

08-370-CD

HSBC Bank vs Joseph Manners al

McCABE, WEISBERG AND CONWAY, P.C.

BY: TERRENCE J. McCABE, ESQUIRE - ID # 16496
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Attorneys for Plaintiff

123 South Broad Street, Suite 2080
Philadelphia, Pennsylvania 19109
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HSBC Bank (USA), National
Association, trustee for PEOPLES
CHOICE 2004-2
10790 Rancho Bernardo Road
San Diego, California 92127

Clearfield County
Court of Common Pleas

v.

Joseph E. Manners
128 Tozier Avenue
Du Bois, Pennsylvania 15801
and
Lori A. Manners
128 Tozier Avenue
Du Bois, Pennsylvania 15801

Number **08-370-CD**

CIVIL ACTION/MORTGAGE FORECLOSURE

FILED 300
MAR 10 4 18 PM 2008 Sheriff
MAR 03 2008 1cc Amy
William A. Shaw
Prothonotary/Clerk of Courts
Atty pd \$95.00

NOTICE

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 property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Dave Meholic
Clearfield County Courthouse
230 East Market Street
Clearfield, Pennsylvania 16830
(814) 765-2641 x 5982

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas ex-puestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

USTED LE DEBE TOMAR ESTE PAPEL A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE A UN ABOGADO, VA A O TELEFONEA LA OFICINA EXPUSO ABAJO. ESTA OFICINA LO PUEDE PROPORCIONAR CON INFORMATION ACERCA DE EMPLEAR A UN ABOGADO.

SI USTED NO PUEDE PROPORCIONAR PARA EMPLEAR UN ABOGADO, ESTA OFICINA PUEDE SER CAPAZ DE PROPORCIONARLO CON INFORMACION ACERCA DE LAS AGENCIAS QUE PUEDEN OFRECER LOS SERVICIOS LEGALES A PERSONAS ELEGIBLES EN UN HONORARIO REDUCIDO NI NINGUN HONORARIO.

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CIVIL ACTION/MORTGAGE FORECLOSURE

1. Plaintiff is HSBC Bank (USA), National Association, trustee for PEOPLES CHOICE 2004-2, a corporation duly organized and doing business at the above captioned address.
2. The Defendant is Joseph E. Manners, who is one of the mortgagors and real owners of the mortgaged property hereinafter described, and his last-known address is 128 Tozier Avenue, Du Bois, Pennsylvania 15801.
3. The Defendant is Lori A. Manners, who is one of the mortgagors and real owners of the mortgaged property hereinafter described, and her last-known address is 128 Tozier Avenue, Du Bois, Pennsylvania 15801.
4. On June 22, 2004, mortgagors made, executed and delivered a mortgage upon the premises hereinafter described to Mortgage Electronic Registration Systems, Inc. as nominee for People's Choice Home Loan, Inc. which mortgage is recorded in the Office of the Recorder of Clearfield County
5. The aforesaid mortgage was thereafter assigned by Mortgage Electronic Registration Systems, Inc. as nominee for People's Choice Home Loan, Inc. to HSBC Bank (USA), National Association, trustee for PEOPLES CHOICE 2004-2, Plaintiff herein, by Assignment of Mortgage which will be duly recorded in the Office of the Recorder of Clearfield County.
5. The premises subject to said mortgage is described in the mortgage attached as Exhibit "A" and is known as 128 Tozier Avenue, Du Bois, Pennsylvania, 15801.
6. The mortgage is in default because monthly payments of principal and interest

upon said mortgage due October 1, 2007 and each month thereafter are due and unpaid, and by the terms of said mortgage, upon default in such payments for a period of one month, the entire principal balance and all interest due thereon are collectible forthwith.

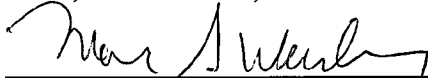
7. The following amounts are due on the mortgage:

Principal Balance	\$	73,147.22
Interest through January 18, 2008 (Plus \$20.32 per diem thereafter)	\$	2,936.05
Attorney's Fee	\$	1,250.00
Late Charges	\$	<u>172.00</u>
GRAND TOTAL	\$	77,505.27

8. Notice of Intention to Foreclose as required by Act 6 of 1974 (41 P.S. §403) and notice required by the Emergency Mortgage Assistance Act of 1983 as amended under 12 PA Code Chapter 13, et seq., commonly known as the Combined Notice of Delinquency has been sent to Defendant by regular mail with a certificate of mailing and by certified mail, return receipt requested.

WHEREFORE, Plaintiff demands Judgment against the Defendant in the sum of \$77,505.27, together with interest at the rate of \$20.32 per diem and other costs and charges collectible under the mortgage and for the foreclosure and sale of the mortgaged property.

McCABE, WEISBERG, AND CONWAY, P.C.

BY: 

Attorneys for Plaintiff

TERRENCE J. McCABE, ESQUIRE

MARC S. WEISBERG, ESQUIRE

EDWARD D. CONWAY, ESQUIRE

MARGARET GAIRO, ESQUIRE

VERIFICATION

The undersigned attorney hereby certifies that he/she is the Attorney for the Plaintiff in the within action, and that he/she is authorized to make this verification and that the foregoing facts based on the information from the Plaintiff, who is not available to sign this, are true and correct to the best of his/her knowledge, information and belief and further states that false statements herein are made subject to the penalties of 18 PA.C.S. §4904 relating to unsworn falsification to authorities.

McCABE, WEISBERG, AND CONWAY, P.C.

BY: 

Attorneys for Plaintiff

TERRENCE J. McCABE, ESQUIRE

MARC S. WEISBERG, ESQUIRE

EDWARD D. CONWAY, ESQUIRE

MARGARET GAIRO, ESQUIRE

Prepared By:

Pam Ingalls
7515 Irvine Center Drive,
Irvine, CA 92618

Return To:

PEOPLE'S CHOICE HOME LOAN,
INC.
7515 IRVINE CENTER DR.,
IRVINE, CA 92618

Parcel Number:
128.0-B4-429-9

[Space Above This Line For Recording Data]

MORTGAGE

MIN 100273900101203403

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated June 22, 2004 together with all Riders to this document.

(B) "Borrower" is JOSEPH E. MANNERS AND LORI A. MANNERS, HUSBAND AND WIFE

Mortgage/Deed of Trust



Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the mortgagee under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint MI 48501-2026, tel. (888) 679-MERS. 10120340

PENNSYLVANIA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS Form 3039 1/01

U.S.M.D. - SA (PA) (0206)

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VMP MORTGAGE FORMS - (R001521-720)

Exhibit A

We hereby certify the within to be a true and correct copy of the original document.

By:

(D) "Lender" is People's Choice Home Loan, Inc.

Lender is a CORPORATION

organized and existing under the laws of WYOMING

Lender's address is 7515 IRVINE CENTER DR., IRVINE, CA 92618

(E) "Note" means the promissory note signed by Borrower and dated June 22, 2004

The Note states that Borrower owes Lender SEVENTY-FIVE THOUSAND FIFTY AND 00/100

Dollars

(U.S. \$75,050.00

) plus interest. Borrower has promised to pay this debt in regular Periodic

Payments and to pay the debt in full not later than July 1, 2034

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

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

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

- | | | |
|---|---|---|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |

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

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

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

(L) "Escrow Items" means those items that are described in Section 3.

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

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

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

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6.11.
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(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the COUNTY [Type of Recording Jurisdiction] of CLEARFIELD [Name of Recording Jurisdiction]

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT 'A'

which currently has the address of 128 TOZIER AVENUE

DU BOIS

[City], Pennsylvania 15801

[Street]

[Zip Code]

("Property Address"):

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

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L.H.
[Signature]

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

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

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

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

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

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

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment

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can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

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

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

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest

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shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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


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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be

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dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

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

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

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

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

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

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

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or

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agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). Lender shall notify Borrower of, among other things: (a) the default; (b) the action required to cure the default; (c) when the default must be cured; and (d) that failure to cure the default as specified may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. Lender shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured as specified, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, attorneys' fees and costs of title evidence to the extent permitted by Applicable Law.

23. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument and the estate conveyed shall terminate and become void. After such occurrence, Lender shall discharge and satisfy this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Waivers. Borrower, to the extent permitted by Applicable Law, waives and releases any error or defects in proceedings to enforce this Security Instrument, and hereby waives the benefit of any present or future laws providing for stay of execution, extension of time, exemption from attachment, levy and sale, and homestead exemption.

25. Reinstatement Period. Borrower's time to reinstate provided in Section 19 shall extend to one hour prior to the commencement of bidding at a sheriff's sale or other sale pursuant to this Security Instrument.

26. Purchase Money Mortgage. If any of the debt secured by this Security Instrument is lent to Borrower to acquire title to the Property, this Security Instrument shall be a purchase money mortgage.

27. Interest Rate After Judgment. Borrower agrees that the interest rate payable after a judgment is entered on the Note or in an action of mortgage foreclosure shall be the rate payable from time to time under the Note.

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

Witnesses:

Joseph E. Manners (Seal)
JOSEPH E. MANNERS -Borrower

Lori A. Manners (Seal)
LORI A. MANNERS -Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

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Certificate of Residence

I, Kobyn Black, do hereby certify that the correct address of the within-named Mortgagee is P.O. Box 2026, Flint, MI 48501-2026.

Witness my hand this 22nd day of June 2004

RB Black

Agent of Mortgagee

COMMONWEALTH OF PENNSYLVANIA, Jefferson

County ss:

On this, the 22nd day of June 2004, before me, the undersigned officer, personally appeared

before me, the

Lori A. Manners

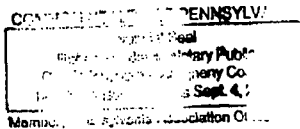
Joseph E. Manners

known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.
My Commission Expires:

RB Black

Notary Public
Title of Officer



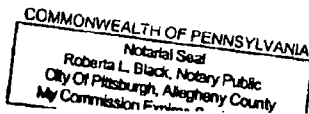
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Member, EBRP
Member, D

Loan Number 10120340

ADJUSTABLE RATE RIDER
(LIBOR Six-Month Index (As Published In The Wall Street Journal)-Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 22nd day of June, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to PEOPLE'S CHOICE HOME LOAN, INC., a WYOMING CORPORATION ("Lender") of the same date and covering the property described in the Security Instrument and located at:

128 TOZIER AVENUE, DU BOIS, PENNSYLVANIA 15801
[Property Address]

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

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 8.250%. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the 1st day of July, 2006 and on that day every 6 month(s) thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

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

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding five and one-quarter percentage points (5.250%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.250 % or less than 8.250 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than one percentage points (1.000%) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 14.250%. My interest rate will never be less than 8.250%.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

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

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

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

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

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

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

5. BORROWER'S RIGHT TO PREPAY


I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial prepayment may be offset by an increase in the interest rate.

If the original Principal amount of this loan is \$50,000 or less, I may make a full or partial Prepayment without paying any penalty. However, if the original Principal amount of this Note exceeds \$50,000, and if within the first Twenty-four (24) months after the execution of the Security Instrument, I make full Prepayment or, in certain cases a partial Prepayment, and the total of such Prepayment(s) in any one (1) year exceeds TWENTY PERCENT (20%) of the original Principal amount, I will pay a Prepayment charge in an amount equal to the payment of SIX (6) months' advance interest on the amount prepaid which is in excess of TWENTY PERCENT (20%) of the original Principal amount.

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

 (Seal)
JOSEPH E. MANNERS -Borrower

 (Seal)
LORI A. MANNERS -Borrower

 (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

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

HSBC BANK (USA), NATIONAL
ASSOCIATION, TRUSTEE FOR
PEOPLES CHOICE 2004-2,
Plaintiff

vs.

JOSEPH E. MANNERS and
LORI A. MANNERS,
Defendant

NO. 08-370-C.D.

Type of Case: Mortgage Foreclosure

Type of Pleading: Answer, New Matter
and Counterclaims

Filed on behalf of: Defendant

Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

FILED^{icc}

APR 17 2008

William A. Shaw
Prothonotary/Clerk of Courts

Who: 27/01/08 Any King
CP

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

HSBC BANK (USA), NATIONAL	:	
ASSOCIATION, TRUSTEE FOR	:	
PEOPLES CHOICE 2004-2,	:	
Plaintiff	:	
vs.	:	NC. 08-370-C.D.
	:	
JOSEPH E. MANNERS and	:	
LORI A. MANNERS,	:	
Defendants	:	

ANSWER

AND NOW, come the Defendants, JOSEPH E. MANNERS and LORI A. MANNERS, through their Attorney, David P. King, and responds to Plaintiff's Complaint in Mortgage Foreclosure as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. The Defendants deny that the Mortgage was assigned to the Plaintiff, as the same was not recorded, and strict proof of the same is demanded at time of trial. Further, Defendants further believe that Chase Home Finance may be the owner/assignee of such Mortgage and Note instead.


5. Admitted.

6. It is denied at this point that the mortgage is in default for the reasons as stated in Defendants' New Matter and Counterclaims hereafter.

7. It is further denied that such monies as are listed for balance, interest, attorney's fees and late charges are correct, as they do not properly give the Defendants proper credit for payments made, are inaccurate, inflated, not reasonable and not in accordance with the terms and conditions of the Mortgage and Note.

8. The Defendants aver that they have not been properly notified of the Intent to Foreclose for the reasons as set forth above and in the New Matter and Counterclaims set forth hereafter.

WHEREFORE, Defendants ask your Honorable Court to deny Judgment to the Plaintiff, and otherwise dismiss this Complaint and they will so ever pray.


David P. King
Attorney for Defendants

NEW MATTER

The Defendants raise the following facts and defenses and in support thereof aver as follows:

9. The averments in Defendants' Answers in Paragraphs 1 through 8 above are herein incorporated by reference.

10. The Defendants restate that the Plaintiff in this matter is not the holder/assignee of the Mortgage and Note which is the subject matter of these proceedings.

11. Further, notwithstanding, the Defendants further aver

that with all of the payments that they have made, their Mortgage is not in default and this action should not have been filed.

12. Moreover, the Defendants have been dealing with Chase Home Finance LLC whom the Defendants believe is the holder/assignee of the Mortgage and Note, or otherwise have the sole and exclusive right to any debt that may be owed.

13. Additionally, just recently, the Defendants were informed that if they would wire the amount of \$4,475.00 to Chase Home Finance LLC, then their Mortgage would be made current.

14. Along with that, they were promised that they would have available to them the ability to re-structure the Mortgage which was a variable or ARM.

15. Thus, on or about March 1, 2008, the Defendants did wire via Western Union the amount of money as above stated to Chase Home Finance LLC.

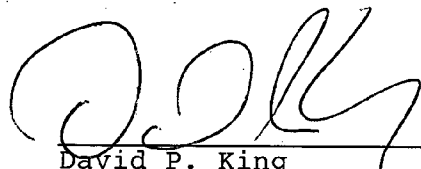
16. Thereafter, on March 3, 2008, the Mortgage Foreclosure Action was filed by the Plaintiff in this matter.

17. Further and thereafter, the Defendants received a notification from Western Union that the wire amount was declined. This was sometime after March 18, 2008.

18. The Defendants have and continually are making efforts to discuss and rectify matters with Chase Home Finance LLC, but have and continue to receive conflicting information on the amount owed, and how to remain current, and further how to re-structure their loan.

