

Derrick J. O'Neill, Esq.
Jones, Gledhill, Hess, Andrews, Fuhrman, Bradbury, & Eiden, P.A.
225 N. 9th
Suite 820
Boise, ID 83701
(208) 331-1170

U.S. COURTS

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CAMERON S. BURKE
CLERK IDAHO

Attorneys for TMS Mortgage Inc., dba The Money Store

FEE PAID
RCPT # 2269

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT COURT OF IDAHO

In re:
TONYA YVETTE HORVATH

Debtor.

MOTION FOR TERMINATION AND
ANNULMENT OF AUTOMATIC STAY

Bankruptcy No. 01-00448
Chapter 13

Movant, **TMS Mortgage Inc., dba The Money Store**, a secured creditor of Debtor, its assignees and/or successor(s) in interest, respectfully moves the Court for RELIEF FROM THE AUTOMATIC STAY of 11 U.S.C. Section 362, upon the following grounds:

1. On or about **February 21, 2001**, the above-named Debtor filed a Chapter 13 petition under the United States Bankruptcy Code with this Court.
2. On **October 26, 1999**, **Tonya Y. Horvath and James S. Horvath**, for a valuable consideration, executed and delivered to **TMS Mortgage Inc., dba The Money Store**, promissory note ("Note"). A copy of said Note is attached hereto as Exhibit "A" and is incorporated herein by reference.
3. To secure the Note, Debtor and co-Debtor executed and delivered a Trust Deed of even date describing real property (the "Property") located in CANYON County, State of

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Idaho. A copy of said Trust Deed is attached hereto as Exhibit "B" and is incorporated herein by reference. The real property is located at **1412 EAST LINCOLN AVENUE, NAMPA, ID 83686** and is legally described herein as follows:

SEE EXHIBIT "A"

4. The Trust Deed creates a valid security interest in the property described therein in favor of Creditor.

5. The unpaid principal balance is **\$64,671.64**. The annual interest rate is **9.60000%**. The per diem interest is **\$17.00**; per diem interest is accruing from **February 1, 2001**.

6. Debtor has defaulted in payments on the debt owed to Movant from **March 1, 2001** through **April 1, 2001**, for a total due of **\$1,157.74**, together with attorney fees and costs herein of **\$475.00**.

7. The value of the property described in Exhibit B is **79,000.00** pursuant to Schedule A - Real Property filed by Debtor in this matter.

8. Creditor further requests that the stay provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) be applied only to the actual foreclosure sale of the property at issue here and not apply to any act taken by Creditor to accomplish any pre-sale requirements.

9. Movant is entitled to attorney's fees and costs pursuant to the terms of the Note and Trust Deed.

10. Movant has elected to initiate foreclosure proceedings on the property with respect to the subject Trust Deed; however, Movant is precluded from proceeding to enforce its lien against the property, which is the subject matter of this action, during the pendency of this bankruptcy.

WHEREFORE, Movant moves the Court for an order terminating and annulling the Automatic Stay of 11 U.S.C. Section 362, as follows:

1. That the requested relief be granted and take effect immediately as to the heretofore mentioned secured creditor.

2. Declaring that the Automatic Stay in the above-entitled bankruptcy proceeding is immediately terminated and annulled as to secured creditor, its assignees, and/or successors in interest and that the secured creditor, its assignees and/or successors in interest may proceed to enforce its lien against the subject property pursuant to applicable state law, and thereafter commence any action necessary to obtain complete possession of the subject property. In the alternative debtor(s) should be ordered to provide creditor with adequate protection of its interest in the property.

