E)). This was also a very effective means of getting borrowers to cure the default as shown by the Terhunes attempts to cure.

The impact of Countrywide's choice of words on the Terhunes is important. Where there is an acceleration provision exercisable at the option of the creditor:

Some affirmative action is required, some action by which the [creditor] makes known to the [debtor] that he intends to declare the whole debt due. This exercise of the option may, of course, take different forms. It may be exercised by giving the [debtor] formal notice to the effect that the whole debt is declared to be due, or by the commencement of an action to recover the debt, or perhaps *by any means by which it is clearly brought home to the [debtor] of the note that the option has been exercised.*

*Weinberg v. Naher*, 51 Wash. 591, 594 (1909) (emphasis added).

Countrywide was not required to use the language “**will be accelerated** with the full amount remaining accelerated and becoming due and payable in full” in its acceleration notice, nor were they required to send a second notice after acceleration. (CP 520) (emphasis in original). The fact that Countrywide chose these words to invoke immediate payment in full and made the election to invoke the power of sale as the notice states will happen after the acceleration supports the interpretation by the Terhunes that the loan had accelerated on February 16, 2009.

The operative consideration when determining whether the right to accelerate the loan has been invoked is not what Countrywide may or may not have intended, but rather whether the notice “effectively” apprises the borrower that the lender is clearly exercising its right to accelerate the loan. See *Glassmaker v. Ricard*, 23 Wn. App. 35, 38 (1979) (“acceleration . . . must be made in a clear and unequivocal manner which effectively apprises the maker that the holder has exercised his right to accelerate the payment date.”). The Countrywide Deed of Trust defines the word “may” as giving the holder “sole discretion without any obligation to take any action.” (CP 502, § 16). Section 22 of the Deed of Trust, which governs acceleration of the loan, allows use of the word “may” in setting out the consequence for not curing the default by the date given in a notice of acceleration. (CP 503). But Countrywide did not use the word “may” when it set out the consequence of not curing the default by the date given in its notice of acceleration, and instead used the verb “will”. Whereas the word “may” expresses the possibility of something happening, the word “will” in this context is used to express inevitability.<sup>1</sup> Something is inevitable when it is “incapable of being avoided or evaded: certain to happen or to come.”<sup>2</sup>

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<sup>1</sup> <http://unabridged.merriam-webster.com/unabridged/Will>, at 6(b)

<sup>2</sup> <http://unabridged.merriamwebster.com/unabridged/Inevitable>

The principles of statutory construction also show how the meaning of certain words should be interpreted based on context. First, a single word should not be read in isolation. Rather, “the meaning of a word may be indicated or controlled by reference to associated words.” *State v. Flores*, 164 Wn.2d 1, 12 (2008). In applying this principle to determine the meaning of a series of words, a court should “take into consideration the meaning naturally attaching to them from the context, and . . . adopt the sense of the words which best harmonizes with the context.” *Id.*, 164 Wn.2d at 12 (internal quotes and citation omitted). Another fundamental principle of statutory interpretation is “when the legislature uses different words in statutes relating to a similar subject matter, it intends different meanings.” *Id.*, 164 Wn.2d at 14. When Countrywide used the word “will” instead of the word “may” as contemplated by the contracts, it intended a different meaning and the Terhunes reasonably understood that meaning to be one of certainty.

The Countrywide notice of acceleration was intended to persuade the Terhunes and others like them to cure the default by paying all past due sums using the right of acceleration in the parties’ contracts and an expression of inevitability. Countrywide’s notice of acceleration language was intended to affectively and unequivocally get the Terhunes to pay, and when they did not pay and the deadline passed for them to avoid the acceleration the loan automatically

without further notice accelerated. Nothing in the Countrywide notice or the parties' contracts indicates the Terhunes had the option of ignoring a notice of acceleration where use of the phrase "will be" is used instead of the prescribed phrase "may be," and then just catch up on their payments later as they are able to do so.

The Terhunes did not cure the default on or before February 15, 2009 as demanded in Countrywide's notice of acceleration, and as a result the entire debt accelerated on February 16, 2009 (the date following the last day given to cure). In August 2010, the new servicer of the loan initiated a nonjudicial foreclosure proceeding with a notice of trustee's sale against the Terhunes' title. This is precisely what Countrywide said would happen after the acceleration if the Terhunes failed to cure the default on or before February 15, 2009.<sup>3</sup>

On or about July 6, 2011, BAC Home Loans also sent the Terhunes a letter wherein they state:

As of July 1, 2011, you owe \$1,830,002.00. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater.

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<sup>3</sup> The notice of acceleration refers to initiating "foreclosure proceedings," which in Washington includes nonjudicial foreclosures. See e.g., *Frias v. Asset Foreclosure Servs., Inc.*, 181 Wn.2d 412, 423 (2014) (borrower subjected to "nonjudicial foreclosure proceedings" of owner-occupied real property); *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83, 89 (2012) ("the trustees began foreclosure proceedings."); *Albice v. Premier Mortg. Servs. of Washington, Inc.*, 174 Wn.2d 560, 575 (2012) ("nonjudicial foreclosure proceedings" flawed by repeated statutory noncompliance).

(CP 537). The principal balance owed at the time was only \$1,499,999.00. (CP 542). There is no option given in this letter to bring the account current by paying the missed payments. (CP 537-540).

Despite acceleration, the Terhune retained a contractual right to reinstate the loan after acceleration by paying less than the full amount of the loan. The Countrywide Deed of Trust authorizes reinstatement of the loan after acceleration if certain conditions are met, such as paying the lender “all sums which then would be due under [the Deed of Trust] and the Note *as if no acceleration had occurred . . .*” (CP 502, § 19) (emphasis added). Washington’s Deed of Trust Act, chapter 61.24 RCW (the “DTA”) also requires giving the borrower the opportunity to cure the default by paying the arrears and “all other specific charges, costs, or fees that the borrower . . . is or may be obliged to pay to reinstate the note and deed of trust before the recording of the notice of sale.” RCW 61.24.030 (8)(d)-(e).

Thus, the parties’ contract and the DTA both required Countrywide and its successors to provide the Terhunes with an itemized list of payment arrears, expenses and costs, which the Terhunes could then pay in full to reinstate the loan “as if no acceleration had occurred.” (CP 502, § 19). But, simply asking for payment of the arrears and costs without something more is not sufficient to unring the acceleration bell. The Deed of Trust, by its

terms, could not have been reinstated because the Note was never brought current, and the Terhunes relied on the acceleration by not making any installment payments that would have reduced the accrual of interest because the only option afforded them pursuant to the parties' contracts was to reinstate the loan. Simply put, acceleration of a mortgage is not revoked absent reinstatement of the loan, *In re Nelson*, 59 B.R. 417, 419 (B.A.P. 9th Cir. 1985), or "an affirmative act giving notice of a clear intent to revoke." *In re Western United Nurseries Inc.*, 338 Fed.Appx 706, 708 (9th Cir. 2009) (unpublished). Every statement or letter offered by U.S. Bank in support of its argument of non-acceleration or revocation is merely showing the amount required to reinstate the loan "as if no acceleration had occurred" as required by the parties' contract (CP 502).

U.S. Bank and Caliber may argue the *Gibbon* case is dispositive, but that case did not involve a notice of acceleration. *4518 S. 256th, LLC v. Karen L. Gibbon, P.S.*, 195 Wn. App. 423 (2016). In *Gibbon*, the issue was whether a notice of trustee's sale was sufficient to accelerate a loan where there was no indication of an intent to accelerate. *Id.* at 427–28. The Court held that a lender is not required to accelerate a loan in order to pursue a nonjudicial foreclosure, and the invocation of the power of sale does not itself accelerate a loan where there has been no written threat of acceleration. *Id.*, 195 Wn.

App. at 445. Here, we have a written notice of acceleration issued pursuant to the parties' contract that invoked the option to accelerate where all sums became "due and payable in full," followed by the foreclosure proceedings the notice stated would occur after the acceleration. (CP 520).