19. For these reasons, Defendants believe that the within Foreclosure Action is improper, illegal, unfair and not in compliance with the laws of the Commonwealth of Pennsylvania.

WHEREFORE, Defendants pray your Honorable Court to dismiss the Complaint in Mortgage Foreclosure against them, and they will so ever pray.


David P. King
Attorney for Defendants

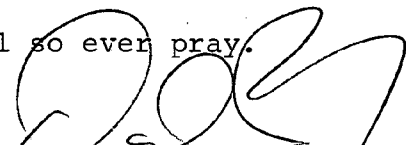
COUNTERCLAIM I.

20. The averments in Defendants' Answers in Paragraphs 1 through 8 above, as well as their New Matter in Paragraphs 9 through 19 above are herein incorporated by reference in full, and as if fully stated herein.

21. The Plaintiff has violated the Fair Debt Collection Practices Act 15 U.S.C. §1696 et seq. by:

- (a) Falsely representing the character, amount and legal status of their debt.
- (b) Unfairly and unconscionably attempting to collect an amount not expressly authorized by the agreement created by the debt or permitted by law.

WHEREFORE, the Defendants request a Judgment in their favor for actual damages and statutory damages, as well as any applicable attorney's fees and costs, and they will so ever pray.


David P. King
Attorney for Defendants

We verify that the statements made in this Answer, New Matter and Counterclaims are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: April 16, 2008


Joseph E. Manners
Defendant


Lori A. Manners
Defendant

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

HSBC BANK (USA), NATIONAL
ASSOCIATION, TRUSTEE FOR
PEOPLES CHOICE 2004-2,
Plaintiff

vs.

JOSEPH E. MANNERS and
LORI A. MANNERS,
Defendants

NO. 08-370-C.D.

Type of Case: Mortgage Foreclosure

Type of Pleading: Certification of
Service

Filed on behalf of: Defendants

Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

FILED

APR 25 2008

William A. Shaw
Prothonotary/Clerk of Courts

David P. King
Attorney for Defendants

FILED

APR 25 2008

**William A. Shaw
Prothonotary/Clerk of Courts**

MCCABE, WEISBERG & CONWAY
BY: KEVIN P. DISKIN, ESQUIRE
ATTORNEY I.D. NO: 86727
123 S. BROAD STREET, STE 2080
PHILADELPHIA PA 19109

HSBC Bank (USA), National
Association, trustee for PEOPLES
CHOICE 2004-2
10790 Rancho Bernardo Road
San Diego, California 92127

v.

Joseph E. Manners
128 Tozier Avenue
Du Bois, Pennsylvania 15801
and
Lori A. Manners
123 Tozier Avenue
Du Bois, Pennsylvania 15801

Clearfield County
Court of Common Pleas

Number 08-370-C.D.

FILED

MAY 22 2008

M/11:45/um

William A. Shaw

Prothonotary/Clerk of Courts

2 CENT TO ATT

PRELIMINARY OBJECTIONS TO DEFENDANTS' NEW MATTER AND COUNTERCLAIM

Plaintiff, HSBC Bank (USA), (hereinafter referred to as "HSBC"), by and through its attorneys, McCabe, Weisberg & Conway, pursuant to Pa. R.C.P. No. 1028 et seq., hereby moves this Honorable Court to dismiss Defendant's Counterclaim. In support of these Preliminary Objections Plaintiff avers the following:

1. On June 22, 2004, mortgagors made, executed and delivered a mortgage upon the premises hereinafter described to Mortgage Electronic Registration Systems, Inc. as nominee for People's Choice Home Loan, Inc. which mortgage is recorded in the Office of the Recorder of Clearfield County
2. On March 3, 2008, Plaintiff filed a Mortgage Foreclosure Complaint pursuant to Pa.R.C.P. 1141, under Docket No. 2008-370CD, with this Honorable Court due to Defendant defaulting on the above referenced mortgage.

3. On or about April 17, 2008, Defendant filed his Answer with Counterclaim. A True and correct copy of the Defendants' Answer with Counterclaim are attached hereto, made part here of and marked as Exhibits A.

4. Defendants, claims in their Counterclaim that Plaintiff has charged or try to collect fees that are not owed under the subject mortgage and therefore violated the Fair Debt Collection Practice Act, the Unfair Trade and Practice Act and therefore they are entitled in personam damages.

5. Defendants fail to attach any proof of the payment as required under Pa.R.C.P. 1019.

PRELIMINARY OBJECTION PURSUANT TO Pa.R.C.P. 1028 (2) and (3)

6. Plaintiff incorporates and references Paragraphs 1 through 5 above, as though stated herein at length.

7. Pursuant to Pa.R.C.P. 1028 (2) it is proper to preliminary object to a pleading that fails "to conform to law or rule of court."

8. The within case is a mortgage foreclosure action, the sole purpose of which is to take the Defendant's mortgage property to Sheriff Sale. Pennsylvania law is clear that an action in mortgage foreclosure is strictly in rem and does not include any personal liability, for either Plaintiff or Defendant. Newton Village Partnership v. Kimmel, Newton Village Partnership v. Kimmel, 424 Pa. Super 53,55, 621 A.2d 1036, 1037 (1993). Signal Consumer Discount Company v. Babuscio, 257 Pa. Super 101, 109, 390 A.2d 265, 270 (1978). Pa.R.C.P. 1141

9. Defendants' demands for monetary damages in their New Matter and Counterclaim cannot be awarded in a foreclosure action and therefore must be stricken.

10. For the above reasons stated above, Defendant's have failed to plead in conformity with the rule of law and have failed to with sufficient specificity. Defendant's Answer with New Matter and Counterclaim should be dismissed with prejudice.

PRELIMINARY OBJECTION PURSUANT TO Pa.R.C.P. 1028 (2)

11. Petitioner incorporates and references Paragraphs 1 through 19 above, as though stated herein at length.

12. Pursuant to Pa.R.C.P. 1028 (2) it is proper to preliminary object to a pleading that fails "to conform to law or rule of court."

13. Pa. R.C.P. 1148 does not permit a counterclaim arising from a contract related to the mortgage, such as the construction contract with a third party. Cunningham v. McWilliams, et als., 714 A.2d 1054 (1998).

14. In the instant action, Defendant's Counterclaim arises from a claim under a separate mortgage closing and their failure to pay off the subject loan to Plaintiff's predecessor, not from the creation of the subjected mortgage. This is precisely the type of counterclaim that is not cognizable under Rule 1148. See Chrysler First Business Credit v. Gourniak, 411 Pa. Super. 259, 601 A.2d 338, 341 (Pa. Super. 1992).

PRELIMINARY OBJECTION PURSUANT TO Pa.R.C.P. 1028 (2) and (3)

15. Petitioner incorporates and references Paragraphs 1 through 14 above, as though stated herein at length.

16. Pursuant to Pa.R.C.P. 1028 (2) it is proper to preliminary object to a pleading that fails "to conform to law or rule of court."

17. Pursuant to Pa.R.C.P. 1028 (3) it is proper to preliminary object to a pleading has insufficient specificity as to its averments.

18. In Counterclaim II, the Defendant claim that "Plaintiff's conduct constitutes an "unfair or deceptive practice" within the meaning of the Pennsylvania Unfair Trade Practice and Consumer Protect Law, 73 P.S. 201-1 et seq."

19. Although, Defendants fail to cite a specific section that they are claiming Plaintiff violated they do plead in Paragraph 23 (a) & (b) that Plaintiff "misrepresented" and "engaged in fraudulent" conduct, so Plaintiff is under the assumption that they are pleading violation of 73 P.S. § 201-2(4)(xvii), the catch all provision of the act. In order to recover under this provision of the UTCPL, all elements of common law fraud must be proven and pled. Prime Meats, Inc. v. Yochim, 619 A.2d 769, 773 (Pa. Super. Ct 1993).

