

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

ANNTWANETTE JONES and  
LUCINDA ALLARD, *individually, and on  
behalf of a class of similarly situated persons,*

Plaintiffs,

v.

PHH MORTGAGE CORPORATION D/B/A  
PHH MORTGAGE SERVICES,

Defendants.

Case No. 1:23-cv-1040

**COMPLAINT – CLASS ACTION**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiffs Anntwanette Jones and Lucinda Allard individually (collectively “Plaintiffs”) and on behalf of all others similarly situated, bring this class action against Defendant PHH Corporation d/b/a PHH Mortgage Services (“PHH”), alleging (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) violations of New York General Business Law § 349; (4) violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. Ann. 505/1 *et seq.*; and (5) unjust enrichment.

As set forth in Paragraphs 8-10, there is diversity jurisdiction over Plaintiffs’ claims pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d).

**NATURE OF THE ACTION**

1. PHH is one of the country’s largest servicers of residential mortgages and has for years raked in millions of dollars in profit by unfairly and illegally up-charging borrowers for routine mortgage servicing activities. While PHH saves money—and therefore increases its profits—when it can persuade borrowers to remit payment using various methods of electronic

funds transfers (“EFTs”) instead of by check, PHH has chosen to take advantage of the fact that borrowers cannot choose their mortgage servicer and are captive audiences for a profit center. While PHH currently permits borrowers to pay via a pre-authorized, reoccurring EFT transaction over the ACH network without a charge, PHH tacks on egregious “convenience fees” or “processing fees” (collectively, “Pay-to-Pay Fees”) of up to \$19.50 for borrowers who elect to remit that same payment on a monthly basis instead.

2. These Pay-to-Pay Fees are not authorized in borrowers’ mortgage agreements and are often prohibited under various state and federal laws and regulations. Many of PHH’s borrowers obtain loans through the Federal Housing Administration (“FHA”), which insures loans for lower income borrowers. In exchange for government insurance, loan servicers must agree to adhere to the FHA’s regulatory scheme, which does not permit arbitrary and unreasonable costs be imposed on borrowers. PHH ignores these rules and charges these FHA borrowers the illegal and unapproved fees anyway.

3. Because mortgage servicers save money when they agree to accept payment via EFT, most mortgage servicers offer these payment methods free of charge. Indeed, the actual cost for PHH to process any kind of EFT transaction is far less than the cost to process a traditional check payment. EFTs are so much more efficient and cheaper for servicers that when PHH receives a check by mail, it often simply keys in the account and routing numbers and processes the payment as an EFT. Of course, that method still costs PHH more than when the borrower simply enters their payment information in themselves online or over the phone, but PHH has nevertheless decided to overcharge its captive borrowers who do its job for it.

4. Unfortunately, borrowers do not have the right to select their loan servicer and obtain a better deal; rather, their creditors made the decision to assign servicing rights to PHH. So

those borrowers who prefer the added control and protection provided when one authorizes the EFT payment on a monthly basis rather than paying by check or a preauthorized, reoccurring EFT cannot switch to those providers, and must accept PHH's outrageous fee schedule. Meanwhile, these borrowers are already compensating PHH for its servicing work; the interest and other fees paid as part of the mortgage loan are intended to cover all the costs associated with servicing it. To that end, the creditor pays PHH monthly service fees for each mortgage it processes. Nevertheless, PHH still chooses to mark up its costs of processing certain EFTs far above the actual cost and impose Pay-to-Pay Fees on borrowers to create a profit center for itself.