U.S. Bank and Caliber may also rely on the unpublished opinion in the *Erickson v. Americas Wholesale Lender*, No. 77742-4-I, 2018 WL 1792382 (Div. I April 16, 2018) (unpublished). In that case a similar notice of acceleration was held as not being sufficient to accelerate the loan in part because Countrywide did not take affirmative action manifesting its intent to accelerate. *Erickson*, 2018 WL 1792382, at \*3. Here Countrywide did take affirmative action. On April 22, 2010, a notice of trustee's sale was prepared. (CP 175). On August 25, 2010, the notice of trustee's sale was recorded with the County. (CP 480, 172) This is precisely what the acceleration notice had warned the Terhunes would happen *after* the acceleration. (CP 520). BAC Home Loans issued a letter in July 2011 wherein they advised the Terhunes the amount of the debt they owed is the full balance of the loan. (CP 539).

The borrower in *Erickson* received multiple notices of acceleration even though he never made a single payment, whereas here there was only one notice of acceleration after the January 2009 notice which had been partially paid. (CP 478). Mr. Erickson also

entered into a written Repayment Plan Agreement whereas the Terhunes did not. The notice of acceleration in this case states that entering into a written agreement is one method of preventing acceleration of the loan. (CP 521). Although *Erickson* appears to have involved a similar if not the same type of notice of acceleration, the facts can be distinguished based on the contracts at issue in this case, the written correspondence, and the absence of a written repayment agreement.

In the present matter, the Terhunes did not reinstate the loan on or before February 15, 2009, and as a result their loan accelerated on February 16, 2009 “becoming due and payable in full.” (CP 520). This is supported by the initiation of foreclosure proceedings in August 2010 and by the July 2011 letter from BAC Home Loans where the amount stated as being owed on was the entire balance of the loan and not just the arrears.

The record does not support the trial court’s summary judgment order because there is a genuine issue of material fact as to whether the loan was accelerated. Accordingly, the Order granting U.S. Bank and Caliber’s summary judgment motion was in error and this Court should reverse.

## **2. The Statute of Limitations Expired**

“When an action for foreclosure on a deed of trust is barred

by the statute of limitations, RCW 7.28.300 authorizes an action to quiet title.” *Westar Funding, Inc. v. Sorrels*, 157 Wn. App. 777, 785 (2010); RCW 7.28.300. An action on a written agreement must be commenced within six years. RCW 4.16.040(1). “As an agreement in writing, [a] deed of trust foreclosure remedy is subject to a six-year statute of limitations.” *Edmundson v. Bank of America, N.A.*, 194 Wn. App. 920, 927 (2016). Although Washington allows a deed of trust to be foreclosed by trustee’s sale, the DTA does not “supersede nor repeal any other provision now made by law for the foreclosure of security interests in real property.” RCW 61.24.120. And, “[a] deed of trust is subject to all laws relating to mortgages on real property.” RCW 61.24.020.

For an installment note, “ ‘the statute of limitations runs against each installment from the time it becomes due; that is, from the time when an action might be brought to recover it.’ ” *Edmundson*, 194 Wn. App. at 930 (quoting *Herzog v. Herzog*, 23 Wn.2d 382, 388 (1945)). But, when an installment obligation is accelerated, “the entire remaining balance becomes due and the statute of limitations is triggered for all installments that had not previously become due.” *4518 S. 256th, LLC v. Karen L. Gibbon, P.S.*, 195 Wn. App. at 434-35. The Uniform Commercial Code (UCC) in a similar fashion provides that a cause of action for collection of

the entire balance owed on a note accrues immediately upon acceleration:

*Statute of Limitations*

(a) . . . an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

RCW 62A.3–118.

“For the purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first.” RCW 4.16.170. But, “when commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be part of the time limited for commencement of the action.” RCW 4.16.230.

A notice of trustee’s sale issued pursuant to the DTA tolls the statute of limitations from the date the notice of sale is recorded up to 120 days after the scheduled sale date. See RCW 61.24.100 (2)(a); RCW 61.24.040(6); *Bingham v. Lechner*, 111 Wn. App 118, 127 (2002), *rev. denied*, 149 Wn.2d 1018 (2003). Under RCW 61.24.100(2)(a), a beneficiary is not precluded from filing an action against the borrower on obligations secured by a deed of trust “*prior to a notice of trustee’s sale . . . or after discontinuance of the trustee’s sale*” (emphasis added). Once a notice of trustee’s sale is issued, a

trustee can continue the original sale date for up to 120 days, during which the statutory period is tolled. *Bingham*, 111 Wn.App at 131. After 120 days, the trustee's right to conduct the original sale is extinguished, and the statute of limitations is restarted. *Id.*

The DTA applies "to foreclosures commenced, by the giving of a notice of default pursuant to RCW 61.24.030(6) . . ." Laws of 1985, ch. 193, § 5 (as noted in RCW 61.24.020); *But see, Cox v. Helenius*, 103 Wn.2d 383, 388 (1985) (a nonjudicial foreclosure begins "with receipt of the notice of sale and foreclosure."). But, commencing a nonjudicial foreclosure under the DTA with a notice of default is not the same as commencing an action with a summons and complaint as required by the statute of limitations. RCW 4.16.170. Under RCW 4.16.230, tolling occurs during the time when "the commencement of an action is stayed by injunction or a statutory prohibition." Under the DTA, only a notice of trustee's sale prohibits commencing an action against the borrower. RCW 61.24.100 (2)(a). There is no such prohibition in the DTA for a notice of default. Therefore, while a notice of default may commence the nonjudicial foreclosure process if issued pursuant to the DTA, it is the notice of trustee's sale that starts the foreclosure proceedings that toll the statute of limitations until discontinued or 120 days past the initial sale date, whichever comes first. RCW 61.24.100 (2)(a); RCW 61.24.040(6); *Bingham v. Lechner*, 111 Wn. App 118, 127 (2002);

See also *Artis v. D.C.*, 138 S. Ct. 594, 601, 199 L. Ed. 2d 473 (2018), citing Black's Law Dictionary 1488 (6th ed. 1990) ("toll," when paired with the grammatical object "statute of limitations," means "to suspend or stop temporarily"). After 120 days, a new notice of trustee's sale is required, but not a new notice of default. *Leahy v. Quality Loan Serv. Corp. of Washington*, 190 Wn. App. 1, 6 (2015), as amended (Aug. 24, 2016).

The Court in *Bingham* appears to support tolling the statute of limitation upon issuance of the notice of default, but the court does not say whether it was the notice of default or the notice of trustee's sale that "instituted nonjudicial foreclosure proceeding," and the Court refers to the scheduled date of sale as following the start of the proceedings. *Bingham*, 111 Wn. App. at 122. The parties in that case also stipulated that commencement of a nonjudicial foreclosure tolls the statute of limitations, but again it is not clear what that means. *Bingham*, 111 Wn. App. at 122-28. Because a notice of default never expires, and the DTA specifically addresses when tolling begins, initiating a nonjudicial foreclosure proceeding (not to be confused with commencing the overall foreclosure process) should be at the time the notice of trustee's sale is issued and not the notice of default. Absent a stay by injunction or statutory prohibition, the statute of limitations on a contract should not toll based only on a notice of default. RCW 4.16.230.

The Court in *Edmundson* involved enforcement of a deed of trust following the borrowers' bankruptcy that was filed seven months after their default and was later discharged thirteen months prior to the recording of the notice of trustee's sale. *Edmundson v. Bank of America, N.A.*, 194 Wn. App. 920, 923 (2016). The notice of trustee's sale in that case was timely regardless of when the notice of default issued because the automatic stay in the bankruptcy tolled the entire limitations period with the exception of twenty months. See 11 U.S.C. § 362 (a); *In re Gruntz*, 202 F.3d 1074, 1081 (9th Cir. 2000) (the automatic stay is self-executing and effective upon the filing of the bankruptcy petition).

In the present case, the statutory window to commence an action on all payments owed on the Note from February 16, 2009 forward expired on February 16, 2015. The notice of trustee's sale (if valid) would toll the statute of limitations a total of 220 days from August 25, 2010 through April 1, 2011 (120 days after the date set for sale). The Terhunes legal action did not toll the statutory period because it did not prevent an action on the Note or Deed of Trust. The lender could have filed a counterclaim but did not. The TRO would be a tolling event, but it was in place during the same time as the notice of trustee's sale and therefore had no effect if the notice of sale is considered a tolling event. U.S. Bank initiated its

foreclosure on October 11, 2016. Thus, U.S. Bank had no legal right to enforce the Note or Deed of Trust.

