

9-26-2016

CMJ Properties v. JP Morgan Chase Bank Clerk's Record Dckt. 44526

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IN THE SUPREME COURT OF THE STATE OF IDAHO

CMJ PROPERTIES, LLC, an Idaho
limited liability company,

Plaintiff-Appellant,

vs.

JP MORGAN CHASE BANK, N.A., a
national banking association,

Defendant-Respondent,

and

DOES 1-10,

Defendants.

Supreme Court Case No. 44526

CLERK'S RECORD ON APPEAL






Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE RICHARD D. GREENWOOD

MATTHEW T. CHRISTENSEN
ATTORNEY FOR APPELLANT
BOISE, IDAHO

JON A. STENQUIST
ATTORNEY FOR RESPONDENT
IDAHO FALLS, IDAHO

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CV-OC-2016-11039

08/16/2016	Order <i>Order re: Application for Default Judgment</i>
08/16/2016	Judgment
08/17/2016	Dismissed (Judicial Officer: Greenwood, Richard D.) Party (JP Morgan Chase Bank NA; CMJ Properties LLC)
09/02/2016	Motion to Dismiss
09/02/2016	Memorandum In Support of Motion <i>To Dismiss</i>
09/07/2016	Miscellaneous <i>of Motion to Dismiss</i>
09/26/2016	 Notice of Appeal
09/26/2016	Appeal Filed in Supreme Court
10/04/2016	 Request <i>Defendant-Respondent's Request for Additional Documents Pursuant to I.A.R. 19 and I.A.R. 28(c)</i>
10/21/2016	 Amended Judgment
11/08/2016	 Notice <i>Amended Notice of Appeal as to Defendant JP Morgan Chase Bank, N.A.</i>
11/14/2016	 Request <i>Defendant-Respondent's Request for Additional Documents Pursuant to IAR 10 and IAR28(c)</i>

DATE	FINANCIAL INFORMATION	
	Defendant JP Morgan Chase Bank NA	
	Total Charges	136.00
	Total Payments and Credits	136.00
	Balance Due as of 11/25/2016	0.00
	Plaintiff CMJ Properties LLC	
	Total Charges	350.00
	Total Payments and Credits	350.00
	Balance Due as of 11/25/2016	0.00

1 ORIGINAL
2

NO. _____ FILED 421
A.M. _____ P.M.

JUN 17 2016

CHRISTOPHER D. RICH, Clerk
By TYLER ATKINSON
DEPUTY

3 Matthew T. Christensen
4 ANGSTMAN JOHNSON
5 3649 N. Lakeharbor Lane
6 Boise, Idaho 83703
7 Telephone: (208) 384-8588
8 Facsimile: (208) 853-0117
9 Email: mtc@angstman.com
10 Christensen ISB: 7213

11 Attorney for Plaintiff

12 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
13 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

14 **CMJ PROPERTIES, LLC**, an Idaho limited
15 liability company,

16 Plaintiff,

17 vs.

18 **JP MORGAN CHASE BANK, N.A.**, a
19 national banking association; **DOES 1-10.**,

20 Defendants.

Case No. **CV OC 1611039**

COMPLAINT TO QUIET TITLE

21 COMES NOW the Plaintiff CMJ Properties, LLC, by and through its counsel of record,
22 ANGSTMAN JOHNSON, and for a cause of action against the Defendants, complains and
23 alleges as follows:

24 **PARTIES AND VENUE**

25
26 1. At all times relevant, Plaintiff CMJ Properties, LLC ("CMJ"), was an Idaho
27 limited liability company with its principal place of business in Ada County, Idaho.
28
29

1 which was recorded on August 16, 2007, in the Ada County Records as Instrument No.
2 107115874 (the "Deed of Trust").

3 9. A true and correct copy of the Deed of Trust is attached hereto as *Exhibit A*.

4
5 10. The Deed of Trust was granted to secure amounts owed by Jakobson to
6 Washington Mutual pursuant to a "WaMu Mortgage Plus Agreement" (the "Credit Line").

7 Pursuant to the Credit Line, Jakobson was to repay certain amounts to Washington Mutual.

8 11. A true and correct copy of the Credit Line is attached hereto as *Exhibit B*.

9
10 12. The Credit Line and Deed of Trust were later assigned and/or assumed by Chase
11 as the successor-in-interest to Washington Mutual.

12 13. Jakobson discontinued making payments on the Credit Line on or before May 29,
13 2010.

14 14. Based on Jakobson's failure to continue making payments, Washington Mutual
15 and/or Chase terminated the Credit Line on or before April 6, 2011.

16
17 15. Pursuant to the terms of both the Credit Line and Deed of Trust, Washington
18 Mutual and/or Chase's termination of the Credit Line effected an automatic acceleration of all
19 amounts due under the Credit Line and acceleration of the Credit Line maturity date.
20

21
22 **COUNT ONE**
Declaratory Relief/Quiet Title

23 16. The allegations of paragraphs 1-15 are incorporated herein by reference.

24 17. On October 13, 2010, Cory Jakobson filed a petition for bankruptcy under
25 Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Case").
26

27 18. On April 6, 2011, Chase filed a Motion for Relief From Stay (the "Stay Relief
28 Motion") in the Bankruptcy Case.
29

1 19. In the Stay Relief Motion, Chase stated that “[Jakobson] is in default pursuant to
2 the terms of the note for failure to make the required payments.”

3 20. The effect of the Stay Relief Motion was to declare the unpaid balance of the
4 Debt due and payable pursuant to the Acceleration Clause.
5

6 21. Thus, the Loan was closed and became due and payable no later than April 6,
7 2011, when Chase filed the Stay Relief Motion.

8 22. Alternatively, as some point between May 29, 2010 (when Jakobson stopped
9 making payments on the Credit Line) and April 6, 2011 (when Chase filed the Stay Relief
10 Motion), Chase terminated the Credit Line, thus effecting an acceleration of the maturity date
11 and amounts due.
12

13 23. A loan matures on the date that it is due and payable, which in this case, was the
14 date that Chase accelerated the loan.
15

16 24. On April 29, 2011, the Bankruptcy Court granted stay relief to Chase, allowing it
17 to proceed with foreclosure against the Property.

18 25. Since the Stay Relief Motion was granted, Chase has never filed a Notice of
19 Default and never foreclosed on the Property.
20

21 26. Idaho Code § 5-214A requires that an action for foreclosure of a mortgage on real
22 property must be commenced within five (5) years from the maturity date of the obligation or
23 indebtedness secured by such mortgage.
24

25 27. Foreclosures of Deeds of Trust (like the Deed of Trust here) must be commenced
26 within the same period as foreclosures of mortgages. See Idaho Code §45-1515.
27

28 28. Chase has never initiated a foreclosure of the Deed of Trust.
29

ADA COUNTY RECORDER J. DAVID NAVARRO
BOISE IDAHO 08/16/07 10:55 AM
DEPUTY Gail Garrett
RECORDED - REQUEST OF
Optima

AMOUNT 33.00 11

107115874

Recording requested by and

When Recorded Mail to:
Optima Information Solutions
3 First American Way
Santa Ana, CA 92707
WAMU

S



WaMu Mortgage Plus™
DEED OF TRUST

Loan Number:

THIS DEED OF TRUST is between:
GEORGE E GIFFORD, THERESA L GIFFORD AND CORY JAKOBSON JOINED BY SPOUSE
JENNIFER JAKOBSON

whose address is:

5071 N RED HILLS AVE MERIDIAN, ID 83646-7659

("Grantor"); OPTIMA INFORMATION SOLUTIONS, a CALIFORNIA
corporation, the address of which is:

ATTN: RECORDING DEPT 3 FIRST AMERICAN WAY SANTA ANA, CA 92707

and its successors in trust and assigns ("Trustee"); and:
WASHINGTON MUTUAL BANK, A FEDERAL ASSOCIATION, WHICH IS ORGANIZED AND
EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND WHOSE ADDRESS IS
2273 N GREEN VALLEY PARKWAY, SUITE #14, HENDERSON, NV 89014 ("BENEFICIARY") AND
ITS SUCCESSORS OR ASSIGNS.

1. Granting Clause. Grantor hereby grants, bargains, sells and conveys to Trustee in
trust, with power of sale, the real property in ADA County, Idaho,
described below and all interest in it Grantor ever gets:

THE FOLLOWING DESCRIBED PROPERTY LOCATED IN THE COUNTY OF ADA, STATE OF
IDAHO, DESCRIBED AS FOLLOWS:
LOT 23 IN BLOCK 1 OF CHARTER POINTE PLACE SUBDIVISION NO. 1, FILED IN BOOK 90 OF
PLATS AT PAGE 10597 THRU 10599 RECORDS OF ADA COUNTY, IDAHO.

Tax Parcel Number: R1376620230 together with all
income, rents and profits from it; all plumbing, lighting, air conditioning and heating apparatus and
equipment; and all fencing, blinds, drapes, floor coverings, built-in appliances and other fixtures at
any time installed on or in or used in connection with such real property.

3 3 9 8 (01/24/07) w8.2

Page 1 of 7



All of the property described above will be called the "Property." If any of the Property is personal property, this Deed of Trust is also a Security Agreement which grants Beneficiary, as a secured party, a security interest in all such property. As used herein "State" shall refer to the State of Idaho.

2. **Obligation Secured.** This Deed of Trust is given to secure performance of each promise of Grantor contained herein and in a WaMu Mortgage Plus(TM) Agreement and Disclosure with Beneficiary with a maximum credit limit of \$155,000.00 (the "Credit Agreement"), including any extensions, renewals or modifications thereof, and repayment of all sums borrowed by Grantor under the Credit Agreement, with interest from the date of each advance until paid at the rates provided therein. The Credit Agreement provides for variable and fixed rates of interest. Under the Credit Agreement, the Grantor may borrow, repay and re-borrow from time to time, up to the maximum credit limit stated above, and all such advances shall be secured by the lien of this Deed of Trust. This Deed of Trust also secures payment of certain fees and charges payable by Grantor under the Credit Agreement, certain fees and costs of Beneficiary as provided in Section 9 of this Deed of Trust and repayment of money advanced by Beneficiary to protect the Property or Beneficiary's interest in the Property, including advances made pursuant to Section 6 below. The Credit Agreement provides that unless sooner repaid, the Debt is due and payable in full thirty (30) years from the date of this Deed of Trust which is 08/09/2037 (the "Maturity Date"). All amounts due under the Credit Agreement and this Deed of Trust are called the "Debt."

3. **Representations of Grantor.** Grantor represents that:

- (a) Grantor is the owner of the Property, which is unencumbered except by: easements reservations and restrictions of record not inconsistent with the intended use of the Property and any existing first mortgage or deed of trust given in good faith and for value, the existence of which has been disclosed in writing to Beneficiary;
- (b) The Property is not used for any agricultural or farming purposes; and
- (c) The Property is either located within an incorporated city or village, or is less than twenty (20) acres in size.

4. **Promises of Grantor.** Grantor promises:

- (a) To keep the Property in good repair and not to remove, alter or demolish any of the improvements on the Property, without first obtaining Beneficiary's written consent;
- (b) To allow representatives of Beneficiary to inspect the Property at any reasonable hour, and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property;
- (c) To pay on time all lawful taxes and assessments on the Property;
- (d) To perform on time all terms, covenants and conditions of any prior mortgage or deed of trust covering the Property or any part of it and pay all amounts due and owing thereunder in a timely manner;
- (e) To see to it that this Deed of Trust remains a valid lien on the Property superior to all liens except those described in Section 3(a), and to keep the Property free of all encumbrances which may impair Beneficiary's security. It is agreed that if anyone asserts the priority of any encumbrance other than those described in Section 3(a) over this Deed of Trust in any pleading filed in any action, the assertion alone shall be deemed to impair the lien of this Deed of Trust for purposes of this Section 4(e);
- (f) To keep the improvements on the Property insured by a company satisfactory to Beneficiary against fire and extended coverage perils, and against such other risks as Beneficiary may reasonably require, in an amount equal to the full insurable value of the improvements and to deliver evidence of such insurance coverage to Beneficiary. Beneficiary shall be named as the loss payee on all such policies pursuant to a standard lender's loss payable clause. The amount

collected under any insurance policy may be applied upon any indebtedness hereby secured in the same manner as payments under the Note or, at Beneficiary's sole option, released to Grantor. In event of foreclosure or sale of the Property pursuant to the Trustee's power of sale, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the Sheriff's or Trustee's sale;

(g) To sign all financing statements and other documents that Beneficiary may request from time to time to perfect, protect and continue Beneficiary's security interest in the Property. Grantor irrevocably appoints Beneficiary as Grantor's attorney-in-fact to execute, file and record any financing statements or similar documents in Grantor's name and to execute all documents necessary to transfer title if there is a default; and

(h) To advise Beneficiary immediately in writing of any change in Grantor's name, address or employment.

5. **Sale, Transfer or Further Encumbrance of Property.** The Loan is personal to Grantor and the entire Debt shall become immediately due and payable in full upon sale or other transfer of the Property or any interest therein by Grantor including, without limit, any further encumbrance of the Property.

6. **Curing of Defaults.** If Grantor fails to comply with any of the covenants in Section 4, including all the terms of any prior mortgage or deed of trust, Beneficiary may take any action required to comply with any such covenants without waiving any other right or remedy it may have for Grantor's failure to comply. Repayment to Beneficiary of all the money spent by Beneficiary on behalf of Grantor shall be secured by this Deed of Trust; at Beneficiary's option, advance may be made against the Credit Agreement to pay amounts due hereunder; such shall not relieve Grantor from liability for failure to fulfill the covenants in Section 4. The amount spent shall bear interest at the rates from time to time applicable under the Credit Agreement and be repayable by Grantor on demand. Although Beneficiary may take action under this paragraph, Beneficiary is not obligated to do so.

7. **Remedies For Default.**

(a) Prompt performance under this Deed of Trust is essential. If Grantor doesn't pay any installment of the Debt on time, or any other event occurs that entitles Beneficiary to declare the unpaid balance of the Debt due and payable in full under the Credit Agreement, the Debt and any other money whose repayment is secured by this Deed of Trust shall immediately become due and payable in full, at the option of the Beneficiary, and the total amount owed by Grantor on the day repayment in full is demanded, including all unpaid interest, will thereafter bear interest at the Rate specified in the Credit Agreement. Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of his election to cause the Property to be sold to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the recorder of each county where the Property or some part thereof is situated. Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed, Trustee, without demand on Grantor, shall sell the Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee shall deliver to the purchaser its deed conveying the Property so sold, but without any covenant or warranty express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Grantor, Trustee, or Beneficiary, may purchase at such sale. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the highest lawful rate permissible under Idaho law; all

sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the highest lawful rate permissible under Idaho law; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto;

(b) The power of sale conferred by this Deed of Trust is not an exclusive remedy. Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage or sue on the Credit Agreement according to law. In connection with any portion of the Property which is personal property, Beneficiary shall further be entitled to exercise the rights of a secured party under the Uniform Commercial Code as then in effect in the state of Idaho; and

(c) By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

8. **Condemnation; Eminent Domain.** In the event any portion of the Property is taken or damaged in an eminent domain proceeding, the entire amount of the award, or such portion as may be necessary to fully satisfy the obligation secured by this Deed of Trust, shall be paid to Beneficiary to be applied to the obligation.

9. **Fees and Costs.** Grantor shall pay Beneficiary's and Trustee's reasonable cost of searching records, other reasonable expenses as allowed by law, and reasonable attorney's fees, in any lawsuit or other proceeding to foreclose this Deed of Trust; in any lawsuit or proceeding which Beneficiary or Trustee prosecutes or defends to protect the lien of this Deed of Trust; and, in any other action taken by Beneficiary to collect the Debt, including without limitation any disposition of the Property under the State Uniform Commercial Code; and, any action taken in bankruptcy proceedings as well as any appellate proceedings.

10. **Reconveyance.** Trustee shall reconvey the Property to the person entitled thereto, on written request of Beneficiary, or following satisfaction of the obligations secured hereby, and Beneficiary and Trustee shall be entitled to charge Grantor a reconveyance fee together with fees for the recordation of the reconveyance documents unless prohibited by law.

11. **Trustee; Successor Trustee.** Beneficiary may, at its option, unless prohibited by law, appoint a successor Trustee from time to time in the manner provided by law. The successor trustee shall be vested with all powers of the original trustee. The Trustee is not obligated to notify any party hereto of a pending sale under any other deed of trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

12. **Miscellaneous.** This Deed of Trust shall benefit and obligate the heirs, devisees, legatees, administrators, executors, successors, and assigns of the parties hereto. The term "Beneficiary" shall mean the holder and owner of the note secured by this Deed of Trust, whether or not that person is named as Beneficiary herein. The words used in this Deed of Trust referring to one person shall be read to refer to more than one person if two or more have signed this Deed of Trust or become responsible for doing the things this Deed of Trust requires. This Deed of Trust shall be governed by and construed in accordance with federal law and, to the extent federal law does not apply, the laws of the State. If any provision of this Deed of Trust is determined to be invalid under law, the remaining provisions of this Deed of Trust shall nonetheless remain in full force and effect.

