

05-961-CD

Country National Bank vs. John R. Spingola et al

2005-961-CD

CNB v. John Spingola et al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

COUNTY NATIONAL BANK,  
Plaintiff

vs.

JOHN R. SPINGOLA  
MERVINE M. SPINGOLA and  
THE INTERNAL REVENUE SERVICE  
OF THE UNITED STATES OF  
AMERICA,  
Defendants

No. 2005- *961* -CD

Type of Case:  
**FORECLOSURE**

Type of Pleading:  
**COMPLAINT**

Filed on Behalf of:  
**PLAINTIFF**

Attorney for this party:  
**Mark A. Falvo, Esquire**  
Supreme Court ID #58135  
7 Bigler Road  
Clearfield, PA 16830  
(814) 765-1400

**FILED** 3 cc Shff  
d/10: 35/2 cc Aug Falvo  
JUL 05 2005  
Piff pd. 85.00  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

COUNTY NATIONAL BANK,  
Plaintiff

vs.

JOHN R. SPINGOLA,  
MERVINE M. SPINGOLA and  
THE INTERNAL REVENUE SERVICE  
OF THE UNITED STATES OF  
AMERICA,  
Defendants

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

No. 2005- -CD

**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF  
YOU DO NOT HAVE OR CANNOT AFFORD A LAWYER, GO TO OR  
TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE  
YOU CAN GET LEGAL HELP.**

Clearfield County Court Administrator  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830  
(814) 765-2641, ext. 5982

## ***AMERICANS WITH DISABILITIES ACT OF 1990***

The Court of Common Pleas of Clearfield County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

Clearfield County Court Administrator  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830  
(814) 765-2641, ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

COUNTY NATIONAL BANK,  
Plaintiff

vs.

JOHN R. SPINGOLA,  
MERVINE M. SPINGOLA and  
THE INTERNAL REVENUE SERVICE  
OF THE UNITED STATES OF  
AMERICA,  
Defendants

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

No. 2005- -CD

**COMPLAINT TO FORECLOSE MORTGAGE**

COMES NOW, COUNTY NATIONAL BANK, by its attorney, Mark A. Falvo, who pursuant to Pa.R.C.P. 1147 pleads:

1. The name of the Plaintiff is **COUNTY NATIONAL BANK**, a national banking institution, with its principal office at One South Second Street, Clearfield, Pennsylvania, 16830.

2. The names of the first and second Defendants are **JOHN R. SPINGOLA** and **MERVINE M. SPINGOLA**, whose last known address is P. O. Box 1288, 205 North Second Street, Clearfield, Clearfield County, Pennsylvania, 16830.

3. The name of the second Defendant is **THE INTERNAL REVENUE SERVICE OF THE UNITED STATES OF AMERICA** with regional office at U. S. Post Office and Courthouse, C/O U. S. Attorney for the Western District of PA, 700 Grant Street, Suite 400, Pittsburgh, PA 15219.

4. The Internal Revenue is service is added as a Defendant because the first two Defendants and this real estate are subject to federal tax liens.

5. The parcel of real estate subject to this action consists of a building and lot located at 226 N. Third Street, Clearfield, PA, 16830 known as the St. Charles Café and is identified by Clearfield County Tax Map Number 4.1-K08-215-00039. This parcel is more particularly described as follows:

**ALL those certain four parcels or pieces of real estate situate in the First Ward of Clearfield Borough, Clearfield County, Pennsylvania, together with all buildings, fixtures and other improvements thereon, bounded and described as follows:**

**PARCEL ONE**

**BEGINNING at the Southwest corner of Third and Reed Streets at a point being the Northeast corner of lot hereby conveyed; thence along Reed Street West fifty (50) feet to a point; thence by Fred Guarino lot South one hundred (100) feet to an iron pin; thence by residue of Orcutt lot by a line three (3) feet South of frame building (50) feet to an iron pin on Third Street; thence by Third Street one hundred (100) feet to a point and place of beginning, as surveyed by Roy C. Kindig, Engineer, on October 26, 1940.**

**BEING known as the St. Charles Café.**

**BEING the same premises conveyed to John R. and Mervine M. Spingola by deed recorded in Clearfield County Deed Book 732, Page 267.**

**PARCEL TWO**

**BEGINNING at a point on the Western side of North Third Street in the Borough of Clearfield being the common corner of the premises presently owned by the Grantors and Grantees; thence West along line of land of the Grantees fifty (50) feet to a point on the lands of Fred Guarino; thence South eight (8) feet eight (8) inches to a point; thence East in a line parallel to the first call contained in this deed fifty (50) feet to the Western side of North Third Street; thence along Western side of North Third Street eight (8) feet eight (8) inches to place of beginning.**

**BEING a portion of the St. Chales Café property.**

**BEING the same premises conveyed to John R. and Mervin M. Spingola by deed in Clearfield County Deed Book 584, Page 507.**

### **PARCEL THREE**

**BEGINNING** at a post on Reed Street at the corner of the line of lot of John Marino; thence east along Reed Street twenty two (22) feet to a post on the line of lot formerly of Fred

G. Guarino, now of Gordon and Anna Kritzer, thence south at right angles with Reed Street and along the Kritzer line one hundred sixteen (116) feet to a post on a private alley running from Third Street westerly to the property of John Marino; thence along the line of said private alley and parallel with Reed Street in a westerly direction a distance of twenty-two (22) feet to the line of the lot of John Marino; thence north along the line of the same one hundred sixteen (116) feet to a post at Reed Street and the place of beginning. Being twenty-two (22) feet front on Reed Street and extending southerly one hundred sixteen (116) feet to a private alley.

**BEING** known as 221 Reed Street.

**BEING** the same premises conveyed to John R. and Mervine M. Spingola by deed in Clearfield County Deed Book 776, Page 521.

### **PARCEL FOUR**

**BEGINNING** at a point on the South side of Reed Street where Lots. No. 233 and 234 corner on said street; thence West along the line of Reed Street twenty-eight (28) feet to a lot formerly sold to Clara A. Faust; thence South along the line of Clara A. Faust one hundred sixteen (116) feet, more or less, to a private alley seven (7) feet wide; thence along the northern line of said private alley twenty-eight (28) feet to the line of Lot No. 233; thence North along the line of said lot one hundred sixteen feet, more or less, to Reed Street and place of beginning.

**BEING** a lot known as 223 Reed Street.

**BEING** the same premises conveyed to John R. and Mervine M. Spingola by deed recorded in Clearfield County Record Volume 1246, Page 530.

6. The Defendants, John R. Spingola and Mervine M. Spingola, mortgaged the property described above to County National Bank, Plaintiff, by instrument dated March 13, 1998, for principal debt of \$133,300.00, together with interest. Said mortgage was recorded in Clearfield County Record Volume 1915, Page 129. A true and correct copy of said mortgage is attached hereto and incorporated herein by reference as Exhibit A.

7. Defendants also executed Note and Security Agreement in favor of County National Bank together with the foregoing mortgage evidencing their personal obligation to pay the \$133,300.00 borrowed from Plaintiff, together with interest and other charges as specified therein. A true and correct copy of said note is attached hereto and incorporated herein by reference as Exhibit B.

8. Defendants also executed an Amendment to the commercial note dated December 3, 2001 regarding the interest rate and monthly payment. A true and correct copy of said amendment is attached hereto and incorporated herein by reference as Exhibit C.

9. Plaintiff has not assigned this mortgage or note.

10. No judgment has been entered in any jurisdiction upon this mortgage or underlying obligation to pay the note.

11. Defendants are entitled to no credits or set-offs.

12. On or about April 13, 2005, the Defendants failed to make the full monthly payment of \$1,419.40, and at no time since then have all monthly payments been made which constitutes a default.

13. After crediting all amounts paid by the Defendants to Plaintiff in reduction of this mortgage, there is a total past due of \$6,242.94 as of June 9, 2005.