The record does not support the trial court's summary judgment as a matter of law. Accordingly, the Order granting U.S. Bank and Caliber's summary judgment motion was in error and this Court should reverse.

#### **D. The Trial Court Erred in Denying Terhune's Motion for Reconsideration**

In their motion for reconsideration, the Terhunes argued that the Countrywide notice of acceleration was that of a certain future event, and if not, then at a minimum there are at least some installment payments on the loan that have been rendered unenforceable by the statute of limitations. (CP 607-610). The Terhunes also argued that issues of material fact remained as to whether U.S. Bank or Caliber had any legal right to enforce the contracts without any evidence that they hold the Note. (CP 610-612). The Terhunes' are seeking to enjoin U.S. Bank and Caliber from enforcing the Deed of Trust based in part on the standing issue. (CP 15, 17).

U.S. Bank and Caliber argued that summary judgment was warranted because there was no acceleration of the loan, their foreclosure can be based on any default even if some payments are barred under the statute of limitations, and the Terhunes' prior action

against third parties in 2010 established U.S. Bank and Caliber had standing to enforce the Note in October 2016 even though the Note is endorsed in blank. (CP 617-633).

There is nothing in the record to show that U.S. Bank or Caliber are the actual holder of the Note. Even if the defendants in Terhunes' 2010 case had submitted proof that they held the Note at that point in time, this does not show who currently holds the Note today or who held it in October 2016 when U.S. Bank initiated a nonjudicial foreclosure proceedings. The Terhunes commenced the current action not only because the statute of limitations had expired, but because they did not have sufficient evidence that U.S. Bank or Caliber had any authority to initiate a foreclosure proceeding.

U.S. Bank is seeking to recover all past due payments in a foreclosure sale even though the limitations period has expired on some or all of the payments. (CP 173). Absent injunctive relief, U.S. Bank will collect all past due payments in a foreclosure sale regardless of whether it is entitled to do so. Even if the Court disagrees with the Terhunes' position that Countrywide accelerated the Note, and the Court finds sufficient evidence that U.S. Bank or Caliber hold the Note, there remains a genuine issue of material fact as to the number of installment payments that are barred by the statute of limitations even in the absence of acceleration. Because

there are genuine issues of material fact in dispute, the trial court's denial of the Terhunes' motion for reconsideration was in error.

#### **E. Terhunes Request Attorney's Fees and Costs**

Attorney's fees may be awarded if a statute, contract or a recognized ground of equity authorizes the award. *Dayton v. Farmers Ins. Grp.*, 124 Wn.2d 277, 280 (1994). RCW 4.84.330 authorizes the recovery of reasonable attorneys' fees, costs and necessary disbursements to the prevailing party in "any action on a contract" where the contract provides for an award of fees and costs to one of the parties. The parties' contract provides for an award of reasonable attorneys' fees and costs to one of the parties (the Lender), "in any action or proceeding to construe or enforce any term of this [Deed of Trust]." (CP 394, §26).

If the Court reverses, the Terhunes request the Court award them attorney's fees and costs incurred in prosecuting this appeal pursuant the parties' contracts, RCW 4.84.330, and RAP 18.1.

#### **VII. CONCLUSION**

There are genuine issues of material fact in dispute as to whether U.S. Bank and Caliber have standing to enforce the contracts, whether Countrywide accelerated the loan, and if there was no acceleration, whether there are now installment payments that the actual holder of the Note is no longer authorized to collect. Since resolution of these issues of fact require more than what the

current record will allow, “the appropriate course under summary judgment rules is to remand this case for resolution of that factual question.” *Progressive Animal Welfare Soc. v. Univ. of Washington*, 125 Wn.2d 243, 252–53, 884 P.2d 592 (1994).

The Terhunes respectfully request the Court reverse the trial court Orders and award the Terhunes attorney’s fees on appeal.

### VIII. APPENDIX

A-1	Promissory Note
A-2	Deed of Trust
A-3	January 18, 2009 Notice of Acceleration
A-4	March 29, 2010 Corporate Assignment
A-5	August 25, 2010 Notice of Trustee’s Sale
A-6	July 2011 Letter
A-7	December 8, 2015 Assignment of Deed of Trust
A-8	December 9, 2015 Appointment of Successor Trustee
A-9	October 11, 2016 Notice of Trustee’s Sale

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of July 2018.

**SKYLINE LAW GROUP PLLC**



Michele K. McNeill, WSBA No. 32052  
Attorney for Plaintiffs/Appellants

**CERTIFICATE OF SERVICE**

I hereby certify that on July 17, 2018 I caused to be served a copy of the foregoing APPELLANTS' BRIEF on the following person(s) in the manner indicated below at the following address(es):

<p>Thomas Abbott Perkins Coie LLP 505 Howard Street, Suite 1000 San Francisco CA 94105-3204 Phone: 415-344-7099 Email: <a href="mailto:tabbott@perkinscoie.com">tabbott@perkinscoie.com</a></p> <p>Attorney for U.S. Bank Trust, N.A. and Caliber Home Loans, Inc.</p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-filing system <input checked="" type="checkbox"/> Email <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail</p>
<p>Kristine Kruger Perkins Coie LLP 1201 Third Ave., Ste. 4900 Seattle, WA 98101 Phone: 206-359-3111 Email: <a href="mailto:KKruger@perkinscoie.com">KKruger@perkinscoie.com</a></p> <p>Attorney for U.S. Bank Trust, N.A. and Caliber Home Loans, Inc.</p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-filing system <input checked="" type="checkbox"/> Email <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail</p>

I am over the age of 18, competent as a witness, and make the foregoing statements based on my personal knowledge. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 17<sup>th</sup> day of July 2018.

Michele K. McNeill  
WSBA No. 32052

# APPENDIX-1

Prepared by: JENNA PAULSEN

LOAN #: 187657229

### INTEREST ONLY ADJUSTABLE RATE NOTE

(One-Year LIBOR Index (As Published In *The Wall Street Journal*)  
Rate Caps - 10 Year Interest Only Period)

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

JANUARY 08, 2008  
[Date]

LAKE TAPPS  
[City]

WASHINGTON  
[State]

18306 DRIFTWOOD DR E, LAKE TAPPS, WA 98391-9462  
[Property Address]

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 1, 499, 999.00 (this amount is called "Principal"), plus interest, to the order of Lender, Lender is Countrywide Bank, FSB.

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.500 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

**3. PAYMENTS**

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

I will make a payment on the first day of every month, beginning on MARCH 01, 2008. Before the First Principal and Interest Payment Due Date as described in Section 4 of this Note, my payment will consist only of the interest due on the unpaid principal balance of this Note. Thereafter, I will pay principal and interest by making a payment every month as provided below.

I will make my monthly payments of principal and interest beginning on the First Principal and Interest Payment Due Date as described in Section 4 of this Note. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its

• MULTISTATE ARM, ONE-YEAR LIBOR, 10-Year Interest Only Period Note  
1E482-XX (09/08)(d/f) Page 1 of 6



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scheduled due date, and if the payment includes both principal and interest, it will be applied to interest before Principal. If, on FEBRUARY 01, 2038, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at  
P.O. Box 10219, Van Nuys, CA 91410-0219  
or at a different place if required by the Note Holder.

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

Each of my initial monthly payments will be in the amount of U.S. \$ 8,124.99 until the first Change Date. After the first Change Date, my monthly payment will be in an amount sufficient to pay accrued interest, at the rate determined as described in Section 4 of this Note until the First Principal and Interest Payment Due Date. On that date and thereafter, my monthly payment will be in an amount sufficient to repay the principal and interest at the rate determined as described in Section 4 of this Note in substantially equal installments by the Maturity Date. The Note Holder will notify me prior to the date of changes in monthly payment.

**(C) Monthly Payment Changes**

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

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

**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of FEBRUARY, 2013, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

**(B) The Index**

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

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

**(C) Calculation of Changes**

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

The Note Holder will then determine the amount of my monthly payment. For payment adjustments occurring before the First Principal and Interest Payment Due Date, the amount of my monthly payment will be sufficient to repay all accrued interest each month on the unpaid principal balance at the new interest rate. If I make a voluntary payment of principal before the First Principal and Interest Payment Due Date, my payment amount for subsequent payments will be reduced to the amount necessary to repay all accrued interest on the reduced principal balance at the current interest rate. For payment adjustments occurring on or after the First Principal and Interest Payment Due Date, the amount of my monthly payment will be sufficient to repay unpaid principal and interest that I am expected to owe in full on the Maturity Date at the current interest rate in substantially equal payments.