3. For such further relief as the Court deems appropriate.

By De p

CERTIFICATE OF MAILING

I hereby certify that I duly mailed, postage prepaid, on the 2nd day of April, 2001, a true and correct copy of **Notice and Motion for Termination and Annulment of the Automatic Stay** going to the following:

U.S. Trustee
P.O. Box 110
Boise, ID 83701

C Grant King
5440 Franklin Road, 201
Boise, ID 83705

John H. Krommenhoek
PO Box 8358
Boise, ID 83707

Tonya Yvette Horvath
1412 E. Lincoln Ave.
Nampa, ID 83686

James S. Horvath
1412 E. Lincoln Avenue
Nampa, ID 83686



0084239169

ADJUSTABLE RATE NOTE
(LIBOR 6 Month Libor Index-Rate Caps)

October 26, 1999
Date

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

1412 E Lincoln Avenue, Nampa, ID 83686

Property Address

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay Sixty-Five Thousand

Dollars (U.S. \$ 65,000.00)

(this amount will be called "principal"), plus interest, to the order of the Lender. The Lender is TMS Mortgage Inc., dba The Money Store

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

2. INTEREST

I will pay interest at an annual rate of 9.600 %

Interest will be charged on unpaid principal beginning on November 1, 1999, and will continue until the full amount of principal has been paid. The interest rate I will pay may change in accordance with Section 4 of this Note.

Interest shall continue to accrue at the interest rate required by this Section 2 and Section 4 of this Note after the maturity or default of this loan.

3. PAYMENTS

(A) Amount of My Initial Monthly Payments

I will pay principal and interest by making payments each month ("monthly payments"). My initial monthly payment will be in the sum of U.S. \$ 551.30. This amount may change.

(B) Monthly Payment Changes

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

(C) Time, Place and Application of Payments

I will make my monthly payments on the First day of each month beginning on December 1, 1999

I will make monthly payments every month until I have paid all of the principal and interest and any other fees or charges, described below, that I may owe under this Note. If, on November 1, 2029 any sum still remains unpaid, I will pay what I owe in full on that date. All monthly payments received by Note Holder shall be applied first to accrued interest and the remainder, if any, to the principal.

IDAHO ADJUSTABLE RATE NOTE (8/701) Original - File

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If I owe the Note Holder any late charges, or other fees or charges ("other charges"), they will be payable upon demand of the Note Holder. Unless prohibited by law, the application of payments may be affected by the imposition of other charges. Therefore, payments of other charges, whether paid to the Note Holder in addition to the monthly payment or separately, will be applied in a manner at the absolute discretion of the Note Holder, subject to applicable law.

I will make my monthly payments at 4837 Watt Ave. Suite 100, North Highlands, CA 95660

or at a different address if required by the Note Holder.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the 1st day of November, 2003 and on the 1st day of every 6th month(s) thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for 6 Month Libor U.S. dollar-denominated deposits in the London market based on quotations of major banks, as published by *The Wall Street Journal*. The most recent Index figure available as of the 20th day of the calendar month immediately preceding each Change Date is called the "Current Index."

If the Index is no longer available, or is no longer published by *The Wall Street Journal*, the Note Holder will choose a new index or source of index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Five and 19/20 percentage points (5.950 %) to the Current Index. The Note Holder will then round the result of this addition up to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 12.600 % or less than 9.600 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than One percentage point(s) (1.000 %) from the rate of interest I have been paying for the preceding 6 month(s). My interest rate will never be greater than 15.600 %, or less than 9.600 %.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

5. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any of my monthly payments by the end of 10 calendar days after the date it is due, I will promptly pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my full monthly payment. I will pay this late charge only once on any late monthly payment.

(B) Default

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

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 10 days after the date on which the notice is delivered or mailed to me.

(D) No Waiver by Note Holder

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

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

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

(F) Check Collection Charges

If I present the Note Holder with a check, negotiable order of withdrawal, share draft or other instrument in payment that is returned or dishonored for any reason, I will pay a check collection charge to the Note Holder. The amount of the charge will not be greater than U.S. \$ 15.00

6. THIS NOTE SECURED BY A SECURITY INSTRUMENT

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), on real property (the "Property") described in the Security Instrument and dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Note. I agree to these conditions. Some of these conditions are as follows:

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

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

7. BORROWER'S PAYMENTS BEFORE THEY ARE DUE

Subject to the application of payments described in Section 3(C), I have the right to make payments of principal at any time before they are due. A prepayment of all of the unpaid principal is known as a "full prepayment." A prepayment of only part of the unpaid principal is known as a "partial prepayment."