20. The Elements of Fraud that need to be pleaded are as follows:

(A) A misrepresentation.

(B) A fraudulent utterance thereof.

(C) An intention by the maker that the recipient will thereby be induced to act.

(D) Justifiable reliance by the recipient upon the misrepresentation.

(E) Damages to the recipient as a proximate cause.

Scaife Co. v. Rockwell-Standard Corp., 446 Pa. 280, 285, 285 A.2d 452, 454 (1971).

21. Defendant fails to plead these elements.

PRELIMINARY OBJECTION PURSUANT TO Pa.R.C.P. 1028 (2) and (3)

22. Petitioner incorporates and references Paragraphs 1 through 21 above, as though stated herein at length.

23. Pursuant to Pa.R.C.P. 1028 (2) it is proper to preliminarily object to a pleading that fails "to conform to law or rule of court."

24. Pursuant to Pa.R.C.P. 1028 (3) it is proper to preliminarily object to a pleading has insufficient specificity as to its averments.

25. In Counterclaim I, the Defendant claim that "The Plaintiff has violated the Fair Debt Collection Practices Act (FDCPA) 15 U.S.C. § 1696 *et. seq.*"

26. Under 15 U.S.C. § 1692a(6), the FDCPA imposes civil liability only upon "debt Collectors", who are defined as persons who regularly engage in the business of collecting or attempting to collect debts owed to another. O'Brien v. Valley Forge Specialized Educational

Services, 2004 U.S. Dist. Lexis 22947 (E.D.Pa. 2004); *Oldroyd v. Asscc. Consumer Discount Co.*, 863 F. Supp. 237, 241 (E.D. Pa. 1994). a mortgage company is not a debt collector under the FDCPA. *See Oldroyd*, 863 F. Supp. at 241-2.

27. Defendants Counterclaim regarding the Fair Debt Collections Practice Act must be dismissed.

WHEREFORE, Plaintiff, respectfully requests this Honorable Court to sustain its Preliminary Objections and dismiss Defendants' Answer and Counterclaim.

Respectfully submitted,

McCabe, Weisberg & Conway

BY: 

KEVIN P. DISKIN, ESQUIRE
Attorney for Plaintiff
Attorney I.D. No. 86727

MCCABE, WEISBERG & CONWAY
BY: KEVIN P. DISKIN, ESQUIRE
ATTORNEY I.D. NO: 86727
123 S. BROAD STREET, STE 2080
PHILADELPHIA PA 19109

HSBC Bank (USA), National
Association, trustee for PEOFLES
CHOICE 2004-2
10790 Rancho Bernardo Road
San Diego, California 92127

v.

Joseph E. Manners
128 Tozier Avenue
Du Bois, Pennsylvania 15801
and
Lori A. Manners
128 Tozier Avenue
Du Bois, Pennsylvania 15801

Clearfield County
Court of Common Pleas

Number 08-370-C.D.

VERIFICATION

Kevin P. Diskin, hereby states that he is the Attorney for Petitioner in this action, and that the statements made in the foregoing Preliminary Objections are true and correct to the best of his knowledge, information and belief.

The undersigned understands that this statement herein is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

McCabe, Weisberg & Conway

BY:


KEVIN P. DISKIN, ESQUIRE
Attorney for Plaintiff

Dated: _____

5/13/08

EXHIBIT A

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

HSBC BANK (USA), NATIONAL
ASSOCIATION, TRUSTEE FOR
PEOPLES CHOICE 2004-2,
Plaintiff

vs.

JOSEPH E. MANNERS and
LORI A. MANNERS,
Defendant

NO. 08-370-C.D.

Type of Case: Mortgage Foreclosure

Type of Pleading: Answer, New Matter
and Counterclaims

Filed on behalf of: Defendant

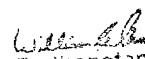
Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

APR 17 2008

Attest


Prothonotary/
Clerk of Courts

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

HSBC BANK (USA), NATIONAL	:	
ASSOCIATION, TRUSTEE FOR	:	
PEOPLES CHOICE 2004-2,	:	
Plaintiff	:	
	:	
vs.	:	NO. 08-370-C.D.
	:	
JOSEPH E. MANNERS and	:	
LORI A. MANNERS,	:	
Defendants	:	

NOTICE

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 Answer, New Matter, Counterclaims 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 Answer, New Matter and Counterclaims or for any other claim or relief requested by the Defendants. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830
(814) 765-2641 Ext. 5982

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

HSBC BANK (USA), NATIONAL	:	
ASSOCIATION, TRUSTEE FOR	:	
PEOPLES CHOICE 2004-2,	:	
Plaintiff	:	
vs.	:	NO. 08-370-C.D.
	:	
JOSEPH E. MANNERS and	:	
LORI A. MANNERS,	:	
Defendants	:	

ANSWER

AND NOW, come the Defendants, JOSEPH E. MANNERS and LORI A. MANNERS, through their Attorney, David P. King, and responds to Plaintiff's Complaint in Mortgage Foreclosure as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

5. The Defendants deny that the Mortgage was assigned to the Plaintiff, as the same was not recorded, and strict proof of the same is demanded at time of trial. Further, Defendants further believe that Chase Home Finance may be the owner/assignee of such Mortgage and Note instead.


5. Admitted.

6. It is denied at this point that the mortgage is in default for the reasons as stated in Defendants' New Matter and Counterclaims hereafter.

7. It is further denied that such monies as are listed for balance, interest, attorney's fees and late charges are correct, as they do not properly give the Defendants proper credit for payments made, are inaccurate, inflated, not reasonable and not in accordance with the terms and conditions of the Mortgage and Note.

8. The Defendants aver that they have not been properly notified of the Intent to Foreclose for the reasons as set forth above and in the New Matter and Counterclaims set forth hereafter.

WHEREFORE, Defendants ask your Honorable Court to deny Judgment to the Plaintiff, and otherwise dismiss this Complaint and they will so ever pray.


David P. King
Attorney for Defendants

NEW MATTER

The Defendants raise the following facts and defenses and in support thereof aver as follows:

9. The averments in Defendants' Answers in Paragraphs 1 through 8 above are herein incorporated by reference.

10. The Defendants restate that the Plaintiff in this matter is not the holder/assignee of the Mortgage and Note which is the subject matter of these proceedings.

11. Further, notwithstanding, the Defendants further aver

that with all of the payments that they have made, their Mortgage is not in default and this action should not have been filed.

12. Moreover, the Defendants have been dealing with Chase Home Finance LLC whom the Defendants believe is the holder/assignee of the Mortgage and Note, or otherwise have the sole and exclusive right to any debt that may be owed.

13. Additionally, just recently, the Defendants were informed that if they would wire the amount of \$4,475.00 to Chase Home Finance LLC, then their Mortgage would be made current.

14. Along with that, they were promised that they would have available to them the ability to re-structure the Mortgage which was a variable or ARM.

15. Thus, on or about March 1, 2008, the Defendants did wire via Western Union the amount of money as above stated to Chase Home Finance LLC.

16. Thereafter, on March 3, 2008, the Mortgage Foreclosure Action was filed by the Plaintiff in this matter.

17. Further and thereafter, the Defendants received a notification from Western Union that the wire amount was declined. This was sometime after March 18, 2008.

18. The Defendants have and continually are making efforts to discuss and rectify matters with Chase Home Finance LLC, but have and continue to receive conflicting information on the amount owed, and how to remain current, and further how to re-structure their loan.

19. For these reasons, Defendants believe that the within Foreclosure Action is improper, illegal, unfair and not in compliance with the laws of the Commonwealth of Pennsylvania.