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

The interest rate I am required to pay at the first Change Date will not be greater than 11.500 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.500 %.

**(E) Effective Date of Changes**

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

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**(F) Notice of Changes**

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

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

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be that date which is the 10th anniversary date of the first payment due date, as reflected in Section 3(A) of the Note.

**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 a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payment unless the Note Holder agrees in writing to those changes. If the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist only of interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, my partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

**6. LOAN CHARGES**

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

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

**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of FIFTEEN calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

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

**(C) Notice of Default**

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

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

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

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

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

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**8. GIVING OF NOTICES**

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

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

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

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

**10. WAIVERS**

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

**11. UNIFORM SECURED NOTE**

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

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

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

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

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

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

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

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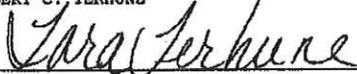
If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this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

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

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

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

  
\_\_\_\_\_  
ROBERT C. TERHUNE (Seal)  
-Borrower

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

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

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

[Sign Original Only]



# APPENDIX-2



(D) "Trustee" is  
RECONTRUST COMPANY

MSN EO-02 225 WEST HILLCREST DRIVE, THOUSAND OAKS, CA 91360

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

(F) "Note" means the promissory note signed by Borrower and dated JANUARY 08, 2008. The Note states that Borrower owes Lender ONE MILLION FOUR HUNDRED NINETY NINE THOUSAND NINE HUNDRED NINETY NINE and 00/100

Dollars (U.S. \$1,499,999.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than FEBRUARY 01, 2038.

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

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

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

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

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

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

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

(M) "Excess Items" means those items that are described in Section 3.

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

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

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

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

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

**TRANSFER OF RIGHTS IN THE PROPERTY**

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably

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grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of PIERCE

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

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

which currently has the address of  
18306 DRIFTWOOD DR E, LAKE TAPPS  
[Street/City]  
Washington 98391-9462 [Property Address]  
[Zip Code]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations

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and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

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

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

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

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

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

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

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

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

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

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

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institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

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

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

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property at public auction at a date not less than 120 days in the future. The notice shall further inform Borrower of the right to reinstate after acceleration, the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale, and any other matters required to be included in the notice by Applicable Law. If the default is not cured on or before the date specified in the notice, Lender at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and/or any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property for a period or periods permitted by Applicable Law by public announcement at the time and place fixed in the notice of sale. Lender or its designee may purchase the Property at any sale.

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs and the Trustee's fee for preparing the reconveyance.

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

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

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

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

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

  
\_\_\_\_\_  
ROBERT C. TERHUNE (Seal)  
-Borrower

  
\_\_\_\_\_  
TARA TERHUNE (Seal)  
-Borrower

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

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

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STATE OF WASHINGTON

County of \_\_\_\_\_

On this day personally appeared before me \_\_\_\_\_

*Robert C. Terhune and Tara Terhune*

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

GIVEN under my hand and official seal this 14 day of Jan. 08

*Ky. [Signature]*

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

My Appointment Expires on

10-29-10



For reference only, not for re-sale.

**EXHIBIT A**

**LEGAL DESCRIPTION:**

Lot 1, in Block 2 of Lake Tapps Driftwood Point according to Plat recorded in Volume 18 of Plats at Page 21, in Pierce County, Washington.

For reference only, not for re-sale.

Unofficial Document

Prepared by: JENNA PAULSEN

Countrywide Bank, FSB.

DATE: 01/08/2008

BASE#:

DQC ID#: 00018765722901008

BORROWER: ROBERT C. TERHUNE

PROPERTY ADDRESS: 18306 DRIFTWOOD DR E  
LAKE TAPPS, WA 98391-9462

Branch #: 0001231  
10701 S. RIVER FRONT PKWY #400  
SOUTH JORDAN, UT 84095  
Phone: (801)446-2600  
Br Fax No.: (801)302-8729

LEGAL DESCRIPTION EXHIBIT A

For reference only, not for re-sale.

FH/VN/CONV  
Legal Description Exhibit A  
20404-XX (04/00)(a)



For reference only, not for re-sale.

Unrecorded  
5184590  
Escrow/Closing #

**PLANNED UNIT DEVELOPMENT RIDER**

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

PARCEL ID #:  
111

Prepared By:  
JENNA PAULSEN

5184590  
[Escrow/Closing #]

00018765722901008  
[Doc ID #]

THIS PLANNED UNIT DEVELOPMENT RIDER is made this EIGHTH day of JANUARY, 2008, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to Countrywide Bank, FSB.

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

18306 DRIFTWOOD DR E,  
LAKE TAPPS, WA 98391-9462  
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
VMP -7R (0405) CHL (08/04)(d) Page 1 of 3 Initials: [Signature] Form 3150 1/01  
VMP Mortgage Solutions, Inc. (800)521-7291



UNRECORDED

DOC ID #: 00018765722901008

other such parcels and certain common areas and facilities, as described in THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD THAT AFFECT THE PROPERTY

(the "Declaration"). The Property is a part of a planned unit development known as LAKE TAPPS DRIFTWOOD POINT

(Name of Planned Unit Development)

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

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

**A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

**C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the

For reference only, not for re-sale.

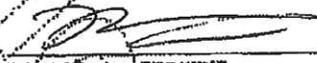
Initials:   
 Form 3150 1/01

DOC ID #: 00018765722901008

express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

  
\_\_\_\_\_  
ROBERT C. TERHUNE (Seal)  
- Borrower

  
\_\_\_\_\_  
TARA TERHUNE (Seal)  
- Borrower

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

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

For reference only, not for re-sale.

LOAN #: 187657229

### FIXED/ADJUSTABLE RATE RIDER

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

THIS FIXED/ADJUSTABLE RATE RIDER is made this EIGHTH day of JANUARY, 2008, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to Countrywide Bank, FSB.

("Lender") of the same date and covering the property described in the Security Instrument and located at:  
18306 DRIFTWOOD DR E  
LAKE TAPPS, WA 98391-9462  
[Property Address]

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

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

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

The Note provides for an initial fixed interest rate of 6.500 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

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

**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of FEBRUARY, 2013, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

• FIXED/ARM Rider  
Interest First/Only LIBOR One-Year Index  
1E460-US (10/05)(d)

Page 1 of 5



\* 2 3 9 9 1 \*



\* 1 8 7 6 5 7 2 2 9 0 0 0 0 1 E 4 6 0 \*

For reference only, not for re-sale.

LOAN #: 187657229

**(B) The Index**

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

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

**(C) Calculation of Changes**

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

The Note Holder will then determine the amount of the monthly payment. For payment adjustments occurring before the First Principal and Interest Payment Due Date, the amount of my monthly payment will be sufficient to repay all accrued interest each month on the unpaid principal at the new interest rate. If I make a voluntary payment of principal before the First Principal and Interest Payment Due Date, my payment amount for subsequent payments will be reduced to the amount necessary to repay all accrued interest on the reduced principal balance at the current interest rate. For payment adjustments occurring on or after the First Principal and Interest Payment Due Date, the amount of my monthly payment will be sufficient to repay unpaid principal and interest that I am expected to owe in full on the Maturity Date at the current interest rate in substantially equal payments.

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

The interest rate I am required to pay at the first Change Date will not be greater than 11.500 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.500 %.

**(E) Effective Date of Changes**

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

**(F) Notice of Changes**

Before the effective date of any change in my interest rate and/or monthly payment, the Note Holder will deliver or mail to me a notice of 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.

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

1. Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

• FIXED/ARM Rider  
Interest First/Only LIBOR One-Year Index  
1E460-US (10/05)

For reference only, not for re-sale.

LOAN #: 187657229

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

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

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

2. When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B.1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

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

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

• FIXED/ARM Rider  
Interest First/Only LIBOR One-Year Index  
1E460-US (10/05)

Page 3 of 5

For reference only, not for re-sale.