13. **Beneficiary and Similar Statements.** Beneficiary may collect a fee in the maximum amount allowed by law, for furnishing any beneficiary statement, payoff demand statement or similar statement.

14. Riders. If one or more riders are executed by Grantor and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

Condominium Rider

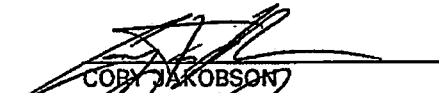
Other: _____
(specify)

Planned Unit Development Rider

By signing below, Grantor accepts and agrees to the provisions of this Deed of Trust and of any rider(s) executed by Grantor concurred therewith.

DATED at MARIAN, EDMUNDO, 8 day of AUGUST, 2007.

GRANTOR(S):



CORY JAKOBSON



GEORGE E. GIFFORD



THERESA L. GIFFORD

THE UNDERSIGNED JOINS IN THE EXECUTION AND DELIVERY OF THIS SECURITY INSTRUMENT TO SUBORDINATE ANY INTEREST HE OR SHE MAY HAVE OR MAY ACQUIRE IN THE SUBJECT PROPERTY, INCLUDING WITHOUT LIMITATION, ANY HOMESTEAD OR MARITAL RIGHTS, AND TO ACKNOWLEDGE ALL THE TERMS AND COVENANTS CONTAINED IN THIS SECURITY INSTRUMENT AND ANY RIDERS HERETO.



JENNIFER JAKOBSON

STATE OF IDAHO)
) SS
COUNTY OF ADAM)

On this 8 day of Aug, 2007, before me, John M Neil,
a Notary Public in and for said State, personally appeared:

CORY JAKOBSON and
GEORGE E GIFFORD and
THERESA L GIFFORD and
JENNIFER JAKOBSON and

_____ and
_____ and

known or identified to me to be the person whose name is subscribed to the foregoing instrument,
and acknowledged to me that he/she/they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed official seal the day and year
in this certificate first above written.



[Signature]
Notary Public for Wamu
residing at Mesa, IDAHO
My commission expires April 26, 2008

REQUEST FOR FULL RECONVEYANCE
Do not record. To be used only when Grantor's
indebtedness has been repaid and Credit Agreement cancelled.

TO: TRUSTEE _____

The undersigned is Beneficiary of the within Deed of Trust, and the legal owner and holder of
the WaMu Mortgage Plus(TM) Agreement secured thereby. Said Deed of Trust is hereby
surrendered to you for reconveyance and you are requested, upon payment of all sums owing to
you, to reconvey, without warranty, to the person(s) entitled thereto, the right, title and interest
now held by you thereunder.

DATED: _____

By _____
Its _____

Recording requested by and
when recorded return to:
ATTN: RECORDING DEPT
3 FIRST AMERICAN WAY
SANTA ANA, CA 92707
ATTN: OPTIMA INFORMATION SOLUTIONS
This document was prepared by:
JULIAN LOPEZ
WASHINGTON MUTUAL BANK
333 E BUTTERFIELD RD
LOMBARD, IL 60148-5617



PLANNED UNIT DEVELOPMENT RIDER

Loan Number:

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 7th day of August
2007, 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:

WASHINGTON MUTUAL BANK (the "Lender")

of the same date and covering the Property described in the Security Instrument and located at:

6298 WHITE CLIFF AVE BOISE, ID 83709

(Property Address)

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with
other such parcels and certain common areas and facilities, as described in the recorded declaration
and related documents creating a planned unit development (the "Declaration"). The Property is a
part of a planned unit development known as:

CHARTER POINTE PLACE

(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) Borrower's obligation under the Security Instrument 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, whether of the unit or of common elements, 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 therein with the excess, if any, paid to Borrower.

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;

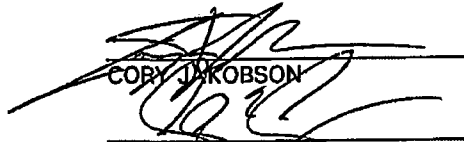
(ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender;

(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 unless otherwise prohibited by applicable law.

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


CORY JAKOBSON


THERESA L GIFFORD

THE UNDERSIGNED JOINS IN THE EXECUTION AND DELIVERY OF THIS SECURITY INSTRUMENT TO SUBORDINATE ANY INTEREST HE OR SHE MAY HAVE OR MAY ACQUIRE IN THE SUBJECT PROPERTY, INCLUDING WITHOUT LIMITATION, ANY HOMESTEAD OR MARITAL RIGHTS, AND TO ACKNOWLEDGE ALL THE TERMS AND COVENANTS CONTAINED IN THIS SECURITY INSTRUMENT AND ANY RIDERS HERETO.


JENNIFER JAKOBSON



WaMu Mortgage Plus™ AGREEMENT AND DISCLOSURE

This WaMu Mortgage Plus(TM) Agreement and Disclosure ("Agreement") governs your home equity line of credit account (the "Credit Line") issued by the Bank identified below and secured by the property at the address identified below. In this Agreement, we use the words "Borrower," "you" and "your" to mean each and all of the persons who sign this Agreement. The words "we," "us" and "our" mean the Bank or any successor or assign. The word "Card" means each credit card that can be used to obtain advances on the Credit Line, whether in the form of purchase transactions, cash advances or otherwise. A Card will be issued only if so indicated in Section I below. Our "business days" are Mondays through Fridays, but federal legal public holidays are excluded. You should read all of this Agreement, but for your convenience, we have set forth some of the rate, payment and fee information on the first two pages. You and we agree as follows:

I. GENERAL INFORMATION:

Borrower(s): CORY JAKOBSON		
Bank: WASHINGTON MUTUAL BANK	Date of Agreement: 08/07/2007	Account Number:
Credit Limit: \$155,000.00	Maturity Date: 08/09/2037	Initial Draw Period: 120 Months
Property Address: 6298 WHITE CLIFF AVE BOISE, ID 83709		
Effective Disbursement Date: 08/10/2007 The date on and after which you may begin to receive credit advances ("advances") from your Credit Line. This will be a date we specify, which shall follow the expiration of any rescission period required by law, our acceptance of this Agreement, and your meeting of all conditions for the Credit Line.		Card Access: You <input checked="" type="checkbox"/> will <input type="checkbox"/> will not receive a Card to access your Credit Line. If you will not have Card access, the terms and conditions in this Agreement regarding the Card will not be applicable.

Discounts: The ANNUAL PERCENTAGE RATE used to calculate the periodic FINANCE CHARGES you pay may be discounted based on your other relationships with the Bank and on whether you authorize payments by our Auto Pay service. The available discounts shown in Table A below are explained further in Section VI 5(c). The specific discount amounts and discounted rates are shown in Tables B and C below.

Table A - Discounts

Type of Discount	No. of Accounts Required	Minimum Balance Required	Currently Eligible for Discount
Auto Pay Authorization	1	\$0.00	No
Account Relationships	N/A	N/A	N/A
First Mortgage Relationship	N/A	N/A	N/A

Payments: Send payments to
WASHINGTON MUTUAL BANK
CONSUMER LENDING - BR2CLFL
PO BOX 6888
LAKE WORTH, FL 33466

or, if a different address is stated in the Periodic Statement, send payments to that address.

II. VARIABLE RATE ADVANCES:

Variable Rate Index: The Daily Periodic Rate and ANNUAL PERCENTAGE RATE on your Credit Line are subject to change daily based on changes in the "Variable Rate Index", which is the highest "Prime Rate" most recently published in the "Money Rates" table of *The Wall Street Journal*.

Variable Rate Margin: 0.800 % (Does not include any discounts shown in Tables A, B or C)

Maximum Variable Rate: Daily Periodic Rate 0.049315 % (ANNUAL PERCENTAGE RATE 18.000 %)

Minimum Variable Rate: Daily Periodic Rate 0.010274 % (ANNUAL PERCENTAGE RATE 3.750 %)

Minimum Payment: For Variable Rate Advances, your minimum monthly payment ("Minimum Payment") during both the Draw Period and any Post Draw Period (defined in Section VI.4 below) will be equal to all accrued and unpaid FINANCE CHARGES, late fees and other fees and charges described below, plus any past due amounts and any outstanding balance of your Credit Line in excess of your Credit Limit.

Special Promotional Rates: If this box is checked, then the special Promotional Rates shown in Table B below will apply beginning on the Effective Disbursement Date and continuing until the following Promotional Rate Expiration Date:
N/A

Table B - Current Rates on Variable Rate Advances

Number of Discounts	Discount Percentage	Daily Periodic Rate	ANNUAL PERCENTAGE RATE	Daily Periodic Rate (Promotional Rate)	ANNUAL PERCENTAGE RATE (Promotional Rate)
No Discounts	0.000 %	0.024795 %	9.050 %	N/A %	N/A %
1 Discount	0.250 %	0.024110 %	8.800 %	N/A %	N/A %
2 Discounts	N/A %	N/A %	N/A %	N/A %	N/A %

III. FIXED RATE LOAN OPTION ("FRLO"):

Fixed Rate Loan Option Index and Rates: The FRLO is your option to obtain fixed rate loans ("Fixed Rate Loans") under your Credit Line. Except as otherwise specified below under "Promotional Rates," if you choose to exercise the Fixed Rate Loan Option, the Daily Periodic Rate and ANNUAL PERCENTAGE RATE will be determined based on the "FRLO Index", which is the highest "Prime Rate" most recently published in the "Money Rates" table of *The Wall Street Journal*, plus a "FRLO Margin" of 14.0 %.

Promotional Rates: We may, at our sole discretion and without prior notice, provide a Fixed Rate Loan at a discounted ANNUAL PERCENTAGE RATE, that is, an ANNUAL PERCENTAGE RATE that is lower than the sum of the FRLO Index plus the FRLO

EXHIBIT

B

Margin stated above. The Daily Periodic Rate will also be reduced. These are called "Promotional Rates." If we provide Promotional Rates, they will be shown in a confirmation form that we provide you. FRLO Promotional Rates will remain in effect for the term of the FRLO.

Table C - Current Rates on Fixed Rate Loans

Number of Discounts	Discount Percentage	Daily Periodic Rate	ANNUAL PERCENTAGE RATE	Daily Periodic Rate (Promotional Rate)	ANNUAL PERCENTAGE RATE (Promotional Rate)
No Discounts	0.000%	0.049315%	18.000%	0.025890%	9.450%
1 Discount	0.250%	0.048630%	17.750%	0.025205%	9.200%
2 Discounts	N/A%	N/A%	N/A%	N/A%	N/A%

*Rates are examples based on a \$50,000 FRLO with an Amortizing Minimum Payment and a Term of five (5) years.

Maximum FRLO Rate: Daily Periodic Rate N/A % (ANNUAL PERCENTAGE RATE N/A %)
 Minimum FRLO Rate: Daily Periodic Rate N/A % (ANNUAL PERCENTAGE RATE N/A %)

FRLO Confirmation: If this box is checked, you have chosen to exercise your option to obtain a Fixed Rate Loan on the Effective Disbursement Date. (If you have chosen to obtain a second Fixed Rate Loan on the Effective Disbursement Date, you must complete a separate form that we will provide to you upon request.) The terms of your Fixed Rate Loan will be as follows:

Type:	FRLO Sub-Account No.:	Amount:
	N/A	N/A
Transaction Fee: There is no Fixed Rate Loan Option Fee for any Fixed Rate Loan obtained upon opening the Credit Line.	Daily Periodic Rate:	Term:
	N/A	N/A Months
Buydown Fee (FINANCE CHARGE): <u>N/A</u> (Equal to <u>N/A</u> % of the Fixed Rate Loan Amount)	ANNUAL PERCENTAGE RATE:	N/A %
	N/A	
Minimum Payment		
N/A		
Payment Method:		
<input type="checkbox"/> You have elected to make your Fixed Rate Loan payments by payment coupon or billing statement. If you do not receive your payment coupon or billing statement before your first payment is due, please send your payment, including your FRLO sub-account number (if any), to: WASHINGTON MUTUAL BANK CONSUMER LENDING -- BR2CLFL PO BOX 6868 LAKE WORTH, FL 33466 or you may make your payment at any Washington Mutual Financial Center.		
<input type="checkbox"/> You have elected to make your Fixed Rate Loan payments by our Auto Pay service. You will need to sign a separate Auto Pay Automatic Loan Payment Authorization Form.		

How to Get a Fixed Rate Loan After Closing: Call 1-888-800-8738 toll-free (for TDD, call 800-735-2922) or, if a different telephone number is stated in the Periodic Statement, call that telephone number.

Table D - Fixed Rate Loan Terms

Type of Minimum Payment	Fixed Rate Loan Dollar Amount	Maximum Permissible Term
Amortizing Minimum Payment	Up to \$19,999.99	Up to 120 months (10 years). If the Term extends beyond the Maturity Date, the principal amount will not fully amortize, and the remaining principal will be due and payable in full on the Maturity Date.
Amortizing Minimum Payment	\$20,000.00 or more	Up to 360 months (30 years). If the Term extends beyond the Maturity Date, the principal amount will not fully amortize, and the remaining principal will be due and payable in full on the Maturity Date.
Interest Only Minimum Payment	Any amount	3, 5, 7 or 10 years, but the term must conclude before the Maturity Date

IV. FEES AND CHARGES:

FINANCE CHARGES and Other Fees and Charges at Closing: You agree to pay the following FINANCE CHARGES and other fees and charges, which will be charged to your Credit Line on the Effective Disbursement Date unless paid to us on or before that date. Periodic FINANCE CHARGES will begin to accrue immediately on these amounts if charged to your Credit Line.

FINANCE CHARGES:	Other Fees and Charges:
Flood Determination Fee \$5.00	Corelogic Avn Fee \$8.00
Tax Registration Fee \$35.00	Property Verification Report \$18.00
	Second Mortgage Protection \$30.00
	Recording Services/ Recording Fee \$46.00

* These items will be paid by the Bank and charged to your Credit Line

Additional FINANCE CHARGES: You agree to pay the following additional FINANCE CHARGES:

Cash Advance Fee. A cash advance fee FINANCE CHARGE of 2.00% of each cash advance obtained on the Card, or \$2.00, whichever is greater.

Fee for Small Variable Rate Advance. If, at our sole option, we elect to honor a request for a Variable Rate Advance of less than \$100.00, a transaction FINANCE CHARGE of 4.00% of the amount of the advance. This FINANCE CHARGE will not be imposed for Card transactions.

Fee for Lien Subordination. If, at our sole option, we agree to subordinate the lien of the Security Instrument, a transaction FINANCE CHARGE of \$50.00 - \$250.00.

Wire Transfer Fee. A wire transfer FINANCE CHARGE of \$20.00 for each advance that you initiate by a wire transfer.

Courier Service Fee. A courier service FINANCE CHARGE of \$30.00 for each transmittal of documents that you request which we send by a delivery service.

Fixed Rate Loan Option Fee. A transaction fee FINANCE CHARGE of \$250.00 for each Fixed Rate Loan that you receive. The Fixed Rate Loan Option Fee will be waived for the first two Fixed Rate Loans you receive.

Buydown Fee. If we offer you the option to pay a fee in exchange for a reduced ANNUAL PERCENTAGE RATE for a Fixed Rate Loan, a transaction fee FINANCE CHARGE of 4.000% of the amount of the Fixed Rate Loan will be charged in return for a reduction of 0.250% in the ANNUAL PERCENTAGE RATE of the Fixed Rate Loan. At our sole discretion, we reserve the right to charge you a lesser Buydown Fee and/or offer a greater reduction in the ANNUAL PERCENTAGE RATE at the time you obtain a Fixed Rate Loan.

Additional Other Fees and Charges: You agree to pay the following additional other fees and charges:

Annual Fee. An annual fee of \$0.00 ("Annual Fee"). The Annual Fee will be charged on the first anniversary of the Effective Disbursement Date and on every anniversary thereafter during the Draw Period. The Annual Fee is nonrefundable and will be imposed regardless of the balance and status of the Credit Line.

Late Fee and Collection Charges. In addition to our other rights upon default, if we do not receive the Minimum Payment on the Variable Rate Advances or any Fixed Rate Loans within fifteen (15) days after the Payment Due Date shown on your Periodic Statement (or, if applicable, on any payment coupon that we provide you), you will be charged a late fee of the greater of \$10.00 or 5.000 % of the Minimum Payment. Upon your default under this Agreement, you will pay all of our reasonable costs and collection charges, whether or not there is a lawsuit, including, without limit, attorneys' fees and legal expenses, including without limit, for bankruptcy or civil proceedings, our efforts to modify or vacate an automatic stay or injunction, appeals, and any anticipated post-judgment collection services, and whether or not such are incurred by our employees or third parties.

Overlimit Fee. An overlimit fee of \$20.00 for each advance from the Credit Line that causes you to exceed your Credit Limit.