WHEREFORE, Defendants pray your Honorable Court to dismiss the Complaint in Mortgage Foreclosure against them, and they will so ever pray.



David P. King
Attorney for Defendants

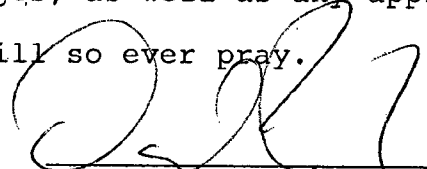
COUNTERCLAIM I

20. The averments in Defendants' Answers in Paragraphs 1 through 8 above, as well as their New Matter in Paragraphs 9 through 19 above are herein incorporated by reference in full, and as is fully stated herein.

21. The Plaintiff has violated the Fair Debt Collection Practices Act 15 U.S.C. §1696 et seq. by:

- (a) Falsely representing the character, amount and legal status of their debt.
- (b) Unfairly and unconscionably attempting to collect an amount not expressly authorized by the agreement created by the debt or permitted by law.

WHEREFORE, the Defendants request a Judgment in their favor for actual damages and statutory damages, as well as any applicable attorney's fees and costs, and they will so ever pray.



David P. King
Attorney for Defendants

COUNTERCLAIM II


22. All of the preceding Answer, New Matter and Counterclaim of the Defendants in Paragraphs 1 through 21 above are herein incorporated by reference as if stated in full.

23. The Plaintiff's conduct constitutes an "unfair or deceptive practice" within the meaning of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-1 et seq. in that:

(a) The Plaintiff has misrepresented to the Defendants the character, extent or amount of the debt or its status in a legal proceeding.

(b) The Plaintiff has engaged in fraudulent and deceptive conduct which creates a likelihood of confusion or misunderstanding.

WHEREFORE, the Defendants request treble damages, attorney's fees, costs and any and all other appropriate relief.



David P. King
Attorney for Defendants

We verify that the statements made in this Answer, New Matter and Counterclaims are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: April 16, 2008


Joseph E. Manners
Defendant


Lori A. Manners
Defendant

MCCABE, WEISBERG & CONWAY
BY: KEVIN P. DISKIN, ESQUIRE
ATTORNEY I.D. NO: 86727
123 S. BROAD STREET, STE 2080
PHILADELPHIA PA 19109

HSBC Bank (USA), National
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128 Tozier Avenue
Du Bois, Pennsylvania 15801
and
Lori A. Manners
128 Tozier Avenue
Du Bois, Pennsylvania 15801

Clearfield County
Court of Common Pleas

Number 08-370-C.D.

PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS PRELIMINARY OBJECTIONS

A. STATEMENT OF FACTS

On June 22, 2004, mortgagors made, executed and delivered a mortgage upon the premises hereinafter described to Mortgage Electronic Registration Systems, Inc. as nominee for People's Choice Home Loan, Inc. which mortgage is recorded in the Office of the Recorder of Clearfield County. On March 3, 2008, Plaintiff filed a Mortgage Foreclosure Complaint pursuant to Pa.R.C.P. 1141, under Docket No. 2008-370CD, with this Honorable Court due to Defendant defaulting on the above referenced mortgage.

On or about April 17, 2008, Defendant filed his Answer with Counterclaim.

Defendants, claims in their Counterclaim that Plaintiff has charged or try to collect fees that are not owed under the subject and therefore violated the Fair Debt Collection Practice Act, the Unfair Trade and Practice Act and therefore they are entitled in personam damages.

Defendants also claim that the act of not properly accounting the claimed tendered funds was an act of Fraud.

B. LEGAL DISCUSSION

In Their Counterclaim are improper due to asking for monetary damage and they do not arise from the origination of the mortgage contract.

1. Pennsylvania Rule of Civil Procedure 1148

The instant action is an *In Rem* Mortgage Foreclosure Action filed pursuant to Pa. R.C. P. 1141. Pa. R.C.P. 1148 governs counterclaims for Mortgage Foreclosure. Pa. R.C.P. 1148 states the following:

A defendant may plead a counterclaim which arises from the same transaction or occurrence or series of transactions or occurrences from which the Plaintiff's cause of action arose.

The Pennsylvania Superior Court has repeatedly held that a Counterclaim in a mortgage foreclosure action, which does not pertain to the creation of the Mortgage, must be dismissed. Cunningham v. McWilliams, et als., 714 A.2d 1054 (1998). Chrysler First Business Credit Corp v. Gourniak, 411 Pa. Super. 259, 601 A.2d 338 (1992). Overly v. Kass, 382 Super Ct. 108, 554 A.2d 970 (1989). Mellon Bank, N.A. v. Joseph, 267 Pa. Super

307, 406 A.2d 1055 (1979). The Court has held that the interpretation of Pa.R.C.P. 1148 must be interpreted narrowly. *See Gourniak*, at 341. Also, in a mortgage foreclosure action, a Counterclaim based on facts which occurred after the default is certainly not based on fact pertaining to the creation of the mortgage and must be dismissed. *Gourniak*, at 342.

2. Pennsylvania Rule of Civil Procedure 1141

As stated above, this action is an *In Rem* Foreclosure Action filed pursuant to Pa.R.C.P. 1141, the sole purpose of which is to take the Defendant's mortgaged property to Sheriff's Sale. Pennsylvania law is clear that an action in mortgage foreclosure is strictly in rem and does not include any personal liability. *Newton Village Partnership v. Kimmel*, *Newton Village Partnership v. Kimmel*, 424 Pa. Super 53,55, 621 A.2d 1036, 1037 (1993). *Signal Consumer Discount Company v. Babuscio*, 257 Pa. Super 101, 109, 390 A.2d 266, 270 (1978). Pa.R.C.P. 1141 (a).

The Kimmel Court held that this restriction is equally applicable to mortgagee as well as mortgagor. *Kimmel* at 55, 1037.

This action's sole purpose is to take the subject property to sheriff sale.

3. Failure to Plead the Elements of Fraud, Under the Unfair Trade Practice Act

In Counterclaim II, the Defendant claim that "Plaintiff conduct constitutes an "unfair or deceptive practice" within the meaning of the Pennsylvania Unfair Trade Practice and Consumer Protect Law, 73 P.S. 201-1 et seq."

Although, Defendant fails to cite a specific section that they are claim Plaintiff violated they do plead in Paragraph 23 (a) & (b) that Plaintiff "misrepresented" and "engaged in fraudulent" conduct, so Plaintiff is under the assumption that they are pleading

violation of 73 P.S. § 201-2(4)(xvii), the catch all provision of the act. In order to recover under this provision of the UTPCPL, all elements of common law fraud must be proven and pled. Prime Meats, Inc. v. Yochim, 619 A.2d 769, 773 (Pa. Super. Ct 1993).

However, Defendants fail to plea any of the required element of fraud. The Elements of Fraud that need to be pleaded are as follows:

- (a) A misrepresentation.
 - (b) A fraudulent utterance thereof.
 - (c) An intention by the maker that the recipient will thereby be induced to act.
 - (d) Justifiable reliance by the recipient upon the misrepresentation.
 - (e) Damages to the recipient as a proximate cause.
- Scaife Co. v. Rockwell-Standard Corp., 446 Pa. 280, 285, 285 A.2d 452, 454 (1971)

Defendants have failed to plead a claim in which relief can be granted in Counterclaim II.