LOAN #: 187657229

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

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

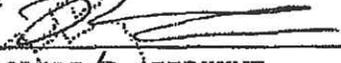
For reference only, not for re-sale.

• FIXED/ARM Rider  
Interest First/Only LIBOR One-Year Index  
1E460-US (10/05)

Page 4 of 5

LOAN #: 187657229

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

  
\_\_\_\_\_  
ROBERT G. TERHUNE (Seal)  
-Borrower

  
\_\_\_\_\_  
TARA TERHUNE (Seal)  
-Borrower

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

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

For reference only, not for re-sale.

• FIXED/ARM Rider  
Interest First/Only LIBOR One-Year Index  
1E460-US (10/05)

# APPENDIX-3

**Countrywide Bank**  
**SERVICED BY COUNTRYWIDE**  
 P.O. Box 660070  
 Dallas, TX 75265-0070

Business Address:  
 7105 Corporate Drive  
 Plano, TX 75024-4100

Send Payments to:  
 P.O. Box 660070  
 Dallas, TX 75265-0070

January 18, 2009

Robert C Terhune  
 18306 DRIFTWOOD DR E  
 LAKE TAPPS, WA 98391-9462

Account No.: 187657229  
 Property Address:  
 18306 Driftwood Dr E  
 Lake Tapps, WA 98391-9462

**NOTICE OF INTENT TO ACCELERATE**

Dear Robert C Terhune:

Countrywide Home Loans Servicing LP (hereinafter "Countrywide") services the home loan described above on behalf of the holder of the promissory note (the "Noteholder"). The loan is in serious default because the required payments have not been made. The total amount now required to reinstate the loan as of the date of this letter is as follows:

<u>Monthly Charges:</u>	12/01/2008	\$18,249.98
<u>Late Charges:</u>	12/01/2008	\$408.26
<u>Other Charges:</u>	Total Late Charges:	\$412.50
	Uncollected Costs:	\$0.00
	Partial Payment Balance:	(\$0.00)
<b>TOTAL DUE:</b>		<b>\$17,068.73</b>

You have the right to cure the default. To cure the default, on or before February 15, 2009, Countrywide must receive the amount of \$17,068.73 plus any additional regular monthly payment or payments, late charges, fees and charges, which become due on or before February 15, 2009.

The default will not be considered cured unless Countrywide receives "good funds" in the amount \$17,068.73 on or before February 15, 2009. If any check (or other payment) is returned to us for insufficient funds or for any other reason, "good funds" will not have been received and the default will not have been cured. No extension of time to cure will be granted due to a returned payment. Countrywide reserves the right to accept or reject a partial payment of the total amount due without waiving any of its rights herein or otherwise. For example, if less than the full amount that is due is sent to us, we can keep the payment and apply it to the debt but still proceed to foreclosure since the default would not have been cured.

If the default is not cured on or before February 15, 2009, the mortgage payments will be accelerated with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time. As such, the failure to cure the default may result in the foreclosure and sale of your property. If your property is foreclosed upon, the Noteholder may pursue a deficiency judgment against you to collect the balance of your loan, if permitted by law.

You may, if required by law or your loan documents, have the right to cure the default after the acceleration of the mortgage payments and prior to the foreclosure sale of your property if all amounts past due are paid within the time permitted by law. However, Countrywide and the Noteholder shall be entitled to collect all fees and costs incurred by Countrywide and the Noteholder in pursuing any of their remedies, including but not limited to reasonable attorney's fees, to the full extent permitted by law. Further, you may have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and foreclosure.

Your loan is in default. Pursuant to your loan documents, Countrywide may, enter upon and conduct an inspection of your property. The purposes of such an inspection are to (i) observe the physical condition of your property, (ii) verify that the property is occupied and/or (iii) determine the identity of the occupant. If you do not cure the default prior to the inspection, other actions to protect the mortgagee's interest in the property (including, but not limited to, winterization, securing the property, and valuation services) may be taken. The costs of the above-described inspections and property preservation efforts will be charged to your account as provided in your security instrument and as permitted by law.

If you are unable to cure the default on or before February 15, 2009, Countrywide wants you to be aware of various options that may be available to you through Countrywide to prevent a foreclosure sale of your property. For example:

- **Repayment Plan:** It is possible that you may be eligible for some form of payment assistance through Countrywide. Our basic plan requires that Countrywide receive, up front, at least 1/3 of the amount necessary to bring the account

Please write your account number on all checks and correspondence.  
 We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law.

BLNSEN 0765 12/11/2008

- Make your check payable to Countrywide Home Loans
- Write your account number on your check or money order
- Write in any additional amounts you are including (if total is more than \$500, please send certified check)
- Don't attach your check to the payment coupon
- Don't include correspondence
- Don't send cash

Account Number: 187657229-6  
 Robert C Terhune  
 18306 Driftwood Dr E

Balance Due for charges listed above: \$17,068.73 as of January 16, 2009.

Please update e-mail information on the reverse side of this coupon.

BLNSEN

Additional Principal  
 Additional Escrow  
 Other  
 Check Total

Countrywide  
 PO BOX 660070  
 Dallas, TX 75265-0070

|||||



187657229600001706873001706873

current, and that the balance of the overdue amount be paid, along with the regular monthly payment, over a defined period of time. Other repayment plans also are available.

- **Loan Modification:** Or, it is possible that the regular monthly payments can be lowered through a modification of the loan by reducing the interest rate and then adding the delinquent payments to the current loan balance. This foreclosure alternative, however, is limited to certain loan types.
- **Sale of Your Property:** Or, if you are willing to sell your home in order to avoid foreclosure, it is possible that the sale of your home can be approved through Countrywide even if your home is worth less than what is owed on it.
- **Deed-in-Lieu:** Or, if your property is free from other liens or encumbrances, and if the default is due to a serious financial hardship which is beyond your control, you may be eligible to deed your property directly to the Noteholder and avoid the foreclosure sale.

If you are interested in discussing any of these foreclosure alternatives with Countrywide, you must contact us immediately. If you request assistance, Countrywide will need to evaluate whether that assistance will be extended to you. In the meantime, Countrywide will pursue all of its rights and remedies under the loan documents and as permitted by law, unless it agrees otherwise in writing. Failure to bring your loan current or to enter into a written agreement by February 15, 2009 as outlined above will result in the acceleration of your debt.

Additionally, the U.S. Department of Housing and Urban Development (HUD) funds free or very low cost housing counseling across the nation. Housing counselors can help you understand the law and your options. They can also help you to organize your finances and represent you in negotiations with your lender if you need this assistance. You may find a HUD-approved housing counselor near you by calling 1-800-569-4287. For the hearing impaired, HUD Counseling Agency (TDD) numbers are available at 1-800-677-8339.

Time is of the essence. Should you have any questions concerning this notice, please contact Loan Counseling Center immediately at 1-888-872-6614. Our office hours are between 8:15 AM and 5:15 PM (Central Time).

Sincerely,

Loan Counseling Center

E-mail use: Providing your e-mail address below will allow us to send you information on your account.  
Account Number: 167667222  
Robert Q Terhune E-mail address

**How we post your payments:** All accepted payments of principal and interest will be applied to the longest outstanding installment due, unless otherwise expressly prohibited or limited by law. If you submit an amount in addition to your scheduled monthly amount, we will apply your payments as follows: (i) to outstanding monthly payments of principal and interest, (ii) toward deficiencies, (iii) late charges and other amounts you owe in connection with your loan and (iv) to reduce the outstanding principal balance of your loan. Please specify if you want an additional amount applied to future payments, rather than principal reduction.

**Postdated checks:** Countrywide's policy is to not accept postdated checks, unless specifically agreed to by a loan counselor or technician.