Dishonored Payment Fee. A fee of \$20.00 if you make a payment on your Credit Line (including any payment on a Fixed Rate Loan) with a check, draft, or other item or transfer (including an Auto Pay service transfer) that is dishonored for any reason.

Stop Payment Fee. A fee of \$20.00 when you request a stop payment on a Check (as defined in Section VI.6(a) below.) A stop payment shall be effective for six (6) months (or, if applicable, such longer period as provided by law) and must be delivered to us in the manner prescribed by law or by method acceptable to us in our sole discretion and in sufficient time for us to act. If a stop payment notice expires, you must renew it as set forth above and you will be assessed an additional stop payment fee. There is no right to stop payment on transactions by use of a Card or other means of access other than a Check.

Cancellation Fee.

If you cancel your Credit Line during the first '36' months (30 months in NC) following the Effective Disbursement Date, you will be charged a cancellation fee equal to 1.00% of the Credit Limit or \$1,000.00, whichever is greater.

If you pay a Cancellation Fee upon cancellation of your Credit Line due to the sale of your primary residence, and you open a new WaMu Mortgage Plus account on your new primary residence within 90 days of cancellation, we will credit your new WaMu Mortgage Plus account with the Cancellation Fee amount you paid. The Cancellation Fee period on your new WaMu Mortgage Plus account will run from the Effective Disbursement Date for the new Credit Line.

Foreign Currency Transactions. If you use the Card to make a purchase or obtain an advance in a foreign currency (the "transaction currency"), it will be converted by Visa International or MasterCard International (depending on which Card we issue from time to time) into U.S. Dollars (the "billing currency"). The details for conversion are discussed below in Section VI.6. We do not determine the exchange rate that is used and we do not add or subtract any adjustment to the exchange rate.

Reject Fee. A reject fee of \$20.00 if a Check or other advance request (other than for a Card transaction) is not honored for any reason.

Copy and Research Fees. A copy fee of \$1.00 per item and research fees of \$10.00 per hour will be assessed if you request copies of Checks or other research relating to your Credit Line.

Release Fee. A fee of \$65.00 in connection with the release, discharge or reconveyance of the Security Instrument (as defined in Section VI.3 below).

Other Institution Fees. Fees imposed by other institutions if you use the Card to obtain cash advances through their ATMs.

V. STATE-SPECIFIC NOTICES:

For the State of: IDAHO

Due on Transfer. The Security Instrument (as defined in Section VI.3 below) contains the following provisions relating to certain sales and transfers of the Property:

The loan is personal to Grantor and the entire debt shall become immediately due and payable in full upon any sale or other transfer of the Property or any interest therein by the Grantor including, without limit, any further encumbrance of the Property.

Governing Law. This Agreement and your Credit Line will be governed by and interpreted in accordance with the laws of the United States of America and, to the extent that such laws are not applicable, with the internal laws of the State of Utah (without giving effect to any choice of law rule that would cause the application of the laws of any other jurisdiction to the rights and duties of the parties). Interest shall be charged at rates allowed to any class of lender by the laws of the State of Utah.

VI. STANDARD TERMS AND CONDITIONS:

1. **Promise to Pay.** You promise to pay to us, or our order, all advances from the Credit Line plus all FINANCE CHARGES, fees, charges, expenses and other amounts required by the terms of this Agreement. All amounts outstanding under the Credit Line that are covered by the Fixed Rate Loan Option described in Section VII below are sometimes referred to in this Agreement as "Fixed Rate Loans." All other amounts outstanding under the Credit Line are sometimes referred to in this Agreement as "Variable Rate Advances." Unless otherwise provided in this Agreement, any amounts charged to the Credit Line shall be treated as Variable Rate Advances. If there is more than one of you, each is jointly and severally liable under this Agreement. Each Borrower alone may cancel the Credit Line, receive advances from the Credit Line and, except as stated below, take all actions with respect to the Credit Line. If Section I above indicates that you will receive a Card to access your Credit Line, each of you requests that we issue each Borrower a Card.

Your use of the Card at Automated Teller Machines ("ATMs") is subject to our rules relating to ATM transactions.

2. **Credit Limit.** This Agreement covers a revolving line of credit in the amount shown in Section I above (the "Credit Limit"). During the Draw Period described below, you may obtain advances from the Credit Line up to the Credit Limit, repay any portion of the amounts advanced and obtain additional advances up to the Credit Limit. If there is more than one of you, each of you alone has the right to borrow up to the full amount of the Credit Limit and each of you is liable for all advances made to any of you. You agree not to request or obtain an advance that will make the Credit Line balance exceed the Credit Limit. We may, at our option, make advances in excess of the Credit Limit. At our request, you will immediately repay the amount by which the balance of the Credit Line exceeds the Credit Limit.

3. **Security Instrument.** To secure the performance of your obligations under this Agreement, one or more of you is giving us a deed of trust, deed to secure debt, mortgage or other security agreement (the "Security Instrument") on the real property located at the address specified in Section I above and other property described therein (the "Property"). If the title to the Property is held by a trust, references in this Agreement to "you" and "your" shall include, with respect to the Property and as applicable, a person who is signing the Security Instrument as a trustee of the trust. The Security Instrument secures all advances and other amounts owed under this Agreement as well as after-acquired property located on or attached to the Property. You agree to perform all of your obligations under the Security Instrument. Regardless of the terms of any other security instrument that you have with us, no personal or real property, other than the Property, secures your obligations under this Agreement.

You will perform on a timely basis all payment and other obligations under the terms of any other deed of trust, mortgage, deed to secure debt or other security agreements or leases on the Property, as well as under any note or other obligation the performance of which is secured by the same.

4. **Draw Period and Post Draw Period; Payments.** You may obtain advances from the Credit Line for the number of years after the Effective Disbursement Date described in Section I above (the "Draw Period"). At our option, we may extend the Draw Period for up to two (2) additional periods that are each no longer than the initial Draw Period stated in Section I above. The period of time, if any, between the end of the Draw Period and the Maturity Date is the "Post Draw Period." If the Draw Period is for ten (10) years, the Post Draw Period will be for twenty (20) years. If the Draw Period is for twenty (20) years, the Post Draw Period will be ten (10) years. For example if the Draw Period is for thirty (30) years, there will not be a Post Draw Period. During the Post Draw Period, if any, you will no longer be able to obtain advances from the Credit Line.

Payments for both Variable Rate Advances and any Fixed Rate Loans are due monthly. The payment due date (the "Payment Due Date") may be different for Variable Rate Advances and Fixed Rate Loans, and each Fixed Rate Loan may have its own Payment Due Date. At our sole option, we may change the Payment Due Dates at any time, and we may establish one Payment Due Date each month for all payments due with respect to the Variable Rate Advances and each Fixed Rate Loan. The Payment Due Date will be stated in your periodic billing statement (the "Periodic Statement") or, if applicable, on any payment coupons that we provide you.

For Variable Rate Advances, your minimum monthly payment ("Minimum Payment") during both the Draw Period and any Post Draw Period will be equal to the amount specified in Section II above as the Minimum Payment. Paying the Minimum Payments will not repay the principal that is outstanding on the Credit Line. You will be required to pay the entire outstanding balance of the Variable Rate Advances (together with all accrued and unpaid FINANCE CHARGES relating to the Variable Rate Advances and all other related amounts that you owe under this Agreement) in a single

payment on the Maturity Date. We are not obligated to refinance any amount due on the Maturity Date. Your payments for any Fixed Rate Loans are described in Section VII below. For both Variable Rate Advances and Fixed Rate Loans, the following shall apply to payments. Payments must be made in U.S. Dollars. When you pay by check, funds must be drawn on a U.S. office of the financial institution. All payments shall be mailed, postage prepaid, to the address that appears on your Periodic Statement (or, if applicable, on any payment coupons that we provide you) for receipt of payments. Any payments that are not received on a business day, or that are received after 5:00 p.m. (prevailing Pacific Time) on a business day, will be treated as having been received on the next following business day. We can accept and apply any late or partial payments, or payments marked "Payment in Full" or similar statement, or with a request to apply a payment in a particular manner, to amounts you owe as set forth in this Agreement without liability on our part and without losing any of our rights under this Agreement. You will not make payments from funds obtained from the Credit Line or any other line of credit from the Bank or any of its affiliates. Payments accepted by the Bank on your Credit Line may be subject to temporary holds on the availability of funds before the payment amount may be re-advanced.

Each month, you will be required to send us one payment for the Variable Rate Advances and an additional separate payment for each Fixed Rate Loan. At our sole option, we may change this process at any time and require you to send us a single payment for both the Variable Rate Advances and your Fixed Rate Loan(s). Each payment will first be applied to accrued and unpaid periodic FINANCE CHARGES, then to any principal due, then to other FINANCE CHARGES, then to other fees and charges, and then to the unpaid principal balance. If you make a payment but do not specify where it should be applied, we will apply the payment in our discretion to outstanding Fixed Rate Loan(s) and/or Variable Rate Advances.

5. **Periodic FINANCE CHARGE; Daily Periodic Rate; ANNUAL PERCENTAGE RATE.** The date on which periodic FINANCE CHARGES begin to accrue will depend upon the type of advance you obtain from the Credit Line. Periodic FINANCE CHARGES will begin to accrue from the date that we initiate a wire transfer, the date that you request to advance from one of our Financial Centers, the effective date of a Card transaction, the effective date of your withdrawal of funds from an ATM, the date that a Check (as defined below) is processed by us, the date of any increase to the balance of the Variable Rate Advances in accordance with Section VI.11(c) or Section VII.3(b), or Section VII.4 below, the date that we prepare a check to fund a Fixed Rate Loan on the Effective Disbursement Date or, thereafter, on the effective date of the conversion of all or any portion of the Variable Rate Advances and/or one or more existing Fixed Rate Loans into a new Fixed Rate Loan and, for any other types of advances, the date the advance is made. Periodic FINANCE CHARGES will continue to accrue until all amounts subject to the periodic FINANCE CHARGES are paid in full. There is no free ride period that would allow you to avoid paying a periodic FINANCE CHARGE on advances you obtain from the Credit Line.

During both the Draw Period and any Post Draw Period, the periodic FINANCE CHARGE on the Variable Rate Advances for each billing period is a function of the Daily Periodic Rate (as described below), the Average Daily Balance (as described below), and the number of days in the billing period, as follows:

(a) The Daily Balance of your Variable Rate Advances for each day of the billing period will be all Variable Rate Advances due at the beginning of that day, plus all new Variable Rate Advances (including, without limitation, any increase to the balance of the Variable Rate Advances in accordance with Section VI.11(c) or Section VII.3(b), or Section VII.4 below), less all payments and credits relating to Variable Rate Advances received that day. Nothing in this Section VI.5 authorizes you to obtain advances from the Credit Line during the Post Draw Period.

(b) The Average Daily Balance is the sum of the Daily Balances of all days in the billing period divided by the number of days in the billing period.

(c) The ANNUAL PERCENTAGE RATE and Daily Periodic Rate may vary. Except as stated below, the ANNUAL PERCENTAGE RATE will be equal to the sum of the Variable Rate Margin Index stated in Section II above plus the Variable Rate Margin stated in Section II above, and the Daily Periodic Rate will be equal to the ANNUAL PERCENTAGE RATE divided by 365 (366 in a leap year). The ANNUAL PERCENTAGE RATE will be reduced by the amount of any applicable discounts shown in Table B in Section II above. The total discount will be based on the number of discounts that are applicable depending on whether you qualify for a particular discount at the time the ANNUAL PERCENTAGE RATE is determined. You will be eligible for a discount for "Auto Pay" if you authorize automatic loan payments for Variable Rate Advances using our Auto Pay service from an account at the Bank that you designate. If you qualified for an Auto Pay discount, you will no longer qualify if you or we cancel the Auto Pay or if you change to an automatic debit arrangement involving an account at another financial institution. You may separately decide whether you wish to authorize Auto Pay for the Variable Rate Advances and for each Fixed Rate Loan. Your

decision whether or not to authorize our Auto Pay service will not affect the availability of the Variable Rate Advances or Fixed Rate Loans. You will be eligible for a discount for "Account Relationships" as indicated in Table A if you maintain at least the specified number of accounts and the dollar amount of deposit, credit and investment accounts with the Bank, or its affiliate, as defined by the Bank. If you qualified for an "Account Relationships" discount, you will no longer qualify if the combined balances of the accounts fall below the minimum required. Further, an account will no longer be considered for the combined balance calculation if it becomes 30 or more days past due, is closed, or if no Borrower continues to be on title for the account. You will be eligible for a discount for a "First Mortgage Relationship" as indicated in Table A if you have outstanding the specified loan account and balance with the Bank, as defined by the Bank. If you qualified for a "First Mortgage Relationship" discount, you will no longer qualify if the loan used to obtain the discount becomes 30 or more days past due, is paid off or otherwise closed, or if no Borrower continues to be a borrower of record for the loan. Any discount marked "Not Applicable" or with similar language in Table A will not be available to you. If you do not qualify for a discount initially, but subsequently do so, the discount (up to the maximum number and amount of discount stated in Table B above) will be put into effect as of a date that we select.

Except as otherwise provided in this Section VI.5(c), the ANNUAL PERCENTAGE RATE and Daily Periodic Rate will change, beginning on the day following the Effective Disbursement Date, on each day that the Variable Rate Index changes. The Daily Periodic Rate and corresponding ANNUAL PERCENTAGE RATE for Variable Rate Advances will never be more than the maximum rates, and will never be less than the minimum rates, shown in Section II above. Increases in the Daily Periodic Rate and ANNUAL PERCENTAGE RATE will increase your Minimum Payment, periodic FINANCE CHARGES, and your final payment due on the Maturity Date.

(d) If Section II above indicates that special promotional rates will apply, then the initial Daily Periodic Rate and corresponding ANNUAL PERCENTAGE RATE will be lower than the sum of the Variable Rate Index plus the Variable Rate Margin. These lower rates are called "Promotional Rates." The Daily Periodic Rate will be equal to the ANNUAL PERCENTAGE RATE divided by 365 (366 in a leap year). If you are provided with Promotional Rates, the ANNUAL PERCENTAGE RATE will be reduced by the amount of any applicable discount shown in Table B in Section II above. The total discount will be based on the number of discounts that are applicable depending on whether you qualify for a particular discount at the time the ANNUAL PERCENTAGE RATE is determined. A description of these discounts is found in Section VI.5(c). If you do not qualify for a discount initially, but subsequently do so, the discount (up to the maximum discount stated in Table B above) will be put into effect as of a date that we select. If you are provided with Promotional Rates, the Promotional Rates will remain in effect until the Promotional Rate Expiration Date stated in Section II above, on which date the higher Daily Periodic Rate and corresponding ANNUAL PERCENTAGE RATE determined in accordance with Section VI.5(c), (f) will apply.

(e) The current Daily Periodic Rates and corresponding ANNUAL PERCENTAGE RATES are specified in Table B in Section II above. These rates will depend on (i) whether you have qualified for one or more discounts, (ii) whether you are being provided with Promotional Rates, or (iii) whether you have both qualified for one or more discounts and are being provided with Promotional Rates.

(f) If you have qualified for one or more discounts in the ANNUAL PERCENTAGE RATE (including any Promotional Rate), but thereafter you no longer qualify, the discount(s) will be eliminated on the date that you fail to qualify. On that date, the ANNUAL PERCENTAGE RATE will increase by the amount of the discount(s) for which you no longer qualify, and the Daily Periodic Rate will increase to the new ANNUAL PERCENTAGE RATE divided by 365 (366 in a leap year). For example, if you initially qualified for two discounts, but later qualify for only one discount, the increase in the ANNUAL PERCENTAGE RATE will equal the amount by which "2 discounts" exceeds "1 discount" in Table B. However, the increased Daily Periodic Rate and ANNUAL PERCENTAGE RATE will not be greater than the maximum rates stated in Section II above. Increases in the Daily Periodic Rate and ANNUAL PERCENTAGE RATE will increase your Minimum Payment, periodic FINANCE CHARGES, and your final payment due on the Maturity Date.

(g) The "Variable Rate Index" is stated in Section II above. If the Variable Rate Index, or any substitute Variable Rate Index, is no longer available, we will choose a new Variable Rate Index. The new Variable Rate Index will have a historical movement substantially similar to that of the prior Variable Rate Index, and the Variable Rate Margin will be changed so that the new Variable Rate Index plus the Variable Rate Margin will result in an ANNUAL PERCENTAGE RATE that is substantially similar to the ANNUAL PERCENTAGE RATE in effect at the time the prior Variable Rate Index becomes unavailable (plus any increase in the ANNUAL PERCENTAGE RATE that results from any termination of any Promotional Rate and/or the discounts, as described in Section VI.5(d), (f)).