4. A Mortgage Company Collecting Debt Is Not a Debt Collector Under the Fair Debt Collections Practice Act

In Counterclaim I, the Defendant claim that "The Plaintiff has violated the Fair Debt Collection Practices Act (FDCPA) 15 U.S.C. § 1696 *et. seq.*"

Under 15 U.S.C. § 1692a(6), the FDCPA imposes civil liability only upon "debt Collectors", who are defined as persons who regularly engage in the business of collecting or attempting to collect debts owed to another. O'Brien v. Vally Forge Specialized Educational Services, 2004 U.S. Dist. Lexis 22947 (E.D.Pa. 2004); Oldroyd v. Assoc. Consumer Discount Co., 863 F. Supp. 237, 241 (E.D. Pa. 1994). A mortgage company is not a debt collector under the FDCPA. See Oldroyd, 863 F. Supp. at 241-2.

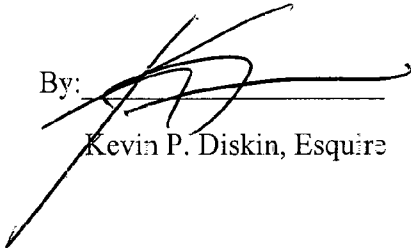
Defendants cannot raise a counterclaim from a law in which has no jurisdiction. The Defendant counterclaim is improperly pled, no court cannot grant the claim and the Counterclaim must be dismissed.

C. CONCLUSION

Defendants Counterclaim cannot be raised under Pa.R.C.P. 1143 and governing case law. In addition the relief sought by Defendant cannot be awarded in this *In Rem* Foreclosure Action pursuant to Pa.R.C.P. 1141 and governing case law. Therefore Plaintiff requests this Honorable Court to dismiss and strike Defendants' Counterclaim and New Matter.

Respectfully submitted,

Date: 5/13/08

By: 
Kevin P. Diskin, Esquire

MCCABE, WEISBERG & CONWAY
BY: KEVIN P. DISKIN, ESQUIRE
ATTORNEY I.D. NO: 86727
123 S. BROAD STREET, STE 2080
PHILADELPHIA PA 19109

HSBC Bank (USA), National
Association, trustee for PEOPLES
CHOICE 2004-2
10790 Rancho Bernardo Road
San Diego, California 92127

v.

Joseph E. Manners
128 Tozier Avenue
Du Bois, Pennsylvania 15801
and
Lori A. Manners
128 Tozier Avenue
Du Bois, Pennsylvania 15801

Clearfield County
Court of Common Pleas

Number 08-370-C.D.

CERTIFICATE OF SERVICE

Kevin P. Diskin, attorney for Plaintiff, hereby certifies that true and correct copies of the foregoing Preliminary Objections, Memorandum of Law and Affidavit in Support of same, together with any other documentation specifically referenced in the transmittal letter, were sent by first class mail, postage pre-paid, on Preliminary Objections to the following party as listed below:

David P. King, Esquire
23 Beaver Drive
P.O. Box 1016
Dubois, PA 15801

McCabe, Weisberg & Conway

DATE: 5/14/08

BY: 

Kevin P. Diskin, Esquire

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

HSBC BANK, National Association, trustee for
PEOPLES CHOICE 2004-2,

Plaintiff

vs.

JOSEPH E. MANNERS and LORI A. MANNERS,
Defendants

*
*
*
*
*

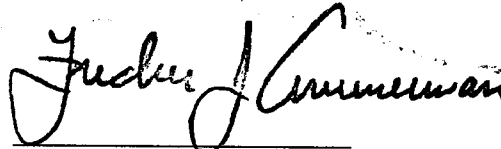
NO. 08-370-CD

ORDER

NOW, this 28th day of May, 2008, upon consideration of the Plaintiff's

Preliminary Objections to Defendants' New Matter and Counterclaim, it is the ORDER of
this Court that argument on the Preliminary Objections is scheduled for the 18th
day of July, 2008 at 9:00 A.m. in Courtroom No. 1 of the Clearfield County
Courthouse, Clearfield, PA 16830.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED 300

012:05/07
MAY 28 2008

Any Diskin

(6K)

William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAY 28 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/28/08

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

MCCABE, WEISBERG & CONWAY, P.C.
KEVIN P. DISKIN, ESQUIRE
IDENTIFICATION NUMBER 86727
123 South Broad Street, Suite 2080
Philadelphia, PA 19109

ATTORNEY FOR PLAINTIFF

HSBC Bank (USA), National
Association, trustee for PEOPLES
CHOICE 2004-2

v.

Joseph E. Manners

and

Lori A. Manners

Clearfield County
Court of Common Pleas

Number 08-370-C.D.

FILED

JUN 04 2008
m/11:50/12
William A. Shaw
Prothonotary/Clerk of Courts
2 cert to Att
(40)

CERTIFICATE OF SERVICE

I, Kevin P. Diskin, Esquire, Attorney for Plaintiff, hereby certifies that a true and correct copy of the within Scheduling Order on Plaintiff's Preliminary Objections to Defendant's New Matter and CounterClaim was served on the below party on the 3rd day of June, 2008, by the United States mail, first class:

David P. King, Esquire
23 Beaver Drive
P.O. Box 1016
Dubois, PA 15801

DATE: 6/3/08



KEVIN P. DISKIN, ESQUIRE
Attorney for Plaintiff

TERRENCE J. McCABE***
MARC S. WEISBERG**
EDWARD D. CONWAY
MARGARET GAIRO
LISA L. WALLACE+†
BRENDA L. BROGDON*
FRANK DUBIN
ANDREW L. MARKOWITZ
GAYL C. SPIVAK*
KEVIN P. DISKIN*
SCOTT TAGGART*
MARISA COHEN*
KATHERINE SANTANGINI^^
JASON BROOKS^
DEBORAH K. CURRAN±±
LAURA H.G. O'SULLIVAN±±
STEPHANIE H. HURLEY±±

LAW OFFICES
McCABE, WEISBERG & CONWAY, P.C.
SUITE 2080
123 SOUTH BROAD STREET
PHILADELPHIA, PA 19109
(215) 790-1010
FAX (215) 790-1274

SUITE 600
216 HADDON AVENUE
WESTMONT, NJ 08108
(856) 858-7080
FAX (856) 858-7020

SUITE 401
145 HUGUENOT STREET
NEW ROCHELLE, NY 10801
(914)-636-8900
FAX (914)-636-8901
Also servicing Connecticut

SUITE 302
8101 SANDY SPRING ROAD
LAUREL, MD 20707
(301) 490-3361
FAX (301) 490-1568
Also servicing the District of Columbia
and Virginia

Of Counsel
DEBORAH K. CURRAN* - MD & DC
LAURA H.G. O'SULLIVAN* - MD & DC
STEPHANIE H. HURLEY±± - MD
JOSEPH F. RIGA* - PA & NJ

* Licensed in PA & NJ
** Licensed in PA & NY
^ Licensed in NY
^^ Licensed in NJ
+ Licensed in PA & WA
++ Licensed in PA, NJ & NY
† Licensed in NY & CT
± Licensed in MD & DC
±± Licensed in MD
+ Managing Attorney for NY
±± Managing Attorney for MD

June 2, 2008

David P. King, Esquire
P. O. Box 1016
23 Beaver Drive
DuBois, PA 15801

Re: **HSBC Bank (USA), National Association, trustee for PEOPLES CHOICE 2004-2 v. Joseph E. Mannors and Lori A. Mannors**
Premises: 128 Tozier Avenue, Du Bois, Pennsylvania, 15801
C. C. P.; Clearfield County; Number 08-370-C.D.

Dear David P. King, Esquire:

Enclosed please find a true and correct copy of the Scheduling Order on Plaintiff's Preliminary Objections to Defendant's New Matter and CounterClaim with regard to the above matter.

A copy of the Plaintiff's Preliminary Objections with Supporting Memorandum of Law to Defendant's New Matter and CounterClaim was previously served upon you by mail on May 19, 2008

Please be guided accordingly.

Very truly yours,


Chrissandra S. Hamilton,

Paralegal for

Kevin P. Diskin, Esquire

McCabe, Weisberg & Conway, P. C.