14. Written and oral demand have been made upon the Defendants to make said payments to Plaintiff and correct their default, but either has failed to do so.

15. The Mortgage and note entitle County National Bank to collect its attorney fees and court costs as part of its damages.

16. The exact amounts due under said mortgage and because of Defendants' default, after acceleration of the balance due pursuant to its terms as of June 9, 2005, are as follows:



a)	Balance	\$55,908.62
b)	Late Charge	\$ 1,483.74
c)	Interest Due to 6/9/05	\$ 109.52
d)	Interest accruing after 6/9/05 at \$8.4245866 per day (to be added)	\$ _____
e)	Costs of suit (to be added)	\$ _____
f)	Attorney's fees	\$ _____
g)	Satisfaction Fee	\$ <u>30.50</u>

PRELIMINARY TOTAL \$57,532.38

FINAL TOTAL \$

17. The property securing the mortgage is a commercial property. Therefore, the Defendants are not entitled to the notices required by Act No. 6 of 1974, 41 Pa.C.S.A. Sections 101 et seq., and the Homeowner's Emergency Mortgage Assistance Act, 1959, Dec. 3, P.L. 1688, No. 621, art. IV-C, Section 402-C, added 1983, Dec. 23, P.L. 385, No. 91, Section 2, 35 P.S. Section 1680.401c et seq.

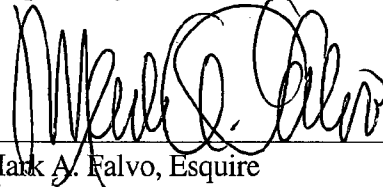
18. On May 3, 2005, Plaintiff sent to Defendants by Certified Mail and U.S. First Class Mail, Postage Prepaid an acceleration letter at their last known address advising them of their default. A true and correct copy of said letter is attached hereto and incorporated herein by reference as Exhibit D.

19. A copy of the certified mail receipts postmarked by the U.S. Postal Service are attached hereto and incorporated herein by reference as Exhibit E.

20. More than thirty (30) days have elapsed since the mailing of said notice. Neither Plaintiff nor Plaintiff's counsel have received notice that the Defendants have asserted their rights under said notices.

WHEREFORE, Plaintiff demands judgment in its favor as specified in Paragraph 16 above, authority to foreclose its mortgage against the real estate, and such other relief as the court deems just.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark A. Falvo', written over a horizontal line.

Dated: June 29, 2005

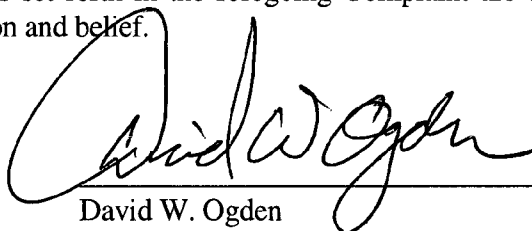
Mark A. Falvo, Esquire  
Attorney for Plaintiff  
7 Bigler Road  
Clearfield, PA 16830  
(814) 765-1400

Spingola


AFFIDAVIT

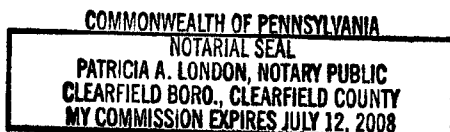
STATE OF PENNSYLVANIA :  
: SS  
COUNTY OF CLEARFIELD :

DAVID W. OGDEN, being duly sworn according to law, deposes and says that he is an Assistant Vice President for COUNTY NATIONAL BANK, and, as such, is duly authorized to make this Affidavit, and further, that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

  
David W. Ogden  
Assistant Vice President

SWORN TO AND SUBSCRIBED  
before me this 23<sup>rd</sup> day of  
June, 2005.

  
Notary Public



THIS MORTGAGE, dated March 13

, 1998

is between the mortgagor(s),

John R. Spingola and Mervine M. Spingola, husband and wife,

of

P. O. Box 1288, Clearfield PA 16830

a

(corporation/partnership/proprietorship/individual)

organized and existing under the laws of the State of

(and whether one or more persons, jointly and severally obligated and called "Owner"), and the mortgagee,

COUNTY NATIONAL BANK, P.O. Box 42, Clearfield, Pennsylvania 16830-0042

(called "Lender").

As used in this Mortgage,

shall be called "Debtor." If no person is named as Debtor, however, any reference to "Debtor" in this Mortgage shall refer only to Owner.

**A. THE PROPERTY:** FOR VALUE RECEIVED AND INTENDING TO BE LEGALLY BOUND HEREBY, as security for the prompt payment and performance of all Obligations (as defined below in Paragraph B), Owner grants, bargains, sells, conveys and mortgages to Lender, its successors and assigns, all of Owner's right, title and interest in the real property described in Schedule "A" (called the "Property"), which is attached to and made a part of this Mortgage, together with all present and future buildings, improvements, additions and fixtures, and all alleys, passageways, easements, rights (including mineral and water rights), liberties, privileges, hereditaments and appurtenances, and all reversions, remainders, rents, royalties, issues and profits, now or later accruing or pertaining to the Property. The Property is commonly known as Reed and Third Streets, Clearfield PA

with Uniform Parcel Identifier (i.e., Tax Parcel Number): 4-1-K8-215-39

**B. OBLIGATIONS SECURED BY THIS MORTGAGE.** As used in this Mortgage, "Obligations" means any and all of the following:

- the liabilities and obligations of Debtor and/or Owner to Lender arising out of a ☒ note; ☐ surety agreement; ☐ other (describe) \_\_\_\_\_; dated March 13, 1998,

in the amount of One Hundred Thirty-three Thousand Three Hundred and 00/100 Dollars (\$133,300.00), (called the "Instrument"), plus interest and costs as provided therein, and/or any modifications or extensions and any other instrument or agreement that may be substituted therefor;

- all other existing and future liabilities and obligations of Debtor and/or Owner, or any of them, to Lender, whether arising from this or any other transaction, or of the same or different kinds or classes of indebtedness; and

- full and complete performance by Owner of all warranties and representations, covenants and agreements and other obligations under this Mortgage.

**C. WARRANTIES AND REPRESENTATIONS:** Until the Obligations are paid and performed in full, Owner warrants and represents as follows:

- Purchase Money Mortgage:** ☐ If checked, this is a Purchase Money Mortgage and the proceeds of the Instrument will be utilized by Owner primarily to purchase the Property.

- Payments:** All payments on or secured by the Instrument will be made when and where due, including payments due by acceleration of maturity or on demand. All Obligations will be paid promptly and performed in full in accordance with their terms.

- Title:** Owner has fee simple title to the Property and the right to mortgage the Property. Owner will defend Owner's title against any person claiming any right in the Property prior to or superior to the lien of this Mortgage.

- Hazardous Conditions and Substances:** While Owner has been in possession of the Property, there has been no use, manufacture, storage, treatment, disposal or release of any hazardous substance or waste on, under or about the Property, nor is Owner aware of the existence of any such activities occurring on the Property prior to Owner's possession of the Property, which activities have not previously been disclosed in writing to Lender. Neither Owner nor the Property is the subject of pending or threatened litigation or regulatory proceedings regarding any hazardous substances or waste, or other activities conducted on or about the Property, which have not previously been disclosed in writing to Lender. As used in this Mortgage, "hazardous substance or waste" means any substance which does not occur naturally on the Property and which, if released into the environment, could or would pose a real and substantial threat to the public health, safety and welfare.

**D. COVENANTS AND AGREEMENTS:** Until the Obligations are paid and performed in full, Owner covenants and agrees as follows:

- Insurance:** Owner will maintain insurance on the Property of such kinds, in such amounts, with such companies and with such mortgagee or loss-payable clauses as are satisfactory to Lender. At Lender's request, Owner will promptly provide evidence of such policies, including paid receipts, to Lender. Owner shall not engage in nor permit any lessee of all or any part of the Property to engage in any activity on the Property which, if resulting in loss or damage to the Property, would not be covered by such insurance. Owner shall notify Lender of any loss or damage to the Property, submit to such insurers a proof or proofs of loss, and apply the proceeds of any such insurance to the repair of the Property or to reduce the outstanding balance of the Obligations, at Lender's election. Lender is hereby authorized, without notice to Owner, to file such proof or proofs of loss on behalf of Owner, if Owner fails or refuses to do so, and to sign Owner's name to any check, draft or other instrument in payment of insurance proceeds.

- Taxes:** Owner will pay all taxes, assessments, ground rents and governmental charges when they come due, and all other charges of any kind which are levied on the Property at any time and which, if unpaid, would result in a lien or other security interest in the Property superior to that of Lender's. Owner will deliver to Lender, on request, all receipts evidencing such payments. Neither Debtor nor Owner will claim a credit under the Instrument or this Mortgage for such payments.

- Use, Condition and Repair:** Owner will maintain the Property in good repair, order and condition. Owner will not commit nor permit any strip, waste, nuisance, impairment or deterioration of the Property. Lender's representatives may inspect the Property at any reasonable time or times. Owner will not bring nor permit any lessee of all or part of the Property to bring any hazardous substance or waste onto the Property, for storage, processing, distillation, treatment, manufacturing, disposal, release or any other purpose, unless with Lender's prior specific written approval. Owner will comply with all applicable laws, regulations and ordinances, federal, state and local, relating to the use and possession of the Property.

- Escrow:** At Lender's written request, Lender will be paid, with each payment of Principal or Interest on the Instrument, an additional sum equal to one-twelfth of the aggregate annual amount which will become due for the payment of all taxes to be levied and assessed on the Property, land, water and sewer rents, and any insurance required to be placed on the Property, as reasonably estimated initially and from time to time by Lender. If the sums held by Lender shall not be sufficient to pay such charges as they fall due, any deficiency shall be paid within 15 days from the date notice is mailed by Lender to Owner. All sums so deposited may be commingled with other funds held by Lender, shall NOT be held in trust for Owner, shall NOT bear interest, and are pledged as additional security for the sums secured by this Mortgage.

- Transfers:** Owner will not sell, assign or transfer the Property or any portion thereof, voluntarily or involuntarily, to any other person, nor grant anyone rights in the Property, without Lender's prior written consent. If the Property has been leased in whole or in part, Owner will comply with the provisions of such leases, but Owner will not collect more than one month's rent, exclusive of any security deposit for non-payment of rentals or damage to the Property, in advance.

- Judgments:** Owner assigns all judgments or awards for damage to the Property, or otherwise, in their entirety, to Lender, and Lender may apply the same to the Obligations secured by this Mortgage. Lender is authorized by Owner to institute or defend such actions and to appeal from any such judgments. If all or any part of the Property is subject to condemnation by any public authority, any award granted in such proceedings shall be paid to Lender as its interest shall then appear.

- Assignments:** Owner will not assign the rents, profits or income from the Property without first obtaining the written consent of Lender.

- Suits:** Owner shall not permit any action to enforce any other lien or claim against the Property prior to the lien of this Mortgage to be commenced and not discontinued and withdrawn within 10 days.

- Restrictions:** Owner shall comply with all restrictions or governmental regulations affecting the use, title or possession of the Property, and shall not make use of the Property or engage in any activity as a result of which the Property may be forfeited to any person.

**E. EVENTS OF DEFAULT.** Each of the following shall constitute an "Event of Default" under this Mortgage:

- Debtor and/or Owner fails to make any payment on the Instrument as and when due or on demand;
- Debtor and/or Owner fails to pay or perform any of the Obligations as and when due; or
- Any warranty or representation or covenant or agreement contained in this Mortgage, in the Instrument, or in any document or instrument evidencing any of the Obligations, is breached.

**F. REMEDIES.** On the occurrence of any Event of Default, Lender may do any or all of the following:

- At its sole discretion, cure the Event of Default and add the costs of such cure to the principal sum then due on the Obligations. Lender may charge interest on such payment, from the date of such payment, at a rate equal to the greater of 15% per annum or the rate provided in the Instrument.
- On providing any timely notice of default and of Owner's right to cure the default as may then be provided by law, and failing appropriate and timely cure by Owner, accelerate and declare immediately due and payable all amounts due under the Instrument and under any or all of the Obligations.
- Refer this Mortgage to an attorney for collection and/or to foreclose on the Property, or to take such other action at law or in equity for the enforcement of this Mortgage as the law may allow, for the entire unpaid balance thereof, together with Lender's costs in curing any Event of Default, with interest thereon at the greater of 15% per annum or the rate charged on the Instrument, and all costs of suit and Lender's reasonable attorneys' fees.

4. Enter into possession of the Property, with or without legal action, and collect all rents, issues, profits and insurance proceeds which Owner hereby assigns to Lender as additional security for the Obligations.

5. At its sole discretion, lease and, at any time and from time to time, on 10 days prior written notice to Owner, which notice Owner acknowledges is commercially reasonable, sell or otherwise dispose of the Property, in whole or in part.

6. After deducting all costs of collection, apply the rents, issues, profits and proceeds of sale of the Property to the payment of taxes, water and sewer rents, insurance premiums and all other charges, and then apply the balance to the Obligations, in such order and amounts as Lender, in Lender's sole discretion, may elect.

G. **WAIVERS.** Owner hereby waives and releases all benefit and relief from any and all appraisal, stay and exemption laws of any state now in force or hereafter passed, either for the benefit or relief of Owner, or limiting the balance due to a sum not in excess of the amount actually paid by a purchaser of the Property at a sale thereof in any judicial proceedings on this Mortgage, or exempting the Property or any other real property or any part of the proceeds of sale thereof, from attachment, levy or sale under execution, or providing for any stay of execution or any process.

H. **CONSENT.** Owner hereby consents: to the extension of the time for payment of the Instrument, this Mortgage or any Obligations; to any compromise or settlement with Debtor or any Owner; to any waiver or failure by Lender to enforce any rights against any person or property; or to any other action which might or could release Owner and/or Debtor from liability.

I. **NOTICE.** Any notice required to be given to Lender shall be personally served at Lender's address shown above. Any notice required to be given to Owner may, unless otherwise required by law, be sent by ordinary first class mail addressed to Owner's last known mailing address shown on Lender's books and records. Such notice shall be deemed received as of the next business day after mailing.

J. **RELEASE.** Lender may release any part of the Property without affecting the lien of this Mortgage on the remainder of the Property for the Obligations then remaining unpaid.

**BUT ALWAYS PROVIDED,** nevertheless, that if this Mortgage and the Obligations it secures are paid and performed in full in the manner provided in the Instrument and in the Obligations, then this Mortgage shall end and become void.

The rights and remedies of Lender provided in this Mortgage, in the Instrument and in the Obligations shall be cumulative and concurrent. They may be pursued singly, successively, or together against Owner and the Property, at the sole discretion of Lender. The failure of Lender to exercise any right or remedy shall not be construed as a waiver or release of that or any other right or remedy. The words "Debtor," "Owner" and "Lender" shall be deemed and construed to include their respective heirs, personal representatives, successors and assigns. If there is more than one Owner, the obligations of each shall be joint and several. This Mortgage shall be governed by and construed according to the laws of the Commonwealth of Pennsylvania. The unenforceability or invalidity of any provision of this Mortgage shall not render any other provision unenforceable or invalid.

OWNER HAS DULY EXECUTED THIS MORTGAGE under seal on the date indicated on the front.

Witness:

Owner: John R. Spingola

(SEAL)

By: Mervine M. Spingola

(SEAL)

By or

Attest:

(Assistant) Secretary

(SEAL)

(Affix Corporate Seal Here)

## ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA

: SS.

COUNTY OF Clearfield

On this, the 13th day of March, 1998, before me, the subscriber, a notary public of the above State, personally appeared John R. Spingola and Mervine M. Spingola, known or satisfactorily proven to me to be the person(s) whose name(s) is (are) subscribed to the above Mortgage, who acknowledged that he/she/they executed the same as his/her/their voluntary act and deed and desired it to be recorded as such, or who acknowledged himself/herself/themselves to be the (Vice) President(s) of the Owner (if a Corporation) or General Partner(s) of the Owner (if a Partnership) and that, being authorized so to do, he/she/they executed the above Mortgage as and for the act and deed of the Corporation or Partnership, as applicable, by signing the name of the Corporation or Partnership by himself/herself/themselves as (Vice) President(s) or General Partner(s) and causing the Corporation seal, if applicable, to be applied thereto, and desired it to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

OF

Notarial Seal  
Linda C. Lewis, Notary Public  
Clearfield Boro, Clearfield County  
My Commission Expires July 25, 1999

Notary Public

My commission expires:

I hereby certify that the precise address of the within named Mortgagee, County National Bank

is One South Second Street, Clearfield PA 16830

Officer on behalf of Mortgagee.

I hereby CERTIFY that this document  
recorded in the Recorder's Office of  
County, Pennsylvania.



Karen L. Starck  
Recorder of Deeds

BANCONSUMER FORM RD 83 (9/90)

Recorder: Please return this Mortgage to:

Mortgagee

TO

Mortgagor(s)

MORTGAGE

CLEARFIELD COUNTY  
ENTERED OF RECORD  
TIME 3:56 pm 3-13  
BY Chris Perry  
FEES 12.50  
Karen L. Starck, Recorder

Entered of Record Mar 13 1998 3:56 pm Karen L. Starck, Recorder

ALL those certain four parcels or pieces of real estate situate in the First Ward of Clearfield Borough, Clearfield County, PA, together with all buildings, fixtures and other improvements thereon, bounded and described as follows:

FIRST

BEGINNING at the Southwest corner of Third and Reed Streets at a point being the Northeast corner of lot hereby conveyed; thence along Reed Street West fifty (50) feet to a point; thence by Fred Guarino lot South one hundred (100) feet to an iron pin; thence by residue of Orcutt lot by a line three (3) feet South of Frame building (50) feet to an iron pin on Third Street; thence by Third Street one hundred (100) feet to a point and place of beginning; as surveyed by Roy C. Kindig, Engineer, on October 26, 1940.

BEING known as the St. Charles Cafe and further identified by Clearfield County Tax Map No. 4.1-K8-215-239.

BEING the same premises to which the Mortgages took title by deed in Clearfield County Deed Book 732, page 267.

SECOND

BEGINNING at a point on the Western side of North Third Street in the Borough of Clearfield being the common corner of the premises presently owned by the Grantors and Grantees; thence West along line of land of the Grantees fifty (50) feet to a point on the lands of Fred Guarino; thence South eight (8) feet eight (8) inches to a point; thence East in a line parallel to the first call contained in this deed fifty (50) feet to the Western side of North Third Street; thence along Western side of North Third Street eight (8) feet eight (8) inches to place of beginning

BEING a portion of the St. Charles Cafe property and further identified by Clearfield County Tax Map No. 4.1-K8-215-38.1.

BEING the same premises to which the Mortgages took title by deed in Clearfield County Deed Book 584, page 507.

THIRD

BEGINNING at a post on Reed Street at the corner of the line of lot of John Marino; thence east along Reed Street twenty two (22) feet to a post on the line of lot formerly of Fred G. Guarino, now of Gordon and Anna Kritzer; thence south at right angles with Reed Street and along the Kritzer line one hundred sixteen (116) feet to a post on a private alley running from Third Street westerly to the property of John Marino; thence along the line of said private alley and parallel with Reed Street in a westerly direction a distance of twenty-two (22) feet to the line of the lot of John Marino; thence north along the line of the same one hundred sixteen (116) feet to a post at Reed Street and the place of beginning. Being twenty-two (22) feet front on Reed Street and extending southerly one hundred sixteen (116) feet to a private alley.

BEING known as 221 Reed Street and further identified by Clearfield County Tax Map 4.1-K8-215-41.

BEING the same premises to which the Mortgages took title by deed in Clearfield County Deed Book 776, page 521.

FOURTH

BEGINNING at a point on the South side of Reed Street where Lots No. 233 and 234 corner, on said Street; thence West along the line of Reed Street twenty-eight (28) feet to a lot formerly sold to Clara A. Faust; thence South along the line of Clara A. Faust one hundred sixteen (116) feet, more or less, to a private alley seven (7) feet wide; thence along the northern line of said private alley twenty-eight (28) feet to the line of Lot No. 233; thence North along the line of said lot one hundred sixteen feet, more or less, to Reed Street and place of beginning.

BEING a lot known as 223 Reed Street and further identified by Clearfield County Tax Map 4.1-K8-215-40.

BEING the same premises to which the Mortgages took title by deed in Clearfield County Record Volume 1246, page 530.

The Mortgages further grant and convey unto the Mortgagee a lien against all the fixtures, appliances, furniture and other items of personal property necessary or convenient to the operation of their business located at the real estate described above and known as The St. Charles Cafe, Inc. The parties expressly intend that this mortgage be subject to the Pennsylvania Industrial Plant Doctrine.

JOHN R. SPINGOLA  
MERVINE M. SPINGOLA  
P.O. BOX 1288  
CLEARFIELD, PA 16830-5288

COUNTY NATIONAL BANK  
COR MARKET & SECOND STS PO BOX 42  
CLEARFIELD, PA 16830

Loan Number 1294134-6  
Date MARCH 13, 1998  
Maturity Date MARCH 13, 2008  
Loan Amount \$ 133,300.00  
Renewal Of \_\_\_\_\_

**BORROWER'S NAME AND ADDRESS**

**LENDER'S NAME AND ADDRESS**

"I" includes each borrower above, jointly and severally.

"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of ONE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED AND NO/100 \* \* \* \* \* Dollars \$ 133,300.00

☒ **Single Advance:** I will receive all of this principal sum on MARCH 13, 1998. No additional advances are contemplated under this note.

☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On \_\_\_\_\_

I will receive the amount of \$ \_\_\_\_\_ and future principal advances are contemplated.

Conditions: The conditions for future advances are \_\_\_\_\_

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum principal sum more than one time. This feature is subject to all other conditions and expires on \_\_\_\_\_

☐ **Closed End Credit:** You and I agree that I may borrow (subject to all other conditions) up to the maximum principal sum only one time.

**INTEREST:** I agree to pay interest on the outstanding principal balance from MARCH 13, 1998 at the rate of 10.000% per year until MARCH 13, 2001

☒ **Variable Rate:** This rate may then change as stated below.

☒ **Index Rate:** The future rate will be 1.500% OVER the following index rate: THE CHASE MANHATTAN BANK, N.A. PRIME RATE

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ **Frequency and Timing:** The rate on this note may change as often as EVERY 36 MONTHS. A change in the interest rate will take effect MARCH 13, 2001, MARCH 13, 2004, MARCH 13, 2007

☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than \_\_\_\_\_% or less than \_\_\_\_\_%. The rate may not change more than \_\_\_\_\_% each \_\_\_\_\_

**Effect of Variable Rate:** A change in the interest rate will have the following effect on the payments:

☒ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐ \_\_\_\_\_

**ACCUAL METHOD:** Interest will be calculated on a ACTUAL/365 basis.

**POST MATURITY RATE:** I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☐ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☒ at a rate equal to THE CHASE MANHATTAN BANK, N.A. PRIME RATE PLUS 3%

☒ **LATE CHARGE:** If a payment is made more than 15 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE PAYMENT

☐ **RETURNED CHECK CHARGE:** I agree to pay a fee of \$ \_\_\_\_\_ for each check, negotiable order of withdrawal or draft I issue in connection with this loan that is returned because it has been dishonored.

☒ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: \$150.00 PROCESSING FEE, \$50.00 APPLICATION FEE

**PAYMENTS:** I agree to pay this note as follows:

☐ Interest: I agree to pay accrued interest \_\_\_\_\_

☐ Principal: I agree to pay the principal \_\_\_\_\_

☒ **Installments:** I agree to pay this note in 120 payments. The first payment will be in the amount of \$ 1,762.55 and will be due APRIL 13, 1998. A payment of \$ 1,762.55 will be due ON THE 13TH DAY OF EACH MONTH thereafter. The final payment of the entire unpaid balance of principal and interest will be due MARCH 13, 2008

**PURPOSE:** The purpose of this loan is BUSINESS: REFINANCE / DEBT CONSOLIDATION

☒ **WARRANT OF AUTHORITY TO CONFESS JUDGMENT.** Upon default, in addition to all other remedies and rights available to you, by signing below Borrower irrevocably authorizes the prothonotary, clerk, or any attorney to appear in any court of record having jurisdiction over this matter and to confess judgment against me at any time without stay of execution. I waive notice, service of process and process. I agree and understand that judgment may be confessed against me for any unpaid principal, accrued interest and accrued charges due on this note, plus collection costs and reasonable attorneys' fees up to 15 percent of the judgment. The exercise of the power to confess judgment will not exhaust this warrant of authority to confess judgment and may be done as often as you elect. I further understand that my property may be seized without prior notice to satisfy the debt owed. I knowingly, intentionally, and voluntarily waive any and all constitutional rights I have to pre-deprivation notice and hearing under federal and state laws and fully understand the consequences of this waiver.

JOHN R. SPINGOLA

MERVINE M. SPINGOLA

ADDITIONAL TERMS:

## SECURITY

**SECURITY INTEREST:** I give you a security interest in all of the Property described below that I now own and that I may own in the future (including, but not limited to, all parts, accessories, repairs, improvements, and accessions to the Property), wherever the Property is or may be located, and all proceeds and products from the Property.

☐ **Inventory:** All inventory which I hold for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.

☐ **Equipment:** All equipment including, but not limited to, all machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and recordkeeping equipment, and parts and tools. All equipment described in a list or schedule which I give to you will also be included in the secured property, but such a list is not necessary for a valid security interest in my equipment.

☐ **Farm Products:** All farm products including, but not limited to:  
(a) all poultry and livestock and their young, along with their products, produce and replacements;  
(b) all crops, annual or perennial, and all products of the crops; and  
(c) all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.

☐ **Accounts, Instruments, Documents, Chattel Paper and Other Rights to Payment:** All rights I have now and that I may have in the future to the payment of money including, but not limited to:  
(a) payment for goods and other property sold or leased or for services rendered, whether or not I have earned such payment by performance; and  
(b) rights to payment arising out of all present and future debt instruments, chattel paper and loans and obligations receivable.  
The above include any rights and interests (including all liens and security interests) which I may have by law or agreement against any account debtor or obligor of mine.

☐ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, applications for patents, patents, copyrights, trademarks, trade secrets, good will, trade names, customer lists, permits and franchises, and the right to use my name.

☐ **Government Payments and Programs:** All payments, accounts, general intangibles, or other benefits (including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance payments, diversion payments, and conservation reserve payments) in which I now have and in the future may have any rights or interest and which arise under or as a result of any preexisting, current or future Federal or state governmental program (including, but not limited to, all programs administered by the Commodity Credit Corporation and the ASCS).

☒ **The secured property includes, but is not limited by, the following:** A FIRST MORTGAGE BY JOHN R. & MERVINE M. SPINGOLA ON COMMERCIAL REAL ESTATE, COMMONLY KNOWN AS ST. CHARLES CAFE, LOCATED AT 226 N. THIRD STREET, CLEARFIELD, CLEARFIELD COUNTY, COMMONWEALTH OF PENNSYLVANIA.

If this agreement covers timber to be cut, minerals (including oil and gas), fixtures or crops growing or to be grown, the description of the real estate is:

☒ If checked, file this agreement on the real estate records. Record owner (if not me) \_\_\_\_\_

The Property will be used for a ☐ personal ☒ business ☐ agricultural ☐ \_\_\_\_\_ purpose.

### ADDITIONAL TERMS OF THE SECURITY AGREEMENT

**GENERALLY** - This agreement secures this note and any other debt I have with you, now or later. However, it will not secure other debts if you fail with respect to such other debts, to make any required disclosure about this security agreement or if you fail to give any required notice of the right of rescission. If property described in this agreement is located in another state, this agreement may also, in some circumstances, be governed by the law of the state in which the Property is located.

**OWNERSHIP AND DUTIES TOWARD PROPERTY** - I represent that I own all of the Property, or to the extent this is a purchase money security interest I will acquire ownership of the Property with the proceeds of the loan. I will defend it against any other claim. Your claim to the Property is ahead of the claims of any other creditor. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position.

I will keep books, records and accounts about the Property and my business in general. I will let you examine these records at any reasonable time. I will prepare any report or accounting you request, which deals with the Property.

I will keep the Property in my possession and will keep it in good repair and use it only for the purpose(s) described on page 1 of this agreement. I will not change this specified use without your express written permission. I represent that I am the original owner of the Property and, if I am not, that I have provided you with a list of prior owners of the Property.

I will keep the Property at my address listed on page 1 of this agreement, unless we agree I may keep it at another location. If the Property is to be used in another state, I will give you a list of those states. I will not try to sell the Property unless it is inventory or I receive your written permission to do so. If I sell the Property I will have the payment made payable to the order of you and me.

You may demand immediate payment of the debt(s) if the debtor is not a natural person and without your prior written consent; (1) a beneficial interest in the debtor is sold or transferred, or (2) there is a change in either the identity or number of members of a partnership, or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation.

I will pay all taxes and charges on the Property as they become due. You have the right of reasonable access in order to inspect the Property. I will immediately inform you of any loss or damage to the Property.

If I fail to perform any of my duties under this security agreement, or any mortgage, deed of trust, lien or other security interest, you may without notice to me perform the duties or cause them to be performed. Your right to perform for me shall not create an obligation to perform and your failure to perform will not preclude you from exercising any of your other rights under the law or this security agreement.

**PURCHASE MONEY SECURITY INTEREST** - For the sole purpose of determining the extent of a purchase money security interest arising under this security agreement: (a) payments on any nonpurchase money loan also secured by this agreement will not be deemed to apply to the Purchase Money Loan, and (b) payments on the Purchase Money Loan will be deemed to apply first to the nonpurchase money portion of the loan, if any, and then to the purchase money obligations in the order in which the items of collateral were acquired or if acquired at the same time, in the order selected by you. No security interest will be terminated by application of this formula. "Purchase Money Loan" means any loan the proceeds of which, in whole or in part, are used to acquire any collateral securing the loan and all extensions, renewals, consolidations and refinancing of such loan.

**PAYMENTS BY LENDER** - You are authorized to pay, on my behalf, charges I am or may become obligated to pay to preserve or protect the secured property (such as property insurance premiums). You may treat

those payments as advances and add them to the unpaid principal under the note secured by this agreement or you may demand immediate payment of the amount advanced.

**INSURANCE** - I agree to buy insurance on the Property against the risks and for the amounts you require and to furnish you continuing proof of coverage. I will have the insurance company name you as loss payee on any such policy. You may require added security if you agree that insurance proceeds may be used to repair or replace the Property. I will buy insurance from a firm licensed to do business in the state where you are located. The firm will be reasonably acceptable to you. The insurance will last until the Property is released from this agreement. If I fail to buy or maintain the insurance (or fail to name you as loss payee) you may purchase it yourself.

**WARRANTIES AND REPRESENTATIONS** - If this agreement includes accounts, I will not settle any account for less than its full value without your written permission. I will collect all accounts until you tell me otherwise. I will keep the proceeds from all the accounts and any goods which are returned to me or which I take back in trust for you. I will not mix them with any other property of mine. I will deliver them to you at your request. If you ask me to pay you the full price on any returned items or items retaken by myself, I will do so.

If this agreement covers inventory, I will not dispose of it except in my ordinary course of business at the fair market value for the Property, or at a minimum price established between you and me.

If this agreement covers farm products I will provide you, at your request, a written list of the buyers, commission merchants or selling agents to or through whom I may sell my farm products. In addition to those parties named on this written list, I authorize you to notify at your sole discretion any additional parties regarding your security interest in my farm products. I remain subject to all applicable penalties for selling my farm products in violation of my agreement with you and the Food Security Act. In this paragraph the terms farm products, buyers, commission merchants and selling agents have the meanings given to them in the Federal Food Security Act of 1985.

**REMEDIES** - I will be in default on this security agreement if I am in default on any note this agreement secures or if I fail to keep any promise contained in the terms of this agreement. If I default, you have all of the rights and remedies provided in the note and under the Uniform Commercial Code. You may require me to make the secured property available to you at a place which is reasonably convenient. You may take possession of the secured property and sell it as provided by law. The proceeds will be applied first to your expenses and then to the debt. I agree that 10 days written notice sent to my last known address by first class mail will be reasonable notice under the Uniform Commercial Code. My current address is on page 1. I agree to inform you in writing of any change of my address.

**FILING** - A carbon, photographic or other reproduction of this security agreement or the financing statement covering the Property described in this agreement may be used as a financing statement where allowed by law. Where permitted by law, you may file a financing statement which does not contain my signature, covering the Property secured by this agreement.

Any person who signs within this box does so to give you a security interest in the Property described on this page. This person does not promise to pay the note. "I" as used in this security agreement will include the borrower and any person who signs within this box.

Date \_\_\_\_\_

Signed \_\_\_\_\_



# ADDITIONAL TERMS OF THE NOTE

**DEFINITIONS:** As used on pages 1 and 2, "X" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

**APPLICABLE LAW** - The law of the state of Pennsylvania will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

**PAYMENTS** - Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

**INTEREST** - Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal sum outstanding at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to in this note (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

**INDEX RATE** - The index will serve only as a device for setting the interest rate on this note. You do not guarantee by selecting this index, or the margin, that the interest rate on this note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers.

**POST MATURITY RATE** - For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the earliest of the following:

- the date of the last scheduled payment indicated on page 1 of this note;
- the date you accelerate payment on the note; or
- after the entry of judgment on this note by confession or otherwise and applies to amounts owed under this note on any such judgment until paid in full.

**SINGLE ADVANCE LOANS** - If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph on page 2.

**MULTIPLE ADVANCE LOANS** - If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

**ADVANCE PROCEDURE AND MEANS** - You will advance the loan proceeds by way of check, cash, wire transfer, credit to an account or any combination as You and I agree. The advance(s) will occur upon consummation of the loan and as You and I agree, except that no advance(s) will occur until after three business days from the date of consummation if the loan is rescindable pursuant to Regulation Z (12 C.F.R. § 226).

**SET-OFF** - I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

- any deposit account balance I have with you;
- any money owed to me on an item presented to you or in your possession for collection or exchange; and
- any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

**SIGNATURES: I AGREE TO THE TERMS OF THIS AGREEMENT (INCLUDING THOSE ON PAGES 1 AND 2).** I have received a copy on today's date.

*John R. Spingola*  
JOHN R. SPINGOLA

*Mervine M. Spingola*  
MERVINE M. SPINGOLA

SIGNATURE FOR LENDER: X  
RONALD E. BILLOTTE

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right to set-off.

**DEFAULT** - I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the Property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season if I am a producer of crops; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

**REMEDIES** - If I am in default on this note you have, but are not limited to, the following remedies:

- You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued unpaid charges).
- You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.
- You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
- You may refuse to make advances to me or allow purchases on credit by me.
- You may use any remedy you have under state or federal law.
- You may make use of any remedy given to you in any agreement securing this note.

By selecting any one or more of these remedies you do not give up your right to use later any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to consider later the event a default if it continues or happens again.

**COLLECTION COSTS AND ATTORNEY'S FEES** - I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

**WAIVER** - I give up my rights (to the extent permitted by law) to require you to do certain things. I will not require you to:

- demand payment of amounts due (presentment);
- obtain official certification of nonpayment (protest); or
- give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

**OBLIGATIONS INDEPENDENT** - I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval.

**CREDIT INFORMATION** - I agree and authorize you to obtain credit information about me from time to time (for example, by requesting a credit report) and to report to others your credit experience with me (such as a credit reporting agency). I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

AMENDMENT

To the Commercial Note, 1294134-6, dated March 13, 1998, in the original principal amount of \$133,300.00 ("Note") between County National Bank ("Bank") and John R. & Mervine M. Spingola ("Borrower").

Whereas, the Borrower has requested a modification in the Interest Rate and the Bank has agreed.

In consideration for the Borrower paying an Interest Rate Modification Fee of \$250.00, the Bank will lower the Interest Rate effective December 13, 2001 from 10.00% to 9.00% per annum. The 9.00% Interest Rate will remain in effect until March 13, 2004, when the Interest Rate will be adjusted (reset) to 1.50% above the then Prime Rate.

Due to the reduction of principal (loan balance, \$98,330.96, after December 13, 2001 payment) and/or lower Interest Rate; the current monthly payment of \$1,767.45 will be reduced to \$1,719.16 per month. Borrower shall commence making the new monthly payments of \$1,719.16 on January 13, 2002 and shall continue to make said reduced monthly payments every month thereafter until April 13, 2004 when the monthly payment will be reset based on the March 14, 2004 Interest Rate change.

The Bank and Borrower agree that all other terms and conditions of said Note shall remain in force and unchanged.

Agreed to December 03, 2001.

Gregory R. Williams  
County National Bank  
By: Gregory R. Williams  
Banking Officer

John R. Spingola  
By: John R. Spingola  
Mervine M. Spingola  
By: Mervine M. Spingola

EXHIBIT C

May 3, 2005

**CERTIFIED MAIL:**

# 7106 3901 9842 7186 9935

# 7106 3901 9842 7186 9942

**First Class Mail**

John R. Spingola  
PO Box 1288  
Clearfield, PA 16830

Mervine M. Spingola  
PO Box 1288  
Clearfield, PA 16830

Re: County National Bank  
Delinquent Mortgage Account # 1294134-6

Dear Mr. and Mrs. Spingola:

The Mortgage, which you executed on March 13, 1998, in favor of County National Bank for \$133,300.00 is in default. This Mortgage is recorded in Clearfield County Record Book Number 1915, Page Number 0129. This Mortgage encumbers and places a lien upon your commercial property know as St. Charles Café, 226 N 3<sup>rd</sup> St, Clearfield, Clearfield County, Pennsylvania, 16830

You have failed to make the full monthly payments since February 2005 and are in default. The total amount of default is \$7,379.84, which includes \$1,483.74 in late charges.

Pennsylvania law provides that you may cure this default anytime up to one hour prior to Sheriff Sale in either of the following manners:

1. First, you can bring your account current by paying County National Bank a total of \$7,379.84, which includes delinquent payments of \$5,896.10 and late charges of \$1,483.74; or,
2. Second, you can pay this mortgage off entirely by tendering \$60,020.46, which includes a balance of \$58,462.17; late charges of \$1,483.74; accrued interest through 05/03/2005 of \$44.05; and loan satisfaction fees of \$30.50.

Interest will accrue at the rate of \$8.8093681 a day from May 3, 2005. Your regular monthly payments will also continue to fall due and will be added to the total stated in Number 1 above if you fail to pay them.

John R. and Mervine M. Spingola  
May 3, 2005  
Page 2

If you chose to cure this default by either of the foregoing manners, the necessary payments should be made at the main office of County National Bank at the corner of Market and Second Streets in Clearfield. **PAYMENT SHOULD BE MADE BY CASH, CASHIER'S CHECK OR CERTIFIED CHECK.**

If you fail to cure this default within thirty (30) days, County National Bank will exercise its right to accelerate the mortgage payments. This means that the entire outstanding balance as stated in Paragraph 2 will become immediately due and payable. The bank will institute a foreclosure lawsuit against the real estate for that amount, i.e. \$60,020.46, plus interest, costs of suit and an attorney's commission of the amounts reasonably and actually incurred by County National Bank, but in no event exceeding eight (8%) percent of the total indebtedness. If CNB obtains judgment against you for those amounts, it can then execute against your residence, which will result in loss of this property at Sheriff Sale. I estimate the earliest date on which such a sheriff sale could be held would be **Friday, August 5, 2005.**

If you cure your default within the thirty (30) day grace period, the mortgage will be recovered to the same position as if no default had occurred. However, you may only exercise this right to cure your default three (3) times in any calendar year.

The Law provides that you may sell this real estate subject to your delinquent mortgage, and your buyer, or anyone else, has the right to cure this default as explained in the preceding paragraphs. You also have the right to refinance this debt with another lender if possible. You also have the right to have this default cured by a third party acting on your behalf.

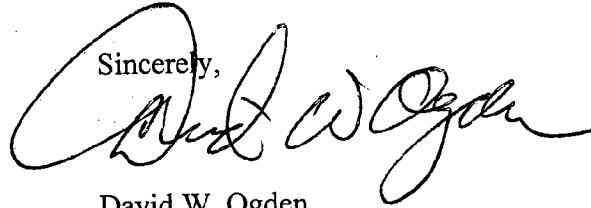
You have the right to assert in any foreclosure proceeding or any other lawsuit instituted under the mortgage documents, the nonexistence of a default or any other defense you believe you may have to any such actions against CNB.

If you make partial payments on the account of the delinquencies, we will accept them and apply them to the delinquencies. However, such partial payments will not cure your default or reinstate your loan unless we receive the entire amount required to cure the default.

John R. and Mervine M. Spingola  
May 3, 2005  
Page 3

If you fail to cure your default within thirty (30) days, which is on or before May 3, 2005 the bank will institute Foreclosure proceedings against your real estate, which will result in your loss of this property at Sheriff Sale.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Ogden", written in a cursive style.

David W. Ogden  
Assistant Vice President

2. Article Number

7160 3901 9842 7186 9935

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

JOHN R SPINGOLA  
PO BOX 1288  
CLEARFIELD PA 16830

PS Form 3811, January 2003

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) *MERVINE SPINGOLA*

B. Date of Delivery *12 2005*

C. Signature *[Signature]*

D. Is delivery address different from item? ☐ Yes ☒ No  
If YES, enter delivery address below:

USPS CLEARFIELD PA 16830

US Postal Service

**Certified Mail Receipt**

Domestic Mail Only  
No Insurance Coverage Provided

Postage \$

Certified Fee

Return Receipt Fee (Endorsement Required)

Restricted Delivery Fee (Endorsement Required)

Total Postage & Fees \$ *4.42*

Sent To:

JOHN R SPINGOLA  
PO BOX 1288  
CLEARFIELD PA 16830

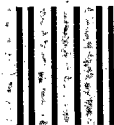
Postmark Here *5-8-05*

PS Form 3800, January 2003

US Postal Service

**Certified Mail Receipt**

2



● Print your name, address and ZIP+4 below ●



ATTN: LDT  
COUNTY NATIONAL BANK  
PO BOX 42  
CLEARFIELD PA 16830-0042

**Certified Mail Provides:**

- A mailing receipt
- A unique identifier for your mailpiece
- A signature upon delivery
- A record of delivery kept by the Postal Service for two years

**Important Reminders:**

- Certified Mail may ONLY be combined with First-Class Mail or Priority Mail.
- Certified Mail is not available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider insured or Registered Mail.
- For an additional fee, a Return Receipt may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

**IMPORTANT: Save this receipt and present it when making an inquiry.**

2. Article Number



7160 3901 9842 7186 9942

3. Service Type - **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

MERVINE M SPINGOLA  
PO BOX 1288  
CLEARFIELD PA 16830

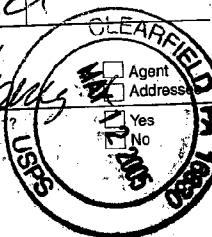
COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

D. Is delivery address different from item?  
If YES, enter delivery address below:



Domestic Return Receipt

PS Form 3811, January 2003

7160 3901 9842 7186 9942

US Postal Service

**Certified  
Mail  
Receipt**

Domestic Mail Only  
No Insurance  
Coverage Provided

LDY  
Postage  
Certified Fee  
Return Receipt Fee  
(Endorsement Required)  
Restricted Delivery Fee  
(Endorsement Required)  
Total Postage & Fees

\$

\$4.42

Postmark  
Here

5-8-05

Sent To:

MERVINE M SPINGOLA  
PO BOX 1288  
CLEARFIELD PA 16830

PS Form 3800, January 2003

US Postal Service

**Certified Mail Receipt**





● Print your name, address and ZIP+4 below ●

ATTN: LDT  
COUNTY NATIONAL BANK  
PO BOX 42  
CLEARFIELD PA 16830-0042**Certified Mail Provides:**

- A mailing receipt
- A unique identifier for your mailpiece
- A signature upon delivery
- A record of delivery kept by the Postal Service for two years

**Important Reminders:**

- Certified Mail may ONLY be combined with First-Class Mail or Priority Mail.
- Certified Mail is not available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a Return Receipt may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

**IMPORTANT: Save this receipt and present it when making an inquiry.**

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

DOCKET # 100613  
NO: 05-961-CD  
SERVICE # 1 OF 3  
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: COUNTY NATIONAL BANK

vs.

DEFENDANT: JOHN R. SPINGOLA; MERVINE M. SPINGOLA and THE INTERNAL REVENUE SERVICE OF THE UNITED STATES OF AMERICA

**SHERIFF RETURN**

---

NOW, July 15, 2005 AT 3:20 PM SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON JOHN R. SPINGOLA DEFENDANT AT SHERIFF'S OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO JOHN R. SPINGOLA, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN MORTGAGE FORECLOSURE AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER / NEVLING

**FILED** *no cc*  
*0/2:15 PM*  
OCT 11 2005 *JS*

William A. Shaw  
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

DOCKET # 100613  
NO: 05-961-CD  
SERVICE # 2 OF 3  
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: COUNTY NATIONAL BANK

vs.

DEFENDANT: JOHN R. SPINGOLA; MERVINE M. SPINGOLA and THE INTERNAL REVENUE SERVICE OF THE UNITED STATES OF AMERICA

**SHERIFF RETURN**

---

NOW, July 18, 2005 AT 2:35 PM SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON MERVINE M. SPINGOLA DEFENDANT AT WORK: ST. CHARLES CAFE, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO MERVINE SPINGOLA, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN MORTGAGE FORECLOSURE AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100613  
NO: 05-961-CD  
SERVICE # 3 OF 3  
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: COUNTY NATIONAL BANK

vs.

DEFENDANT: JOHN R. SPINGOLA; MERVINE M. SPINGOLA and THE INTERNAL REVENUE SERVICE OF THE UNITED STATES OF AMERICA

**SHERIFF RETURN**

---

NOW, July 12, 2005, SHERIFF OF ALLEGHENY COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON UNITED STATES OF AMERICA, c/o U.S. Atty for Western District of Pa..