(h) The Daily Periodic Rate may change within a single billing period. If only one Daily Periodic Rate is in effect during

the billing period, the periodic FINANCE CHARGE for the billing period will be calculated by first multiplying the Average Daily Balance by the applicable Daily Periodic Rate, and then multiplying that amount by the number of days in the billing period. If more than one Daily Periodic Rate is in effect during a billing period, the periodic FINANCE CHARGE for the billing period will be calculated by: (i) calculating a periodic FINANCE CHARGE for each Daily Periodic Rate by first multiplying that Daily Periodic Rate by the Average Daily Balance, and by then multiplying that amount by the number of days that such Daily Periodic Rate is in effect during the billing period, and (ii) by then adding together the periodic FINANCE CHARGES that are so determined for each such Daily Periodic Rate.

The ANNUAL PERCENTAGE RATE for both the Variable Rate Advances and the Fixed Rate Loans do not include costs other than interest. The periodic FINANCE CHARGE and ANNUAL PERCENTAGE RATE for the Fixed Rate Loans are described in Section VII below.

6. Variable Rate Advances. Provided you are not in default and your right to obtain advances has not been terminated, suspended or cancelled, you may obtain Variable Rate Advances during the Draw Period on and after the Effective Disbursement Date. All advances, other than by Card transactions outside the United States (as described below), shall be in U.S. Currency. You may obtain Variable Rate Advances as follows:

(a) Writing a preprinted check ("Check") that we supply to you for use with your Credit Line. The signature of only one Borrower is required for each Check.

(b) Using the Card to effect purchases, obtain cash advances at authorized ATMs (using the separate Personal Identification Number ("PIN") that we will supply to each of you), obtain cash advances at other locations or otherwise obtain advances.

(c) Requesting an advance in person at any of our Financial Centers. You will need to provide acceptable identification to obtain an advance.

(d) A wire transfer of funds to an account that you designate. Wire transfers are subject to our rules governing wire transfer transactions.

You authorize us to make available additional means of obtaining advances. Those advances will also be subject to this Agreement.

In addition, the balance of the Variable Rate Advances may be increased in accordance with Section VI.11(c) or Section VII.3(b), or Section VII.4(c) below.

If you use the Card to make a purchase or obtain an advance in a foreign currency (the "transaction currency"), it will be converted by Visa International or MasterCard International (depending on which Card we issue from time to time) into U.S. Dollars (the "billing currency"). Visa International or MasterCard International, as applicable, will use the procedures set forth in its operating regulations or conversion procedures in effect at the time the transaction is processed. Currently, the Visa International operating regulations state that the exchange rate between the transaction currency and the billing currency is: (i) a rate selected by Visa from the range of rates available in wholesale currency markets for the applicable central processing date, which rate may vary from the rate Visa itself receives or (ii) the government-mandated rate in effect for the applicable central processing date, in each instance, plus or minus an adjustment determined by the card issuer. The exchange rate for the applicable central processing date may differ from the rate in effect on the transaction date or the posting date. Currently, the MasterCard International conversion procedures state that the exchange rate between the transaction currency and the billing currency is either a wholesale market rate or a government-mandated rate as of a date selected by MasterCard International, in each instance plus or minus an adjustment determined by the card issuer. The exchange rate used by MasterCard International may differ from the rate in effect on the transaction date or the posting date. Regardless of which Card is used, the exchange rate used may be the same as, greater than, or less than the rate that would be available through a financial institution in the country in which the purchase or advance occurred. We do not determine the exchange rate that is used and we do not add or subtract any adjustment to the exchange rate.

7. Minimum Advances and Other Limitations. Each Variable Rate Advance, other than a purchase transaction with a Card, must be not less than \$100.00. We may, at our option, make Variable Rate Advances of less than \$100.00. At our option, we may (but reserve the right not to) honor any requests for advances in the following circumstances:

(a) Your credit privileges have been cancelled, suspended or terminated.

(b) Your Credit Limit is currently exceeded or would be exceeded if we honored the advance requested.

(c) Your Check is post-dated (written and presented before the date on the item) or stale dated (presented more than six (6) months after the date of the item).

(d) Your Check bears a restriction or notation.

(e) Your Checks have been reported lost or stolen or, if advances requiring a PIN have been authorized, you have reported that your PIN has been compromised.

(f) You are in material default of this Agreement or would be so if we honored the advance request.

(g) We receive conflicting instructions or demands from any of you.

(h) You have asked us to prepare a payoff demand statement setting forth the amounts required to satisfy your obligations under this Agreement.

You agree to hold us harmless from and indemnify us against any claim or loss the payee or any other endorser or depositing or collecting bank may assert regarding such restrictions, notations or post or stale dated items. You further agree to indemnify and hold us harmless for any claim or loss relating to honoring or refusing to honor any instructions or demands which we believe may be conflicting.

Our liability, if any, for wrongful dishonor of an advance request is limited to your actual damages, shall not include consequential damages and in no event will exceed the amount of the advance request.

Checks may be processed mechanically based on information encoded on the item. Checks not meeting our format and encoding specifications may not be honored. The signature on each Check should match the signature on file with us, however, we may not verify the signature if the item is processed mechanically. Subject to applicable law, we will only pay Checks that are presented to us by another financial institution. We do not "certify" Checks drawn on your Credit Line.

8. Illegal Transactions. You will not use any advance, the Card, a Check or other access device to engage in any internet gambling or illegal transaction (including, without limitation, illegal gambling). We are not responsible for preventing you from doing so.

9. Periodic Statement. As required by law, we will send you a Periodic Statement showing all new transactions since the prior Periodic Statement closing date and other information relating to the Credit Line. The Periodic Statements may be sent on other than a calendar month basis. We reserve the right to change the Periodic Statement closing date. We may choose not to return Checks along with your Periodic Statement.

10. Loss or Theft. Notify us if any unauthorized use of your Credit Line has occurred or may occur as a result of loss or theft of one or more of your Checks, Cards or other access device or if you believe someone else knows your PIN. The best way to notify us is by calling us. Call us at 800-566-5678 (for TDD, call 800-735-2922) or, if a different telephone number is stated in the Periodic Statement, call that number. You may also write us at the address stated in Section VI.16 below. You agree to reasonably assist us in determining the facts and circumstances relating to any unauthorized use of your Credit Line.

11. Termination and Acceleration; Suspension of Advances and Reduction of Credit Limit; Other Remedies.

(a) We may terminate your Credit Line and require you to pay us the entire outstanding balance of the Credit Line (including the outstanding balance of any Fixed Rate Loans), together with all other fees, charges and amounts owing under this Agreement or the Security Instrument, in one payment, if any of the following happen:

(i) You commit fraud or make a material misrepresentation at any time in connection with the Credit Line. This can include, for example, a false statement about your income, assets, liabilities or any other aspect of your financial condition.

(ii) You do not meet any of the repayment terms of this Agreement.

(iii) Your action or inaction adversely affects the Property or our rights in the Property. This can include, for example, failure to maintain required insurance or pay taxes on the Property, waste or destructive use of the Property which impairs our security, death of the last Borrower, death of all but one Borrower which impairs our security, transfer of title or sale of the Property without our permission, permitting the creation of a senior lien on the Property, foreclosure by the holder of a prior lien on the Property or use of the Property for an illegal purpose that subjects the Property to seizure.

If we terminate the Credit Line, no additional advances will be made and the entire outstanding balance of the Credit Line (including the outstanding balance of any Fixed Rate Loans) will be immediately due and payable without prior notice, except as may be required by law, and you agree to pay immediately such amount plus any other amounts due under this Agreement.

Failure to meet the repayment terms of any portion of the Credit Line, such as for Fixed Rate Loans or for Variable Rate Advances, will be considered failure to meet the repayment terms of the entire Credit Line, and this will give us the right to demand the immediate repayment of the entire outstanding balance of the Credit Line and to exercise any of our other rights under this Agreement. Likewise, payment of only a portion of the amount required under the repayment terms of this Agreement will not satisfy your repayment obligations for

the entire Agreement. If a partial payment is made, we reserve the right to accept the payment and apply it to the outstanding balance of the Credit Line in accordance with Section VI.4 without waiving our right to demand immediate payment of the entire outstanding balance of the Credit Line or to exercise any of our other rights under this Agreement.

(b) In addition to any other rights we may have, we can suspend additional advances (including any Fixed Rate Loans) or reduce your Credit Limit during any period in which any of the following are in effect:

(i) The value of the Property declines significantly below the value as determined by us at the time you applied for your Credit Line. This includes, for example, a decline such that the difference between the Credit Limit and the available equity is reduced by fifty percent (50.00%) and may include a smaller decline depending on individual circumstances.

(ii) We reasonably believe that you will be unable to fulfill your payment obligations under this Agreement due to a material adverse change in your financial circumstances.

(iii) You are in default of a material obligation of this Agreement. We consider all of your obligations to be material. Categories of material obligations include, for example, the events described above permitting us to terminate, obligations and limitations relating to your receipt of advances, obligations concerning maintenance or use of the Property, obligations to perform the terms of the Security Instrument or any other deed of trust, mortgage, deed to secure debt or other security agreement or lease on the Property (and to perform on any notes or other obligations secured by the same), obligations to notify us and to provide documents and information to us (such as updated financial information), and obligations to comply with applicable law (such as zoning restrictions).

(iv) We are precluded by government action from imposing the ANNUAL PERCENTAGE RATE provided for under this Agreement.

(v) The priority of our security interest in the Property is adversely affected by government action to the extent that the value of the security interest is less than 120.00% of the Credit Limit.

(vi) We have been notified by a government authority that continued advances may constitute an unsafe and unsound business practice.

(vii) If the maximum ANNUAL PERCENTAGE RATE stated in Section II above has been reached.

Regardless of any action that we take, all other terms of this Agreement will remain in effect and be binding upon you.

(c) If, at any time, we have the right to terminate your Credit Line under Section VI.11(a) above, we may, at our sole option and without prior notice to you, then or thereafter convert any or all of your Fixed Rate Loans (including both the unpaid principal balance of the Fixed Rate Loans plus all accrued and unpaid FINANCE CHARGES) to the balance of your Variable Rate Advances, which will then accrue FINANCE CHARGES in accordance with Section VI.5 above and be subject to all other provisions of this Agreement relating to Variable Rate Advances. No exercise of this right to convert and nothing in this Section VI.11(c) shall constitute an election of remedies or a waiver of any of our rights under the remaining provisions of this Section VI.11, the remainder of this Agreement, the Security Instrument or at law or in equity.

(d) Any Borrower may cancel the Credit Line or suspend the right to obtain advances by sending a written notice of cancellation or suspension to the address stated in Section VI.16 below. The notice must identify the account number of the Credit Line and be signed by at least one Borrower. The notice will be effective when it has been received and accepted by us. If the right to obtain advances is suspended at the request of a Borrower, advances will be reinstated only following our receipt and approval of a written request for reinstatement that has been signed by each of you.

(e) If the Credit Line is cancelled, suspended or terminated, you agree not to attempt to write or deliver any Checks, use a Card or any other access device or otherwise obtain advances. You will return all Cards and unused Checks to us. You remain liable for any use of Checks, Cards or other access devices and any advances taken even after any cancellation by you or us, termination or suspension. If your Credit Line is cancelled or terminated, subject to applicable law, we may delay the cancellation or release of the Security Instrument for a reasonable period of time to enable us to post to your Credit Line any advances that you have received.

Our rights under this Agreement shall be in addition to any other rights we may have under the Security Instrument or at law or in equity.

12. Delay in Enforcement; Corrections. To the extent permitted by law, we may delay or waive the enforcement of any of our rights under this Agreement without losing that right or any other right and if we delay or waive any of our rights, we may enforce that right at any time in the future without advance notice. We may correct any inaccuracies that we find with respect to the Credit Line or any Periodic Statements.

13. Presentment. You waive any statutes of limitations, and any legal requirements of presentment, demand, protest, notice of dishonor and notice of protest of this Agreement.

14. **Credit Information.** You will provide us with a current financial statement, a new credit application, or both, at any time upon our request. We may obtain credit reports on you at any time for the purpose of reviewing or collecting your Credit Line. You authorize us to release information to others (such as credit bureaus, merchants, other financial institutions and any of our affiliate companies) about our transactions or experiences with you. **WE MAY REPORT INFORMATION ABOUT YOUR ACCOUNT TO CREDIT BUREAUS. LATE PAYMENTS, MISSED PAYMENTS, OR OTHER DEFAULTS ON YOUR ACCOUNT MAY BE REFLECTED IN YOUR CREDIT REPORT.**

15. **Transfer and Assignment.** Without prior notice to or approval from you, we reserve the right to sell or transfer this Agreement, the Credit Line and our obligations under this Agreement to any other person. Your rights under this Agreement belong to you only and may not be transferred, assumed or assigned. Your obligations, however, are binding upon your heirs and legal representatives.

16. **Notices.** Except as otherwise provided in this Agreement, notices must be in writing. Notice to any of you shall be deemed notice to all of you. Notices shall be deemed given when deposited in the U.S. Mail, postage prepaid first class mail, or when delivered in person, or sent by registered or certified mail, or by nationally recognized overnight carrier. Notice to you shall be sent to your last known address in our records for the Credit Line. Notice to us must be sent to: **WASHINGTON MUTUAL BANK
CONSUMER LENDING -- BR2CLFL
PO BOX 8888
LAKE WORTH, FL 33466** or, if a different address is stated in the Periodic Statement, to that address. Any party may change its address for receipt of notices by giving notice of the same, as set forth herein, to the other parties. You agree to notify us immediately if you change your name, address or employment or if any of you dies, is declared incompetent or is the subject of a bankruptcy or insolvency proceeding.

17. **Tax Consequences.** You should consult your own tax advisor regarding the tax deductibility of interest and charges under this Agreement.

18. **Special Terms.** In our sole discretion, we may offer you special terms on Variable Rate Advances from time to time. The special terms may include, by way of example, reduced rates, reduced fees, and reduced payments. The special terms may be available for temporary periods of time and on a limited basis.

19. **Amendment.** In addition to other changes described in this Agreement, we may make changes to the terms of this Agreement if you agree to the change in writing at that time, if the change will unequivocally benefit you throughout the remainder of your Credit Line or if the change is insignificant.

20. **Interpretation.** The names given to sections or paragraphs in this Agreement are for convenience and shall not be used to interpret this Agreement. This Agreement, the Periodic Statements and, if applicable, any payment coupons that we provide you are the best evidence of your agreement with us. If any provision of this Agreement, the Periodic Statements or any such payment coupons is found not to be valid or enforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of such provision or the remaining provisions of that document, which provisions shall continue to be binding, valid and enforceable.

VII. FIXED RATE LOAN OPTION

1. **Introduction.** If indicated in Section III above, you have the option (the "Fixed Rate Loan Option") to obtain advances from your Credit Line in the form of Fixed Rate Loans as described in this Section. Except as stated below, the Fixed Rate Loans will be subject to a fixed Daily Periodic Rate and ANNUAL PERCENTAGE RATE and a fixed term.

2. **General Terms and Conditions for the Fixed Rate Loan Option.** The following shall apply to the Fixed Rate Loan Option:

(a) The Fixed Rate Loan Option may be exercised only during the Draw Period.

(b) You may exercise the Fixed Rate Loan Option to obtain up to two (2) Fixed Rate Loans on the Effective Disbursement Date which, in the aggregate, may be any amount up to the then available portion of the Credit Limit. Thereafter, you may only exercise the Fixed Rate Loan Option by converting all or any portion of (i) the outstanding Variable Rate Advances, and/or (ii) one (1) or more existing Fixed Rate Loans, into a new Fixed Rate Loan in accordance with our procedures. Following the Effective Disbursement Date, you may not obtain a Fixed Rate Loan by obtaining an advance of new funds from the Credit Line.

(c) Each Fixed Rate Loan may be for any amount, but the aggregate of all Fixed Rate Loans and outstanding Variable Rate Advances may not exceed your available Credit Limit.

(d) The portion of the Credit Limit that is available to you for Variable Rate Advances will be reduced by the amount of each Fixed Rate Loan. Any repayment of the principal amount

of a Fixed Rate Loan during the Draw Period will restore the available Credit Limit by an equal amount.

(e) You may exercise a Fixed Rate Loan Option only if no defaults exist under the terms of this Agreement or the Security Instrument, your right to obtain advances has not been terminated, suspended or cancelled and you sign all documents required by us. You may not obtain more than two (2) Fixed Rate Loans in any one (1) calendar year period and may not have more than five (5) Fixed Rate Loans outstanding at any time. You may not have outstanding at any time more than one Fixed Rate Loan that provides for an "Interest Only Minimum Payment" as described in Section VII.3(b) below. Notwithstanding any other provisions of this Section VII.2, we may convert any or all of your Fixed Rate Loans to the balance of your Variable Rate Advances in accordance with Section VI.11(c) above.

(f) You will be required to pay a Fixed Rate Loan Option Fee in the amount stated in Section IV above for each Fixed Rate Loan that you receive, except as provided in Section IV above. You may pay this fee prior to the making of the Fixed Rate Loan or it will be added to the principal balance of the Fixed Rate Loan.