**Countrywide Bank**  
SERVICED BY COUNTRYWIDE  
PO Box 9048  
Temecula, CA 92298-9048

Send Payments To:  
PO Box 680070  
Dallas, TX 75285-0070

Send Correspondence to:  
PO Box 6170, M8 SV314B  
Simi Valley, CA 93065



2215617035

PRESORT  
First-Class Mail  
U.S. Postage and  
Fees Paid  
WSO

Robert C Terhune  
18306 DRIFTWOOD DR E  
LAKE TAPPS, WA 98391-9462

2000216-7  
BLON5EV

1129-v0



# APPENDIX-4

201003290262  
Electronically Recorded  
Pierce County, WA  
Julle Anderson, Pierce County Auditor  
03/29/2010 12:06 PM  
Pages: 1 Fee: \$ 14.00

RECORDING REQUESTED BY:  
RECONTRUST COMPANY  
AND WHEN RECORDED MAIL DOCUMENT  
AND TAX STATEMENTS TO:  
BAC Home Loans Servicing, LP  
400 COUNTRYWIDE WAY SV-35  
SMI VALLEY, CA 93065

TS No. 18-0036591

SPACE ABOVE THIS LINE FOR RECORDERS USE

**CORPORATION ASSIGNMENT OF DEED OF TRUST**

FOR VALUE RECEIVED, THE UNDERSIGNED HEREBY GRANTS, ASSIGNS AND TRANSFERS TO:  
BAC HOME LOANS SERVICING, LP, FKA COUNTRYWIDE HOME LOANS SERVICING, LP  
ALL BENEFICIAL INTEREST UNDER THAT CERTAIN DEED OF TRUST DATED 01/09/2008, EXECUTED  
BY: ROBERT C TERHUNE, AND TARA TERHUNE, HUSBAND AND WIFE, TRUSTOR: TO RECONTRUST  
COMPANY, TRUSTEE AND RECORDED AS INSTRUMENT NO. 200801180593 ON 01/18/2008, OF  
OFFICIAL RECORDS IN THE COUNTY RECORDER'S OFFICE OF PIERCE COUNTY, IN THE STATE OF  
WASHINGTON.  
DESCRIBING THE LAND THEREIN: AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST  
TOGETHER WITH THE NOTE OR NOTES THEREIN DESCRIBED OR REFERRED TO, THE MONEY DUE  
AND TO BECOME DUE THEREON WITH INTEREST, AND ALL RIGHTS ACCRUED OR TO ACCRUE  
UNDER SAID DEED OF TRUST/MORTGAGE.

DATED: MAR 25 2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,  
INC.

State of: California  
County of: VENTURA

BY: Abraham Barakman  
Abraham Barakman, Assistant Secretary

On MAR 25 2010, before me DANNE BOLTON, notary public, personally appeared Abraham Barakman, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.



DANNE BOLTON

# APPENDIX-5

201008250587  
Electronically Recorded  
Pierce County, WA  
Julie Anderson, Pierce County Auditor  
08/25/2010 03:49 PM  
Pages: 5 Fee: \$ 66.00

After recording, return to:  
BAC Home Loans Servicing, LP  
400 COUNTRYWIDE WAY SV-35  
SIMI VALLEY, CA 93065

File No. 2010-36591

10011636-28

**Notice of Trustee's Sale**

Pursuant To the Revised Code of Washington 61.24, et seq.

NOTICE IS HEREBY GIVEN that the undersigned Trustee, RECONTRUST COMPANY, N.A. on December 3, 2010 at 10:00 AM The 2ND floor entry plaza outside the County Courthouse, 930 Tacoma Avenue South, Tacoma, WA 98402, State of Washington, (subject to any conditions imposed by the trustee to protect the lender and borrower) will sell at public auction to the highest and best bidder, payable at time of sale, the following described real property, situated in the county(ies) of Pierce, State of Washington:

Tax Parcel ID no.: 5050000160

LOT 1 IN BLOCK 2 OF LAKE TAPPS DRIFTWOOD POINT ACCORDING TO PLAT RECORDED IN VOLUME 18 OF PLATS AT PAGE 21, IN PIERCE COUNTY, WASHINGTON

Commonly Known as: 18306 DRIFTWOOD DR E , LAKE TAPPS, WA 983919462

which is subject to that certain Deed of Trust dated 01/08/2008, recorded on 01/18/2008, under Auditor's File No. 200801180593 and Deed of Trust re-recorded on \_\_\_\_, under Auditor's File No. \_\_\_\_, records of Pierce County, Washington from ROBERT C TERHUNE, AND TARA TERHUNE, HUSBAND AND WIFE, as grantor, to RECONTRUST COMPANY, as Trustee, to secure an obligation in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as beneficiary, the beneficial interest in which was assigned by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to BAC HOME LOANS SERVICING, LP, FKA COUNTRYWIDE HOME LOANS SERVICING, LP, under an Assignment/Successive Assignments recorded under Auditor's File No. 201003290262.

II.

No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any court by reason of the Grantor's or Borrower's default on the obligation secured by the Deed of Trust.

For reference only, not for re-sale.

III.

The Beneficiary alleges default of the Deed of Trust for failure to pay the following amounts now in arrears and/or other defaults:

<b>A. Monthly Payments</b>	<b>\$215,462.00</b>
<b>B. Late Charges</b>	<b>\$818.75</b>
<b>C. Beneficiary Advances</b>	<b>\$331.00</b>
<b>D. Suspense Balance</b>	<b>(\$0.00)</b>
<b>E. Other Fees</b>	<b>\$0.00</b>
<b>Total Arrears</b>	<b><u>\$216,611.75</u></b>
<b>F. Trustee's Expenses (Itemization)</b>	
Trustee's Fee	\$540.00
Title Report	\$2,306.00
Statutory Mailings	\$12.64
Recording Fees	\$66.00
Publication	\$0.00
Posting	\$200.00
<b>Total Costs</b>	<b><u>\$3,124.64</u></b>
<b>Total Amount Due:</b>	<b>\$219,736.39</b>

Other potential defaults do not involve payment of the Beneficiary. If applicable, each of these defaults must also be cured. Listed below are categories of common defaults, which do not involve payment of money to the Beneficiary. Opposite each such listed default is a brief description of the action/documentation necessary to cure the default. The list does not exhaust all possible other defaults; any defaults identified by Beneficiary or Trustee that are not listed below must also be cured.

<b>OTHER DEFAULT</b>	<b>ACTION NECESSARY TO CURE</b>
Nonpayment of Taxes/Assessments	Deliver to Trustee written proof that all taxes and assessments against the property are paid current.
Default under any senior lien	Deliver to Trustee written proof that all senior liens are paid current and that no other defaults exist.
Failure to insure property against hazard	Deliver to Trustee written proof that the property is insured against hazard as required by the Deed of Trust.
Waste	Cease and desist from committing waste, repair all damage to property and maintain property as required in Deed of Trust.
Unauthorized sale of property (Due on Sale)	Revert title to permitted vestee.

IV.

The sum owing on the obligation secured by the Deed of Trust is: Principal Balance of \$1,499,999.00, together with interest as provided in the note or other instrument secured from 01/01/2009 and such other costs and fees as are due under the Note or other instrument secured, and as are provided by statute.

For reference only, not for re-sale.

V.

The above-described real property will be sold to satisfy the expense of the sale and the obligation secured by the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied regarding title, possession, or encumbrances on 12/03/2010. The default(s) referred to in paragraph III, together with any subsequent payments, late charges, advances costs and fees thereafter due, must be cured by 11/22/2010 (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time before the close of the Trustee's business on 11/22/2010 (11 days before the sale date), the default(s) as set forth in paragraph III, together with any subsequent payments, late charges, advances, costs and fees thereafter due, is/are cured and the Trustee's fees and costs are paid. The sale may be terminated any time after 11/22/2010 (11 days before the sale date), and before the sale by the Borrower, Grantor, and Guarantor or the holder of any recorded junior lien or encumbrance paying the entire balance of principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any made pursuant to the terms of the obligation and/or Deed of Trust.

VI

A written notice of default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the address(es) enclosed: ( See Attachment to section VI ).

by both first class and either certified mail, return receipt requested, or registered mail on 03/19/2010, proof of which is in the possession of the Trustee; and on 03/22/2010 Grantor and Borrower were personally served with said written notice of default or the written notice of default was posted on a conspicuous place on the real property described in paragraph I above, and the Trustee has possession of such service or posting.

VII.

The Trustee whose name and address is set forth below will provide in writing to anyone requesting it a statement of all foreclosure costs and trustee's fees due at any time prior to the sale.

VIII.

The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their right, title and interest in the above-described property.

IX.

Anyone having any objections to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

X.