If I make a partial prepayment equal to one or more of my monthly payments, my due date may be advanced no more than one month. If I make any other partial prepayment, I must still make each later payment as it becomes due and in the same amount.

I may make a full or partial prepayment at any time. However, if within the first 60 months from the date of this loan I make any prepayment(s) within any 12-month period whose total amount exceeds 20% of the original principal amount of this loan, I will pay a prepayment charge equal to six months' interest on the amount by which the total of my prepayment(s) within that 12-month period exceeds 20% of the original principal amount of this loan.

8. BORROWER'S WAIVERS

I waive my rights to require the Note Holder to do certain things. Those things are: (A) to demand payment of amounts due (known as "presentment"); (B) to give notice that amounts due have not been paid (known as "notice of dishonor"); (C) to obtain an official certification of nonpayment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else, also waives these rights. These persons are known as "guarantors," "sureties" and "endorsers."

9. GIVING OF NOTICES

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

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

10. RESPONSIBILITY OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each of us is fully and personally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any guarantor, surety, or endorser of this Note (as described in Section 8 above) is also obligated to do these things. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. Any person who takes over my rights or obligations under this Note will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of a guarantor, surety, or endorser of this Note (as described in Section 8 above) is also obligated to keep all of the promises made in this Note. This Note is intended by Lender and me as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Note. This Note may not be supplemented or modified except in a writing signed by me and the Note Holder. This Note benefits Lender, its successors and assigns, and binds me and my heirs, personal representatives and assigns.

11. APPLICABLE LAW

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

12. BORROWER'S COPY

I hereby acknowledge receipt of a filled-in copy of this Note.

James S. Horvath (Seal)
James S. Horvath - Borrower
P.O. Attn: Tony Y. Harvath (Seal)
- Borrower

Tonya Y. Harvath (Seal)
Tonya Y. Harvath - Borrower

- Borrower
(Sign Original Note Only)

Pay to the order of:

TMS Mortgage Inc.. dba The Money Store

By _____

B

PC 3A9

9943388

After recording return to:
The Money Store/Packaging
P.O. Box 160128
Sacramento, CA 95816-0128

0084239169

DEED OF TRUST

THIS DEED OF TRUST ("Security Instrument") is made on October 26, 1999
The trustor is Tonya Y Horvath And James S Horvath, Wife And Husband

The trustee is Pioneer Title- Caldwell ("Borrower").

The beneficiary is TMS Mortgage Inc., dba The Money Store ("Trustee").

which is organized and existing under the laws of New Jersey
and whose address is 1161 West River St., Suite 160,
Boise, ID. 83702

Borrower owes Lender the principal sum of Sixty-Five Thousand and 00/100 ("Lender").

Dollars (U.S. \$65,000.00), together with interest. This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on November 1, 2029. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications; (b) the payment of all other sums, with interest, advanced under Paragraph 8 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For these purposes, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in Canyon County, Idaho:
(SEE EXHIBIT 'A' ATTACHED)



PLAINTIFF'S EXHIBIT
tabbler
B

being the same property commonly known as: 1412 E Lincoln Avenue, Nampa, ID 83686

("Property Address").

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Security Instrument. All of the foregoing, together with such property (or the leasehold estate if this Security Instrument is on a leasehold) are called the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record and that the Property is either located within an incorporated city or village at the time this Security Instrument is executed, or the Property does not exceed forty (40) acres. Borrower warrants and covenants that Borrower will defend generally the title to the Property against all claims and demands, subject to encumbrances of record. Borrower further warrants, represents and covenants as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness and all other charges evidenced by the Note.