(g) Except as stated below, the ANNUAL PERCENTAGE RATE that will apply to each Fixed Rate Loan will be equal to the sum of the FRLO Index stated in Section III above that is in effect on the day you exercise the Fixed Rate Loan Option to obtain that Fixed Rate Loan plus the FRLO Margin stated in Section III above. The ANNUAL PERCENTAGE RATE will be reduced by the amount of any applicable discounts shown in Table C in Section III above. The total discount will be based on the number of discounts that are applicable depending on whether you qualify for a particular discount at the time the ANNUAL PERCENTAGE RATE is determined. A description of these discounts is found in Section VI.5(c). If you do not qualify for a discount(s) when you exercise the Fixed Rate Loan Option, but you subsequently do so, the ANNUAL PERCENTAGE RATE for the Fixed Rate Loan will not be decreased.

If the FRLO Index, or any substitute FRLO Index, becomes unavailable, we will choose a new FRLO Index. The new FRLO Index will have a historical movement substantially similar to that of the prior FRLO Index, and the FRLO Margin will be changed so that the new FRLO Index plus the FRLO Margin will result in an ANNUAL PERCENTAGE RATE that is substantially similar to the ANNUAL PERCENTAGE RATE that would have been in effect at the time the prior FRLO Index becomes unavailable.

The Daily Periodic Rate for the Fixed Rate Loan will be equal to the ANNUAL PERCENTAGE RATE divided by 365 (366 in a leap year). The Daily Periodic Rate and corresponding ANNUAL PERCENTAGE RATE for the Fixed Rate Loan will not be greater than the maximum rates, and will not be less than the minimum rates, stated in Section III above. The periodic FINANCE CHARGE on the Fixed Rate Loan for each billing period will be a function of the outstanding principal balance of the Fixed Rate Loan each day of the billing period and the applicable Daily Periodic Rate. The outstanding principal balance of the Fixed Rate Loan for each day of the billing period is calculated by starting with the beginning principal balance that day and then subtracting any payments or credits relating to the Fixed Rate Loan received that day. The periodic FINANCE CHARGE that will apply to the Fixed Rate Loan for each billing period will be determined by first multiplying the applicable Daily Periodic Rate by the outstanding principal balance of the Fixed Rate Loan for each day of the billing period and then adding together the resulting amounts.

You will be deemed to exercise a Fixed Rate Loan Option when the FRLO Confirmation provisions in Section III above are completed and you sign this Agreement, when you sign any other required documentation at the time that you sign this Agreement, when you sign the required documentation at one of our Financial Centers, or when you call the toll-free telephone number described in Section III above and provide us with all required information.

(h) We may, at our sole discretion and without prior notice, provide a Fixed Rate Loan at a Daily Periodic Rate and corresponding ANNUAL PERCENTAGE RATE that will be lower than the sum of the FRLO Index plus the FRLO Margin as described in accordance with Section VII.2(g). These lower rates are called "Promotional Rates". The Daily Periodic Rate will be equal to the ANNUAL PERCENTAGE RATE divided by 365 (366 in a leap year). If you are provided with Promotional Rates, the ANNUAL PERCENTAGE RATE will be reduced by the amount of any applicable discounts shown in Table C in Section III above. The total discount will be based on the number of discounts that are applicable depending on whether you qualify for a particular discount at the time the ANNUAL PERCENTAGE RATE is determined. A description of these discounts is found in Section VI.5(c). If you do not qualify for a discount(s) when you exercise the Fixed Rate Loan Option, but you subsequently do so, the ANNUAL PERCENTAGE RATE for the Fixed Rate Loan will not be decreased. If we provide a Fixed Rate Loan at Promotional Rates, we are not obligated to offer Promotional Rates on any subsequent Fixed Rate Loans. The amount of the Promotional Rates may change from time to time.

In addition to any Promotional Rates and discounts shown in Table C in Section III above, we may, at our sole discretion and without prior notice, offer you the option to pay a fee ("Buydown Fee") to reduce the rate further on your Fixed Rate

Loan. If we offer and you accept this buydown option, the ANNUAL PERCENTAGE RATE that would otherwise be applicable to the Fixed Rate Loan will be reduced and the Daily Periodic Rate will be equal to the reduced ANNUAL PERCENTAGE RATE divided by 365 (366 in a leap year). The amount of the Buydown Fee that you must pay, and the amount of the reduction in the ANNUAL PERCENTAGE RATE, are stated in Section IV above. At our sole discretion, we reserve the right to charge you a lesser Buydown Fee and/or offer a greater reduction in the ANNUAL PERCENTAGE RATE at the time you obtain a Fixed Rate Loan, and this may vary from one Fixed Rate Loan to another. A separate Buydown Fee must be paid for each Fixed Rate Loan that is subject to the buydown option. You must pay the Buydown Fee prior to the making of the Fixed Rate Loan or it will be added to the principal balance of the Fixed Rate Loan. If you prepay the Fixed Rate Loan, none of the Buydown Fee will be returned to you or credited to your Fixed Rate Loan or Credit Line. If we offer you the buydown option for a Fixed Rate Loan, we are not obligated to offer the buydown option for any subsequent Fixed Rate Loans. The reduction in the ANNUAL PERCENTAGE RATE resulting from the buydown option will remain in place for the full term of the Fixed Rate Loan, but the ANNUAL PERCENTAGE RATE may be increased as otherwise provided in this Section VII.

(i) The current Daily Periodic Rates and corresponding ANNUAL PERCENTAGE RATES are specified in Table C in Section III above. These rates will depend on (i) whether you have qualified for one or more discounts, (ii) whether you are being provided with Promotional Rates, or (iii) whether you have both qualified for one or more discounts and are being provided with Promotional Rates.

(j) If you have qualified for one or more discounts in the ANNUAL PERCENTAGE RATE, but thereafter you no longer qualify, the discount(s) will be eliminated on the date that you fail to qualify. On that date, the ANNUAL PERCENTAGE RATE of each Fixed Rate Loan will increase by the amount of the discount(s) for which you no longer qualify, and the Daily Periodic Rate will increase to the new ANNUAL PERCENTAGE RATE divided by 365 (366 in a leap year). For example, if you initially qualified for two discounts, but later qualify for only one discount, the increase in the ANNUAL PERCENTAGE RATE will equal the amount by which "2 discounts" exceeds "1 discount" in Table C. However, the increased Daily Periodic Rate and ANNUAL PERCENTAGE RATE will not be greater than the maximum rates stated in Section III above.

3. Choice of Terms and Minimum Payment for the Fixed Rate Loan Option. You have the following choices regarding the term and Minimum Payment for a Fixed Rate Loan:

(a) **Amortizing Minimum Payment.** With this choice, you may determine the amortization term of each Fixed Rate Loan ("Term") at the time you exercise the Fixed Rate Loan Option. The Term shall be in increments of one (1) year. The maximum permissible Terms available for the Fixed Rate Loan are stated in Table D in Section III above and will depend upon the dollar amount of the Fixed Rate Loan. Your Minimum Payment for the Fixed Rate Loan is the amount sufficient to repay the original principal balance of the Fixed Rate Loan, together with periodic FINANCE CHARGES at the applicable ANNUAL PERCENTAGE RATE, in full in substantially equal monthly installments during the Term that you will select at the time you exercise the Fixed Rate Loan Option. The entire outstanding principal balance of the Fixed Rate Loan together with all accrued and unpaid FINANCE CHARGES, if not sooner paid, will be due and payable in full in a single payment on the earlier of the Credit Line Maturity Date or the last day of the scheduled Term. We are not obligated to refinance this amount.

(b) **Interest Only Minimum Payment.** With this choice, you must select one of the terms for the Fixed Rate Loan that is described in Table D in Section III above. You must make this selection at the time you exercise the Fixed Rate Loan Option. Your Minimum Payment will be equal to all of the unpaid periodic FINANCE CHARGES that have accrued on the outstanding principal balance of the Fixed Rate Loan at the applicable ANNUAL PERCENTAGE RATE. Your Minimum Payments will not repay any of the outstanding principal balance of the Fixed Rate Loan. At the conclusion of the term of the Fixed Rate Loan, the entire outstanding principal balance of the Fixed Rate Loan, together with all accrued and unpaid FINANCE CHARGES and all other fees and charges relating to the Fixed Rate Loan, automatically will be transferred to the balance of your Variable Rate Advances, which will then accrue FINANCE CHARGES in accordance with Section VI.5 above and be subject to all other provisions of this Agreement relating to Variable Rate Advances. If you choose to pay only the Minimum Payments, then (i) the payments on your Variable Rate Advances may increase substantially following the conclusion of the term of the Fixed Rate Loan, and (ii) the final payment due on the Maturity Date may increase substantially.

You must make your choices regarding a Fixed Rate Loan at the time you exercise the Fixed Rate Loan Option for the loan in accordance with our procedures. You may make a different choice for each Fixed Rate Loan that you obtain.

We will notify you of the amount of the Minimum Payment for

the Fixed Rate Loan. If the Fixed Rate Loan has an Amortizing Minimum Payment, your first Minimum Payment may be for a period of less than one month and, if so, we may apply the excess amount of the payment to the outstanding principal balance of the Fixed Rate Loan, which may reduce the amount of your final scheduled payment on the Fixed Rate Loan. Your Minimum Payment on each Fixed Rate Loan is in addition to the Minimum Payments that you must pay on any other Fixed Rate Loans and on the Variable Rate Advances.

4. Change in Minimum Payment Following Termination of Discount(s). If you have qualified for one or more discounts in the ANNUAL PERCENTAGE RATE, but thereafter you no longer qualify, the discount(s) will be eliminated and the ANNUAL PERCENTAGE RATE and Daily Periodic Rate of each Fixed Rate Loan will increase in accordance with Section VII.2(j). Your Minimum Payment will also increase. Your new Minimum Payment will be determined in accordance with the applicable paragraphs of Section VII.3 above, with the exception that (a) the Minimum Payment will be calculated using the increased ANNUAL PERCENTAGE RATE and, (b) if the Fixed Rate Loan has an Amortizing Minimum Payment, the Minimum Payment will be based on the anticipated unpaid principal balance and remaining scheduled Term of the Fixed Rate Loan. For a Fixed Rate Loan with an Amortizing Minimum Payment, the periodic FINANCE CHARGES, the Minimum Payment, and any payment due on the earlier of the Credit Line Maturity Date or the last day of the Term will increase. For a Fixed Rate Loan with an Interest Only Minimum Payment, the periodic FINANCE CHARGES, the Minimum Payment, the balance transferred to your Variable Rate Advances at the conclusion of the Fixed Rate Loan, the amount of the Minimum Payments due on the Variable Rate Advances, and the final payment due on the Maturity Date will increase. We will notify you of the amount of the new Minimum Payment for the Fixed Rate Loan.

5. Special Terms. In our sole discretion, we may offer you special terms on Fixed Rate Loans from time to time. The special terms may include, by way of example, reduced rates, reduced fees, and reduced payments. The special terms may be available for temporary periods of time and on a limited basis.

6. Conflicts. In the event of any conflict or inconsistency between the provisions of this Section VII and the remaining provisions of this Agreement, the provisions of this Section VII shall prevail. Except as otherwise provided in this Section VII, all remaining provisions of this Agreement shall apply to the Fixed Rate Loans in accordance with their terms.

VIII. BILLING RIGHTS

YOUR BILLINGS RIGHTS KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us in Case of Errors or Questions About Your Bill. If you think your bill is wrong, or if you need more information about a transaction on your bill, write us (on a separate sheet) at the address listed on your bill. Write to us as soon as possible. We must hear from you no later than sixty (60) days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your bill automatically from your deposit account, you can stop the payment on any amount you think is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic payment is scheduled to occur.

Your Rights and Our Responsibilities After We Receive Your Written Notice. We must acknowledge your letter within thirty (30) days, unless we have corrected the error by then. Within ninety (90) days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question or report you as delinquent. We can continue to bill you for the amount you question, including FINANCE CHARGES, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. If we find that we made a mistake on your bill, you will not have to pay any FINANCE CHARGES related to any questioned amount. If we did not make a mistake, you may have to pay FINANCE CHARGES and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date on which it is due.

If you fail to pay the amount that we think you owe, we may

report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten (10) days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we do not follow these rules, we cannot collect the first \$50.00 of the questioned amount, even if your bill was correct.

Special Rule for Credit Card Purchases. If you have a problem

with the quality of property or services that you purchased with a credit card and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or the services. There are two limitations on this right:

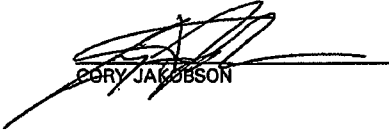
(a) You must have made the purchase in your home state or, if not within your home state, within 100 miles of your current mailing address; and


(b) The purchase price must have been more than \$50.00.

These limitations do not apply if we own or operate the merchant or if we mailed you the advertisement for the property or services.

SIGNATURES

By signing below, you agree to the terms of this Agreement and you acknowledge that you have read and received a copy of this Agreement.


CORY JACOBSON

Pay to the order of
Without Recourse
Washington Mutual Bank

Cynthia A. Hiley, vice-President

JUL 27 2016

CHRISTOPHER D. RICH, Clerk
By TYLER ATKINSON
DEPUTY

1 ORIGINAL
2
3

4 Matthew T. Christensen
5 ANGSTMAN JOHNSON
6 3649 N. Lakeharbor Lane
7 Boise, Idaho 83703
8 Telephone: (208) 384-8588
9 Facsimile: (208) 853-0117
10 Email: mtc@angstman.com
11 Christensen ISB: 7213

12 Attorney for Plaintiff

13 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
14 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

15 CMJ PROPERTIES, LLC, an Idaho limited
16 liability company,

17 Plaintiff,

18 vs.

19 JP MORGAN CHASE BANK, N.A., a
20 national banking association; DOES 1-10.,

21 Defendants.

Case No. CV OC 1611039

MOTION FOR ENTRY OF DEFAULT AND
DEFAULT JUDGMENT AGAINST JP
MORGAN CHASE BANK, N.A.

22 Plaintiff, by and through its attorneys of record, Angstman Johnson, requests this Court
23 enter Default against Defendants JP Morgan Chase Bank, N.A., pursuant to I.R.C.P. 55(b)(1).

24 This Motion is based on the file herein together with the Affidavit of Matthew T. Christensen in
25 Support of this Motion filed contemporaneously herewith.

26 The best place for Defendant to receive notice of this default is the service addresses as
27 follows:

1 JP Morgan Chase Bank, N.A.
2 CT Corporation System
3 921 S. Orchard Street
4 Suite G
5 Boise, ID 83705

6 JP Morgan Chase Bank, N.A.
7 6490 S. Federal Way
8 Boise, ID 83716

9 DATED this 27 day of July, 2016.

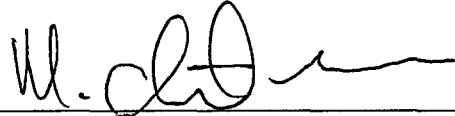


10 MATTHEW T. CHRISTENSEN
11 Attorney for Plaintiff
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of July, 2016, I caused to be served a true copy of the foregoing MOTION FOR DEFAULT by the method indicated below, and addressed to those parties marked served below:

<u>Served</u>	<u>Party</u>	<u>Counsel</u>	<u>Means of Service</u>
<input checked="" type="checkbox"/>		JP Morgan Chase Bank, N.A. 6490 S. Federal Way Boise, ID 83716	<input checked="" type="checkbox"/> U.S. Mail, Postage Paid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Fax Transmittal
<input checked="" type="checkbox"/>		JP Morgan Chase Bank, N.A. CT Corporation System 921 S. Orchard Street Suite G Boise, ID 83705	<input checked="" type="checkbox"/> U.S. Mail, Postage Paid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Fax Transmittal



Matthew T. Christensen

1 ORIGINAL

JUL 27 2016

CHRISTOPHER D. RICH, Clerk
By TYLER ATKINSON
DEPUTY

4 Matthew T. Christensen
5 ANGSTMAN JOHNSON
6 3649 N. Lakeharbor Lane
7 Boise, Idaho 83703
8 Telephone: (208) 384-8588
9 Facsimile: (208) 853-0117
10 Email: mtc@angstman.com
11 Christensen ISB: 7213

12 Attorney for Plaintiff

13 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
14 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

15 CMJ PROPERTIES, LLC, an Idaho limited
16 liability company,

17 Plaintiff,

18 vs.

19 JP MORGAN CHASE BANK, N.A., a
20 national banking association; DOES 1-10.,

21 Defendants.

Case No. CV OC 1611039

AFFIDAVIT OF MATTHEW T.
CHRISTENSEN IN SUPPORT OF MOTION
FOR ENTRY OF DEFAULT AND DEFAULT
JUDGMENT

22 STATE OF IDAHO)
23) ss:
24 COUNTY OF ADA)

25 MATTHEW T. CHRISTENSEN, being first duly sworn upon oath, deposes and says:

26 1. I am the attorney of record for the Plaintiff in the above-entitled matter. I am over
27 the age of 18 and competent to testify before this Court and make the following statements based
28 on my own personal knowledge.