**NOTICE TO OCCUPANTS OR TENANTS** - The purchaser at the Trustee's Sale is entitled to possession of the property on the 20th day following the sale, as against the grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants who are not tenants. After the 20th day following the sale the purchaser has the right to evict occupants who are not tenants by summary proceedings under Chapter 59.12 RCW. For tenant-occupied property, the purchaser shall provide a tenant with written notice in accordance with RCW 61.24.060 and/or any applicable Federal Law.

For reference only, not for re-sale.

DATED: April 22, 2010

RECONTRUST COMPANY, N.A.

By: Nora Sade

Its: Assistant Secretary

State of: California

County of: Ventura

On AUG 24 2010 before me Ivette Pelayo, notary public, personally appeared NORINE SCIDA, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official Seal.

*[Handwritten Signature]*



RECONTRUST COMPANY, N.A.  
P.O. Box 10284  
Van Nuys, CA 91410-0284  
Phone: (800) 281-8219

Client: BAC Home Loans Servicing, LP

Agent for service of process:  
CT Corporation System  
1801 West Bay Drive NW, Ste 206  
Olympia, WA 98502  
Phone: (360) 357-6794

File No. 2010-36591

**THIS FIRM IS ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THE DEBT SET FORTH ON THIS NOTICE WILL BE ASSUMED TO BE VALID UNLESS YOU DISPUTE THE DEBT BY PROVIDING THIS OFFICE WITH A WRITTEN NOTICE OF YOUR DISPUTE WITHIN 30 DAYS OF YOUR RECEIPT OF THIS NOTICE, SETTING FORTH THE BASIS OF YOUR DISPUTE. IF YOU DISPUTE THE DEBT IN WRITING WITHIN 30 DAYS, WE WILL OBTAIN AND MAIL VERIFICATION OF THE DEBT TO YOU. IF THE CREDITOR IDENTIFIED IN THIS NOTICE IS DIFFERENT THAN YOUR ORIGINAL CREDITOR, WE WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR IF YOU REQUEST THIS INFORMATION IN WRITING WITHIN 30 DAYS.**

For reference only, not for re-sale.

**Attachment to section VI:**

**ROBERT C TERHUNE**  
18306 DRIFTWOOD DR E  
LAKE TAPPS, WA 98391-9462

**TARA TERHUNE**  
18306 DRIFTWOOD DR E  
LAKE TAPPS, WA 98391-9462

For reference only, not for re-sale.

# APPENDIX-6



P. O. Box 941633  
Simi Valley, CA 93094-1633

0212843 01 AV 0.337 \*\*AUTO 00 4447 98391-946206 -001-P18075-1

ROBERT C TERHUNE  
18306 DRIFTWOOD DR E  
LAKE TAPPS WA 98391-9462



Account No.: 187657229



**IMPORTANT MESSAGE ABOUT YOUR LOAN**

Effective July 1, 2011, the servicing of home loans by our subsidiary-BAC Home Loans Servicing, LP, transfers to its parent company-Bank of America, N.A. Based upon our records as of July 6, 2011, the home loan account noted above is affected by this servicing transfer. The information contained in this communication does not change or affect any other communications you may have received or will receive regarding this servicing transfer.

**IMPORTANT ADDITIONAL INFORMATION**

Under the federal Fair Debt Collections Practices Act and certain state laws, Bank of America, N.A. is considered a debt collector. As a result, we are sending you the enclosed Fair Debt Collection Practices Act Notice containing important information about your loan and your rights under applicable federal and state law.

If an attorney represents you in connection with your Bank of America home loan, please provide your attorney a copy of this letter and the enclosed legal notice.

**THANK YOU**

We appreciate the opportunity to serve your home loan needs. If you have any questions or need assistance regarding this servicing transfer, please call us at 1.877.488.7812 between 8 a.m. and 9 p.m. Eastern, Monday through Friday.

Please Note: This letter is being sent to the address and borrower(s) listed above. If there are other borrowers on this account who receive mail at a different address than above, please share this information with them.

**Bank of America, N.A. is required by law to inform you that this communication is from a debt collector attempting to collect a debt, and any information obtained will be used for that purpose. Notwithstanding the foregoing, if you are currently in a bankruptcy proceeding or have received a discharge of the debt referenced above, this notice is for informational purposes only and is not an attempt to collect a debt. If you are represented by an attorney, please provide this notice to your attorney.**



## Fair Debt Collections Practices Act and State Law Notice

The servicing of your home loan was transferred to Bank of America, N.A., effective July 1, 2011. Bank of America, N.A. is required by law to advise you of the following:

(1.) Under the federal Fair Debt Collections Practices Act and certain state laws, Bank of America, N.A. is considered a debt collector. Bank of America, N.A. must provide certain information to you in order to make sure you are informed when a communication is related to a debt. The purpose of this letter is therefore to provide you with information required by law, including the amount of the debt.

## (2.) Debt Validation Notice:

- a) The amount of the debt: As of July 6, 2011, you owe \$1,830,002.00. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Therefore, if you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you or your agent before accepting the payment for collection. For further information, write to the address provided below or call 1.877.488.7812 between 8 a.m. and 9 p.m. Eastern, Monday through Friday.
- b) The name of the creditor to whom the debt is owed: BANA CWB CIG HFI 1ST LIENS  
*Please note that unless Bank of America, N.A. is listed in 2(b) as the creditor of your loan, Bank of America, N.A. does not own your loan and only services your loan on behalf of your creditor, subject to the requirements and guidelines of your creditor.*
- c) Unless you, within thirty (30) days after receipt of this letter, dispute the validity of the debt or any portion of the debt, Bank of America, N.A. will assume the debt to be valid.
- d) If you notify Bank of America, N.A. in writing, at the address provided below within the thirty (30) day period, that the debt, or any portion thereof, is disputed, Bank of America, N.A. will obtain verification of the debt and mail it to you.
- e) Upon your written request within the thirty (30) day period, Bank of America, N.A. will provide you with the name and address of the original creditor if it is different from the current creditor.

Bank of America, N.A.  
Customer Service, CA6-919-01-41  
Attention: DVN  
P.O. Box 1140  
Simi Valley, CA 93062-1140

If you have any questions regarding this notification, please call Bank of America, N.A. Customer Service at 1.877.488.7812 between 8 a.m. and 9 p.m. Eastern, Monday through Friday.

Bank of America, N.A. is required by law to inform you that this communication is from a debt collector attempting to collect a debt, and any information obtained will be used for that purpose. Notwithstanding the foregoing, if you are currently in a bankruptcy proceeding or have received a discharge of the home loan debt referenced above, this statement is being furnished for informational purposes only. It should not be construed as an attempt to collect against you personally, Bank of America, N.A. will take no steps to collect from you personally or against the property securing this loan while the bankruptcy's automatic stay remains in effect. In the future, you may receive a discharge in bankruptcy. Under those circumstances, by operation of law, Bank of America, N.A. will retain the ability to enforce its rights against the property securing this loan should there be a default under the terms of your loan documents. If you are represented by an attorney, please provide this notice to your attorney.

SEE REVERSE SIDE

**Notice to Colorado Residents:** A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt. **FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE [WWW.AGO.STATE.CO.US/CADC/CADMMAIN.CFM](http://WWW.AGO.STATE.CO.US/CADC/CADMMAIN.CFM)**

**Notice to California Residents:** The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or [www.ftc.gov](http://www.ftc.gov).



# APPENDIX-7

201512080354

Electronically Recorded

Pierce County, WA

12/08/2015 11:23 AM

Pages: 2 Fee: \$16.00

For reference only, not for re-sale.