2. **Funds for Taxes and Insurance.** If required by Lender, and subject to applicable law, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; and (e) yearly mortgage insurance premiums, if any. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974, as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under Paragraph 18, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. **Application of Payments.** All payments of principal and interest received by Lender shall be applied as provided in the Note. If Borrower owes Lender any late charges, or other fees or charges ("other charges"), they will be payable upon demand of Lender. Unless prohibited by law, the application of payments may be affected by the imposition of other charges. Therefore, payments of other charges, whether paid to Lender in addition to the monthly payment or separately, will be applied in a manner at the absolute discretion of the Lender, subject to applicable law. Borrower agrees that Lender may apply any payment received under Paragraphs 1 and 2, either first to amounts payable under Paragraph 1, or first to amounts payable under Paragraph 2.

4. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Security Instrument, if any, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Security Instrument, and leasehold payments or ground rents, if any.

5. **Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," flood and any other hazards as Lender may require, from time to time, and in such amount and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided that such approval shall not be unreasonably withheld. If the Borrower fails to maintain the coverage described above, Lender may, at its option, obtain coverage to protect its rights in the Property in accordance with Paragraph 8. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Security Instrument. If any insurance proceeds are made payable to Borrower, Borrower shall promptly pay such amounts to Lender, including, without limitation, the endorsement to Lender of any proceeds made by check or other draft.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraphs 1 and 2 or change the amounts of the payments. If under Paragraph 18 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

The provisions of this Paragraph 5 concerning the payment, disbursement or application of insurance proceeds shall apply to any insurance proceeds covering the Property whether or not (i) Lender is a named insured, (ii) the policy contains a mortgage clause or (iii) Lender has required Borrower to maintain the insurance. Borrower authorizes and directs any insurer to list Lender as a loss payee on any payment of insurance proceeds upon Lender's notice to insurer of Lender's interest in the insurance proceeds.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Security Instrument.

6. **Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit nor permit waste, impairment or deterioration of the Property. Borrower shall not do anything affecting the Property that is in violation of any law, ordinance or government regulation applicable to a residential property, and Borrower shall comply with the provisions of any lease if this Security Instrument is on a leasehold. If this Security Instrument is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

Unless Lender and Borrower otherwise agree in writing, all awards, payments or judgments, including interest thereon, for any injury to or decrease in the value of the Property received by Borrower will be used to restore the Property or applied to the payment of sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraphs 1 and 2 or change the amounts of the payments. Borrower agrees that in the event an award, payment or judgment includes compensation for both injury or decrease in the value of the Property and compensation for any other injury or loss, the total amount of such award, payment or judgment shall be deemed compensation with respect to the Property and Borrower hereby consents to Lender's intervention into any proceedings regarding the Property.

7. **Loan Application Process.** Borrower shall be in default under this Security Instrument, if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information directly bearing on Lender's decision to extend credit to Borrower), in connection with the loan evidenced by the Note.

8. **Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation, forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs or abate nuisances. Although Lender may take action under this Paragraph 8, Lender does not have to do so. The right of Lender to protect Lender's rights in the Property shall include the right to obtain at Borrower's expense, property inspections, credit reports, appraisals, opinions of value or other expert opinions or reports unless prohibited by law.

Any amounts disbursed by Lender under this Paragraph 8 shall become additional debt of Borrower secured by this 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 demand of Lender.

9. **Mortgage Insurance.** If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the insurance in effect until such time as the requirement for the insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

10. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor as related to Lender's interest in the Property.

11. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Security Instrument.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraphs 1 and 2 or change the amount of such payments.

12. **Borrower Not Released; Forbearance By Lender Not a Waiver; Acceptance of Partial Payment.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or may refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender on one or more occasions in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the later exercise of that or any other right or remedy.