29 AFFIDAVIT OF MATTHEW T. CHRISTENSEN IN SUPPORT OF MOTION FOR ENTRY
OF DEFAULT AND DEFAULT JUDGMENT – PAGE 1

1 2. Examination of the court files and records of this case shows that the Defendants
2 JP Morgan Chase Bank, N.A. were served by a process server on June 21, 2016, with a
3 Summons and Complaint in the above-entitled matter. *See* Affidavit of Service filed on or about
4 June 24, 2016
5

6 3. Plaintiff has not been served with any responsive pleading within the time
7 allowed under the Idaho Rules of Civil Procedure.

8 4. Defendant is not, to the best of my knowledge, a minor or incompetent, nor
9 member of the military service.
10

11 5. The last known address to serve Defendant with the Default Judgment in this
12 matter is:

13 JP Morgan Chase Bank, N.A.
14 6490 S. Federal Way
15 Boise, ID 83716

16 JP Morgan Chase Bank, N.A.
17 CT Corporation System
18 921 S. Orchard Street, Ste G
19 Boise, ID 83705

20 6. That I have read the Complaint filed in this action and know the contents; to be
21 true to the best of my knowledge; and the Defendant now owes the Plaintiff the following
22 amount:

Filing Fee	\$ 221.00
Service of Process	\$ 50.00
Attorney Fee	<u>\$ 2,500.00</u>
Total:	\$ 2,771.00

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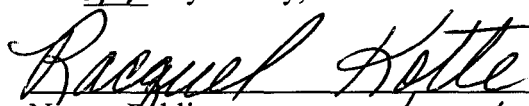
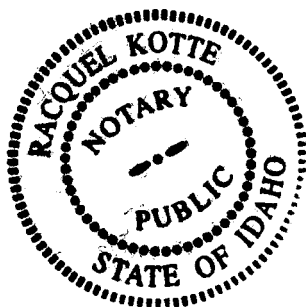
Further your affiant sayeth naught.

DATED this 27 day of July, 2016.



Matthew T. Christensen

SUBSCRIBED AND SWORN to before me this 27 day of July, 2016.



Notary Public

Commission Expires: 4/25/2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July, 2016, I caused to be served a true copy of the foregoing MOTION FOR DEFAULT by the method indicated below, and addressed to those parties marked served below:

<u>Served</u>	<u>Party</u>	<u>Counsel</u>	<u>Means of Service</u>
<input checked="" type="checkbox"/>		JP Morgan Chase Bank, N.A. 6490 S. Federal Way Boise, ID 83716	<input checked="" type="checkbox"/> U.S. Mail, Postage Paid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Fax Transmittal
<input checked="" type="checkbox"/>		JP Morgan Chase Bank, N.A. CT Corporation System 921 S. Orchard Street Suite G Boise, ID 83705	<input checked="" type="checkbox"/> U.S. Mail, Postage Paid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Fax Transmittal



Matthew T. Christensen

ORIGINAL

NO. 126 FILED
A.M. 12:00 P.M.

AUG 03 2016

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

Jon A. Stenquist, ISB No. 6724
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
900 Pier View Drive Suite 206
Post Office Box 51505
Idaho Falls, Idaho 83405
Telephone (208) 522-6700
Facsimile (208) 522-5111
JAS@moffatt.com
00UFO.5228

Attorneys for JPMorgan Chase Bank, N.A.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CMJ PROPERTIES, LLC, an Idaho limited
liability company,

Plaintiff,

vs.

JPMORGAN CHASE BANK, N.A., a national
banking association, DOES 1-10,

Defendants.

Case No. CV OC 1611039

NOTICE OF APPEARANCE

NOTICE IS HEREBY GIVEN that Jon A. Stenquist of the firm Moffatt, Thomas,
Barrett, Rock & Fields, Chartered, hereby enters his appearance on behalf of JPMorgan Chase
Bank, N.A. Request is also made that notice of all hearings, pleadings, and other papers in this
matter be sent to the undersigned counsel by facsimile at (208) 522-5111, or by mail care of Jon

A. Stenquist at Moffatt, Thomas, Barrett, Rock & Fields, Chartered, P.O. Box 51505,
Idaho Falls, Idaho 83405-1505, whichever is most convenient for Court and counsel.

DATED this 3rd day of August, 2016.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 

Jon A. Stenquist – Of the Firm
Attorneys for JPMorgan Chase Bank,
N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of August, 2016, I caused a true and correct copy of the foregoing **NOTICE OF APPEARANCE** to be served by the method indicated below, and addressed to the following:

Matthew T. Christensen
ANGSTMAN JOHNSON
3469 N. Lakeharbor Lane
Boise, ID 83703
Fax: (208) 853-0117

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Jon A. Stenquist

NO. 1124 FILED
A.M. _____ P.M. _____

AUG 03 2016

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

CMJ
6/26/16
6/21/16

ORIGINAL

Jon A. Stenquist, ISB No. 6724
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
900 Pier View Drive Suite 206
Post Office Box 51505
Idaho Falls, Idaho 83405
Telephone (208) 522-6700
Facsimile (208) 522-5111
JAS@moffatt.com
00UFO.5228

Attorneys for JPMorgan Chase Bank, N.A.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CMJ PROPERTIES, LLC, an Idaho limited
liability company,

Plaintiff,

vs.

JPMORGAN CHASE BANK, N.A., a national
banking association, DOES 1-10,

Defendants.

Case No. CV OC 1611039

**OBJECTION TO MOTION FOR
ENTRY OF DEFAULT JUDGMENT**

COMES NOW JPMorgan Chase Bank, N.A. a National Association ("Chase"),
by and through undersigned counsel of record, and hereby opposes Plaintiff's Motion for Entry
of Default Judgment.

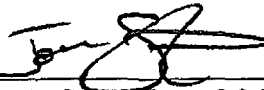
Default has not yet been entered against Chase. Rule 55(a)(1), Idaho Rules of
Civil Procedure, provides that "[d]efault shall not be entered against a party who has appeared in

m

the action unless that party (or, if appearing by representative, the party's representative) has been served with three (3) days written notice of the application for entry of such default." IDAHO R. CIV. P. 55(a)(1). In this case, because Chase has appeared by representative and no Notice of Entry of Default has been served on counsel for Chase, the Court should not enter default against Chase until Plaintiff has complied with I.R.C.P. 55(a)(1).

DATED this 3rd day of August, 2016.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED


By  _____
Jon A. Stenquist – Of the Firm
Attorneys for JPMorgan Chase Bank,
N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of August, 2016, I caused a true and correct copy of the foregoing **OBJECTION TO MOTION FOR ENTRY OF DEFAULT JUDGMENT** to be served by the method indicated below, and addressed to the following:

Matthew T. Christensen
ANGSTMAN JOHNSON
3469 N. Lakeharbor Lane
Boise, ID 83703
Fax: (208) 853-0117

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Jon A. Stenquist

RECEIVED
JUL 27 2016
Ada County Clerk

ORIGINAL

NO. _____ FILED
A.M. 11:42 P.M. _____

AUG 16 2016

CHRISTOPHER D. RICH, Clerk
By LISA ABERASTURI
DEPUTY

Matthew T. Christensen
ANGSTMAN JOHNSON
3649 N. Lakeharbor Lane
Boise, Idaho 83703
Telephone: (208) 384-8588
Facsimile: (208) 853-0117
Email: mtc@angstman.com
Christensen ISB: 7213

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CMJ PROPERTIES, LLC, an Idaho limited liability Company,

Plaintiff,

vs.

JP MORGAN CHASE BANK, N.A., a national banking association; DOES 1-10.,

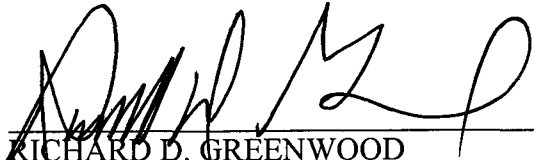
Defendants.

Case No.: CV OC 1611039

ORDER OF DEFAULT

NOW THEREFORE, IT IS HEREBY ORDERED, pursuant to IRCP 55(a), that default against Defendant JP Morgan Chase Bank, N.A. is hereby entered.

DATED this 3 day of ^{August} ~~July~~, 2016.


RICHARD D. GREENWOOD
District Judge

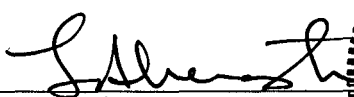
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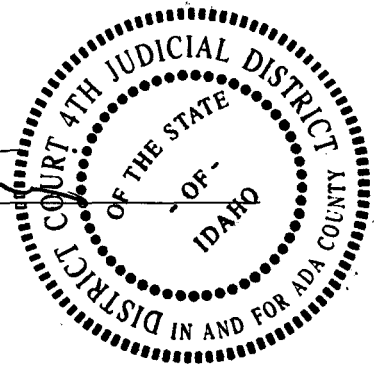
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16 day of ^{AUGUST} July, 2016, I caused to be served a true copy of the foregoing ORDER F DEFAULT by the method indicated below, and addressed to those parties marked served below:

<u>Served</u>	<u>Party</u>	<u>Counsel</u>	<u>Means of Service</u>
<input checked="" type="checkbox"/>		JP Morgan Chase Bank, N.A. 6490 S. Federal Way Boise, ID 83716	<input checked="" type="checkbox"/> U.S. Mail, Postage Paid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Fax Transmittal
<input checked="" type="checkbox"/>		JP Morgan Chase Bank, N.A. CT Corporation System 921 S Orchard Street, Ste G Boise, ID 83705	<input checked="" type="checkbox"/> U.S. Mail, Postage Paid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Fax Transmittal
<input checked="" type="checkbox"/>		Matthew T. Christensen ANGSTMAN JOHNSON 3649 N. Lakeharbor Lane Boise, ID 83703	<input checked="" type="checkbox"/> U.S. Mail, Postage Paid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Fax Transmittal


Deputy Clerk



AUG 16 2016

CHRISTOPHER D. RICH, Clerk
By LISA ABERASTURI
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CMJ PROPERTIES, LLC, an Idaho Limited
Liability Company,

Plaintiff,

vs.

JP MORGAN CHASE BANK, N.A., a National
Banking Association; DOES 1-10,

Defendants.

Case No. CV-OC-16-11039

ORDER RE: APPLICATION FOR
DEFAULT JUDGMENT

This matter is before the court upon the application for default judgment quieting title in plaintiff in this case. The order for default has been entered. The Court declines to enter the proposed judgment quieting title.

In this case Plaintiff seeks to quiet title on real property as against the beneficiary under a deed of trust. The Plaintiff alleges in its complaint that the beneficiary under the deed of trust is the successor in interest to Washington Mutual Bank. The deed of trust secured a line of credit under a credit agreement. The credit agreement allows for draws against the line of credit up to \$155,000 with an initial draw period of 120 months for the variable-rate option. The credit line also had a fixed rate loan option. Repayment terms under the line of credit vary depending upon the type of advance taken. The record does not reflect which option Plaintiff's predecessor in interest chose. The loan documents attached to the Complaint reflect an agreement date of

August 7, 2007. The deed of trust states: “the Credit Agreement provides that unless sooner repaid, the Debt is due and payable in full thirty (30) years from the date of this Deed of Trust which is 08/09/2037 (the “Maturity Date”). Plaintiff’s cause of action is based upon the premise that the deed of trust in this action is unenforceable and, by implication, constitutes an unwarranted cloud on Plaintiff’s title.

Plaintiff alleges that one of its predecessors in interest, Corey Jakobson, filed bankruptcy on October 13, 2010. Plaintiff further alleges that Defendant JP Morgan Chase filed a Motion for Relief from Stay in the bankruptcy case on April 6, 2011 which had the effect of accelerating the debt owed. In the alternative, Plaintiff alleges JP Morgan Chase or its predecessor Washington Mutual Bank terminated the line of credit and accelerated the debt at some time before April 6, 2011. The only support for this recitation of facts is contained within the body of the unsworn complaint signed by counsel for the Plaintiff. Counsel for the Plaintiff also filed an affidavit in which he states that he has read the Complaint filed in this action “and knows the contents; to be true to the best of my knowledge; and the Defendant now owes the Plaintiff...” [\$2771 for attorney fees and costs]. While counsel states in the first paragraph of the affidavit that the statements are “based on my own personal knowledge,” nothing in the affidavit demonstrates how counsel has personal knowledge of the execution of the original loan documents, and the assignment/assumption of the loan from Washington Mutual to JP Morgan Chase, or the other matters alleged in the Complaint.

Even assuming counsel could cure the foundation problems with his testimony, there are more fundamental issues with the relief sought. First, Plaintiff relies upon the passage of the statute of limitations as rendering the deed of trust unenforceable. I.C. §45-1515 provides that

foreclosures of deeds of trust must be commenced within the same period as foreclosures of mortgages. I.C. §5-214A requires that foreclosure of a mortgage must be commenced within five years of the maturity date of the obligation or indebtedness secured by the mortgage. Acceleration of the indebtedness does not equate to the maturity date of the obligation secured by the mortgage/deed of trust. The maturity date shown on the debt instrument controls. While the Court could locate no case so holding, the language of the statute compels this result. I.C. §5-214A provides:

An action for the foreclosure of a mortgage on real property must be commenced within five (5) years from the maturity date of the obligation or indebtedness secured by such mortgage. If the obligation or indebtedness secured by such mortgage does not state a maturity date, then the date of the accrual of the cause of action giving rise to the right to foreclose shall be deemed the date of maturity of such obligation or indebtedness.

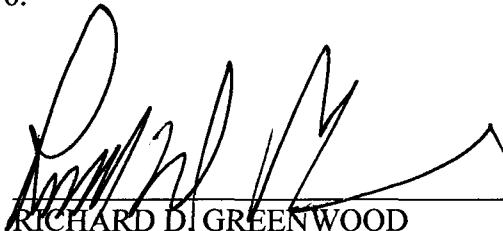
The second sentence of the statute distinguishes between accrual of the cause of action giving rise to the right to foreclose and the maturity of the indebtedness. If the indebtedness contains no maturity date, then accrual of the cause of action commences the running of the five-year statute of limitations. In this case, assuming the debt was accelerated at some point more than five years ago, acceleration of the debt would give rise to the right to foreclose under the loan documents. However, the loan documents themselves contain a stated maturity date. The stated maturity date controls. The statute of limitations has not yet run on this deed of trust and will not commence to run until August 9, 2037.

Even if commencement of a foreclosure action on the deed of trust were presently barred by the statute of limitations, this record is insufficient to show Plaintiff has the power to quiet title against the beneficiary under the deed of trust. The general rule, and the rule in Idaho, is that

a mortgagor or his successor in interest cannot quiet title against a mortgagee, while the secured debt remains unpaid, even though the statute of limitations has run against the right to foreclose the mortgage. *Trusty v. Ray*, 73 Idaho 232, 249 P.2d 814 (1952). Where purchasers of realty take with full knowledge of existence of note and mortgage of defendant, and the fact that indebtedness was unpaid, and that defendant was claiming some interest in land, the rights of purchasers are not superior to the rights of their grantor-mortgagors prior to the transfer. They are not entitled to have title to premises quieted in them against the lien of the mortgage even though the statute of limitations had run against right to foreclose the mortgage. *Id.*, 73 Idaho at 237, 249 P.2d at 817 (1952). The Court takes judicial notice that the records of the Idaho Secretary of State show that the Plaintiff has as its address in the most recent annual report the same address as property that is subject to the deed of trust. The record further reflects that the Plaintiff was formed by and the manager of the Plaintiff is one Corey Jakobson. The manager of the LLC may or may not be the same Corey Jakobson. However, the name is sufficiently distinctive that this Court is unwilling to assume, without proof, that Mr Jakobson is a purchaser without knowledge so as to entitle him to quiet title against the lender under the circumstances discussed in *Trusty v. Ray, supra*.

For the foregoing reasons, it is ORDERED that judgment will enter dismissing this case.

Dated this 14 day of August, 2016.


RICHARD D. GREENWOOD
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 16 day of August, 2016, I mailed (served) a true and correct copy of the within instrument to:

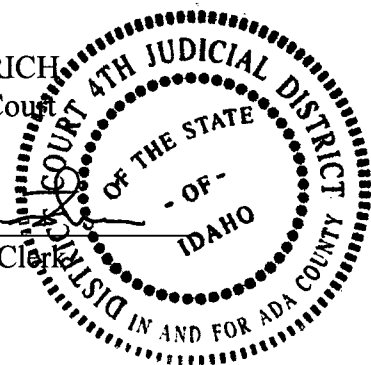
JP Morgan Chase Bank, N.A.
6490 S. Federal Way
Boise, ID 83716

JP Morgan Chase Bank, N.A.
CT Corporation System
921 S. Orchard St., Ste. G
Boise, ID 83705

Matthew T. Christensen
Angstman Johnson
3649 N. Lake Harbor Ln.
Boise, ID 83703

CHRISTOPHER D. RICH
Clerk of the District Court

By: 
Deputy Court Clerk



AUG 16 2016

CHRISTOPHER D. RICH, Clerk
By LISA ABERASTURI
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CMJ PROPERTIES, LLC, an Idaho Limited
Liability Company,

Plaintiff,

vs.