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

CALIBER HOME LOANS  
13801 Wireless Way  
Oklahoma City, OK 73134

Prepared By: Chetan Sharma

Control Number 9804071265

MERS Min: 100133700028759903

Parcel ID: 5050000160

Space Above This Line For Recorder's Use

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP F/K/A COUNTRYWIDE HOME LOANS SERVICING, LP whose address is 1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063, hereby grants, assigns and transfers to U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST whose address is 13801 WIRELESS WAY, OKLAHOMA CITY, OK 73134 all beneficial interest under that certain Deed of Trust dated 01/08/2008 executed by ROBERT C TERHUNE and TARA TERHUNE to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE BANK, FSB., ITS SUCCESSORS AND ASSIGNS in the amount of \$1,499,999.00; and recorded on 1/18/2008 as Instrument # 200801180593, in Book/Volume or Liber No. NA / Page/folio-NA of Official Records in the County Recorder's office of PIERCE County, WA, describing land herein as: "L 1 B 2 TOG/W COMM PROP INT IN COMMON AREA/ LAKE TAPPS DRIFTWOOD POINT", as described more in the attached Exhibit A"

Property Address: 18306 DRIFTWOOD DR E, LAKE TAPPS WA 98391-9462

TOGETHER with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Witness #1 *[Signature]*

BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP F/K/A COUNTRYWIDE HOME LOANS SERVICING, LP, BY CALIBER HOME LOANS INC., AS ITS ATTORNEY IN FACT

Witness #2 **Sasha Candelaria**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

By: *[Signature]*  
Title: **Authorized Signatory**

County of San Diego )  
State of California )

On Sept 15 2015 before me, **Ashlee Lawson**, Notary Public, personally appeared, **Julia Jackson** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand official seal, *[Signature]*  
Notary Name: **Ashlee Lawson**

My Commission Expires: **Oct 13 2016**



**LEGAL DESCRIPTION**

**EXHIBIT "A"**

Lot 1 in Block 2 of Lake Tapps Driftwood Point according to Plat recorded in Volume 18 of Plats at Page 21, in Pierce County, Washington.

For reference only, not for re-sale.

Unofficial Document

# APPENDIX-8



**ACKNOWLEDGMENT**

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Diego

On OCT-13-2015 before me, Ashlee Lawson, Notary Public  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_



(Seal)



For reference only, not for re-sale.

# APPENDIX-9

201610110655

Electronically Recorded

Pierce County, WA EWILLIA  
10/11/2016 2:52 PM

Pages: 4 Fee: \$76.00

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:  
North Cascade Trustee Services Inc.  
901 Fifth Avenue, Suite 410  
Seattle, WA 98164

TS #60357-00176-NJ-WA APN #5050000160  
Reference Number: 200801180593  
Abbreviated Legal: LOT 1 IN BLOCK 2 OF LAKE TAPPS DRIFTWOOD POINT REC VOL 18 OF PLATS, PG  
Grantor: Robert C Terhune and TARA TERHUNE  
Grantee: North Cascade Trustee Services Inc.  
Original Beneficiary: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), SOLELY AS  
NOMINEE FOR COUNTRYWIDE BANK, FSB, ITS SUCCESSORS AND ASSIGNS

**NOTICE OF TRUSTEE'S SALE  
PURSUANT TO THE REVISED CODE OF WASHINGTON  
CHAPTER 61.24 ET. SEQ.**

This is an attempt to collect a debt and any information obtained will be used for that purpose.

**THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR HOME.**

You have only 20 DAYS from the recording date on this notice to pursue mediation.

**DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW** to assess your situation and refer you to mediation if you are eligible and it may help you save your home. See below for safe sources of help.

**SEEKING ASSISTANCE**

Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following:

The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission Telephone: Toll-free: 1-877-894-HOME (1-877-894-4663). Web site: [http://www.dfi.wa.gov/consumers/homeownership/post\\_purchase\\_counselors\\_foreclosure.htm](http://www.dfi.wa.gov/consumers/homeownership/post_purchase_counselors_foreclosure.htm).

The United States Department of Housing and Urban Development Telephone: Toll-free: 1-800-569-4287.  
Web Site: <http://www.hud.gov/offices/hsg/sfh/hcc/fc/index.cfm?webListAction=search&searchstate=WA&filterSvc=dfc>

The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys Telephone: Toll-free: 1-800-606-4819. Web site: <http://nwjustice.org/what-clear>.

For reference only, not for re-sale.

I.

NOTICE IS HEREBY GIVEN that the undersigned Trustee will on February 17, 2017, at the hour of 10:00 AM at Pierce County Superior Courthouse, 2nd Floor Entry Plaza, 930 Tacoma Avenue South, Tacoma, WA 98402 sell at public auction to the highest and best bidder, payable at the time of sale, the following described real property, situated in the County of Pierce, State of Washington, to-wit:

**LOT 1 IN BLOCK 2 OF LAKE TAPPS DRIFTWOOD POINT, ACCORDING TO THE PLAT RECORDED IN VOLUME 18 OF PLATS AT PAGE 21, IN PIERCE COUNTY, WASHINGTON.**

**APN: 5050000160**

More commonly known as: **18306 Driftwood Dr E, Lake Tapps, WA 98391**

which is subject to that certain Deed of Trust dated January 8, 2008, recorded January 18, 2008, under Auditor's File No. 200801180593, records of Pierce County, Washington, from Robert C Terhune, and TARA TERHUNE, husband and wife as Grantor, to RECONTRUST COMPANY, as Trustee, to secure an obligation in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), SOLELY AS NOMINEE FOR COUNTRYWIDE BANK, FSB., ITS SUCCESSORS AND ASSIGNS as Beneficiary, the beneficial interest in which was assigned to U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST under an Assignment recorded on December 8, 2015 under Auditor's File 201512080354 in the official records in the Office of the Recorder of Pierce County, Washington.

II.

No action commenced by the current Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust/Mortgage.

III.

The Beneficiary alleges default of the Deed of Trust as of for failure to pay the following amounts now in arrears and/or other defaults:

Payments	\$654,048.20
Late Charges	\$5,685.92
Fees	\$56.00
Total Advances	\$9,994.99
Grand Total	\$669,729.11

IV.

The sum owing on the obligation secured by the Deed of Trust is: Principal \$1,499,999.00, together with interest as provided in the note or other instrument secured from December 1, 2008, and such other costs and fees as are due under the note or other instrument secured, and as are provided by statute.

For reference only, not for re-sale.

The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on February 17, 2017. The defaults referred to in paragraph III must be cured by February 6, 2017 (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time before February 6, 2017 (11 days before the sale date), the defaults as set forth in paragraph III are cured and the Trustee's fees and costs are paid. Payment must be in cash or with cashiers' or certified check from a state or federally chartered bank. The sale may be terminated any time after February 6, 2017 (11 days before the sale date), and before the sale by the Borrower, Grantor, any Guarantor, or the holder of any recorded junior lien or encumbrance paying the entire principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following addresses:

Robert C Terhune  
18306 Driftwood Dr E  
Lake Tapps, WA 98391

TARA TERHUNE  
18306 Driftwood Dr E  
Lake Tapps, WA 98391

Current Occupant  
18306 Driftwood Dr E  
Lake Tapps, WA 98391

EQUITY GROUP N WEST LLC  
C/O VIGAL & SIMON, INC. ONE UNION SQUARE, SUITE 2401  
600 UNIVERSITY  
SEATTLE WA 98101

EQUITY GROUP N WEST LLC  
18306 E DRIFTWOOD DR  
LAKE TAPPS WA 98391-9462

by both first-class and certified mail on December 23, 2015, proof of which is in the possession of the Trustee; and the Borrower and Grantor were personally served, if applicable, with said written Notice of Default or the written Notice of Default was posted in a conspicuous place on the real property described in paragraph I above, and the Trustee has possession of proof of such service or posting.

VII.

The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII.

The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the above-described property.

For reference only, not for re-sale.



# SKYLINE LAW GROUP PLLC

July 19, 2018 - 11:32 AM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51479-6  
**Appellate Court Case Title:** Robert Terhune, Appellant v North Cascase Trustee Services Inc., Respondent  
**Superior Court Case Number:** 17-2-05214-6

### The following documents have been uploaded:

- 514796\_Briefs\_20180719111612D2464715\_9413.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Appellants Brief.pdf*

### A copy of the uploaded files will be sent to:

- KKruger@perkinscoie.com
- brenner@perkinscoie.com
- syoungquist@perkinscoie.com
- tabbott@perkinscoie.com

### Comments:

---

Sender Name: Julia Bryan - Email: julia@skylinelaw.com

**Filing on Behalf of:** Michele K Mcneill - Email: michele@skylinelaw.com (Alternate Email: julia@skylinelaw.com)

Address:  
2155 112th Ave NE  
Bellevue, WA, 98004  
Phone: (425) 455-4307 EXT 101

**Note: The Filing Id is 20180719111612D2464715**