Lender may accept partial payments from Borrower, without waiving or forbearing any of its rights under this Security Instrument or under the Note even if such payments are notated as a payment in full, or with a notation of similar meaning.

APR. 18 2001 8:08PM PIONEER TITLE NO. 128 1:50 PM

13. **Successors and Assigns Bound; Joint and Several Liability; Signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 17 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who signs this Security Instrument, but does not execute the Note: (a) is signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property to Lender under the terms of this Security Instrument, (b) is not personally liable on the Note or under this Security Instrument, and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

14. **Notice.** Except for any notice required under applicable law to be given in another manner: (a) any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing such notice by first class mail addressed to the Property Address or to such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by first class mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

15. **Governing Law; Severability.** The state and local laws applicable to this Security Instrument shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Security Instrument. In the event that any provision or clause of this Security Instrument or the Note which can be given effect without law, such conflict shall not affect other provisions of this Security Instrument or the Note which are declared to be severable. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

16. **Borrower's Copy.** Borrower shall be furnished a copy of the Note and of this Security Instrument at the time of execution or after recordation hereof.

17. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

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

18. **Acceleration; Remedies.** Except as provided in Paragraph 17 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Security Instrument, including the covenants to pay when due any sums secured by this Security Instrument, Lender prior to acceleration shall give notice to Borrower as provided in Paragraph 14 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding or advertisement and sale of the property.

The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action or to assert in the judicial proceeding the nonexistence of a breach or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option may declare all of the sums secured by this Security Instrument to be immediately due and payable without further demand and may foreclose this Security Instrument by judicial proceeding or invoke the power of sale hereby granted and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses of foreclosure, including, but not limited to, reasonable attorneys' fees, court costs, and costs of documentary evidence, abstracts and title reports, even if the breach is cured prior to the completion of any foreclosure.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Trustee shall give public

APR 18 2001 8:28PM PIONEER TITLE NO. 188 17715

notice of sale to the persons and in the manner prescribed by applicable law. After the time required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

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

19. **Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Security Instrument due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Security Instrument discontinued at any time prior to sale of the Property or entry of a judgment enforcing this Security Instrument if: (a) Borrower pays Lender all sums which would be then due under this Security Instrument and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Security Instrument; (c) Borrower pays all reasonable attorneys' fees, trustees' fees and court costs; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unimpaired. Upon such payment and cure by Borrower, this Security Instrument and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred. This right to reinstate shall not apply, however, in the case of acceleration pursuant to Paragraph 17.

20. **Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under Paragraph 18 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under Paragraph 18 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Security Instrument. Lender and the receiver shall be liable to account only for those rents actually received.

21. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate for normal residential uses and for maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this Paragraph 21, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph 21, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

22. **Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay Lender's reasonable charge for preparation of any payoff statement or other document in connection with the reconveyance, any Trustee reconveyance fee and any costs of recordation, unless applicable law provides otherwise.

23. Substitute Trustee. Lender, at its option, and after giving notice prescribed by applicable law, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, and the book and page where this Security Instrument is recorded and the name and address of the successor trustee. Without conveyance of the Property, the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law.

Adjustable Rate Mortgage Loan Rider attached hereto and incorporated herein by this reference.

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

Witness:

_____ (Witness)

James S Horvath (Seal)
James S Horvath
Tonya Y Horvath (Seal)
Tonya Y Horvath -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

STATE OF IDAHO,
On this 26th day of October, 1999 County of Blaine, before me, Neil Z. Miller, a Notary Public in and for said county and state, personally appeared Tonya Y. Horvath, and Tonya Y Horvath acting as POA for James S Horvath, known or proved to me to be the person(s) who executed the foregoing instrument, and acknowledged to me that executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Neil Z. Miller
Notary Public residing at:
Blaine, Idaho
Commission expires 10/20/00