JP MORGAN CHASE BANK, N.A., a National
Banking Association; DOES 1-10,

Defendants.

Case No. CV-OC-16-11039

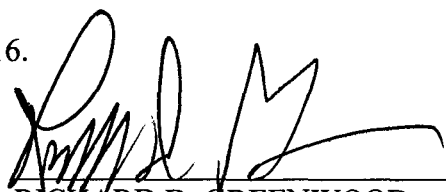
JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

Pursuant to the Court's Order Re: Application for Default Judgment, the above case is
hereby dismissed.

IT IS SO ORDERED.

Dated this 16 day of August, 2016.



RICHARD D. GREENWOOD
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 16 day of August, 2016, I mailed (served) a true and correct copy of the within instrument to:

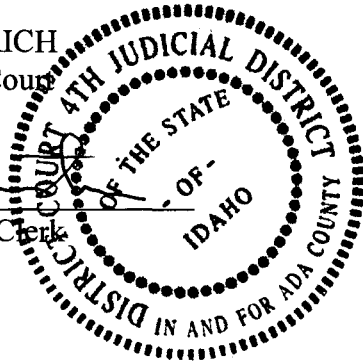
JP Morgan Chase Bank, N.A.
6490 S. Federal Way
Boise, ID 83716

JP Morgan Chase Bank, N.A.
CT Corporation System
921 S. Orchard St., Ste. G
Boise, ID 83705

Matthew T. Christensen
Angstman Johnson
3649 N. Lake Harbor Ln.
Boise, ID 83703

CHRISTOPHER D. RICH
Clerk of the District Court

By: 
Deputy Court Clerk



NO. 11:30 FILED
A.M. _____ P.M. _____

SEP 02 2016

CHRISTOPHER D. RICH, Clerk
By SANTIAGO BARRIOS
DEPUTY

Jon A. Stenquist, ISB No. 6724
Kirk J. Houston, ISB No. 9055
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
900 Pier View Drive Suite 206
Post Office Box 51505
Idaho Falls, Idaho 83405
Telephone (208) 522-6700
Facsimile (208) 522-5111
jas@moffatt.com
kjh@moffatt.com
23161.0098

Attorneys for JPMorgan Chase Bank, N.A.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CMJ PROPERTIES, LLC, an Idaho limited
liability company,

Plaintiff,

vs.

JPMORGAN CHASE BANK, N.A., a national
banking association, DOES 1-10,

Defendants.

Case No. CV OC 1611039

MOTION TO DISMISS


COMES NOW defendant JPMorgan Chase Bank, N.A., by and through
undersigned counsel of record, and pursuant to Idaho Rule of Civil Procedure 12 and other
applicable law, hereby files its Motion to Dismiss ("Motion"). Defendant's Motion is supported
by the memorandum of law filed herewith.

4

Through this Motion, Defendant moves the Court for an Order dismissing the Plaintiff's Complaint for Quiet Title, filed on or about June 17, 2016.

DATED this 1st day of September, 2016.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED


By 
Jon A. Stenquist - Of the Firm
Attorneys for JPMorgan Chase Bank,
N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of September, 2016, I caused a true and correct copy of the foregoing **MOTION TO DISMISS** to be served by the method indicated below, and addressed to the following:

Matthew T. Christensen
ANGSTMAN JOHNSON
3469 N. Lakeharbor Lane
Boise, ID 83703
Fax: (208) 853-0117

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- (X)
- Facsimile



Jon A. Stenquist

NO. 1130 FILED
A.M. 11:30 P.M.

SEP 02 2016

CHRISTOPHER D. RICH, Clerk
By SANTIAGO BARRIOS
DEPUTY

Jon A. Stenquist, ISB No. 6724
Kirk J. Houston, ISB No. 9055
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
900 Pier View Drive Suite 206
Post Office Box 51505
Idaho Falls, Idaho 83405
Telephone (208) 522-6700
Facsimile (208) 522-5111
jas@moffatt.com
kjh@moffatt.com
23161.0098

Attorneys for JPMorgan Chase Bank, N.A.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CMJ PROPERTIES, LLC, an Idaho limited liability company,

Plaintiff,

vs.

JPMORGAN CHASE BANK, N.A., a national banking association, DOES 1-10,

Defendants.

Case No. CV OC 1611039

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS**

COMES NOW defendant, JPMorgan Chase Bank, N.A. ("Chase"), by and through undersigned counsel, and files this Memorandum in Support of Motion to Dismiss ("Motion") the complaint that was filed by CMJ Properties, LLC ("Plaintiff"), on or about June 17, 2016 ("Complaint").

4

I. BACKGROUND

Plaintiff filed its Complaint on or about June 17, 2016. The allegations in the Complaint are summarized below (by restating these allegations, Chase does not admit to the truth of any of them).

Plaintiff acquired the property that is the subject of this litigation (located at 6028 White Cliff Ave. Boise, Idaho 83700) (the "Property") on August 9, 2007, via quitclaim deed executed by George Gifford, Theresa Gifford, and Cory Jakobson. Complaint ¶¶ 6-7. Before deeding the Property to Plaintiff, the Giffords and Jakobson granted a deed of trust to Washington Mutual Bank, which was recorded on August 16, 2007. *Id.* ¶¶ 8-9. The deed of trust secured a loan to Jakobson. *Id.* ¶ 10.

Jakobson stopped making payments on or before May 29, 2010, and filed a Chapter 7 bankruptcy petition on October 13, 2010. *Id.* ¶¶ 13, 17. Chase filed a motion for stay relief on April 6, 2011, in order to foreclose its deed of trust, and the bankruptcy court granted the motion on April 29, 2011. *Id.* ¶¶ 18, 24. Thereafter, Chase did not take any action to foreclose its deed of trust. *Id.* ¶¶ 25, 28.

Plaintiff contends that Chase is time-barred from foreclosing its deed of trust pursuant to Idaho Code Section 5-214A, and as such, title to the Property should be quieted in the name of Plaintiff. *Id.* ¶¶ 25-28. Chase now moves this Court to dismiss the Complaint.

II. LEGAL STANDARD

Under Idaho Rule of Civil Procedure 12(b)(6), a defendant may move for dismissal of an action for failure to state a claim upon which relief can be granted. When considering a motion to dismiss pursuant to Rule 12(b)(6), the court determines the legal sufficiency of the plaintiff's statement of his claim. *Gallagher v. State*, 141 Idaho 665, 667, 115

P.3d 756, 758 (2005). A motion to dismiss may be granted for failure to state a claim if it is absolutely clear that a plaintiff can prove no set of facts that would support any relief. *Harper v. Harper*, 122 Idaho 535, 835 P.2d 1346 (Ct. App. 1992). Put differently, the court determines “whether the non-movant has alleged sufficient facts in support of his claim, which if true, would entitle him to relief.” *Hoffer v. City of Boise*, 151 Idaho 400, 402, 257 P.3d 1226, 1228 (2011) (quoting *Orrock v. Appleton*, 147 Idaho 613, 618, 213 P.3d 398, 403 (2009)). In making this determination, the plaintiff is entitled to have all inferences drawn in his favor. *Miles v. Idaho Power Co.*, 116 Idaho 635, 637, 778 P.2d 757, 759 (1989).

III. ARGUMENT

A lien against real property exists independently of the right to sue on the underlying debt and cannot be quieted against the real property unless and until the underlying obligation is paid in full. *See infra*. Thus, the Complaint should be dismissed because *even if* Plaintiff could establish that the statute of limitations bars Chase from foreclosing the deed of trust, The Court cannot strip Chase’s perfected security interest from the Property. The Idaho Supreme Court squarely addressed this issue in *Trusty v. Ray*, 73 Idaho 232 (1952), and it remains good law. In *Trusty*, the plaintiffs acquired real property with full knowledge of a duly recorded mortgage that their predecessors in interest had granted to defendant Ray as security for a loan that was never repaid. *Id.* at 234.

The district court determined that despite the fact that the statute of limitation had run with respect to Ray’s right to sue on the underlying debt and foreclose the mortgage, plaintiffs were not entitled to have title quieted against Ray. In so holding, the Court reasoned that the liability to pay a mortgage debt acts as a charge against both the borrower and the land

itself, and as such, title can only be quieted against the mortgagee when the obligation is paid, regardless of whether the mortgagor still owned the property:

There is no more firmly established rule than that the liability to pay a mortgage debt rests upon the mortgaged land as well as upon the mortgagor. A mortgagor cannot without paying his debt quiet title as against the mortgagee; and the same rule applies to the grantee of a mortgagor, who takes the land while it is still burdened with a lien for the security of a debt.

Id. at 236 (emphasis added). See also *In re Mullen*, 402 B.R. 353, 358 (Bankr. D. Idaho Dec. 31, 2008) (explaining that the statute of limitations for foreclosure “cut[s] off the right to enforcement, although the lien still exists.”). Absent some allegation that the mortgagor (or his successor in interest, as the case may be) has tendered the amount due on the underlying debt, a claim for quiet title asserted against a perfected mortgagee fails as a matter of law. *Id.* See also *Anderson v. Bank of Am.*, 2015 WL 3822276 at *3 (D. Idaho June 19, 2015) (“However, fatal to the Plaintiffs’ quiet title claim is their failure to plead tender This is true even where the mortgagee has failed to pursue a foreclosure action within the applicable statute of limitations.”) (citing *Trusty*), and *Mullen, supra* (holding that a bankruptcy trustee may not quiet title as against a mortgagee that failed to foreclose its trust deed before the running of the statute of limitations). This is particularly true where the party seeking to quiet title is in privity with the mortgagee. *Trusty*, 73 Idaho at 237.

The case at bar is indistinguishable from *Trusty v. Ray*. Like the plaintiff in that case, the Plaintiff here claims that it is entitled to have title quieted in its favor because Chase allegedly did not timely commence a foreclosure action. Complaint ¶¶ 27-30. However, as *Trusty* and its progeny make clear, the fact that an action to foreclose may be time barred does not entitle the mortgagor or his successor in interest to quiet title against the mortgagee unless the amount justly due on the underlying debt has been tendered to satisfy the obligation. As the


Idaho Supreme Court explained in *Trusty*, the Plaintiff's failure to plead tender is fatal to its claim for quiet title.¹

IV. CONCLUSION

In light of clear Idaho law as outlined the Idaho Supreme Court's holding in *Trusty v. Ray* and other cases cited herein, Plaintiff's Complaint for Quiet Title fails as a matter of law and must be dismissed, with prejudice.

DATED this 1st day of September, 2016.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Jon A. Stenquist – Of the Firm
Attorneys for JPMorgan Chase Bank,
N.A.

¹ The Plaintiff's claim for quiet title is particularly tenuous given that it obtained title to the property by virtue of a quitclaim deed executed by Cory Jakobson, who has consistently held himself out as either a member or manager of the Plaintiff. Complaint ¶¶ 7-10; *see also* public records of Articles of Organization, CMJ Properties, LLC, 2007 Annual Report of CMJ Properties, LLC, and 2014 Annual Report of CMJ Properties, LLC *available at* [http://www.sos.idaho.gov/tiffpilot/tiffpilot.exe?FN=\\sosimg\corp\\$\%5C10142005%5CLIMIT%23OR05287143503.tif](http://www.sos.idaho.gov/tiffpilot/tiffpilot.exe?FN=\\sosimg\corp$\%5C10142005%5CLIMIT%23OR05287143503.tif); http://www.sos.idaho.gov/xt/?xp=%5C09112007%5CXMLPORTS_07254014.XML; and http://www.sos.idaho.gov/xt/?xp=%5C20141111%5CXMLPORTS_W43537_1411110804.xml.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of September, 2016, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS** to be served by the method indicated below, and addressed to the following:

Matthew T. Christensen
ANGSTMAN JOHNSON
3469 N. Lakeharbor Lane
Boise, ID 83703
Fax: (208) 853-0117

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Jon A. Stenquist

NO _____ FILED _____
A.M. _____ P.M. 3:30

SEP 07 2016

CHRISTOPHER D. RICH, Clerk
By SANTIAGO BARRIOS
DEPUTY

Jon A. Stenquist, ISB No. 6724
Kirk J. Houston, ISB No. 9055
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
900 Pier View Drive Suite 206
Post Office Box 51505
Idaho Falls, Idaho 83405
Telephone (208) 522-6700
Facsimile (208) 522-5111
jas@moffatt.com
kjh@moffatt.com
23161.0098

Attorneys for JPMorgan Chase Bank, N.A.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CMJ PROPERTIES, LLC, an Idaho limited
liability company,

Plaintiff,

vs.

JPMORGAN CHASE BANK, N.A., a national
banking association, DOES 1-10,

Defendants.

Case No. CV OC 1611039

**WITHDRAWAL OF MOTION TO
DISMISS**

COMES NOW Defendant JPMorgan Chase Bank ("Chase"), by and through undersigned counsel of record, and hereby withdraws its Motion to Dismiss filed on or about September 1, 2016 ("Motion"). Undersigned counsel filed a Notice of Appearance on August 3, 2016 but the address provided thereon was not included in the Certificate of Service that

RIGINAL

WITHDRAWAL OF MOTION TO DISMISS - 1

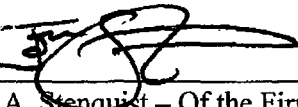
CV - OC - 2016 - 11039
MISC
Miscellaneous
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accompanied the Court's Judgment, Order of Default, and Order re Application for Default Judgment dated as of August 16, 2016. The Motion was filed in ignorance of the Court's decision to dismiss the Complaint, and in light of said dismissal, the Motion need not be considered.

DATED this 7th day of September, 2016.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED


By 
Jon A. Stenquist - Of the Firm
Attorneys for JPMorgan Chase Bank,
N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of September, 2016, I caused a true and correct copy of the foregoing **WITHDRAWAL OF MOTION TO DISMISS** to be served by the method indicated below, and addressed to the following:

Matthew T. Christensen
ANGSTMAN JOHNSON
3469 N. Lakeharbor Lane
Boise, ID 83703
Fax: (208) 853-0117

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Jon A. Stenquist

SEP 26 2016

CHRISTOPHER D. RICH, Clerk
By SANTIAGO BARRIOS
DEPUTY

1 ORIGINAL
2
3

4 Matthew T. Christensen
5 ANGSTMAN JOHNSON
6 3649 N. Lakeharbor Lane
7 Boise, Idaho 83703
8 Telephone: (208) 384-8588
9 Facsimile: (208) 853-0117
10 Email: mtc@angstman.com
11 Christensen ISB: 7213

12 Attorney for Plaintiff

13 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
14 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

15 **CMJ PROPERTIES, LLC**, an Idaho limited
16 liability company,

17 Plaintiff-Appellant,

18 vs.

19 **JP MORGAN CHASE BANK, N.A.**, a
20 national banking association; **DOES 1-10.**,

21 Defendant-Respondents.

Case No. CV OC 1611039

NOTICE OF APPEAL AS TO DEFENDANT
JP MORGAN CHASE BANK, N.A.

22
23 TO: THE ABOVE-NAMED DEFENDANT-RESPONDENTS, JP MORGAN CHASE
24 BANK, N.A., AND ITS ATTORNEY OF RECORD, JON A. STENQUIST OF THE FIRM
25 MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHTD., 900 PIER VIEW DR., STE.
26 206, IDAHO FALLS, IDAHO 83405; AND THE CLERK OF THE ABOVE-ENTITLED
27 COURT:
28
29

1 NOTICE IS HEREBY GIVEN THAT:

2 1. The above-named Plaintiff-Appellant CMJ Properties, LLC ("Appellant") appeals
3 against the above-named Defendant-Respondent JP Morgan Chase Bank, N.A. ("Respondent")
4 to the Idaho Supreme Court from the Judgment dismissing the above case, entered in the above-
5 entitled action on the 16th day of August, 2016, Honorable Judge Richard D. Greenwood
6 presiding. A copy of the judgment or order being appealed is attached to this notice, as well as a
7 copy of the final judgment if this is an appeal from an order entered after final judgment.
8

9 2. Appellant has a right to appeal to the Idaho Supreme Court, and the judgment
10 described in Paragraph 1 above is an appealable final judgment under and pursuant to I.A.R.
11 54(a)(1).
12

13 3. The following is a preliminary statement of the issues on appeal which Appellant
14 intends to assert in the appeal; provided, the following list of issues on appeal shall not prevent
15 Appellant from asserting other issues on appeal:
16

- 17 a. Did the District Court err in failing to consider the effect of the Entry of
18 Default against JP Morgan Chase Bank, N.A., on the factual allegations in
19 the Complaint?
20
- 21 b. Did the District Court err in concluding that the maturity date of the Credit
22 Line was August 9, 2037?
23
- 24 c. Did the District Court err in concluding that Idaho Code section 5-214A
25 does not operate to entitle Appellant to quiet title?
26
- 27 d. Did the District Court err in applying *Trusty v. Ray*, 73 Idaho 232, 249 P.2d
28 814 (1952), addressing mortgages, to this case involving a deed of trust?
29
- e. Did the District Court err in failing to apply Idaho Code section 6-411?