Attorneys for Plaintiff

KPD/csh
Enclosure

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

HSBC BANK, National Association, trustee for
PEOPLES CHOICE 2004-2,

Plaintiff

vs.

JOSEPH E. MANNERS and LORI A. MANNERS,
Defendants

NO. 08-370-CD

ORDER

NOW, this 28th day of May, 2008, upon consideration of the Plaintiff's Preliminary Objections to Defendants' New Matter and Counterclaim, it is the ORDER of this Court that argument on the Preliminary Objections is scheduled for the 18th day of July, 2008 at 9:00 Am. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, PA 16830.

BY THE COURT,


/s/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAY 28 2008

Attest.


Prothonotary/
Clerk of Courts

FILED
JUN 04 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103838
NO: 08-370-CD
SERVICE # 1 OF 2
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: HSBC BANK (USA) NATIONAL ASSOCIATION, Trustee

vs.

DEFENDANT: JOSEPH E. MANNERS and LORI A. MANNERS

SHERIFF RETURN

NOW, March 24, 2008 AT 10:53 AM SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON JOSEPH E. MANNERS DEFENDANT AT 128 TOZIER AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO JOHN MANNERS, SON A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN MORTGAGE FORECLOSURE AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

FILED
03:40 PM
JUN 25 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103838
NO: 08-370-CD
SERVICE # 2 OF 2
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: HSBC BANK (USA) NATIONAL ASSOCIATION, Trustee

vs.

DEFENDANT: JOSEPH E. MANNERS and LORI A. MANNERS

SHERIFF RETURN

NOW, March 24, 2008 AT 10:53 AM SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON LORI A. MANNERS DEFENDANT AT 128 TOZIER AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO JOHN MANNERS, SON A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN MORTGAGE FORECLOSURE AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103838
NO: 08-370-CD
SERVICES 2
COMPLAINT IN MORTGAGE FORECLOSURE

PLAINTIFF: HSBC BANK (USA) NATIONAL ASSOCIATION, Trustee
vs.
DEFENDANT: JOSEPH E. MANNERS and LORI A. MANNERS

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	MCCABE	15128	20.00
SHERIFF HAWKINS	MCCABE	15128	43.19

Sworn to Before Me This

_____ Day of _____ 2008

So Answers,


by *Manlye Harris*

Chester A. Hawkins
Sheriff

COPY

McCABE, WEISBERG AND CONWAY, P.C.

BY: **TERRENCE J. McCABE, ESQUIRE - ID # 16496**
MARC S. WEISBERG, ESQUIRE - ID # 17616
EDWARD D. CONWAY, ESQUIRE - ID # 34687
MARGARET CAIRO, ESQUIRE - ID # 34419

Attorneys for Plaintiff

123 South Broad Street, Suite 2080
Philadelphia, Pennsylvania 19109
(215) 790-1010

HSBC Bank (USA), National
Association, trustee for PEOPLES
CHOICE 2004-2
10790 Rancho Bernardo Road
San Diego, California 92127

v.

Joseph E. Manners
128 Tozier Avenue
Du Bois, Pennsylvania 15801
and
Lori A. Manners
128 Tozier Avenue
Du Bois, Pennsylvania 15801

Clearfield County
Court of Common Pleas

Number **08-370-CD**

CIVIL ACTION/MORTGAGE FORECLOSURE

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAR 03 2008

Attest.



William A. Shaw
Prothonotary/
Clerk of Courts

NOTICE

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 property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Dave Meholick
Clearfield County Courthouse
230 East Market Street
Clearfield, Pennsylvania 16830
(814) 755-2641 x 5982

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

USTED LE DEBE TOMAR ESTE PAPEL A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE A UN ABOGADO, VA A O TELEFONEA LA OFICINA EXPUESTO ABAJO. ESTA OFICINA LO PUEDE PROPORCIONAR CON INFORMACION ACERCA DE EMPLEAR A UN ABOGADO.

SI USTED NO PUEDE PROPORCIONAR PARA EMPLEAR UN ABOGADO, ESTA OFICINA PUEDE SER CAPAZ DE PROPORCIONARLO CON INFORMACION ACERCA DE LAS AGENCIAS QUE PUEDEN OFRECER LOS SERVICIOS LEGALES A PERSONAS ELEGIBLES EN UN HONORARIO REDUCIDO NI NINGUN HONORARIO.

Dave Meholick
Clearfield County Courthouse
230 East Market Street
Clearfield, Pennsylvania 16830
(814) 765-2641 x 5982

CIVIL ACTION/MORTGAGE FORECLOSURE

1. Plaintiff is HSBC Bank (USA), National Association, trustee for PEOPLES CHOICE 2004-2, a corporation duly organized and doing business at the above captioned address.
2. The Defendant is Joseph E. Manners, who is one of the mortgagors and real owners of the mortgaged property hereinafter described, and his last-known address is 128 Tozier Avenue, Du Bois, Pennsylvania 15801.
3. The Defendant is Lori A. Manners, who is one of the mortgagors and real owners of the mortgaged property hereinafter described, and her last-known address is 128 Tozier Avenue, Du Bois, Pennsylvania 15801.
4. On June 22, 2004, mortgagors made, executed and delivered a mortgage upon the premises hereinafter described to Mortgage Electronic Registration Systems, Inc. as nominee for People's Choice Home Loan, Inc. which mortgage is recorded in the Office of the Recorder of Clearfield County
5. The aforesaid mortgage was thereafter assigned by Mortgage Electronic Registration Systems, Inc. as nominee for People's Choice Home Loan, Inc. to HSBC Bank (USA), National Association, trustee for PEOPLES CHOICE 2004-2, Plaintiff herein, by Assignment of Mortgage which will be duly recorded in the Office of the Recorder of Clearfield County.
5. The premises subject to said mortgage is described in the mortgage attached as Exhibit "A" and is known as 128 Tozier Avenue, Du Bois, Pennsylvania, 15801.
6. The mortgage is in default because monthly payments of principal and interest

upon said mortgage due October 1, 2007 and each month thereafter are due and unpaid, and by the terms of said mortgage, upon default in such payments for a period of one month, the entire principal balance and all interest due thereon are collectible forthwith.

7. The following amounts are due on the mortgage:

Principal Balance	\$	73,147.22
Interest through January 18, 2008 (Plus \$20.32 per diem thereafter)	\$	2,936.05
Attorney's Fee	\$	1,250.00
Late Charges	\$	<u>172.00</u>
GRAND TOTAL	\$	77,505.27

8. Notice of Intention to Foreclose as required by Act 6 of 1974 (41 P.S. §403) and notice required by the Emergency Mortgage Assistance Act of 1983 as amended under 12 PA Code Chapter 13, et seq., commonly known as the Combined Notice of Delinquency has been sent to Defendant by regular mail with a certificate of mailing and by certified mail, return receipt requested.

WHEREFORE, Plaintiff demands Judgment against the Defendant in the sum of \$77,505.27, together with interest at the rate of \$20.32 per diem and other costs and charges collectible under the mortgage and for the foreclosure and sale of the mortgaged property.

McCABE, WEISBERG, AND CONWAY, F.C.

BY: 

Attorneys for Plaintiff

TERRENCE J. McCABE, ESQUIRE

MARC S. WEISBERG, ESQUIRE

EDWARD D. CONWAY, ESQUIRE

MARGARET GAIRO, ESQUIRE

VERIFICATION

The undersigned attorney hereby certifies that he/she is the Attorney for the Plaintiff in the within action, and that he/she is authorized to make this verification and that the foregoing facts based on the information from the Plaintiff, who is not available to sign this, are true and correct to the best of his/her knowledge, information and belief and further states that false statements herein are made subject to the penalties of 18 PA.C.S. §4904 relating to unsworn falsification to authorities.