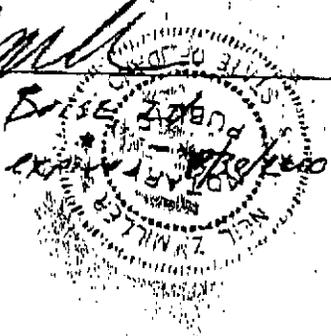


Exhibit "A"

The South Half of vacated Lot 5 and all of Lot 6 in vacated Block 28 of KURTZ ADDITION to Nampa, Canyon County, Idaho, according to the Amended Plat filed in Book 2 of Plats, Page 37, records of said County, more particularly described as follows:

BEGINNING at the East Quarter corner of Section 27, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho, and running thence South on the East boundary line of said Section 27 a distance of 685 feet; thence West a distance of 180 feet to a point, which is the TRUE POINT OF BEGINNING; thence South a distance of 75 feet; thence West a distance of 150 feet; thence North a distance of 75 feet; thence East a distance of 150 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM

COMMENCING at the East Quarter corner of Section 27, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho; thence South along the East boundary line of said Section 27 a distance of 685 feet; thence West a distance of 180 feet to a point, which is the TRUE POINT OF BEGINNING; thence South a distance of 75 feet; thence West a distance of 10 feet; thence North a distance of 75 feet; thence East a distance of 10 feet to the POINT OF BEGINNING, being the West 10 feet of the alley adjoining the South Half of Lot 5 and all of Lot 6 in Block 28 of KURTZ ADDITION to Nampa.

ALSO EXCEPTING THEREFROM

The West 50 feet of the South Half of vacated Lot 5 and the West 50 feet of vacated Lot 6 in vacated Block 28 of KURTZ ADDITION to Nampa, Canyon County, Idaho, according to the Amended Plat filed in Book 2 of Plats, Page 37, records of said County, more particularly described as follows:

BEGINNING at the East Quarter corner of Section 27, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho, and running thence South on the East boundary line of said Section 27 a distance of 685 feet; thence West a distance of 280 feet to a point, which is the TRUE POINT OF BEGINNING; thence South a distance of 75 feet; thence West a distance of 50 feet; thence North a distance of 75 feet; thence East a distance of 50 feet to the TRUE POINT OF BEGINNING.

APR 16 2001 8:07PM PIONEER TITLE NO. 120 7:18/15
Loan No. 0084239169

ADJUSTABLE RATE RIDER
(LIBOR 6 Month Libor Index-Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 26th day of October 1999, 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 (the "Note") to TMS Mortgage Inc., dba The Money Store

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:
1412 E Lincoln Avenue, Nampa, ID 83686

(Property Address)

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MINIMUM AND THE MAXIMUM RATE THE BORROWER MUST PAY.

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

INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 9.600%. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the 1st day of November, 2003 and on the 1st day of every 6th month(s) thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for 6 Month Libor U.S. dollar-denominated deposits in the London market based on quotations of major banks, as published by *The Wall Street Journal*. The most recent index figure available as of the 20th day of the calendar month immediately preceding each Change Date is called the "Current Index."

If the index is no longer available, or is no longer published by *The Wall Street Journal*, the Note Holder will choose a new index or source of index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Five and 19/20 percentage points (5.950 %) to the Current Index. The Note Holder will then round the result of this addition up to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

MULTISTATE ADJUSTABLE RATE RIDER (9910) Original - Record
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Page 1 of 2



The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 12.600 % or less than 9.600 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than One percentage point(s) (1.000 %) from the rate of interest I have been paying for the preceding Six month(s). My interest rate will never be greater than 15.600 %, or less than 9.600 %.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

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

James S Horvath (Seal) Borrower
James S Horvath
Tonya Y Horvath (Seal) Borrower
Tonya Y Horvath

____ (Seal) Borrower
____ (Seal) Borrower

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GROEL HALES
CANYON CITY RECORDER
BY *J. Hales*
REQUESTED
PIONEER - CALDWELL
W. Caldwell