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f. Is Appellant entitled to an award of costs and attorney fees at the district court?

g. Is Appellant entitled to an award of attorneys' fees and costs on appeal?

4. Has an order been entered sealing all or any portion of the record? No.

5. Is a reporter's transcript requested? No.

6. Appellant requests the following documents to be included in the Clerk's Record:

a. The standard record as defined at I.A.R. 28(b), to include the Complaint to Quiet Title filed on June 17, 2016 and the exhibits thereto;

b. The Motion for Entry of Default and Default Judgment against JP Morgan Chase Bank, N.A. filed on July 27, 2016;

c. The Affidavit of Matthew T. Christensen in Support of Motion for Entry of Default and Default Judgment filed on July 27, 2016;

d. The Order of Default filed on August 16, 2016;

e. The Order Re: Application for Default Judgment filed on August 16, 2016;
and

f. The Judgment filed on August 16, 2016.

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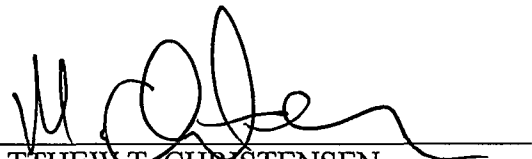
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7. I certify:

- a. That no transcript is requested as no hearings took place in this matter.
- b. That the estimated fee for preparation of the Clerk's Record has been paid.
- c. That the appellate filing fee has been paid.
- d. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 26th day of September, 2016.



MATTHEW T. CHRISTENSEN
Attorney for Plaintiff-Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of September, 2016, I caused to be served a true copy of the foregoing NOTICE OF APPEAL AS TO DEFENDANT JP MORGAN CHASE BANK, N.A., by the method indicated below, and addressed to those parties marked served below:

<u>Served</u>	<u>Party</u>	<u>Counsel</u>	<u>Means of Service</u>
<input checked="" type="checkbox"/>	Defendant	JP Morgan Chase Bank, N.A. 6490 S. Federal Way Boise, ID 83716	<input checked="" type="checkbox"/> U.S. Mail, Postage Paid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Fax Transmittal
<input checked="" type="checkbox"/>	Defendant	JP Morgan Chase Bank, N.A. CT Corporation System 921 S Orchard Street, Ste G Boise, ID 83705	<input checked="" type="checkbox"/> U.S. Mail, Postage Paid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Fax Transmittal
<input checked="" type="checkbox"/>	Defendant	Jon A. Stenquist MOFFATT THOMAS PO Box 51505 Idaho Falls, Idaho 83405 (208) 522-5111	<input checked="" type="checkbox"/> U.S. Mail, Postage Paid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Fax Transmittal



Matthew T. Christensen

Jon A. Stenquist, ISB No. 6724
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
900 Pier View Drive Suite 206
Post Office Box 51505
Idaho Falls, Idaho 83405
Telephone (208) 522-6700
Facsimile (208) 522-5111
jas@moffatt.com
23161.0098

Attorneys for JPMorgan Chase Bank, N.A.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CMJ PROPERTIES, LLC, an Idaho limited
liability company,

Plaintiff-Appellant,

vs.

JPMORGAN CHASE BANK, N.A., a national
association, DOES 1-10,

Defendant-Respondents.

Case No. CV OC 1611039

**DEFENDANT-RESPONDENT'S
REQUEST FOR ADDITIONAL
DOCUMENTS PURSUANT TO I.A.R. 19
AND I.A.R. 28(c)**

TO: THE ABOVE NAMED PLAINTIFF-APPELLANTS AND THEIR
ATTORNEYS OF RECORD, AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN that the Defendant-Respondent, JPMorgan Chase
Bank, N.A., in the above-entitled proceeding hereby request pursuant to Rules 19 and 28(c) of
the Idaho Appellate Rules the inclusion of the following material in the clerk's record in addition

**DEFENDANT-RESPONDENT'S REQUEST FOR ADDITIONAL DOCUMENTS
PURSUANT TO I.A.R. 19 AND I.A.R. 28(c) - 1**

Client:4257883.1

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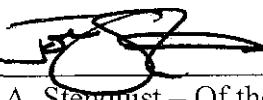
to that required to be included by the Idaho Appellate Rules and requested in the notice of appeal all pleadings filed with the District Court, including the following:

08/03/16	Notice of Appearance
08/03/16	Objection to Motion for Entry of Default Judgment
09/01/16	Motion to Dismiss
09/01/16	Memorandum in Support of Motion to Dismiss
09/07/16	Withdrawal of Motion to Dismiss (Miscellaneous)

I certify that this request for additional record has been served upon the clerk of the District Court and upon all parties required to be served pursuant to Rule 20.

DATED this 4th day of October, 2016.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Jon A. Stenquist – Of the Firm
Attorneys for JPMorgan Chase Bank,
N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of October, 2016, I caused a true and correct copy of the foregoing **DEFENDANT-RESPONDENT'S REQUEST FOR ADDITIONAL DOCUMENTS PURSUANT TO I.A.R. 19 AND I.A.R. 29(c)** to be served by the method indicated below, and addressed to the following:

Matthew T. Christensen
ANGSTMAN JOHNSON
3469 N. Lakeharbor Lane
Boise, ID 83703
Fax: (208) 853-0117

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- E-File

Clerk of the District Court
Ada County Courthouse
200 W. Front Street.
Boise, ID 83702-7300

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Jon A. Stenquist

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CMJ PROPERTIES, LLC, an Idaho Limited
Liability Company,

Plaintiff,

vs.

JP MORGAN CHASE BANK, N.A., a National
Banking Association; and DOES 1-10,

Defendants.

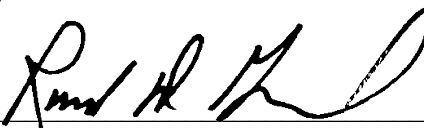
Case No. CV-OC-16-11039

AMENDED JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

The above case is hereby dismissed.

Dated this 20th day of October, 2016.



RICHARD D. GREENWOOD
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 21st day of October, 2016, I mailed (served) a true and correct copy of the within instrument to:

Matthew T. Christensen
Angstman Johnson
3649 N. Lake Harbor Ln.
Boise, ID 83703
Via email: mtc@angstman.com

Jon A. Stenquist
Moffatt Thomas Barrett Rock & Fields
P.O. Box 51505
Idaho Falls, ID 83405
Via email: jas@moffatt.com

CHRISTOPHER D. RICH
Clerk of the District Court

Signed: 10/21/2016 09:44 AM

By: K. Platon
Deputy Court Clerk



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Matthew T. Christensen
ANGSTMAN JOHNSON
3649 N. Lakeharbor Lane
Boise, Idaho 83703
Telephone: (208) 384-8588
Facsimile: (208) 853-0117
Email: mtc@angstman.com
Christensen ISB: 7213

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CMJ PROPERTIES, LLC, an Idaho limited liability company,

Plaintiff-Appellant,

vs.

JP MORGAN CHASE BANK, N.A., a national banking association; **DOES 1-10.**,

Defendant-Respondents.

Case No. CV OC 1611039

AMENDED NOTICE OF APPEAL AS TO DEFENDANT JP MORGAN CHASE BANK, N.A.

TO: THE ABOVE-NAMED DEFENDANT-RESPONDENTS, JP MORGAN CHASE BANK, N.A., AND ITS ATTORNEY OF RECORD, JON A. STENQUIST OF THE FIRM MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHTD., 900 PIER VIEW DR., STE. 206, IDAHO FALLS, IDAHO 83405; AND THE CLERK OF THE ABOVE-ENTITLED COURT:

AMENDED NOTICE OF APPEAL AS TO DEFENDANT JP MORGAN CHASE BANK, N.A.

1 NOTICE IS HEREBY GIVEN THAT:

2 1. The above-named Plaintiff-Appellant CMJ Properties, LLC (“Appellant”) appeals
3 against the above-named Defendant-Respondent JP Morgan Chase Bank, N.A. (“Respondent”)
4 to the Idaho Supreme Court from the Judgment dismissing the above case, entered in the above-
5 entitled action on the 20th day of October, 2016, Honorable Judge Richard D. Greenwood
6 presiding. A copy of the judgment or order being appealed is attached to this notice, as well as a
7 copy of the final judgment if this is an appeal from an order entered after final judgment.
8

9 2. Appellant has a right to appeal to the Idaho Supreme Court, and the judgment
10 described in Paragraph 1 above is an appealable final judgment under and pursuant to I.A.R.
11 54(a)(1).
12

13 3. The following is a preliminary statement of the issues on appeal which Appellant
14 intends to assert in the appeal; provided, the following list of issues on appeal shall not prevent
15 Appellant from asserting other issues on appeal:
16

- 17 a. Did the District Court err in failing to consider the effect of the Entry of
18 Default against JP Morgan Chase Bank, N.A., on the factual allegations in
19 the Complaint?
20
- 21 b. Did the District Court err in concluding that the maturity date of the Credit
22 Line was August 9, 2037?
23
- 24 c. Did the District Court err in concluding that Idaho Code section 5-214A
25 does not operate to entitle Appellant to quiet title?
26
- 27 d. Did the District Court err in applying *Trusty v. Ray*, 73 Idaho 232, 249 P.2d
28 814 (1952), addressing mortgages, to this case involving a deed of trust?
29
- e. Did the District Court err in failing to apply Idaho Code section 6-411?

1 f. Is Appellant entitled to an award of costs and attorney fees at the district
2 court?

3 g. Is Appellant entitled to an award of attorneys' fees and costs on appeal?
4

5 4. Has an order been entered sealing all or any portion of the record? No.

6 5. Is a reporter's transcript requested? No.

7 6. Appellant requests the following documents to be included in the Clerk's Record:

8 a. The standard record as defined at I.A.R. 28(b), to include the Complaint to
9 Quiet Title filed on June 17, 2016 and the exhibits thereto;

10 b. The Motion for Entry of Default and Default Judgment against JP Morgan
11 Chase Bank, N.A. filed on July 27, 2016;

12 c. The Affidavit of Matthew T. Christensen in Support of Motion for Entry of
13 Default and Default Judgment filed on July 27, 2016;

14 d. The Order of Default filed on August 16, 2016;

15 e. The Order Re: Application for Default Judgment filed on August 16, 2016;
16 and
17

18 f. The Judgment filed on August 16, 2016.

19 g. The Amended Judgment filed on October 20, 2016.
20

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3 7. I certify:

4 a. That no transcript is requested as no hearings took place in this matter.

5 b. That the estimated fee for preparation of the Clerk's Record has been paid.

6 c. That the appellate filing fee has been paid.

7 d. That service has been made upon all parties required to be served pursuant to
8 Rule 20.
9

10
11
12 DATED this 8th day of November, 2016.

13
14
15 /s/ Matt Christensen
16 MATTHEW T. CHRISTENSEN
17 Attorney for Plaintiff-Appellant
18
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of November, 2016, I caused to be served a true copy of the foregoing NOTICE OF APPEAL AS TO DEFENDANT JP MORGAN CHASE BANK, N.A., by the method indicated below, and addressed to those parties marked served below:

<u>Served</u>	<u>Party</u>	<u>Counsel</u>	<u>Means of Service</u>
<input checked="" type="checkbox"/>	Defendant	Jon A. Stenquist MOFFATT THOMAS PO Box 51505 Idaho Falls, Idaho 83405 (208) 522-5111	<input checked="" type="checkbox"/> U.S. Mail, Postage Paid <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> iCourt e filing

/s/ Matt Christensen
Matthew T. Christensen

Jon A. Stenquist, ISB No. 6724
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
900 Pier View Drive Suite 206
Post Office Box 51505
Idaho Falls, Idaho 83405
Telephone (208) 522-6700
Facsimile (208) 522-5111
jas@moffatt.com
23161.0098

Attorneys for JPMorgan Chase Bank, N.A.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CMJ PROPERTIES, LLC, an Idaho limited
liability company,

Plaintiff-Appellant,

vs.

JPMORGAN CHASE BANK, N.A., a national
association, DOES 1-10,

Defendant-Respondents.

Case No. CV OC 1611039

**DEFENDANT-RESPONDENT'S
REQUEST FOR ADDITIONAL
DOCUMENTS PURSUANT TO I.A.R. 19
AND I.A.R. 28(c)**

TO: THE ABOVE NAMED PLAINTIFF-APPELLANTS AND THEIR
ATTORNEYS OF RECORD, AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN that the Defendant-Respondent, JPMorgan Chase
Bank, N.A., in the above-entitled proceeding hereby request pursuant to Rules 19 and 28(c) of
the Idaho Appellate Rules requests the inclusion of the following material in the clerk's record in

**DEFENDANT-RESPONDENT'S REQUEST FOR ADDITIONAL DOCUMENTS
PURSUANT TO I.A.R. 19 AND I.A.R. 28(c) - 1**

Client:4290148.1

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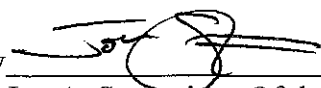
addition to that required to be included by the Idaho Appellate Rules and requested in the Amended Notice of Appeal as to Defendant JPMorgan Chase Bank filed with the District Court, including the following:

08/03/16	Notice of Appearance
08/03/16	Objection to Motion for Entry of Default Judgment
09/01/16	Motion to Dismiss
09/01/16	Memorandum in Support of Motion to Dismiss
09/07/16	Withdrawal of Motion to Dismiss (Miscellaneous)

I certify that this request for additional record has been served upon the clerk of the District Court and upon all parties required to be served pursuant to Rule 20.

DATED this 14th day of November, 2016.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Jon A. Stenquist – Of the Firm
Attorneys for JPMorgan Chase Bank,
N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 2016, I caused a true and correct copy of the foregoing **DEFENDANT-RESPONDENT'S REQUEST FOR ADDITIONAL DOCUMENTS PURSUANT TO I.A.R. 19 AND I.A.R. 29(c)** to be served by the method indicated below, and addressed to the following:

Matthew T. Christensen
ANGSTMAN JOHNSON
3469 N. Lakeharbor Lane
Boise, ID 83703
Fax: (208) 853-0117

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- E-File

Clerk of the District Court
Ada County Courthouse
200 W. Front Street.
Boise, ID 83702-7300
(208) 287-6919

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Jon A. Stenquist

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CMJ PROPERTIES, LLC, an Idaho
limited liability company,

Plaintiff-Appellant,

vs.

JP MORGAN CHASE BANK, N.A., a
national banking association,

Defendant-Respondent,

and

DOES 1-10,

Defendants.

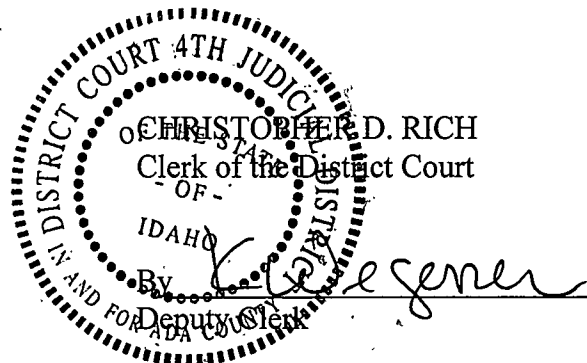
Supreme Court Case No. 44526

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 25th day of November, 2016.



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CMJ PROPERTIES, LLC, an Idaho
limited liability company,

Plaintiff-Appellant,

vs.

JP MORGAN CHASE BANK, N.A., a
national banking association,

Defendant-Respondent,

and

DOES 1-10,

Defendants.

Supreme Court Case No. 44526

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

MATTHEW T. CHRISTENSEN

ATTORNEY FOR APPELLANT

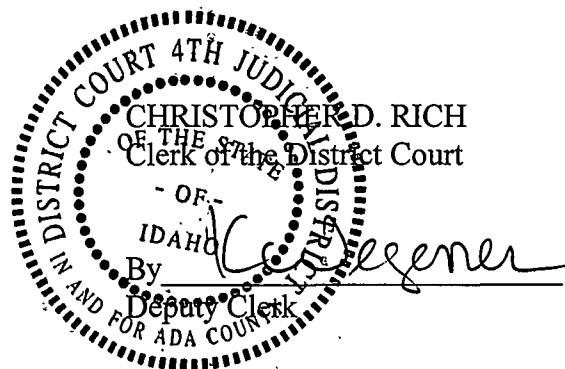
BOISE, IDAHO

JON A. STENQUIST

ATTORNEY FOR RESPONDENT

IDAHO FALLS, IDAHO

Date of Service: NOV 25 2016



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CMJ PROPERTIES, LLC, an Idaho
limited liability company,

Plaintiff-Appellant,

vs.

JP MORGAN CHASE BANK, N.A., a
national banking association,

Defendant-Respondent,

and

DOES 1-10,

Defendants.

Supreme Court Case No. 44526

CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 26th day of September, 2016.