NOW, July 22, 2005 AT 12:58 PM SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON UNITED STATES OF AMERICA, c/o U.S. Atty for Western District of Pa., DEFENDANT. THE RETURN OF ALLEGHENY COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100613  
NO: 05-961-CD  
SERVICES 3  
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: COUNTY NATIONAL BANK

vs.

DEFENDANT: JOHN R. SPINGOLA; MERVINE M. SPINGOLA and THE INTERNAL REVENUE SERVICE OF THE  
UNITED STATES OF AMERICA

SHERIFF RETURN

---

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	CNB	290048	30.00
SHERIFF HAWKINS	CNB	290048	48.00
ALLEGHENY CO.	CNB	293467	50.00
SHEILA O'BRIEN	CNB	293468	5.00

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2005

\_\_\_\_\_

So Answers,



Chester A. Hawkins  
Sheriff

## ALLEGHENY COUNTY SHERIFF'S DEPARTMENT

436 GRANT STREET  
PITTSBURGH, PA 15219-2496  
PHONE (412) 350-4700  
FAX (412) 350-6388

PETER R. DEFAZIO  
Sheriff

DENNIS SKOSNIK  
Chief Deputy

PLAINTIFF: County National Bank

CASE#: 05-9101-CD

DEFT.: United States of America VS.

EXPIRES: \_\_\_\_\_

DEFT.: U.S. post office and courthouse

☐ SUMMONS/PRAECIPE

DEFT.: \_\_\_\_\_

☐ SEIZURE OR POSSESSION

GARNISHEE: \_\_\_\_\_

☒ NOTICE AND COMPLAINT

ADDRESS: 700 Grant Street Suite 400

☐ REVIVAL OR SCI FA

☐ INTERROGATORIES

☐ EXECUTION • LEVY OR GARNISHEE

☐ OTHER \_\_\_\_\_

MUNICIPALITY OR CITY WARD: ward 1

ATTY: \_\_\_\_\_

DATE: 7-19 20 05

ADDRESS: Clearfield County

ATTY'S PHONE: \_\_\_\_\_

INDICATE TYPE OF SERVICE: ☐ PERSONAL ☐ PERSON IN CHARGE ☐ DEPUTIZE ☐ MAIL ☐ POSTED ☐ OTHER ☐ LEVY ☐ SEIZED & STORED

NOW: \_\_\_\_\_ 20 \_\_\_\_\_ I, SHERIFF OF ALLEGHENY COUNTY, PA do hereby deputize the Sheriff of \_\_\_\_\_ County to execute this Writ and make return thereof according to law

**NOTE: ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN** - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, with out liability on the part of such deputy herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

Seize, levy, advertise and sell all the personal property of the defendant on the premises located at: \_\_\_\_\_

MAKE

MODEL

MOTOR NUMBER

SERIAL NUMBER

LICENSE NUMBER

## SHERIFF'S OFFICE USE ONLY

I hearby CERTIFY and RETURN that on the 22 day of July, 2005, at 1238 o'clock, A.M./P.M. Address Above/ Address Below, County of Allegheny, Pennsylvania

I have served in the manner Described below: \_\_\_\_\_

☐ Defendant(s) personally served.

☐ Adult family member with whom said Defendant(s) reside(s). Name & Relationship \_\_\_\_\_

☐ Adult in charge of Defendant's residence who refused to give name or relationship.

☐ Manager/other person authorized to accept deliveries of United States Mail \_\_\_\_\_

☒ Agent or person in charge of Defendant(s) office or usual place of business. Cathy

☐ Other \_\_\_\_\_

☐ Property Posted \_\_\_\_\_

Defendant not found because: ☐ Moved ☐ Unknown ☐ No Answer ☐ Vacant ☐ Other \_\_\_\_\_

☐ Certified Mail ☐ Receipt \_\_\_\_\_ ☐ Envelope Returned \_\_\_\_\_ ☐ Neither receipt or envelope returned: writ expired \_\_\_\_\_

☐ Regular Mail Why \_\_\_\_\_

You are hereby notified that on \_\_\_\_\_, levy was made in the case of \_\_\_\_\_ Possession/Sale has been set for \_\_\_\_\_, 20 \_\_\_\_\_ at \_\_\_\_\_ o'clock

**YOU MUST CALL DEPUTY ON THE MORNING OF SALE/POSSESSION BETWEEN 8:30 - 9:30 A.M.**

ATTEMPTS \_\_\_\_\_

Additional Costs Due \$ \_\_\_\_\_, This is placed on writ when returned to Prothonotary. Please check before satisfying case.

Affirmed and subscribed before me 1 2005 this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Notary Seal  
Sheila R. O'Brien, Notary Public  
City of Pittsburgh, Allegheny County, PA  
My Commission Expires June 19, 2008  
Member, Pennsylvania Association of Notaries

PETER R. DEFAZIO, Sheriff

(DEPUTY)

White Copy - Sheriff

Pink Copy - Attorney



CHESTER A. HAWKINS  
SHERIFF

# Sheriff's Office Clearfield County

COURTHOUSE  
1 NORTH SECOND STREET, SUITE 116  
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986  
AFTER 4:00 P.M. (814) 765-1533  
FAX (814) 765-5915

ROBERT SNYDER  
CHIEF DEPUTY

MARILYN HAMM  
DEPT. CLERK

CYNTHIA AUGHENBAUGH  
OFFICE MANAGER

PETER F. SMITH  
SOLICITOR

## DEPUTATION

### IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 100613

COUNTY NATIONAL BANK

vs.

TERM & NO. 05-961-CD

COMPLAINT IN MORTGAGE FORECLOSURE

JOHN R. SPINGOLA; MERVINE M. SPINGOLA and THE INTERNAL REVENUE SERVICE OF THE UNITED STATES OF AMERICA

**SERVE BY: 08/04/05**

### MAKE REFUND PAYABLE TO COUNTY NATIONAL BANK

**SERVE:** UNITED STATES OF AMERICA, c/o U.S. Atty for Western District of Pa.

**ADDRESS:** U.S.P.O.&COURTHOUSE,700 GRANT ST. STE. 400, PITTSBURGH, PA 15219

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF ALLEGHENY COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, July 12, 2005.

RESPECTFULLY,

CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

**MARK A. FALVO  
ATTORNEY  
7 BIGLER ROAD  
CLEARFIELD, PA 16830  
(814) 765-1400**

June 27, 2005

Peter DeFazio  
Allegheny County Sheriff  
Allegheny County Courthouse  
436 Grant Street  
Pittsburgh, PA 15219

Re: County National Bank v. John R. Spingola and Mervine M. Spingola and the Internal  
Revenue Service of the United States of America

Dear Sheriff:

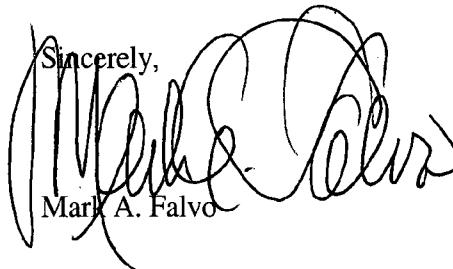
I filed a Foreclosure Complaint in the matter above with the Clearfield County Prothonotary in Clearfield, Pennsylvania.

The Sheriff of Clearfield County has been directed to deputize you. He will forward one certified copy of the Complaint to you for service on the Internal Revenue Service at the following address:

United States of America  
C/O U.S. Attorney for the Western District of PA  
U.S. Post Office and Courthouse  
700 Grant Street, Suite 400  
Pittsburgh, PA 15219

I enclose a check for your costs of service and a check payable to the notary.

If you have any questions or additional information is needed, please do not hesitate to contact my office.

Sincerely,  
  
Mark A. Falvo

PFS/hab  
Enclosure

cc: Lori D. Trumbull, County National Bank