McCABE, WEISBERG, AND CONWAY, P.C.

BY: 

Attorneys for Plaintiff

TERRENCE J. McCABE, ESQUIRE

MARC S. WEISBERG, ESQUIRE

EDWARD D. CONWAY, ESQUIRE

MARGARET GAIRO, ESQUIRE

Prepared By:

Pam Ingalls
7515 Irvine Center Drive,
Irvine, CA 92618

Return To:

PEOPLE'S CHOICE HOME LOAN,
INC.
7515 IRVINE CENTER DR.,
IRVINE, CA 92618

Parcel Number:
128.0-B4-429-9

[Space Above This Line For Recording Data]

MORTGAGE

MIN 100273900101203403

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 15.

(A) "Security Instrument" means this document, which is dated June 22, 2004 together with all Riders to this document.

(B) "Borrower" is JOSEPH E. MANNERS AND LORI A. MANNERS, HUSBAND AND WIFE



Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint MI 48501-2026, tel. (888) 679-MERS, 10120340

PENNSYLVANIA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS Form 3039 1/01

VMP-4A(PA) (0206)

Page 1 of 16

Initials

VMP MORTGAGE FORMS - (A00 621-7791)

Exhibit A

We hereby certify the within to be a
true and correct copy of the original
document.

By:

(D) "Lender" is People's Choice Home Loan, Inc.

Lender is a CORPORATION
organized and existing under the laws of WYOMING
Lender's address is 7515 IRVINE CENTER DR., IRVINE, CA 92618

(E) "Note" means the promissory note signed by Borrower and dated June 22, 2004
The Note states that Borrower owes Lender SEVENTY-FIVE THOUSAND FIFTY AND 00/100

(U.S. \$75,050.00) Dollars
plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than July 1, 2034

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

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

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

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s): [specify] |

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

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

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

(L) "Escrow Items" means those items that are described in Section 3.

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

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

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

10120340

WHP-SA(PA) (0200)

Page 2 of 16

Initials *L.H.*
DM

Form 3039 1/01

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the COUNTY [Type of Recording Jurisdiction] of CLEARFIELD [Name of Recording Jurisdiction]

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT
'A'

which currently has the address of 129 TOZIER AVENUE

DU BOIS

[City], Pennsylvania 15801

[Street]
[Zip Code]

("Property Address"):

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

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[Signature]

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

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

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

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

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

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

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

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment

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can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

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

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

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest

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shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be

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dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

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

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

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

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

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

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

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or

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agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). Lender shall notify Borrower of, among other things: (a) the default; (b) the action required to cure the default; (c) when the default must be cured; and (d) that failure to cure the default as specified may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. Lender shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured as specified, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, attorneys' fees and costs of title evidence to the extent permitted by Applicable Law.

23. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument and the estate conveyed shall terminate and become void. After such occurrence, Lender shall discharge and satisfy this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Waivers. Borrower, to the extent permitted by Applicable Law, waives and releases any error or defects in proceedings to enforce this Security Instrument, and hereby waives the benefit of any present or future laws providing for stay of execution, extension of time, exemption from attachment, levy and sale, and homestead exemption.

25. Reinstatement Period. Borrower's time to reinstate provided in Section 19 shall extend to one hour prior to the commencement of bidding at a sheriff's sale or other sale pursuant to this Security Instrument.

26. Purchase Money Mortgage. If any of the debt secured by this Security Instrument is lent to Borrower to acquire title to the Property, this Security Instrument shall be a purchase money mortgage.

27. Interest Rate After Judgment. Borrower agrees that the interest rate payable after a judgment is entered on the Note or in an action of mortgage foreclosure shall be the rate payable from time to time under the Note.

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

Witnesses:

JOSEPH E. MANNERS (Seal)
-Borrower

LORI A. MANNERS (Seal)
-Borrower

-Borrower (Seal)
-Borrower

-Borrower (Seal)
-Borrower

-Borrower (Seal)
-Borrower

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Certificate of Residence

I, Robyn Black, do hereby certify that
the correct address of the within-named Mortgagee is P.O. Box 2026, Flint, MI 48501-2026.

Witness my hand this 22nd day of June 2004

Robyn Black

Agent of Mortgagee

COMMONWEALTH OF PENNSYLVANIA, Jefferson

County ss:

On this, the 22nd day of June 2004
undersigned officer, personally appeared

, before me, the

Lori A. Manners

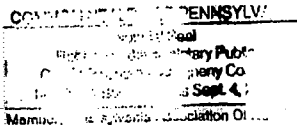
Joseph E. Manners

known to me (or
satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged that he/she/they executed the same for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.
My Commission Expires:

Robyn Black

Notary Public
Title of Officer



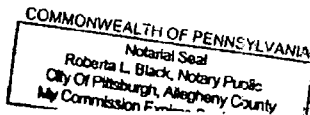
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Notary Public
Roberta L. Black

Loan Number 10120340

ADJUSTABLE RATE RIDER
(LIBOR Six-Month Index (As Published In The Wall Street Journal)-Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 22nd day of June, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to PEOPLES CHOICE HOME LOAN, INC. a WYOMING CORPORATION ("Lender") of the same date and covering the property described in the Security Instrument and located at:

128 TOZIER AVENUE, DU BOIS, PENNSYLVANIA 15801
[Property Address]

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

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 8.250%. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the 1st day of July, 2006 and on that day every 6 month(s) thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

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

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding five and one-quarter percentage points (5.250%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.250 % or less than 8.250 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than one percentage points (1.000%) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 14.250%. My interest rate will never be less than 8.250%.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

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

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

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

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

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

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

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5. BORROWER'S RIGHT TO PREPAY


I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial prepayment may be offset by an increase in the interest rate.

If the original Principal amount of this loan is \$50,000 or less, I may make a full or partial Prepayment without paying any penalty. However, if the original Principal amount of this Note exceeds \$50,000, and if within the first Twenty-four (24) months after the execution of the Security Instrument, I make full Prepayment or, in certain cases a partial Prepayment, and the total of such Prepayment(s) in any one (1) year exceeds TWENTY PERCENT (20%) of the original Principal amount, I will pay a Prepayment charge in an amount equal to the payment of SIX (6) months' advance interest on the amount prepaid which is in excess of TWENTY PERCENT (20%) of the original Principal amount.

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

 (Seal)
JOSEPH E. MANNERS -Borrower

 (Seal)
LORI A. MANNERS -Borrower

 (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

UM

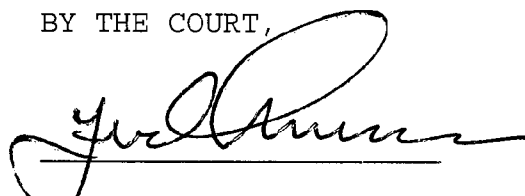
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HSBC BANK, National Assoc.,	:	
trustee for PEOPLE'S	:	
CHOICE 2004-2	:	
	:	
VS.	:	NO. 08-370-CD
	:	
JOSEPH E. MANNERS and	:	
LCRI A. MANNERS	:	

O R D E R

AND NOW, this 18th day of July, 2008, this being the date set for argument on Preliminary Objections to Defendants' New Matter and Counterclaim filed on behalf of Plaintiff; Plaintiff having failed to appear, either in person or by counsel, it is the ORDER of this Court that said Objections be and are hereby dismissed.

BY THE COURT,


President Judge

FILED 2cc Atty's:
012:59/611 Weisberg & Diskin
JUL 18 2008 King
William A. Shaw
Prothonotary/Clerk of Courts
@

FILED

JUL 18 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/18/08

 You are responsible for serving all appropriate parties.

 X The Prothonotary's office has provided service to the following parties:

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions: