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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

MARIKA HAMILTON, an individual, on her own)	
behalf and on behalf of all others similarly)	
situated,)	No.
)	
Plaintiff,)	CLASS ACTION COMPLAINT
)	AND JURY DEMAND
v.)	
)	
WELLS FARGO BANK, N.A.,)	
)	
Defendant.)	

14 Marika Hamilton (“Ms. Hamilton” or “Plaintiff”), for her complaint, alleges as follows
15 upon information and belief, based upon, *inter alia*, investigation conducted by her attorneys,
16 except as to those allegations pertaining to Plaintiff and her counsel personally, which are alleged
17 upon personal knowledge:

18 **Introduction**

19 1. This case is about Defendant’s use of false pretenses and unlawful “triggering
20 events” to fraudulently suspend accounts and reduce credit limits on home equity lines of credit
21 (“HELOCs”) across the country. Wells Fargo Bank N.A. (“Wells Fargo”), in an attempt to limit
22 its exposure to the risk of collapse in the United States housing market, violated the Truth in
23 Lending Act and its implementing regulation, Regulation Z, and broke its contractual promises to
24 its HELOC account holders (collectively the “Class Members”) – the result of which was to deny
25 its customers access to hundreds of millions of dollars worth of credit at a critical time.

26 2. Rather than verify whether its borrowers had experienced material adverse changes
27 to their financial circumstances such that Wells Fargo could reasonably believe the borrowers
28

would be unable to meet the terms of their agreements – pre-requisites to suspending a HELOC account under Regulation Z, 12 C.F.R. § 226.5b(f)(3)(vi)(B) – Defendants reduced credit limits and froze accounts based on grossly insufficient factors such as a single derogatory item on a credit report, irrespective of the customers’ actual financial circumstances.

3. Each member of the Class had a HELOC for which Wells Fargo reduced the available credit limit or suspended the account in a manner that was illegal, unfair, oppressive and fraudulent. As a result of Defendant's wrongful actions, Plaintiff bring this class action on behalf of herself and the putative class for actual damages and attorneys fees under Regulation Z of the Truth-in-Lending Act ("TILA") (15 U.S.C. § 1640(a); 12 C.F.R. § 226.5(b)), equitable and injunctive remedies under California's Unfair Competition Law ("UCL") (Cal. Bus. & Prof. Code § 17200 *et. seq.*) and damages for breach of contract.

Nature of the Claim

4. As recently as February 2009, Defendant sent a form letter to, on information and belief, hundreds of its HELOC customers, including Plaintiff and the other class members, stating:

[We regularly review our home equity customers' credit performance and property values. Based on our review, we may decide to lower your credit limit or restrict your use of this Account. Further according to your Home Equity Line of Credit Agreement, if Wells Fargo reasonably believes that you will not be able to meet your prepayment requirements due to a material change in your financial circumstances; Wells Fargo may suspend the use of your Account.

As a result of our recent review, effective immediately, the Account is restricted to new advances, due to derogatory credit. No new advances will be made while the restriction is in effect. If you owe a balance on your Account, your monthly payments should continue to be made in a timely manner.

(See “February 26, 2009, Suspension Letter,” a true and accurate copy of which is attached as Exhibit A.) (Emphasis in original).

5. Defendant, acting intentionally and with knowledge, falsely claimed that its customers' financial circumstances had changed, through "derogatory credit" and other insufficient factors so as to trigger its ability under federal law to freeze the accounts or lower the credit limits. As a result, Defendants, in violation of federal law, reduced the credit limits and/or froze the HELOC accounts of many homeowners, including Plaintiffs, whose financial

1 circumstances had not materially worsened so as give Defendant a reasonable basis for concluding
2 the Plaintiff and other accountholders would be unable to meet the terms of their loans.

3 6. Wells Fargo lacked a sound factual basis for sending these letters and reducing
4 HELCO credit limits or suspending accounts. A derogatory item or items on a credit report,
5 without more, does not constitute a material adverse change in a borrower's financial
6 circumstances. Even if a derogatory credit report could in some instances signal, along with other
7 evidence, a material change in financial circumstances, Wells Fargo failed to reasonably
8 investigate the nature or basis for the purportedly derogatory item or items to verify whether a
9 material adverse change had occurred in its borrowers' financial circumstances prior to sending its
10 letters.

11 7. Making matter worse, when customers contacted Wells Fargo customer service to
12 dispute the adverse action, Wells Fargo customer service representatives failed to reasonably
13 respond to attempts by the customers to demonstrate that their financial circumstances had not
14 materially changed and instead threatened and otherwise discouraged customers from challenging
15 Wells Fargo's decision.

16 8. Although federal law allows the creditor to freeze or reduce the line where the
17 creditor reasonably believes that the consumer will be unable to make payments as agreed because
18 of a material change in the consumer's financial circumstances, this exception requires both a
19 material change in a borrower's financial situation and the creditor's reasonable belief that the
20 borrower will not be able to repay the HELOC account as agreed. 12 C.F.R. §
21 226.5(b)(f)(3)(vi)(B).

22 9. With respect to Plaintiff and the Class, Wells Fargo froze accounts and reduced
23 credit limits where no material changes in the borrowers' financial circumstances had occurred
24 and Wells Fargo did not have a reasonable belief that the borrowers would be unable to repay their
25 HELOC accounts as agreed. As a result, Defendant's intentional systematic, freezing and mass
26 reduction on the limits on its customers' HELOCs and their use of standards that are inconsistent
27 with Regulation Z was and remains fraudulent, deceptive and illegal.
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10. Defendant's HELOC reductions are not only unlawful; they are patently unconscionable. On October 3, 2008, Congress passed the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343. As part of this law, Wells Fargo obtained, on information and belief, approximately \$25 billion from an unprecedented \$700 billion bailout funded entirely by American taxpayers. The rationale advanced for the bailout by its proponents was that the banks needed the money to ensure liquidity in the face of the worsening subprime mortgage disaster. Moreover, banks, including Wells Fargo, promised members of Congress they would use the money to make credit available to American consumers and get credit flowing again.

11. Wells Fargo has intentionally failed to meet its obligations to its customers and has intentionally deprived those customers of crucial affordable consumer credit at a critical time.

12. In stark contrast, Wells Fargo's HELOC borrowers such as Plaintiff, like most American consumers, are struggling in a faltering economy, yet they continue to meet their mortgage obligations. These customers have been improperly denied access to their HELOCs and have further suffered damages in the form of the increased price of credit, reduced credit scores, lost interest, annual fees and other damages.

Parties

13. **Plaintiff Marika Hamilton:** Plaintiff maintains her primary residence in Fort Wayne, Indiana (the “subject matter property”). In or around August 2008, Plaintiff obtained a HELOC in the amount of \$103,600 secured by the subject matter property.

14. **Defendant Wells Fargo:** Wells Fargo Bank, N.A. is a national banking association, chartered in Sioux Falls, South Dakota, with its main offices at 420 Montgomery Street, San Francisco, California 94163. Wells Fargo is one of the country's largest banks and has offices throughout the country.

Jurisdiction and Venue

15. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332(d)(2). This Complaint alleges claims on behalf of a national class of homeowners who are minimally diverse from Defendant. On information and belief, the aggregate of these claims

1 exceeds the sum or value of \$5,000,000. This Court further has federal question subject matter
2 jurisdiction under 28 U.S.C. § 1331 as this action arises in part under Regulation Z of the Truth in
3 Lending Act, 15 U.S.C. § 1647, 12 C.F.R. § 226.5(b). This Court has supplemental subject matter
4 jurisdiction over the pendent state law claims under 28 U.S.C. § 1367.

5 16. Defendant Wells Fargo is a national banking association chartered in South Dakota
6 whose main offices are in California, and is considered a citizen of South Dakota and California
7 for the purposes of diversity jurisdiction under 28 U.S.C. § 1348 and *Wachovia Bank, N.A. v.*
8 *Schmidt*, 546 U.S. 303 (2006).

9 17. Venue is also proper before this Court under 28 U.S.C. § 1391(b)(2) as a
10 substantial part of the events, circumstances, and omissions giving rise to these claims occurred in
11 this District.

12 18. This Court has personal jurisdiction over Defendants under Cal. Code Civ. Proc. §
13 410.10 because some of the acts alleged herein were committed in California (specifically in the
14 Northern District of California), and because Defendants are registered to do business in this state
15 and actively conduct business in this District.

16 **Allegations as to Plaintiff's Individual Claims**

17 19. In August 2008, Plaintiff obtained a HELOC agreement secured by the subject
18 matter premises in the amount of \$103,600. (*See* "HELOC Agreement" a true and accurate copy
19 of which is attached as Exhibit B.)

20 20. On February 26, 2009, Ms. Hamilton received a notice that her HELOC was being
21 suspended from further draws due to "derogatory credit." (*See* Ex. A.)

22 21. Plaintiff's derogatory credit item was a late charge of approximately \$25 that she
23 had disputed owing. Plaintiff eventually settled the dispute over the late charge and, on
24 information and belief, the derogatory item has been removed from her credit report.

25 22. Plaintiff's credit history was otherwise strong. Likewise, Plaintiff's financial
26 circumstances as a small business owner had not materially or adversely changed since the time
27 she first obtained her HELOC.

23. Plaintiff complied with all other terms of her HELOC agreement, making all required payments in a timely manner.

24. Plaintiff attempted to request reinstatement as provided for in the February 26, 2009, Suspension Letter by calling the telephone number Wells Fargo provided. Plaintiff was told that the harder she pressed for reinstatement, the more difficult and painful Wells Fargo would make the reinstatement process, including a thorough examination of all of Plaintiff's accounts, including her business accounts. The message was made clear that Plaintiff would risk substantial additional loss of credit if she protested. When Plaintiff asked where she should put her money if her Wells Fargo HELOC was not safe, Wells Fargo customer service responded she "should carry cash."

25. At no time did Plaintiffs' income materially change or decrease, and at no time did Defendant have a reasonable basis for concluding Plaintiff, who had always made timely payments on all her loans, would not be able to meet the terms of her loan agreement. Despite requests, Defendant has refused to remove the suspension.

26. Plaintiff's HELOC with Defendant was her primary line of credit. Defendant's suspension of Plaintiff's HELOC negatively impacted the amount of credit she had available to pay for basic expenses. In addition to depriving the Plaintiff of the availability of her HELOC, Defendant's acts damaged her credit rating and increased the cost of credit to her.

Class Certification Allegations

27. Plaintiff seeks certification of a class under both Fed. R. Civ. P. 23(b)(2) and Rule 23(b)(3).

28. **Definition of the Class:** Pursuant to Fed. R. Civ. P. 23:

Marika Hamilton brings this Complaint against Defendant on behalf of the “Class,” consisting of:

All Wells Fargo HELOC borrowers in the United States who received from Wells Fargo a letter suspending their HELOC accounts based on “derogatory credit.”

Excluded from the Class are 1) any Judge or Magistrate presiding over this action and members of their families; 2) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors,

1 and any entity in which Defendant or its parent companies have a controlling interest and its
2 current or former employees, officers and directors; 3) persons who properly execute and file a
3 timely request for exclusion from the class; 4) the legal representatives, successors or assigns of
4 any such excluded persons; and 5) HELOC accountholders who have had their credit line(s)
5 restored.

6 Plaintiff anticipates that amending the Class definition may become necessary following
7 discovery.

8 29. **Numerosity:** The exact number of the members of the Class is unknown and is not
9 available to the Plaintiff, but it is clear that individual joinder is impracticable. Defendant sent its
10 generic credit line suspension letters to hundreds of borrowers, and a substantial percentage of the
11 recipients of these letters fall into the definition of the Class. Class members can be easily
12 identified through Defendant's records and public records.

13 30. **Commonality:** Common questions of fact and law exist as to all members of the
14 Class and predominate over the questions affecting only individual members. These common
15 questions include:

- 16 (a) What were Defendant's criteria for suspending its borrowers' HELOCs;
- 17 (b) Whether Defendant's suspension of HELOC accounts or reduction of credit limits
18 based on derogatory credit and/or purported material changes in financial
19 circumstances were made without a reasonable basis for concluding such a material
20 change had in fact occurred;
- 21 (c) Whether Defendant's criteria for reducing HELOC credit limits and/or suspending
22 HELOC accounts based on "derogatory credit" and/or phantom material adverse
23 changes in accountholder finances violated Regulation Z;
- 24 (d) Whether Defendant's reduction of the credit limits or account suspensions for
25 "derogatory credit" and/or purported material changes in income breached the
26 terms of its HELOC agreements;
- 27 (e) Whether Defendant's reduction of the credit limits on their HELOC agreements
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1 was fraudulent, deceptive, unfair and/or unlawful;

2 (f) Whether Defendant had a sound factual basis for concluding the derogatory credit
3 items present in its HELOC borrowers' credit reports constituted material changes
4 in the borrowers' incomes.

5 (g) Whether in those cases where a material change in financial circumstances had in
6 fact occurred, Defendant had a reasonable basis for concluding the material
7 changes would render such customers unable to meet the terms of their HELOC
8 agreements.

9 (h) Whether Ms. Hamilton and the Class members are entitled to relief, and the nature
10 of such relief.

11 31. **Typicality:** Ms. Hamilton's claims are typical of the claims of other members of
12 the Class as Ms. Hamilton and other members sustained damages arising out of the wrongful
13 conduct of Defendant, based upon the same transactions which were made uniformly to Plaintiff
14 and the public. The California and federal laws under which Ms. Hamilton's claims arise do not
15 conflict with the laws of any other state in any material way.

16 32. **Adequate Representation:** Plaintiff will fairly and adequately represent and
17 protect the interests of the members of the Class, and has retained counsel competent and
18 experienced in complex class actions. Plaintiff has no interest antagonistic to those of the Class
19 and Defendant has no defenses unique to Plaintiff.

20 33. **Predominance and Superiority:** This class action is appropriate for certification
21 because class proceedings are superior to all other available methods for the fair and efficient
22 adjudication of this controversy. Joinder of all members is impracticable. The damages suffered
23 by the individual members of the Class will likely be relatively small, especially given the burden
24 and expense of individual prosecution of the complex litigation necessitated by the actions of
25 Defendant. It would be virtually impossible for the individual members of the Class to obtain
26 effective relief from the misconduct of Defendant. Even if members of the Class themselves could
27 sustain such individual litigation, it would still not be preferable to a class action, because
28

1 individual litigation would increase the delay and expense to all parties due to the complex legal
2 and factual controversies presented in this Complaint. By contrast, a class action presents far
3 fewer management difficulties and provides the benefits of single adjudication, economy of scale,
4 and comprehensive supervision by a single Court. Economies of time, effort, and expense will be
5 fostered and uniformity of decisions will be ensured.

6 34. **Policies Generally Applicable to the Class:** This class action is also appropriate
7 for certification because Defendant has acted or refused to act on grounds generally applicable to
8 the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief
9 with respect to Class as a whole. The policies of Defendant challenged herein apply and affect
10 members of the Class uniformly, and Plaintiff's challenge of these policies hinges on Defendant's
11 conduct, not on facts or law applicable only to Plaintiff.

12 **Count I: Declaratory Relief Under TILA and Regulation Z**
13 **(on behalf of Plaintiff and the Class against Wells Fargo)**

14 35. Plaintiff incorporates the above allegations by reference.

15 36. The Truth-in-Lending Act ("TILA") and its implementing regulation (Regulation
16 Z) prohibit Defendants from changing any of the terms of a mortgage or HELOC, including the
17 credit limit. 15 U.S.C. § 1647(c)(1); 12 C.F.R. § 226.5b(f)(3).

18 37. There is an exception under TILA and Regulation Z for any period in which
19 creditor reasonably believes that the consumer will be unable to make payments as agreed because
20 of a material change in the consumer's financial circumstances. This exception requires both a
21 material change in a borrower's financial situation and the creditor's reasonable belief that the
22 borrower will not be able to repay the HELOC account as agreed. 15 U.S.C. § 1647; 12 C.F.R. §
23 226.5b(f)(3)(vi), Comment 7. Regulation Z permits Wells Fargo to suspend or reduce a HELOC
24 account only when the designated circumstances exist, and the regulatory commentary emphasizes
25 that credit privileges must be reinstated when those circumstances cease.

26 38. Before suspending the accounts or reducing the credit limits on its borrowers'
27 HELOCs, Defendant had the obligation to both ensure that the customers' financial circumstances
28 had in fact materially adversely changed and, if so, that such a change would reasonably render the

1 customers unable to meet the terms of their agreements.

2 39. Wells Fargo's practice of suspending accounts or reducing credit limits based on
3 "derogatory credit" violates these duties. "Derogatory credit," standing alone, does not
4 automatically mean a customer's financial circumstances have materially changed, and without
5 further investigation or evidence, it does not give Wells Fargo a reasonable belief that the
6 borrower will not be able to meet the terms of the HELOC agreement. On information and belief,
7 with respect to Plaintiff and the Class, Wells Fargo failed to reasonably investigate whether any
8 so-called "derogatory credit" item was disputed or legitimate, let alone an indicator of a material
9 adverse change in financial circumstances.

10 40. Furthermore, "derogatory credit" is not one of the recognized "triggering events"
11 that permits a bank to reduce a credit limit or suspend an account from further draws. As the
12 Official Commentary provides, a creditor may not use any "'triggering events' or responses that
13 the regulation expressly addresses in a manner different from that provided in the regulation." 12
14 C.F.R. § 226.5b(f)(3)(i) Comment 2. As the Official Commentary explains:

15 For example, an agreement may not provide that the margin in a variable-rate plan
16 will increase if there is a material change in the consumer's financial circumstances,
17 because the regulation specifies that temporarily freezing the line or lowering the
18 credit limit is the permissible response to a material change in the consumer's
19 financial circumstances. Similarly a contract cannot contain a provision allowing
20 the creditor to freeze a line due to an insignificant decline in property value since
21 the regulation allows that response only for a significant decline.

22 41. Plaintiff and the other members of the Class have additionally been harmed
23 because Defendant has knowingly failed to disclose information that would permit Plaintiff and
24 the Class members to fairly determine whether to seek reinstatement, including but not limited to:

- 25 a. how Defendant determines or defines a material change in income or financial
26 circumstances,
- 27 b. how Defendant computes an accountholder's ability to meet the terms of his or her
28 loan agreement,
- 29 c. Defendant's actual and specific reasons for the reduction of the HELOCs,
- 30 d. The process, procedures, and guidelines pursuant to which Defendants

1 implemented their reduction of credit limits/suspension of the HELOCs,
2 e. other necessary and material information.

3 43. Wells Fargo has additionally used threats, intimidation, and other methods to
4 strongly discourage Plaintiff and the other class members from challenging Wells Fargo's decision
5 to suspend or reduce the credit limits on their accounts.

6 44. As an actual and proximate result of the Defendant's above-described practices of:

7 a. failing to ensure a sound factual basis existed for concluding a material adverse
8 change in financial circumstances had occurred, or, if it had, that the material
9 change would reasonably preclude its borrowers from meeting the terms of their
10 HELOC agreements;

11 b. using "derogatory credit" as a pretext for suspending their accounts or reducing
12 their credit limits without investigating the legitimacy or facts surrounding the
13 derogatory items or the derogatory items' impact on the borrowers' financial
14 circumstances;

15 c. withholding necessary information required for a customer to determine whether
16 pursuing reinstatement is worthwhile; and

17 d. using strong-armed tactics and threats to discourage borrowers from challenging
18 Wells Fargo's decisions;

19 Plaintiffs and the Class members have suffered actual and consequential damages in the form of
20 being denied the use and enjoyment of and access to their bargained-for credit at a crucial time,
21 returned/dishonored check fees, finance charges, annual fees, lost interest, early termination fees
22 and other costs and damages.

23 45. The Class and Wells Fargo have adverse legal interests, and there is a substantial
24 controversy between the Class and Defendant of sufficient immediacy and reality to warrant the
25 issuance of a declaratory judgment as to whether Defendant's mass suspension of accounts and
26 reduction of credit limits violates TILA and Regulation Z.

27 46. Ms. Hamilton, on her own behalf and behalf of the other Class members,
28

1 respectfully seeks a declaratory judgment under 27 U.S.C. § 2201 that Defendant's mass reduction
2 of HELOC credit limits in connection with its form letters violates TILA and Regulation Z.

3 **Count II: Violation of the TILA and Regulation Z**
4 **(on behalf of Plaintiff and the Class against Wells Fargo)**

5 47. Plaintiff incorporates the above allegations by reference.

6 48. Defendant knowingly lacked a sufficient factual basis for reducing Plaintiff and the
7 Class's credit limits or prohibiting additional extensions of credit. Defendant lacked a sound
8 factual basis for concluding Plaintiff and the other Class members' financial circumstances had
9 materially changed so as to support reducing the credit limits or prohibiting additional extensions
10 of credit. Defendant also used improper triggering events for determining when such a material
11 adverse change in financial circumstances had occurred.

12 49. Defendant's suspension of the HELOCs for Plaintiff and other Class members
13 violated the Truth-in-Lending Act and Regulation Z.

14 50. Defendants' violations of the Truth-in-Lending Act and Regulation Z damaged
15 Plaintiff and the other Class members in the form of being denied the use and enjoyment of and
16 access to their bargained-for credit at a crucial time, returned/dishonored check fees, finance
17 charges, annual fees, lost interest, early termination fees and other costs and damages.

18 51. Plaintiff, on her own behalf and behalf of the other Class members, seeks actual
19 damages under 15 U.S.C. § 1640(a)(1), statutory damages under 15 U.S.C. § 1640(a)(2)(B), and
20 costs of the action, together with a reasonable attorney's fees under 15 U.S.C. § 1640(a)(3).

21 **Count III: Breach of Contract**
22 **(on behalf of Plaintiff and the Class against Wells Fargo)**

23 52. Plaintiff incorporates the above allegations by reference.

24 53. Plaintiff and the other Class members entered into HELOC agreements with
25 Defendant Wells Fargo serving as the lender. The terms of these HELOCs constitute a contract
26 between the Class members and Defendant.

27 54. The HELOC agreements contain a term that tracks Regulation Z and provides
28 Defendant may reduce the credit limit or suspend additional extensions of credit during times

1 when “(b) there is any material change in my financial circumstances that the Bank reasonably
2 believes will make me unable to fulfill my repayment obligations under this Agreement.” (See Ex.
3 B.)

4 55. Plaintiff and the other Class members made all payments due to Defendant and
5 otherwise fully performed under their HELOCs with Defendant.

6 56. The availability of credit and the triggering events the lender could use to suspend
7 credit extensions were material terms.

8 57. Defendant materially breached the terms of the HELOCs by suspending the
9 HELOC accounts for Plaintiff and other Class members’ HELOCs where no material adverse
10 change in financial circumstances had first occurred that would give Defendant a reasonable basis
11 for believing Plaintiff and the borrowers would be unable to fulfill their payment obligations under
12 their agreements.

13 58. As a result, Plaintiff and the other Class members have suffered damages in the
14 form of being denied the use and enjoyment of and access to their bargained-for credit at a crucial
15 time, returned/dishonored check fees, finance charges, annual fees, lost interest, early termination
16 fees and other costs and damages.

17 59. Plaintiff, on her own behalf and behalf of the other Class members, seeks damages
18 for Defendants’ breach of contract, as well as interest and attorney’s fees and costs pursuant to
19 Cal. Code Civ. Proc. § 1021.5.

20 **Count IV: Breach of Implied Covenants**
21 **(on behalf of Plaintiff and the Class against Wells Fargo)**

22 60. Plaintiff incorporates the above allegations by reference.

23 61. Plaintiff and the other Class members entered into HELOC agreements with
24 Defendant Wells Fargo serving as the lender. The terms of these HELOCs constitute a contract
25 between the Class members and Defendant.

26 62. Implicit in the HELOC agreements were contract provisions that prevented the
27 Defendant from engaging in conduct which frustrates the Class members’ rights to the benefits of
28 the contract or which would injure the right of the Class members’ to receive the benefits of their

1 HELOCs.

2 63. The availability of credit and the triggering events the lender could use to suspend
3 credit extensions were material terms of the Class members' HELOCs. Defendant breached the
4 implied covenant of good faith and fair dealing in the HELOCs by suspending the HELOC
5 accounts for Plaintiff and other Class members without the customers first having had experienced
6 an adverse material change in their finances or the Defendant having a reasonable belief for
7 claiming such an adverse change would render the borrowers unable to meet their obligations
8 under the agreements.

9 64. Implicit in the HELOC agreements were contract terms that required Defendant to
10 follow Regulation Z.

11 65. Defendant's breach of Regulation Z and the implicit HELOC covenants caused
12 Plaintiff and other Class members to incur damages in the form being denied the use and
13 enjoyment of and access to their bargained-for credit at a crucial time, returned/dishonored check
14 fees, finance charges, annual fees, lost interest, early termination fees and other costs and damages

15 66. Plaintiff, on her own behalf and behalf of the other Class, seeks damages for
16 Defendant's breach of the implied covenant of good faith and fair dealing, as well as interest and
17 attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

18 **Count V: Violation of California's UCL, Cal. Bus. & Prof. Code § 17200**
19 **(on behalf of Plaintiff and the Class against Wells Fargo)**

20 67. Plaintiff incorporates the above allegations by reference.

21 68. Defendant's suspension or credit limit reduction of the Plaintiff and the Class's
22 HELOC accounts violated TILA and Regulation Z. With respect to the Class, Defendant's
23 practice of taking action against accounts based on "derogatory credit" was deceptive and untrue.
24 These unlawful, deceptive, and unfair acts and practices constitute unfair competition in violation
25 of the UCL.

26 69. Defendant has engaged in unfair, unlawful and fraudulent business acts and
27 practices as set forth above.
28

70. Defendant has violated the “unfair” prong of the UCL in that Defendant’s actions, taken in total, caused substantial injury to consumers; the injury caused by Defendant’s conduct is not outweighed by any countervailing benefits to consumers or competition; and the injury is one that consumers themselves could not reasonably have avoided.

71. Defendant has violated the “fraudulent” prong of the UCL in that Defendant’s statements regarding the availability of credit through the HELOCs were false and were likely to deceive a reasonable consumer. Defendant’s statements regarding any potential future reduction of credit through the HELOCs would only occur through a material adverse change in financial conditions were false and were likely to deceive a reasonable consumer.

72. Defendant has violated the “unlawful” prong of the UCL in that Defendant’s conduct was undertaken in violation of TILA and Regulation Z.

73. Defendant's violations of the UCL caused Plaintiff and the other Class members damages in the form of being denied the use and enjoyment of and access to their bargained-for credit at a crucial time, returned/dishonored check fees, finance charges, annual fees, lost interest, early termination fees and other costs and damages.

74. Plaintiff, on her own behalf and behalf of the other Class members, seeks an order preliminarily and permanently enjoining Defendant's unfair competition alleged herein and requiring Defendant to restore HELOC credit limits and cease suspending HELOCs in violation of Regulation Z, and individual restitution of property gained by such unfair competition under the UCL (Cal. Bus. & Prof. Code § 17203), as well as interest and attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

Count VI: Common Law Fraud
(on behalf of Plaintiff and the Class against Wells Fargo)

75. Plaintiff incorporates the above allegations by reference.

76. Wells Fargo's actions described herein were fraudulent.

77. At the time Wells Fargo sent the letters to Plaintiff and the Class Members suspending their HELOC accounts or reducing their HELOC credit limits, Wells Fargo intentionally misrepresented in those letters:

- a. That the customers' financial circumstances no longer supported the HELOC;
- b. That Wells Fargo had the ability to suspend the HELOCs based on "derogatory credit";
- c. That Wells Fargo had reasonably determined that the borrower's financial circumstances had changed so as to trigger Wells Fargo's ability to suspend the account or reduce the credit limits.

78. Wells Fargo knew these statements were false at the time the statements were made, and Wells Fargo made these statements with the intent that Plaintiff and the Class members rely on these statements so that the Plaintiff and the Class members would accept Wells Fargo's decision.

79. Wells Fargo's actions unilaterally imposed reliance on its statements by Plaintiff and the Class members. Plaintiff and the other Class members had no choice but to accept Wells Fargo's decision or undergo the appeals process.

80. In furtherance of its fraudulent scheme, Wells Fargo customer service representatives intentionally threatened Plaintiff and other borrowers who called to appeal by stating that Wells Fargo would make the appeals process as painful for the borrower as possible and that challenging Wells Fargo's decision would cause the bank to thoroughly examine each of the customers' accounts.

WHEREFORE, Plaintiffs pray that the Court enter judgment and orders in their favor and against Defendants as follows:

- (a) Certifying the action as a class action and designating Plaintiff and her counsel as representatives of the Class;
- (b) Declaratory judgment under 27 U.S.C. § 2201 on Count I that the Defendant's HELOC reductions violate federal law;
- (c) Statutory damages under 15 U.S.C. § 1640(a)(2)(B) for Count II;
- (d) Actual damages on Counts II, III, and IV for Plaintiff and the Class including but not limited to damages to compensate the Plaintiff and Class's loss of the use and

1 enjoyment of and access to their bargained-for credit at a crucial time,
2 returned/dishonored check fees, finance charges, annual fees, lost interest, early
3 termination fees and other costs and damages;

- 4 (e) Preliminary and permanent equitable and injunctive relief for Plaintiff and the
5 Class, including enjoining the Defendants from further violations of Regulation Z
6 and restoration of HELOC credit limits, including restitution of property gained by
7 the unfair competition alleged herein, and an order for accounting of such property;
8 (f) Actual and exemplary damages on Count VI;
9 (g) Awarding pre- and post-judgment interest, costs and reasonable attorneys fees on
10 all counts available; and
11 (h) Granting such other and further relief as the Court may deem just and proper

12 **JURY TRIAL DEMAND**

13 The Plaintiff hereby demands a trial by jury of all issues so triable.

14 Dated: September 8, 2009

15 By:



17 Alan Himmelfarb (Cal. Bar. No. 90480)
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20
21 Jay Edelson (*pro hac vice pending*)
Steven L. Lezell (*pro hac vice pending*)
22 Evan Meyers (*pro hac vice pending*)
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23 Chicago, IL 60654
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EXHIBIT A



P.O. Box 4790
Portland, OR 97208-4790

February 26, 2009

MARIKA HAMILTON
[REDACTED]
[REDACTED]

Re: Your Wells Fargo Home Equity Account
Ending in [REDACTED]

Dear MARIKA HAMILTON:

You value your home investment. We value your relationship. We also understand that a changing economy can affect your financial situation. We also know it is important to you to use your home equity account (your "Account") wisely and maintain your home ownership.

That is why we regularly review our home equity customers' credit performance and property values. Based on our review, we may decide to lower your credit limit or restrict your use of this Account. Further, according to your Home Equity Line of Credit Agreement, if Wells Fargo reasonably believes that you will not be able to meet your repayment requirements due to a material change in your financial circumstances; Wells Fargo may suspend the use of your Account.

As a result of our recent review, effective immediately, the Account is restricted to new advances, due to derogatory credit. No new advances will be made while the restriction is in effect. If you owe a balance on your Account, your monthly payments should continue to be made in a timely manner. Any automatic payments will continue to be deducted each month from your deposit account.

You may request reinstatement of your Account to its original terms if you think our decision is in error or if your circumstances have changed. Please call 1-866-508-7059, or write to Wells Fargo Home Equity Group, MAC-P6051-01A, P.O. Box 4790, Portland, OR 97208-4790.

We are committed to helping our customers with their financial needs. If you have questions or want to give us additional information, we invite you to call us to discuss your home equity account. If your needs are changing, we may be able to offer flexible solutions — and we will work with you to identify an appropriate solution for your individual financial situation. Please call us at 1-866-508-7059 toll-free, Monday - Friday, 7:00AM - 8:00 PM, PT.

Sincerely,

Customer Management
Wells Fargo Bank, N.A.

PLEASE SEE IMPORTANT DISCLOSURE INFORMATION ON NEXT PAGE

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EQUAL CREDIT OPPORTUNITY ACT NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning Wells Fargo Bank, N.A. is: The Comptroller of the Currency, Customer Assistance Unit, 1301 McKinney Street, Suite 3450, Houston, TX 77010-9050.

FAIR CREDIT REPORTING ACT NOTICE

Wells Fargo's decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The consumer reporting agency played no part in Wells Fargo's decision and is unable to supply specific reasons why Wells Fargo has denied credit to you. You have the right to obtain a free copy of your credit file from the consumer reporting agency, if you request the copy of your credit file no later than sixty (60) days after you receive this notice. With no time restrictions, you may also dispute the accuracy or completeness of your credit file. You may do all of the preceding by telephone or letter to the consumer reporting agency indicated below, identifying yourself and stating your request. Any questions regarding information contained in your credit file should be directed to the consumer reporting agency indicated below.

EXPERIAN
701 Experian Parkway
P.O.Box(2002)
Allen, Texas 75013-0036
1 - 888 - EXPERIAN(397 - 3742)
www.experian.com/reportaccess

If you ever have difficulty making your home equity payments, please call 1-866-508-7059 right away. We understand that a changing economy may affect your financial situation. Our Home Equity Specialists may be able to help, by arranging an extension or a more affordable monthly payment.

EXHIBIT B

WELLS FARGO BANK, N.A.

AGREEMENT DATE: [REDACTED]

ACCOUNT #: [REDACTED]

REFERENCE #: [REDACTED]

Wells Fargo Home Equity Account Agreement and Disclosure Statement (the "Agreement")

Borrower Name: MARIKA HAMILTON

Property Address: [REDACTED]

Mailing Address for Billing Purposes (if different): N/A

Credit Line Limit: [REDACTED]

SECTION 1: MY ACCOUNT AGREEMENT

In this Agreement, the words, "I," "me," "my," and "Borrower" (which also means "we," "us," "our," and "Borrowers," if more than one customer signs below) refer to each person who signs this Agreement. The words "you," "your," "Lender," and "the Bank" refer to Wells Fargo Bank, N.A. and any successor or assign or subsequent holder of this Agreement. This Agreement governs my *Wells Fargo Home Equity Account* (the "Account") with the Bank. If more than one person signs this Agreement, we are jointly and individually bound by its terms. We are separately liable to the Bank for the entire amount owed on the Account. We are each liable as a principal and not merely as a guarantor, even if one or more of us does not use the Account.

SECTION 2: SECURITY INTEREST

I am giving the Bank a deed of trust, mortgage or other security instrument including all modifications, addenda and amendments thereto (the "Security Instrument"), signed the same date as this Agreement. The Security Instrument gives you a security interest in the property located at the address shown above (the "Property").

SECTION 3: MY WELLS FARGO HOME EQUITY ACCOUNT

My Account is a revolving account. My credit limit is shown above and will be displayed on each of my billing statements. During the Draw Period (described below), my available credit will be my credit limit minus the sum of all unpaid Advances posted to my Account. During the Draw Period, as I repay the principal balance I owe on my Account, my available credit will be replenished. I agree not to request an Advance that would cause my balance to exceed my credit limit. If at any time the balance of my Account exceeds my credit limit, I agree to immediately repay the amount that exceeds my credit limit.

I may apply for an increase in my credit limit, and if I do so I agree to pay any application, appraisal and other fees, including increased costs for title insurance, as the Bank may require. If the Bank approves my application and increases my credit limit, I will provide and maintain such additional hazard insurance (including flood insurance, if necessary) and sign any additional documents as the Bank may require. All such increased credit



amounts will be governed by the terms and conditions of this Agreement and will be secured by the Security Instrument.

The Bank may from time to time in its sole discretion, approve additional credit for me under the terms of this Agreement. I will receive written notice from the Bank of any such offer to increase my credit limit. I may accept such offer of increased credit by my use of those additional funds and by signing any additional documents the Bank may require. All such increased credit amounts will be governed by the terms and conditions of this Agreement and will be secured by the Security Instrument.

SECTION 4: MY ACCOUNT DURING THE DRAW PERIOD

DRAW PERIOD

I may request Advances during the Draw Period. My Account has a Draw Period of 10 years and one month from the date this Agreement is effective. This Agreement is considered effective on the day the last of us signs this Agreement (the "Effective Date"). At the end of the Draw Period, I may request that the Bank renew the Draw Period for an additional 10 years and one month. The Bank may, at its option, approve my request to extend the Draw Period. I may not obtain Advances after the Draw Period ends.

When the Draw Period ends, the outstanding unpaid Line of Credit Advances will convert to a Final Fixed Rate Advance as detailed below in Section 5, MY ACCOUNT DURING THE REPAYMENT PERIOD.

ADVANCES DURING THE DRAW PERIOD

There are 2 types of Advances on my Account:

- Line of Credit Advances
- Fixed Rate Advances

The Bank must honor my request for Line of Credit Advances and Fixed Rate Advances (collectively, "Advances") as long as I am in compliance with all terms of this Agreement, including all modifications, addenda and amendments to it, and the Security Instrument.

As I use my Account, my available credit will be my credit limit minus the sum of all unpaid Advances. As I repay the principal balance I owe on my Account, my available credit will be replenished. I will not request an Advance that would cause the balance in my Account to exceed my credit limit, or which would violate the terms of this Agreement or any law. If I do exceed my credit limit, I agree to immediately repay the amount that exceeds my credit limit.

I understand that the Bank may refuse to allow any Advance if the Advance does not comply with every requirement of this Agreement. The Bank may choose at its sole discretion to make an Advance that does not comply. The Bank may allow any Advances in any sequence convenient to the Bank.

The Bank is authorized to make an Advance from my Account when it receives a request given by any person who has signed this Agreement. If there are conflicting demands made by any of us who signed this Agreement, the Bank has the option to refuse to make any Advance that has not been requested by all of us together. The Bank will not be liable for any loss, expense, or cost arising out of any telephone request, including any fraudulent or unauthorized telephone request, when the Bank acts upon such instructions believing them to be genuine.

LINE OF CREDIT ADVANCES

Each Line of Credit Advance I request will be in the amount of \$300 or greater.

LINE OF CREDIT ADVANCE METHODS

While my Account is not in default, closed, or suspended, I may obtain a Line of Credit Advance by:

- Requesting a Line of Credit Advance in person at any Bank branch
- Requesting a Line of Credit Advance by phone
- Transferring funds by using Wells Fargo Online®
- In other ways the Bank authorizes from time to time



Writing an Advance request check or draft which the Bank has provided to me
Obtaining a cash withdrawal or transferring funds by using my Wells Fargo ATM Card or Wells Fargo ATM & Check Card, if offered by the Bank and I select such service
Using my home equity access credit card, if offered by the Bank and I select such service

LINE OF CREDIT ADVANCES PERIODIC FINANCE CHARGES

Finance charges begin to accrue on Line of Credit Advances immediately when funds are advanced. The periodic FINANCE CHARGE for a billing cycle is the sum of the periodic FINANCE CHARGE for each day in the billing cycle. To determine the periodic FINANCE CHARGE for a day in the billing cycle, multiply the Daily Periodic Rate by the daily balance for Line of Credit Advances (including current transactions) each day. To determine the daily balance, take the Line of Credit Advances balance at the beginning of each day (excluding any unpaid FINANCE CHARGES or other charges provided for under this Agreement), add any new Line of Credit Advances, and subtract any payments or credits that apply to the repayment of Line of Credit Advances. The result is the daily balance.

The Daily Periodic Rate for Line of Credit Advances is equal to 1/365 (1/366 during leap years) of an Index plus a Margin. The Index is the highest Prime Rate as published in the Western Edition of *The Wall Street Journal* "Money Rates" table. The Margin, the initial Daily Periodic Rate, and the initial ANNUAL PERCENTAGE RATE, are each disclosed below. The Margin will increase if the Automatic Payment feature described in Section 6 below is terminated for any reason. The ANNUAL PERCENTAGE RATE does not include costs other than interest.

The Daily Periodic Rate and corresponding ANNUAL PERCENTAGE RATE on my Line of Credit Advances will be adjusted the day after an Index change is published, using the new Index value. Therefore, the Daily Periodic Rate for Line of Credit Advances may change (increase or decrease) as often as once each day based on changes in the Index. I understand that any increase may cause me to make larger monthly payments.

LIFETIME RATE CAP FOR LINE OF CREDIT ADVANCES

The Daily Periodic Rate for Line of Credit Advances will never exceed 0.049180% (corresponding ANNUAL PERCENTAGE RATE of 18.00%). This is the Lifetime Rate Cap for Line of Credit Advances.

LIFETIME RATE FLOOR FOR LINE OF CREDIT ADVANCES

The Daily Periodic Rate for Line of Credit Advances will never fall below 0.011585% (corresponding ANNUAL PERCENTAGE RATE of 4.240%). This is the Lifetime Rate Floor for Line of Credit Advances.

MY INITIAL RATE FOR LINE OF CREDIT ADVANCES

As discussed above, my Daily Periodic Rate is based on the value of the Index plus a Margin. The initial Index value that applies to my Account will be the value of the Index on the day I open my Account. The following disclosures are based on the value of the Index in effect on 08-28-2008. I understand that if I open my Account after this date, my actual Index value, Daily Periodic Rate and corresponding ANNUAL PERCENTAGE RATE may be higher or lower than the rates disclosed below.

My Margin for Line of Credit Advances is equal to NEGATIVE TEN THOUSANDTHS OF ONE PERCENTAGE POINT percentage points (-0.010%). As a result, unless the Lifetime Rate Cap for Line of Credit Advances or Lifetime Rate Floor for Line of Credit Advances require the Bank to apply a different rate to my Account, my initial Daily Periodic Rate is 0.013634% (corresponding ANNUAL PERCENTAGE RATE of 4.990%).

LINE OF CREDIT ADVANCES MINIMUM MONTHLY PAYMENT

During the Draw Period, my Minimum Monthly Payment for Line of Credit Advances shall be equal to:

The sum of all accrued and unpaid periodic FINANCE CHARGES on Line of Credit Advances, plus credit insurance premiums, if any.

FIXED RATE ADVANCES DURING THE DRAW PERIOD

I have the option to convert outstanding unpaid Line of Credit Advances to Fixed Rate Advances during the Draw Period based on credit limit availability. The minimum Fixed Rate Advance during the Draw Period is \$10,000. I may request up to 2 Fixed Rate Advances each year. For purposes of this rule, the first "year" will begin on the Effective Date. Subsequent years will begin on each anniversary of the Effective Date. I may have no more



than 3 Fixed Rate Advances outstanding at any one time. On the Effective Date, I may request an initial Fixed Rate Advance in an amount that does not exceed my available credit. After the Effective Date, the sum of all outstanding Fixed Rate Advances taken after the Effective Date may not exceed the lesser of my available credit or \$250,000.00. I must select the repayment term for the Fixed Rate Advance at the time I request the Fixed Rate Advance.

Fully Amortizing Payments:

For a Fixed Rate Advance with fully amortizing payments during the Draw Period (see the section below titled "**FIXED RATE ADVANCES MINIMUM MONTHLY PAYMENT DURING THE DRAW PERIOD**"), the repayment term must be a period of whole years and in the range described below:

<u>Fixed Rate Advance Amount</u>	<u>Term Range</u>
\$10,000 - 19,999.99	5 to 15 years
\$20,000 and above	5 to 30 years

Interest-Only Payments (Offered at Bank's Discretion):

If the Bank offers me the option to make interest-only payments on a Fixed Rate Advance during the Draw Period, and I select that option (see the section below titled "**FIXED RATE ADVANCES MINIMUM MONTHLY PAYMENT DURING THE DRAW PERIOD**"), the repayment term must be at least one year and not more than the lesser of 5 years or the remaining term of the Draw Period minus one month. At the end of the term, the balance will convert to a Line of Credit Advance.

FIXED RATE ADVANCE METHODS DURING THE DRAW PERIOD

While my Account is not in default, closed, or suspended, I may obtain a Fixed Rate Advance by:

- Requesting a Fixed Rate Advance in person at any Bank branch.
- Requesting a Fixed Rate Advance by phone.

FIXED RATE ADVANCES PERIODIC FINANCE CHARGES DURING THE DRAW PERIOD

Fixed Rate Advances will accrue periodic FINANCE CHARGES beginning on the day that the Bank converts any Line of Credit Advances to a Fixed Rate Advance. I will be charged a periodic FINANCE CHARGE on all outstanding unpaid Fixed Rate Advances each day at a fixed Daily Periodic Rate. To determine the periodic FINANCE CHARGE for a day in the billing cycle, multiply the Daily Periodic Rate by the daily balance for the Fixed Rate Advance (including current transactions) each day. To determine the daily balance for the Fixed Rate Advance, take the Fixed Rate Advance balance at the beginning of each day (excluding any unpaid FINANCE CHARGES or other charges provided for under this Agreement), and subtract any payments or credits that apply to the repayment of the Fixed Rate Advance. The result is the daily balance.

The Daily Periodic Rate for Fixed Rate Advances is equal to $1/365$ ($1/366$ during leap years) of an Index plus a Margin. The Index is the highest Prime Rate as published in the Western Edition of *The Wall Street Journal* "Money Rates" table. The Bank will use the value of the Index in effect on the last business day preceding the day the Bank receives my request for a Fixed Rate Advance. The Margin for Fixed Rate Advances is eight percentage points (8.000%), but the Margin may be lower than eight percentage points (8.000%) depending upon the amount and term of the Fixed Rate Advance and other pricing indicators that exist at the time we receive your request for a Fixed Rate Advance.

The corresponding ANNUAL PERCENTAGE RATE for Fixed Rate Advances will never be more than the Lifetime Rate Cap for Fixed Rate Advances shown below. The ANNUAL PERCENTAGE RATE does not include costs other than interest.

The Margin for any existing Fixed Rate Advances will increase by one quarter of one percentage point (0.25%) if the Automatic Payment feature is terminated, as described in Section 6, below. Therefore, the Daily Periodic Rate for Fixed Rate Advances may also increase at least once during the Account based on an increase in the Margin when the Automatic Payment feature is terminated. Any such increase will result in an increase in the then outstanding Fixed Rate Advance Minimum Monthly Payments, as follows:

- For a Fixed Rate Advance with fully amortizing payments: The Fixed Rate Advance Minimum



Monthly Payment for a Fixed Rate Advance with fully amortizing payments will be reset at an amount sufficient to repay the remaining balance of the applicable Fixed Rate Advance within its applicable term in substantially equal, fully amortizing monthly payments at its increased corresponding ANNUAL PERCENTAGE RATE.

- For a Fixed Rate Advance with interest-only payments: If the Bank offers me the option to make interest-only payments on a Fixed Rate Advance during the Draw Period and I select that option, the Fixed Rate Advance Minimum Monthly Payment for that Advance will equal the sum of all accrued and unpaid periodic FINANCE CHARGES on the remaining balance of the Fixed Rate Advance at the increased corresponding ANNUAL PERCENTAGE RATE.

LIFETIME RATE CAP FOR FIXED RATE ADVANCES DURING THE DRAW PERIOD

The Daily Periodic Rate for Fixed Rate Advances will not exceed 0.049180% (corresponding ANNUAL PERCENTAGE RATE of 18.00%). This is the Lifetime Rate Cap for Fixed Rate Advances.

INITIAL FIXED RATE ADVANCE

I did not request an initial Fixed Rate Advance on the Effective Date.

FIXED RATE ADVANCES MINIMUM MONTHLY PAYMENT DURING THE DRAW PERIOD

The following minimum payment options will apply to a Fixed Rate Advance during the Draw Period:

Fully Amortizing Payments: Unless the Bank offers me the option to make interest-only payments on a Fixed Rate Advance during the Draw Period and I select that option, my Minimum Monthly Payment for the Fixed Rate Advance will be equal to the amount of principal plus periodic FINANCE CHARGE sufficient to repay the Fixed Rate Advance within its applicable term in substantially equal, fully amortizing monthly payments at the applicable corresponding ANNUAL PERCENTAGE RATE. This assumes that all payments will be made on their due dates, which will be the same as the due dates for my Line of Credit Advances Minimum Monthly Payment described above. If my payments are not consistently made when due, the Fixed Rate Advance Minimum Monthly Payment may not fully repay the Fixed Rate Advance over its term and my final payment may be higher.

Interest-Only Payments (Offered at Bank's Discretion): The Bank may, in its sole discretion, offer me the option to make interest-only payments on a Fixed Rate Advance during the Draw Period. If the Bank offers me the option to make interest-only payments on a Fixed Rate Advance during the Draw Period, and I select that option, my Minimum Monthly Payment for the Fixed Rate Advance during the Draw Period will be equal to the sum of all accrued and unpaid periodic FINANCE CHARGES on the Fixed Rate Advance.

During the Draw Period, my available credit for new Line of Credit Advances will be replenished by the amount of principal I repay on my Fixed Rate Advances.

MY TOTAL PAYMENT DUE DURING THE DRAW PERIOD

I will receive monthly billing statements from the Bank. I must pay at least the amount of the Total Payment Due by the Date Due, as shown on each monthly billing statement.

The "Total Payment Due" during the Draw Period consists of my Line of Credit Advances Minimum Monthly Payment plus my Fixed Rate Advance Minimum Monthly Payment(s) together with all past due amounts and overlimit amounts and all other charges due.

SECTION 5: MY ACCOUNT DURING THE REPAYMENT PERIOD

REPAYMENT PERIOD

I understand that I may not receive new Advances after the Draw Period ends. At that time, I will begin the Repayment Period, which will continue for no more than 30 years after the end of the Draw Period.

REPAYMENT OF OUTSTANDING FIXED RATE ADVANCES

During the Repayment Period, I will continue to make the same Fixed Rate Advance Minimum Monthly Payment for any Fixed Rate Advance that was in effect at the end of the Draw Period. If my payments are not



consistently made when due, the Fixed Rate Advance Minimum Monthly Payment may not fully repay the Fixed Rate Advance over its term and my final payment may be higher.

REPAYMENT OF FINAL FIXED RATE ADVANCE

At the end of the Draw Period, the outstanding unpaid Line of Credit Advances balance will be converted into a Final Fixed Rate Advance. The Final Fixed Rate Advance will have a term of 15 years if my total Final Fixed Rate Advance balance is less than \$20,000, or 30 years if my Final Fixed Rate Advance balance is \$20,000 or more.

The Final Fixed Rate Advance Minimum Monthly Payment will be the greater of \$100 or an amount sufficient to repay the Final Fixed Rate Advance balance by the end of the scheduled term in substantially equal, fully amortizing monthly payments of principal and periodic FINANCE CHARGE at the applicable corresponding ANNUAL PERCENTAGE RATE. If my payments are not consistently made when due, the Final Fixed Rate Advance Minimum Monthly Payment may not fully repay the Final Fixed Rate Advance over its term and my final payment for the Final Fixed Rate Advance may be higher. The Bank will notify me in advance of any changes to my Total Payment Due as a result of the Final Fixed Rate Advance Minimum Monthly Payment.

PERIODIC FINANCE CHARGE ON FINAL FIXED RATE ADVANCE BALANCE

Periodic FINANCE CHARGES on my Final Fixed Rate Advance balance will begin to accrue on the first day of the Repayment Period. I will be charged a periodic FINANCE CHARGE based on the unpaid Final Fixed Rate Advance balance at the end of each day at a fixed Daily Periodic Rate.

The Daily Periodic Rate for the Final Fixed Rate Advance is equal to 1/365 (1/366 during leap years) of an Index plus a Margin. The Index is the highest Prime Rate as published in the Western Edition of *The Wall Street Journal* "Money Rates" table. The Bank will use the Index value published on the last business day during the Draw Period. The Margin for the Final Fixed Rate Advance is eight percentage points (8.000%), but the Margin may be lower than eight percentage points (8.000%) depending upon the amount and term of the Final Fixed Rate Advance and other pricing indicators that exist at the end of the Draw Period. The corresponding ANNUAL PERCENTAGE RATE on my Final Fixed Rate Advance will never be more than the Lifetime Rate Cap for my Final Fixed Rate Advance shown below. The ANNUAL PERCENTAGE RATE does not include costs other than interest.

The Margin for the Final Fixed Rate Advance will increase by one quarter of one percentage point (0.25%) if the Automatic Payment feature is terminated, as described in Section 6, below, during the Repayment Period. Therefore, the Daily Periodic Rate for the Final Fixed Rate Advance may also increase at least once during the Repayment Period based on an increase in the Margin when the Automatic Payment feature is terminated. Any such increase will result in an increase in the then outstanding Final Fixed Rate Advance Minimum Monthly Payment, which will be reset at the greater of \$100 or the amount sufficient to repay the remaining balance of the Final Fixed Rate Advance within its applicable term in substantially equal, fully amortizing monthly payments at its applicable corresponding ANNUAL PERCENTAGE RATE.

LIFETIME RATE CAP FOR MY FINAL FIXED RATE ADVANCE

The Daily Periodic Rate for my Final Fixed Rate Advance will not exceed 0.049180% (corresponding ANNUAL PERCENTAGE RATE of 18.00%). This is the Lifetime Rate Cap for my Final Fixed Rate Advance.

MY TOTAL PAYMENT DUE DURING THE REPAYMENT PERIOD

I must pay at least the amount of the Total Payment Due by the Date Due, as shown on each monthly billing statement.

The "Total Payment Due" during the Repayment Period is the total of my Fixed Rate Advance Minimum Monthly Payment(s) still due as the result of Fixed Rate Advances in effect on the day before the end of the Draw Period, plus the Final Fixed Rate Advance Minimum Monthly Payment as described above, together with all past due amounts and overlimit amounts and all other charges due. I must pay any remaining balance in full at the end of the Repayment Period.



SECTION 6: AUTOMATIC PAYMENT DISCOUNT

I have chosen to make Automatic Payments as specified in the Authorization for Automatic Transfer. I have received an interest rate discount for making this choice. I understand that the ANNUAL PERCENTAGE RATE and the Margin that apply to my Line of Credit Advances, as described in Section 4 above, reflect a discount you gave me for this Authorization for Automatic Transfer. If the Automatic Payments are terminated for any reason at any time during the Draw Period by anyone, the Margin that applies to my Line of Credit Advances, as set forth in Section 4 above, will increase by one quarter of one percentage point (0.25%) effective the day the Automatic Payments are terminated. If the Margin increases, the Daily Periodic Rate and corresponding ANNUAL PERCENTAGE RATE applicable to my Line of Credit Advances, and my Line of Credit Advances Minimum Monthly Payment, may also increase. My monthly billing statement will show me my new Daily Periodic Rate, corresponding ANNUAL PERCENTAGE RATE and Line of Credit Advances Minimum Monthly Payment as applicable.

SECTION 7: OTHER FINANCE CHARGES

In addition to paying periodic FINANCE CHARGES, as described in Sections 4 and 5 above, I also agree to pay the following additional fees, each of which is a FINANCE CHARGE:

ANNUAL FEE

Beginning on the first Anniversary of the Effective Date, and continuing at each anniversary thereafter during the Draw Period, whether or not I use the Account, I will pay a \$75.00 non-refundable annual fee. I will not have to pay an annual fee if my Account is open (has not been closed or suspended under Section 17 or 18 below) and the average daily balance in my Account is \$20,000 or greater for the 12 monthly billing cycles up to and including my anniversary month. For the purpose of making this determination, the Bank will add the average daily balances for Line of Credit Advances and Fixed Rate Advances from the previous 12 monthly billing cycles and divide the total by 12.

SECTION 8: ADDITIONAL OTHER FINANCE CHARGES AND CLOSING COSTS

I agree to pay upon the opening of my Account the other FINANCE CHARGES and other charges that are enumerated and disclosed on the attached final HUD Settlement Statement which is integrated by reference into this Agreement.

SECTION 9: ADDITIONAL FEES, COSTS AND CHARGES

In addition to the FINANCE CHARGES and closing costs described above, I agree to pay the following non-refundable fees, costs and charges, which will be owed once charged to my Account.

LATE CHARGES

During the Draw Period, I will pay a late charge equal to the greater of five dollars (\$5.00) or five percent (5%) of the Line of Credit Minimum Monthly Payment if my payment is more than 10 days past due.

During the Repayment Period, I will pay a late charge equal to the greater of five dollars (\$5.00) or five percent (5%) of the sum of all Fixed Rate Advance Minimum Monthly Payments if my payment is more than 10 days past due.

PREPAYMENT FEE

I agree to pay a prepayment fee of \$500.00. This fee will be due and payable in full at any time within the first 3 years after the Effective Date if I close my Account (for any reason other than default due to non-payment, casualty loss, refinance with you or your affiliate, or termination by the Bank). If my Account remains open (is not closed or suspended under Section 17 or 18 below) for more than 3 years after the Effective Date, no prepayment fee will be assessed. No tender of a prepayment of all amounts due under this Agreement shall be effective unless and until such prepayment is accompanied by the applicable prepayment fee.



OTHER CHARGES

To the extent allowed by law, I agree to pay the following fees if I request or authorize these additional services:

- (a) **Fax Fee:** The Bank will charge a fax fee in the amount of \$10 if I request or authorize others to request any document or letter to be transmitted by facsimile (fax) machine.
- (b) **Research Fee and Photocopy Fee:** The Bank will charge a research/photocopy fee in the amount of \$5 per photocopy if I request or authorize others to request that the Bank research my Account or provide photocopies of Account documents for any purpose other than a billing error inquiry.
- (c) **Reconveyance or Satisfaction Fee:** The Bank will charge reconveyance and satisfaction fees as allowed by applicable law.
- (d) **Stop Payment Fee:** The Bank will charge a stop payment fee in the amount of \$25 if I request or authorize others to request that the Bank stop payment on a draft I have used to request a Line of Credit Advance.
- (e) **Return Payment Fee:** The Bank will charge a return payment fee in the amount of FORTY AND 00/100THS dollars (\$40.00) if I make a payment with a check, or by any other method, which is not honored for any reason. If a payment check or any other payment item is dishonored, the Bank will notify me though information included in my billing statement covering the period in which the returned check or other payment item is reversed against my Account.
- (f) **Overlimit Fee:** The Bank will charge an overlimit fee in the amount of \$25 for each billing cycle in which I have exceeded my credit limit or have requested an Advance that would have caused me to exceed my credit limit.
- (g) **Return Advance Check Fee (insufficient funds):** The Bank will charge a return advance check fee in the amount of \$25 for each check or draft used to request a Line of Credit Advance that is returned unpaid (dishonored) by the Bank due to the requested Advance not meeting all requirements of this Agreement.

SECTION 10: COLLECTION COSTS AND ATTORNEY'S FEES

If I am in default, I will pay the Bank's collection costs, attorney's fees and other expenses of enforcing the Bank's rights under this Agreement and the Security Instrument, unless prohibited by applicable law.

SECTION 11: METHOD OF PAYMENT

The Bank will provide me with a monthly billing statement and automatically charge my qualified deposit account (under the terms of a separate written Authorization for Automatic Transfer) for the Total Payment Due. If I owe other charges (other than credit insurance premiums and annual fees), I must pay them separately. If I owe past due amounts on my Account, the Bank will not collect these amounts by using an Automatic Payment, and I must pay them separately.

SECTION 12: SCHEDULED PAYMENT DUE DATE

My monthly payment due date for my Total Payment Due is the 15TH day of each and every month during both the Draw and Repayment Periods.

SECTION 13: MY PROMISE TO PAY

I promise to pay to the order of the Bank the total of all Advances which I receive or which I authorize to be made from my Account. I promise to pay the total of any FINANCE CHARGE, plus all amounts past due, overlimit amounts, and any late charges, fees, other charges and other obligations charged to my Account under this Agreement or the Security Instrument. All payments made under this Agreement will be made in U.S. Dollars. I will not mail any cash payments to the Bank. The Bank may refuse to credit to my Account any payment made with any Advance under this Agreement.

The Bank may, at its discretion, withhold a portion of the available credit on my Account up to the amount of any payment in order to assure that my check or other payment is honored.

I will make payments at the Bank's address for receiving a payment, as indicated on my payment coupon and



billing statement, unless another payment method is authorized by the Bank. Each non-electronic payment I make will be accompanied by the remittance portion of my billing statement.

I understand that payments I make by mail to the address indicated on my billing statement or payment coupon will be credited to my Account as of the date received (including Saturdays, Sundays, and holidays) if the Bank receives the payment prior to 5 p.m. local time for the payment address.

Payments I make from a qualified account ("Automatic Payments") pursuant to an Authorization for Automatic Transfer will be credited to my Account on the date received (including Saturdays, Sundays, and holidays).

Payments I make at a Bank branch and received prior to established cut-off times will be credited to my Account on the business day the payment is received by the Bank. For purposes of this rule, a business day includes any day other than Saturdays, Sundays, and Bank observed holidays. Payments made at a Bank branch received on a Saturday, Sunday, or Bank observed holiday or after established cut-off times will be credited as of the next business day.

Payments I make online, by ATM, by telephone, or by any other means the Bank may make available to me and received prior to established cut-off times will be credited to my Account on the business day the payment is received by the Bank. For purposes of this rule, a business day includes any day other than Saturdays, Sundays, and federal holidays. Payments made online, by ATM, by telephone, or by any other means the Bank may make available to me received on a Saturday, Sunday, or federal holiday or after established cut-off times will be credited as of the next business day.

I will not make payment or authorize others to make payment for me by means of a single aggregated payment, which includes payments for this Account and any other account(s), unless the payment is made in compliance with the Bank's requirements for multiple account payments.

The Bank may accept late payments, partial payments, post-dated checks, or any form of payment containing a restrictive endorsement, without losing any of the Bank's rights under this Agreement. The Bank's acceptance of checks or money orders labeled "payment in full," or words to that effect, will not constitute an accord and satisfaction nor a waiver of any rights the Bank has to receive full payment. If I intend to condition a payment, pay the Account in full with less than the total amount owed, or give payment instructions, I will clearly set out such intention, conditions and instructions in a separate letter accompanying my payment, and mail both to Wells Fargo Bank, N.A., P.O. Box 2993, Portland, OR 97208.

SECTION 14: TAX DEDUCTIBILITY

I understand that I should consult a tax advisor regarding the deductibility of interest and charges under my Account.

SECTION 15: REEVALUATION OF CREDIT QUALIFICATIONS AND CREDIT REPORTS

My signature on this Agreement authorizes the Bank to obtain credit information about me, including credit bureau reports, at any time. Such credit bureau reports may be requested or used in connection with (a) renewal or extension of this Agreement, (b) review of my Account, (c) taking any collection action, or (d) any other legitimate purposes associated with my Account. I agree to submit current financial information to the Bank upon the Bank's request. The Bank may reexamine and reevaluate my credit qualifications at any time. The Bank may report its experience with me and my Account to others, to the extent allowed by law.

SECTION 16: PAYOFF BALANCE INFORMATION

The Bank will tell me the balance required on any given day to pay off my Account in full, if I so request. If such request is made on my behalf by an escrow holder, settlement agent or other third party on my behalf during the Draw Period, the Bank may immediately freeze my Account. I agree that the Bank's receipt of such a request from an escrow holder, settlement agent or other third party on my behalf will be considered to be a request by me to suspend credit privileges on my Account. While my Account is frozen, I cannot receive new



Advances and the Bank will return unpaid any Advance request checks the Bank receives and will refuse to honor any other Advance request made on my Account. This payoff freeze will be lifted and my Account reopened if the request for payoff balance information is withdrawn, in which event the Bank may require written confirmation from the escrow holder, settlement agent or other third party on my behalf that the escrow or other settlement has been cancelled.

SECTION 17: DEFAULT

I will be in default if (a) I fail to meet the repayment terms of this Agreement for any outstanding balance, or (b) there is fraud or material misrepresentation by me in connection with this Agreement, or (c) any action or inaction by me adversely affects the Bank's security in the Property, including without limitation, transfer of the Property without the Bank's consent, failure to maintain required insurance or pay required taxes, revocation or termination of any revocable trust that is an owner of the Property, or the death of any person who has signed this Agreement, or (d) I am an executive officer of the Bank and federal law governing credit extended by a bank to its executive officer, including without limitation Section 215.5(d)(4) of Federal Reserve Regulation O (12 CFR § 215.5(d)(4)), permits or requires immediate payment of my entire Account balance.

If I am in default, the Bank, subject to applicable law, may do any or all of the following: (a) close my Account immediately, without notice; (b) return unpaid any outstanding Advance request checks drawn on my Account and refuse to honor any other Advance request made on my Account; and (c) require immediate payment of the entire balance of my Account, and, if I fail to pay, exercise the Bank's rights under the Security Instrument, which may result in the loss of the Property. If I am in default, the method of determining the Daily Periodic Rate and corresponding ANNUAL PERCENTAGE RATE will remain as described in this Agreement.

The Bank and I agree that notwithstanding any other provision of this Agreement or the Security Instrument, the Bank will have the right to terminate or suspend my Account to the extent permitted by applicable law.

SECTION 18: CLOSURE OR SUSPENSION OF ACCOUNT, REDUCTION OF CREDIT LIMIT; REINSTATEMENT OF CREDIT

CLOSURE OR SUSPENSION OF ACCOUNT, REDUCTION OF CREDIT LIMIT BY BORROWER

Any one Borrower can close the Account by paying in full and sending a signed letter to the Bank at the address indicated on my monthly billing statement requesting that the Account be closed. Any one Borrower may terminate the Advance feature, at any time during the Draw Period, by sending a signed letter to the Bank at the address indicated on my monthly billing statement requesting the termination of the Advance feature. To reactivate the Advance feature on the Account during the Draw Period, the Bank will require all Borrowers to sign a written request and mail it to the address indicated on my monthly billing statement.

CLOSURE OR SUSPENSION OF ACCOUNT, REDUCTION OF CREDIT LIMIT BY BANK

I will receive a written notice if the Bank suspends or freezes my Account or reduces my credit limit as required under applicable law. The notice will include the reason(s) for such action(s). Thereafter, if I wish to reinstate my Account or increase my credit limit, I agree to send a written request to the Bank at the address specified on my monthly billing statement, signed by all of the Borrowers, along with satisfactory evidence to the Bank that the reason(s) for suspension or reduction of my Account no longer exist(s). I also agree to provide the Bank promptly with any additional information necessary to support my request.

The Bank may suspend the use of my Account and temporarily prohibit future Advances during the Draw Period, or the Bank may reduce my credit limit, for any reason permitted by applicable law, including without limitation, (a) if the annualized Daily Periodic Rate equals or exceeds the Lifetime Rate Cap stated herein, (b) there is any material change in my financial circumstances that the Bank reasonably believes will make me unable to fulfill my repayment obligations under this Agreement, (c) the value of the Property declines significantly below its original appraised value, as determined by the Bank, (d) my failure to comply with any material obligation under this Agreement or the Security Instrument, (e) a regulatory authority has notified the Bank that continued Advances would constitute an unsafe and unsound business practice, (f) I am in default under Section 17 above, or (g) government action prevents the Bank from imposing the ANNUAL PERCENTAGE RATE provided for in this Agreement or impairs the Bank's security interest in the Property,



such that the value of the security interest is less than 120 percent of the credit limit.

In the event of a suspension of my Account, the Bank is authorized to obtain such information as may be required by the Bank, including without limitation, credit reports and appraisals of the Property, to evaluate any request by me to reinstate the Account. To the extent permitted by applicable law, I agree to pay to the Bank the cost of obtaining such additional information.

If my Account is closed or suspended for any reason, the Bank may return unpaid any outstanding Advance request checks drawn on my Account and refuse to honor any other Advance request made on my Account. I will continue to be responsible for full payment of the balance of my Account as well as all other Account obligations, according to the terms of this Agreement.

SECTION 19: FURTHER ASSURANCES

I agree that I will take any steps, including but not limited to, signing, filing or recording any documents, which are necessary or which the Bank deems appropriate, to be sure that my obligations to the Bank under this Agreement are accurate, valid and enforceable, and become and continue to be secured by the Security Instrument.

SECTION 20: CHANGE IN RESIDENCE OR OWNERSHIP OF THE PROPERTY

I agree to notify the Bank immediately if (a) the Property is my primary residence and I cease to live in the Property as my primary residence, or (b) there is any change in the ownership of the Property. I agree that my Account shall be closed and that the entire outstanding balance of my Account shall be due and payable immediately on any sale or other transfer of the Property, unless prohibited by applicable law. In this regard, I understand that my Account is secured by a Security Instrument containing the following or a substantially similar provision:

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

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 13 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.

SECTION 21: CHANGE IN TERMS

To the extent allowed by law, I agree that the Bank may make certain changes to the terms of this Agreement at specified times or upon the occurrence of specified events. The Bank may make insignificant changes, such as changes in the address for payments, billing cycle dates, payment due dates, day of the month on which Index values are determined, Index or interest rate rounding rules, and balance computation method (if the change produces an insignificant difference in the interest or FINANCE CHARGE I am required to pay). The Bank may also make changes that will benefit me, such as additional options or a temporary reduction in rates or fees. In accordance with federal law, the Bank may also change the Index and Margin used to determine the ANNUAL PERCENTAGE RATE(S) that apply to my Line of Credit Advances and/or Fixed Rate Advances if the original Index is no longer available. The Bank may make any of the changes discussed above without my consent, unless applicable law provides otherwise. The Bank will give me any notice of change that is required by law. I may also agree to changes in writing.

SECTION 22: WAIVERS

BORROWER'S WAIVERS



I waive my rights to require the Bank 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 Agreement, or who agrees to make payments to the Bank if I fail to keep my promises under this Agreement, or who signs this Agreement to transfer it to someone else, waives these rights. These persons are known as "guarantors, sureties and endorsers."

BANK'S NON-WAIVER

The Bank may fail to make use of any of its rights under this Agreement or the Security Instrument or under applicable law on one or more occasions, or delay or partially exercise such rights, without waiving any of its rights or amending any of my obligations. The Bank may fail to make use of any of its rights or delay or partially exercise such rights against one party, without waiving any of its rights against any other party to this Agreement.

SECTION 23: GOVERNING LAW; SEVERABILITY

All interest, fees and other amounts charged or accruing in connection with this Agreement which are considered "interest" within the meaning of Section 85 of the National Bank Act (12 USC § 85; 12 CFR 7.4001(a)), shall be governed by and interpreted under South Dakota law. In all other respects, this Agreement and all related documents, as well as the rights, remedies, and duties of the Bank and the Borrower(s), shall be governed and interpreted by federal law with respect to national banks and, to the extent not preempted by federal law, the laws of the state in which the Property is located.

If any provision of this Agreement or the Security Instrument is determined to be invalid or unenforceable by a court of competent jurisdiction, the rest of this Agreement will remain in full force and effect and enforceable according to its terms. All references in this Agreement to the singular shall include the plural and vice versa.

SECTION 24: LOST OR STOLEN ADVANCE REQUEST CHECKS; BILLING ERRORS

LOST OR STOLEN ADVANCE REQUEST CHECKS (WHERE AVAILABLE); BILLING ERRORS

I will immediately contact the Bank at the phone number on my monthly billing statement and confirm by letter if any of my Advance request checks are ever lost or stolen, if there are any errors in my monthly billing statement, or if I suspect any unauthorized use of my Account.

The Bank will not return to me my cancelled Advance request checks or other Advance request instruments after paying them. The Bank will make available photocopies of my Advance request checks and other Advance request instruments upon request. I will examine my Account statements promptly in order to identify any improper or unauthorized entries. In consideration for the Bank's payment of each Advance request check, I agree that even though I will not receive the original Advance request checks, all time periods under the Uniform Commercial Code (UCC) for examining my monthly billing statement and reporting improper entries, including the UCC's statutes of limitation with respect to forged, unauthorized, or missing signatures or endorsements, will begin from the time my Account statement is first sent or made available to me.

UNAUTHORIZED TRANSACTIONS

I will notify the Bank if someone has transferred, or may transfer money from my Account without my permission, or if I suspect any fraudulent activity on my Account. I can call the Wells Fargo Phone Bank at the telephone number on my monthly billing statement, anytime, 24 hours a day, 7 days a week, or advise my local Bank branch office. I may also send written notice to the Bank at the address indicated on my billing statement.

Billing Rights - Keep This Notice For Future Use

This notice contains important information about my rights and the Bank's responsibilities under the Fair Credit Billing Act.

Notify The Bank In Case Of Errors Or Questions About My Bill

If I think my billing statement is wrong, or if I need more information about a transaction on my billing statement, I will send a letter on a separate page to the Bank, as soon as possible, at the address listed on my



billing statement. The Bank must hear from me no later than 60 days after the Bank sent me the first billing statement on which the suspected error or problem appears. I can telephone the Bank, but doing so will not preserve my rights.

In my letter, I will provide the Bank with the following information:

- My name, Account number and daytime phone number, and
- The dollar amount of the suspected error, and
- A description of the error and explanation, if possible, as to why I believe there is an error. If I need more information, I will describe the item I am not sure about.

If I have authorized the Bank to pay my minimum monthly payment automatically from my checking account at the Bank, I can stop the payment of any scheduled automatic payment if I believe a billing error has occurred. To stop the payment, my letter must reach the Bank at least three business days before the automatic payment is scheduled to occur.

My Rights And The Bank's Responsibilities After Receipt Of My Written Notice

The Bank must acknowledge my letter within 30 days, unless the Bank has corrected the error by then. Within 90 days, the Bank must either correct the error or explain why the Bank believes the billing statement was correct.

After the Bank receives my letter, the Bank cannot try to collect any amount I question, or report me as delinquent. The Bank can continue to bill me for the amount I question, including finance charges, and the Bank can apply any unpaid amount against my credit limit. I do not have to pay any questioned amount while the Bank is researching my Account, but I am still obligated to pay the parts of my bill that are not in question.

If the Bank finds that a mistake was made on my billing statement, I will not have to pay any finance charges related to the questioned amount. If the Bank didn't make a mistake, I will have to pay finance charges, and I will have to make up any missed payments on the questioned amount. In either case, the Bank will send me a statement of the amount I owe and the date that payment is due.

If I fail to pay the amount that the Bank determines I owe, the Bank may report me as delinquent. However, if the Bank's explanation does not satisfy me and I write to the Bank within ten days telling the Bank that I still refuse to pay, the Bank must tell anyone the Bank reports me to that I have a question about my bill. And, the Bank must tell me the name of anyone the Bank reports me to. When the matter has been settled between the Bank and me, the Bank must tell anyone the Bank reports me to that the matter has been settled.

If the Bank does not follow the above rules, the Bank cannot collect the first \$50 of the questioned amount, even if my billing statement was correct.

SECTION 25: NOTICES

Unless applicable law requires a different method, any notice that must be given to me or to anyone else who signs, guarantees or endorses this Agreement may be given by mailing it to my address as set forth above in this Agreement, or to a different address if I have properly notified Lender of that different address. I understand that I am responsible for promptly notifying Lender of a change in my name, address (including the email address(es) I use for online banking with Lender and any other email address(es) at which I agree to be contacted) or telephone number(s) (including any wireless telephone number(s) at which I agree to be contacted). Any notice that I may send to Lender must be given by mailing it to Lender at the address provided on my billing statement, unless the type of notice is more specifically addressed in this Agreement and a different address is provided herein.

From time to time, Lender may monitor and record telephone calls regarding my account to assure the quality of its service. I agree, in order for Lender to service the account or to collect any amounts I may owe, that Lender or its designated representatives may from time to time make calls and/or send e-mails and/or text messages to me, sometimes using prerecorded/artificial voice messages and/or through the use of an automatic dialing device, at



any telephone number associated with my account, including wireless telephone numbers that could result in charges to me, or at any e-mail address I provide to Lender.

SECTION 26: ADDENDA

I agree to the following attached addenda, modifications or amendments:

N/A

SECTION 27: STATE DISCLOSURES

N/A

THIS AGREEMENT, THE SECURITY INSTRUMENT AND THE CLOSING DOCUMENTS EXECUTED HERewith CONSTITUTE A WRITTEN LOAN AGREEMENT WHICH REPRESENTS THE FINAL AGREEMENT OF THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES RELATING TO THIS AGREEMENT.

NOTICE TO THE BORROWER

DO NOT SIGN THIS AGREEMENT IF IT CONTAINS BLANK SPACES. ALL SPACES SHOULD BE COMPLETED BEFORE THIS AGREEMENT IS SIGNED. READ THIS AGREEMENT BEFORE SIGNING IT.

ACKNOWLEDGMENT

I have received, read and retained a copy of this *Wells Fargo Home Equity Account* Agreement and Disclosure Statement (the "Agreement"), the Security Instrument, the Agreement to Provide Insurance, and the HUD Settlement Statement provided to me at the closing, all of which I agree to by signing this Agreement. The HUD Settlement Statement is incorporated into and made a part of this Agreement. I acknowledge receipt of the *Wells Fargo Home Equity Account* Important Terms disclosure and the home equity brochure when I applied for this Account. In addition, I hereby agree that the terms of this Agreement replace the terms of any prior oral or written agreements between the Bank and me about this Account, including, for example, any and all commitment letters and pre-approval letters between the Bank and me about this Account.

_____	(Seal)	_____
BORROWER		DATE SIGNED
MARIKA HAMILTON		

_____	(Seal)	_____
BORROWER		DATE SIGNED

_____	(Seal)	_____
BORROWER		DATE SIGNED

_____	(Seal)	_____
BORROWER		DATE SIGNED



BORROWER (Seal) DATE SIGNED

BORROWER (Seal) DATE SIGNED

BORROWER (Seal) DATE SIGNED

BORROWER (Seal) DATE SIGNED