5. PHH has long known that its Pay-to-Pay Fees are problematic. Federal and state regulators have criticized the practice, and PHH has been subjected to many lawsuits over it. While other mortgage servicers have agreed to stop charging the fees (or never charged them in the first instance), PHH has aggressively sought out ways to force these fees on borrowers. In recognition of the fact that the fees are not otherwise permitted by contract or law, PHH has recently started to try to force some borrowers to agree to amend their mortgages to permit PHH to extract these fees. But PHH's proposed note amendment goes far beyond merely allowing it to charge a fee for a singular transaction. Rather, to obtain the right to have one payment processed via a standard EFT, PHH has begun trying to force some borrowers to permanently modify their mortgage agreements to permit PHH to charge the borrower up to \$19.50 each time the borrower elects to pay in a method not specifically provided for in the borrower's original note agreement for the duration of the mortgage agreement. Because the *only* method specifically provided for in the original note agreement is payment via check or money order, ***PHH's amendment allows PHH to charge borrowers who elect a recurring, pre-authorized automatic ACH debit from their bank account \$19.50 a month for the entire duration of the mortgage.*** Thus, under PHH's proposed note

amendment, a borrower who has a temporary financial setback but who wishes to preserve their credit and avoid a late fee, and elect to pay via a standard EFT, would only be able to do so if they agree to permit PHH broad rights to impose new and exorbitant fees for decades on the most routine payment methods.

6. PHH claims that it offers borrowers payment choices to which they would not otherwise be entitled, and for that, it has a right to charge whatever fees it wants. But PHH is required to accept payment by check and has no legal entitlement to receive payment any other way. It only offers various EFT options because those options save PHH money. And it imposes charges on the standard EFT payments because it has figured out that the borrowers most likely to elect that option tend to be borrowers who live on tighter budgets and are least able to absorb this added cost, but do so to avoid adverse credit reporting, overdraft charges, late fees, or other financial consequences. In criticizing this practice recently, a group of eleven state attorneys general explained, “simply choosing the less bad option doesn’t mean that the consumer really has a choice.”

7. Plaintiffs paid these Pay-to-Pay Fees and they bring this class action lawsuit individually and on behalf of all similarly situated putative class members, to recover the unlawfully charged Pay-to-Pay Fees and to enjoin PHH from continuing to charge these unlawful fees.

#### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d), because diversity exists between PHH and at least one class member and the matter in controversy exceeds \$5,000,000.



9. This Court has personal jurisdiction because PHH is a New Jersey citizen as it is a New Jersey corporation, and commits torts in New Jersey, as described in this Complaint.

10. Venue is proper because a substantial portion of the events alleged herein occurred within this District.

### **PARTIES**

11. Plaintiff Anntwanette Jones (individually, “Plaintiff Jones”) is a natural person residing in Amherst, New York, who has an FHA mortgage loan serviced and/or subserviced by PHH. A copy of her mortgage agreement is attached hereto as Exhibit A.

12. Plaintiff Lucinda Allard (individually, “Plaintiff Allard”) is a natural person residing in Chatham, Illinois, who has a mortgage loan serviced and/or subserviced by PHH. A copy of her mortgage agreement is attached hereto as Exhibit B.

13. PHH is incorporated in and has its principal place of business in the State of New Jersey and is thus a citizen of the State of New Jersey.

14. PHH enters into service agreements with lenders, note holders, master-servicers and trustees pursuant to which PHH provides servicing, subservicing, and agency activities for loan portfolios. Pursuant to its agreements with lenders, note holders, master-servicers, and trustees, PHH (a) acts as the agent to the lenders, note holders, master-servicers, and trustees, and (b) exercises the rights and responsibilities of those lenders, note holders, and master-servicers pursuant to their approval. In this manner, PHH either takes assignment of the servicing obligations in borrowers’ loan agreements, and/or is in functional privity and near privity of contract with Plaintiffs and Class members, tasked with performing many of the obligations assumed by the lenders and/or note holders to Plaintiffs’ and Class members’ loan agreements.

15. PHH often performs subservicing in which it performs its servicing duties under the name of master-servicer or lender. A borrower may not even realize that PHH is sub-servicing their loan as the master-servicer's name and logo appears prominently on the monthly statement and other correspondence while PHH's name may appear as "c/o PHH Mortgage Services" smaller font. However, PHH is responsible for interacting with borrowers, and processing payments. PHH does not disclose the terms of its servicing agreements publicly.

16. PHH represents in standard, form letters to Plaintiffs and other borrowers that, "PHH Mortgage Services will perform all servicing activities for your mortgage loan." PHH mails standard, form mortgage statements and notice letters to Plaintiffs and Class members with the approval and authority of its lender, note holder, and/or trustee principals.

### **STATEMENT OF FACTS**

#### **A. Overview of the Residential Mortgage Lending and Servicing Industry**

17. The residential mortgage lending industry is generally divided between two types of loans: conforming and non-conforming. The vast majority of loans are "conforming" loans, in that they "conform" with particular uniform terms and conditions, and are for amounts under a certain threshold, set by the Federal Housing Finance Agency in coordination with Federal National Mortgage Association (FNMA or Fannie Mae) and the Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac). FNMA and FHLMC are federally chartered corporations and are known as Government-Sponsored Enterprises (GSEs). In 2021, that funding threshold was \$528,250 in many places, and up to \$970,800 in higher cost-of-living areas. Loans that do not conform to these standards are typically "jumbo" loans and require more specialized underwriting due to the higher value of the property securing the mortgage.

18. Conforming loans include both government loans (i.e., those insured by the Federal Housing Administration (“FHA”), Veterans’ Administration, or the U.S. Department of Agriculture), and conventional loans. While certain government loans differ from conventional loans in a few ways, all conforming loans must nevertheless “conform” to the nationwide standards set by the GSEs, which purchase them to sell as pooled securities in the secondary market. To ensure ease of securitization, the GSEs create standard promissory notes and deed of trust/mortgage templates for all conventional loans, and the government agencies’ templates are modeled after those GSE templates. While these templates contain sections to incorporate any state requirements, this process too relies on standardized language.

19. As a result, the consumers who buy residential properties using a conforming mortgage loan do so through a standardized, regulated process, regardless of the lender or type of conforming loan obtained. These borrowers’ transactions are memorialized in two standardized documents, a deed of trust/mortgage and note (collectively “Standard Mortgage Agreements” or “Standard Mortgages”). Every few years, the GSEs and government agencies make minor modifications to select paragraphs in the templates that lenders are to use, but the templates are otherwise consistent. Examples of government and conventional Standard Mortgage Agreements are attached as Exhibits A and B, respectively.

20. Because the agreements cannot be bundled with one another if they are not standardized, all borrowers go through the same process to obtain a conforming loan. Mortgage lenders typically use industry software to generate the standardized templates and complete the templates with the borrowers’ information. Once approved to borrow the funds, the borrowers execute these standard loan documents. Because the GSEs will accept for securitization only those

loans that adhere to their standard loan documents, a lender cannot add additional terms and there is no room for negotiation of any kind.

**1. Mortgage Holders Delegate Rights and Responsibilities to Mortgage Servicers.**

21. After the mortgage or deed of trust agreement is finalized, the mortgage lender often sells the mortgage to the GSEs, which in turn bundle it with other conforming loans to sell as securities to investors in the form of a mortgage-backed security—a bond-like security that is secured by the mortgaged property. While the original mortgage lender may itself service the securitized and pooled loan, often that lender or the GSEs to which the loan is sold (collectively “Holders”) will assign a large mortgage servicing company the rights to service the mortgages. That company may in turn contract with one or multiple subservicers. These servicers (whether master servicers or subservicers (collectively “Servicing Companies”)) specialize in the management and administration of mortgages and perform the servicing obligations required by the Standard Mortgages.

22. As part of this process, the Holder assigns the servicer various rights and responsibilities under the standard mortgage agreements, and the servicer and the Holder negotiate a fee schedule under which the Holder will compensate the servicer for collecting payments and other servicing and collections work. Where a servicer enlists a subservicer, the same process applies. As a result, rather than paying the Holder directly, borrowers are instructed to submit their mortgage payments to a Servicing Company, who later splits those payments between itself, any master servicer involved, and the Holder pursuant to the agreed upon fee schedule.

23. The Servicing Companies get compensated in two key ways. *First*, as with any loan, a portion of the interest a borrower pays on their mortgage goes to cover the cost of collecting

that loan, and Servicing Companies negotiate a servicing fee for each mortgage serviced. The servicing fee is typically a fixed percentage of the borrower's outstanding mortgage balance on an annual basis, usually in the .25-.5% range. For example, if a Servicing Company agrees to perform work for .5% of the borrowers' balance, and a borrower has a \$223,952 balance on their mortgage (which was the average mortgage balance in the United States at the end of 2021),<sup>1</sup> the Servicing Company receives \$1,119.76 a year, or \$93.31 a month, to accept the payment from the borrower and apply it to the balance. *Second*, the Holder the servicing company to which it assigns servicing rights can agree to a fee schedule by which other incidental revenue from the borrower gets allocated between them. For example, the standard mortgage agreement specifies certain kinds of fees, such as late fees, and these agreements usually specify which party (i.e., the Holder or the servicer) can keep those fees. Likewise, the various companies involved may agree as to how interest on borrowers' escrow payments is shared.

24. The borrower has no role in the selection of the Servicing Companies or the way any company in the chain agree to split fees. Because the borrower's payment obligations are set out in the standard mortgage agreement, the borrower's out-of-pocket costs, in theory, should not be impacted by the Holder's choice of servicer and the involvement of any subservicer. And the standard mortgage agreement does not impose any obligation to pay for loan servicing beyond the mortgage payment, interest, and certain limited fees.

## **2. The Servicing of FHA Mortgages is Subject to Additional Regulatory Oversight.**

25. One type of government backed conforming mortgage are those backed by the FHA, an agency within the United States Department of Housing and Urban Development

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<sup>1</sup> <https://www.experian.com/blogs/ask-experian/how-mortgage-debt-has-rose-over-last-5-years/>

(“HUD”). The FHA “provides mortgage insurance on loans made by FHA-approved lenders throughout the United States and its territories.” The FHA “is the largest insurer of mortgages in the world, insuring over 47.5 million properties since its inception in 1934.”

26. A lender’s choice to avail itself of the benefit of the federal guarantee, however, comes with an obligation to service insured mortgages in full compliance with FHA’s servicing rules, which are codified as law at 24 C.F.R. Subpart C, Part 203. Because the lenders bear less risk, they are obligated to adhere to the regulatory scheme to protect the government’s investment, i.e., minimize the risk of borrower default. In particular, the regulations require the “mortgagee,” broadly defined to include the Lender, Holder, and Servicer, 24 C.F.R. § 203.251, to adhere to HUD’s servicing regulations “with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage.” 24 C.F.R. § 203.257. Additionally, HUD publishes a Single-Family Housing Handbook, which contains additional detail and instructions on how to comply with its regulations. Handbook 4000.1 (issued Jan. 18, 2023), available at <https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsgh-011823.pdf> (the “HUD Servicing Policy”).

27. One way the FHA enforces its regulatory scheme is through uniform security instruments (notes and deeds of trust/mortgages)<sup>2</sup> that contain standard terms. *See* 24 C.F.R. § 203.17 (mortgage must be in form defined by HUD Commissioner or contain specific terms authorized by Commissioner). Rather than allowing lenders to use their own potentially individualized mortgage agreements, the FHA requires lenders to use its version of the Standard Mortgage Agreement.

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<sup>2</sup> The contract used to secure the promissory note is referred to as either a deed of trust or mortgage depending on state law.

28. As part of its regulatory scheme, HUD has promulgated a series of regulations to “identif[y] servicing practices of lending institutions that HUD considers acceptable for mortgages insured by HUD.” 24 C.F.R. § 203.500.<sup>3</sup> *See also generally id.* at §§ 203.500-203.681 (“Servicing Regulations”).

29. Included in the Servicing Regulations are specific instructions setting forth the fees and charges that Holders and servicers may collect from borrowers. Specifically, HUD requires that a “mortgagee may collect reasonable and customary fees and charges from the mortgagor after insurance endorsement *only* as provided below.” 24 C.F.R. § 203.552 (emphasis added) (“Approved Fees Regulation”). This Regulation identifies thirteen specific types of charges, *see generally* 24 C.F.R. § 203.552(a), and one narrow category of charges, i.e., those “other reasonable and customary charges as may be authorized by the Secretary.” 24 C.F.R. § 203.552(a)(12) (emphasis added). The Regulation, however, limits what charges the Secretary may authorize, stating that these other charges “shall not include...[c]harges for servicing activities of the mortgagee or servicer.” *Id.* 24 C.F.R. § 203.552(a)(12)(i).

30. The HUD Servicing Policy reinforces the language in the Approved Fee Regulation. It states that lenders: may collect certain reasonable and customary fees and charges from the Borrower after the Mortgage is insured and as authorized by HUD below. All fees must be: reasonable and customary for the local jurisdiction based on the actual cost of the work performed or actual out-of-pocket expenses and not a percentage of either the face amount or the unpaid principal balance of the Mortgage; **and** within the maximum amount allowed by HUD.

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<sup>3</sup> The FHA Handbook similarly makes clear that “[t]he Mortgagee must fully comply with all of the following standards and procedures when servicing a Mortgage insured by the Federal Housing Administration.” HUD Servicing Policy § III.A.

HUD Servicing Policy at § III.A.1.f.ii. In other words, lenders may only collect fees that are authorized by HUD, and fees that are authorized by HUD are only those fees that meet all three of the specified criteria. Importantly, the fees must be tied to the actual costs or expenses incurred by the Holder or servicer.

31. To determine “the maximum amount allowed by HUD” for a fee, a lender must consult Appendix 3.0 of the HUD Servicing Policy, which contains an exhaustive list of the servicing fees and charges authorized by HUD and the maximum amounts that may be charged for such fees. Appendix 3.0 does not list any fees for processing payments other than fees for returned checks.

32. The HUD Servicing Policy further states “The Mortgagee must not charge the Borrower” for “costs of telephone calls personal visits with the Borrower, certified mail, or other activities that are normally considered a part of a prudent Mortgagee’s servicing activity.” HUD Servicing Policy at § III.A.1.f.ii.(B).

33. The Standard Mortgage Agreements for FHA borrowers is informed by the Approved Fee Regulation, as well as the Servicing Regulations. In particular, since approximately 2017, these Agreements have stated:

**13. Loan Charges.** Lender may charge me fees for services performed in connection with my 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. Lender may collect fees and charges authorized by the Secretary [of Housing and Urban Development]. Lender may not charge fees that are prohibited by this Security Instrument or by Applicable Law.



*See, e.g.,* Ex. A at § 13.<sup>4</sup> The Standard Mortgage Agreements for FHA borrowers does not specifically itemize the fees that HUD has approved and prohibited; rather, the Agreements contemplate that the contracting parties (i.e., the lenders, Servicing Companies, and borrowers) will refer to the Approved Fee Regulation and implementing policy documents, including the Servicing Handbook to understand what fees can be charged.

**B. PHH is a Residential Mortgage Servicer That Charges Illegal and Unfair Pay-to-Pay Fees.**

34. PHH is a Servicing Company, providing both servicing and subservicing of conforming, residential mortgages, and operates nationwide. PHH buys mortgage servicing rights or contracts and exercises those mortgage servicing rights to collect mortgage payments, charge fees, enforce the mortgage or deed of trust and note, as well as initiate foreclosure on properties that secure the mortgage or deed of trust and note.

35. As part of PHH's regular business practice of acquiring servicing rights to mortgages, it acquires mortgages in default for purposes of servicing them, including collecting payments on that mortgage debt both during the time the mortgage is in default and after it has been brought current.

36. PHH also regularly services FHA mortgages and is a "mortgagee" within the meaning of the HUD regulatory scheme. In so doing, PHH must annually "acknowledge that the Mortgagee is now, and was at all times throughout the Certification Period, subject to all applicable HUD regulations, Handbooks, Guidebooks, Mortgagee Letters, Title I Letters, policies and requirements, as well as Fair Housing regulations and laws including but not limited to 24 C.F.R

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<sup>4</sup> The language prior to 2017 was substantially similar, except that the last sentence was not included.

§ 5.105, Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), and Title VI of the Civil Rights Act of 1964.”

**1. PHH Has Legal Obligations and Financial Incentives to Offer Consumers Various Ways to Remit Payment.**

37. As a Servicing Company, one of PHH’s major responsibilities is to accept mortgage payments. The Standard Mortgage Agreements require the Holder or Servicer to accept payment via check or money order at a designated location.

38. While PHH, like all Servicing Companies, is required to accept payments by check under the Standard Mortgage Agreements, accepting payments in this form is expensive. It can cost anywhere between \$1 and \$4 a month in processing and other fees, per a 2015 report by the Association for Financial Professionals. Every check needs to be opened, reviewed, keyed into the computer system to apply to the loan, and deposited. Delays in postal operations and the high risk of human error generate customer service calls and require internal checkpoints and increased oversight. Borrowers who are concerned about the timeliness of the payment may call to ensure it was received and properly credited, adding to the customer service work associated with this routine part of servicing.

39. Because of the costs associated with accepting paper checks, Servicing Companies earn more money per payment if they can persuade borrowers to remit payment via electronic funds transfer, which often costs as little as only a few cents. Generally, EFTs take two main forms.

40. **First**, EFTs may be pre-authorized, reoccurring EFTs, whereby the borrower authorizes the Servicing Company to debit each month a pre-determined amount of money from their account on a pre-determined date. This form of payment typically costs Servicing Companies a few cents per transaction. While Servicing Companies may accept payment in this manner, they

are prohibited from requiring borrowers to repay their mortgages in this manner. The federal Electronic Funds Transfer Act prohibits lenders from “condition[ing] the extension of credit” on a borrower’s willingness to repay the loan “by means of preauthorized electronic fund transfers.” 15 U.S.C § 1693k(1).

41. ***Second***, EFTs may be standard EFTs, whereby the borrower authorizes only a single debit at a time. A borrower paying via standard EFT could remit payment via electronic funds transfer on the date of their choosing by using a payment form on the Servicers’ website, phone, or via an interactive voice recorded (“IVR”) phone call, through which a borrower can provide bank account information and authorize the electronic payment. Standard EFTs typically cost Servicing Companies like PHH less than 50 cents a transaction, far less than the cost of paying by check, and like the pre-authorized EFTs, includes increased electronic efficiencies. The Association for Financial Professionals wrote a report in 2015 stating that the median cost for processing these transactions was between 37 and 75 cents, much less than its estimated check processing costs of \$1 to \$4.

42. While PHH, like all Servicing Companies, saves the most money, and thus, profits more, when borrowers agree to submit payment via pre-authorized EFTs, it knows that it cannot mandate that borrowers pay this way. And PHH knows that many borrowers will find pre-authorized reoccurring EFTs inconvenient or impractical, as it requires that one agree to a fixed amount and date for the debit each month out of a pre-determined bank account, and increases a borrower’s vulnerability to banking errors. Many borrowers have various budgetary needs that cause them to need more control over their finances. For example, borrowers are often paid on different dates of a given month, and since there is a fifteen-day grace period before a monthly payment is deemed late, borrowers may need to make their monthly payment on a schedule that

coincides with their paydays, which may not be the same calendar day each month. Some may pay extra on their mortgage at times and need to make that decision on a monthly basis. Others may be sharing responsibility for paying the mortgage with another person, and funds to pay it come from multiple bank accounts.

43. Because the cost of accepting paper checks is high, and accepting payment via EFT is low, Servicing Companies, including PHH, can reduce costs and increase profits if they can persuade the group of borrowers who do not consent to pre-authorized EFTs to pay via standard EFTs instead of by check. Thus, many servicers, including PHH, offer borrowers the option of authorizing payment via a standard EFT on a month-by-month basis.

**2. PHH Illegally and Unfairly Double-Charges Consumers When They Remit Payment Online or Over the Phone.**

44. While PHH already profits when it persuades borrowers to pay in ways that do not require PHH to process a check, PHH exploits borrowers' financial vulnerabilities by charging borrowers to process their own transactions at a huge markup. Each time a borrower whose loan is serviced by PHH makes a payment via standard EFT, PHH charges the borrower a Pay-to-Pay Fee of up to \$19.50, but often at least \$7.50.

45. These Pay-to-Pay Fees are materially higher than the costs incurred by PHH, and can add up to hundreds of dollars over the life of a single loan, and provide millions of dollars in profits for PHH. PHH's imposition of Pay-to-Pay Fees also amounts to a form of double-charging. It charges the Pay-to-Pay Fees over and above its negotiated servicing fees agreed with the Holder and any master servicer.

46. When PHH negotiates a servicing fee, it does so knowing that (1) it cannot require any borrower to remit payments exclusively by a pre-authorized EFT; and (2) it may have to incur

the higher cost of payment by check for every single borrower whose account PHH services. Thus, when negotiating and charging a given service fee, PHH knows that it must charge a rate that is high enough to cover its servicing costs, including the costs of accepting payment by check, while allowing it to turn a profit. Using the example in paragraph 23, where PHH negotiates a .5% servicing fee, the borrower of an average U.S. mortgage compensates PHH \$93.31 a month to accept their payment, regardless of how they remit payment. In that instance, should the borrower invoke their right to pay by check, PHH could incur as much as \$4 in costs to process check payments, leaving \$89.31 to cover other overhead costs and for its own profit. By offering the borrower the option to pay via a standard EFT, PHH can keep a few more dollars of the borrower's money. But PHH goes one step further. It *also* charges the borrower extra fees—of up to \$19.50 per payment—when they make the payment.

47. PHH has admitted that it retains portions of the Pay-to-Pay Fees and that the fees it collects exceeds “the costs of processing such payments or making such payment methods available.” Ex. C, Allard Proposed Note Amendment ¶ 2.

48. As to FHA borrowers, the Pay-to-Pay Fees that PHH collects are in violation of those borrowers' mortgage agreements, as well as of the HUD Servicing Regulations. In particular, Pay-to-Pay Fees do not appear on the list of approved fees in the Approved Fee Regulation. Rather, the Approved Fee Regulation prohibits the Secretary from authorizing “[c]harges for servicing activities,” 24 C.F.R. § 203.552(a)(12)(i), which Pay-to-Pay Fees are. The Pay-to-Pay Fees further violate that regulation and the policies set forth in the Servicing Handbook, as they are neither reasonable nor customary. Most Servicers do not charge these fees. And they are not reasonable, as the fees exceed PHH's out-of-pocket costs by as much as several hundred percent. Moreover, because the Pay-to-Pay Fees are both a cost in connection with a telephone call, and not included

on Appendix 3.0, they, are not authorized, even if they are based on actual cost of work and are reasonable and customary for the given geographic region.

49. PHH's fees also violate a New York statute that regulates mortgage servicers. In particular, New York law provides that "[a] servicer may only collect a fee if it is for a service that is actually rendered to the borrower, reasonably related to the cost of rendering that service." 3 N.Y.C.R.R. § 419.5(b). PHH's steep fees of \$7.50 to \$19.50 are not reasonably related to the cost of rendering the service, which is significantly less.

50. PHH may purport to be providing a valuable service to borrowers to which they would not otherwise be entitled. But PHH has no incentive to stop offering standard EFTs to borrowers, because if it did, PHH would have to process more checks at a much higher cost.

51. PHH's preference for processing payments via standard EFT rather than via a paper check is plain from its own instructions to borrowers in monthly statements. PHH admits that it may not actually process the checks it receives as checks, but rather, converts them to a *standard* EFT:

When you provide a check as payment, you authorize us either to use the information from your check to make a one-time electronic fund transfer from your account, or to process the payment as a check transaction. . . . If you would like to opt out of this program or if you have any questions, please call us at the phone number shown on the front of this statement.

In other words, PHH does not deposit the check at its bank and then wait several days for the check to clear. Rather, when a borrower mails it a check, PHH uses the borrower's bank account number and routing number on the bottom of the check to electronically debit the borrower's bank account over the ACH network, resulting in the payment clearing in about a day.

52. Because processing a check as an EFT transaction will clear faster, it is less likely to incur the customer service costs associated with the acceptance of checks, and thus is less

expensive, but because there is still some delay time and more risk of human error, this method is still more expensive than processing a standard borrower-initiated EFT. It is implausible that PHH would stop allowing borrowers to enter their bank account information if it could not charge them to do so, and instead assume the added expense of doing that work itself. For example, although PHH agreed, in settling a similar class action lawsuit involving California borrowers, to cease charging those borrowers Pay-to-Pay Fees, it continues to offer those borrowers the option of paying via standard EFT (free of charge), presumably because allowing customers this payment option is financially beneficial for PHH.

53. If PHH wants to make more money, it can negotiate a larger fee from the Holder or master servicer. It should not get to double dip—pocketing the servicing cut while upcharging borrowers for doing the work they have already been paid to do. PHH gets away with these illegal Pay-to-Pay Fees because borrowers cannot choose another mortgage servicer or shop around for a better deal. Borrowers are forced to have PHH service their loan.

**C. PHH Has Long Known that Its Pay-to-Pay Fees Violate Contracts, Laws, and Public Policy But Continues to Manufacture Unfair and Unenforceable Ways to Force Borrowers to Pay Them.**

54. Pay-to-Pay Fees are nothing new. And they have earned condemnation from borrowers, federal and state legislatures, regulators, and attorneys general. PHH is well aware of the criticisms and unfair and illegal nature of the fees, but has charged them for years. While most mortgage servicers in the country have stopped charging these fees (or never charged them in the first instance) as public outcry over these fees has grown, PHH has looked for new loopholes to force borrowers to continue to pay them.

55. The federal government and state governments have issued statements condemning Pay-to-Pay Fees and prohibiting loan servicers and debt collectors from assessing them.

56. In October 2022, President Biden announced that his administration would be taking steps to go after unfair “junk fees” that are imposed on consumers, who get nothing of value in return. Around that time, the Federal Trade Commission announced that it was seeking comments on “junk fees,” the “unnecessary, unavoidable, or surprise charges that inflate costs while adding little to no value.” <https://www.ftc.gov/news-events/news/press-releases/2022/10/federal-trade-commission-explores-rule-cracking-down-junk-fees> (last accessed Feb. 1, 2023). Among the junk fees on which the FTC sought commentary were those imposed on “captive consumers,” such as those who are dealing with a company that has “exclusive rights.” *Id.* Chair Lina M. Khan explained that:

No one has ever felt that a ‘convenience fee’ was convenient. Companies should compete to provide the best quality at the best price, not to see who can squeeze the most added expenses out of consumers. That’s especially true at a time when families are struggling with the effects of inflation.

*Id.*

57. Similarly, the Consumer Financial Protection Bureau (“CFPB”) has been taking steps to address junk fees. In June 2022, it issued an advisory opinion in which it “affirm[ed]” its position that imposition of “pay-to-pay or ‘convenience’ fees, such as fees imposed for making a payment online or by phone,” where those fees are not contractually or legally authorized, is an “unfair or unconscionable means to collect or attempt to collect any debt” prohibited by Section 808(1) of the FDCPA and the CFPB’s regulations implementing that provision. Although the FDCPA may not directly apply in this context, the CFPB’s position on Pay-to-Pay Fees affirms the clear federal policy against them in myriad contexts.

58. This advisory opinion comes on the heels of other efforts by the CFPB to respond to the problems caused by Pay-to-Pay Fees. In October 2021, the CFPB filed an *amicus* brief in a



matter before the Ninth Circuit explaining its position that Pay-to-Pay Fees are junk fees that violate federal law and policy. The CFPB explained:

The FDCPA was designed to rein in unethical debt collectors, and [the FDCPA] specifically was designed to limit the amounts that debt collectors could try to collect from consumers. But under the district court’s interpretation, debt collectors can collect additional fees, like the pay-to-pay fees at issue here, whenever no other law specifically prohibits them—leaving debt collectors with the power and discretion to try to collect additional fees during the collection process. This is particularly problematic given that consumers have no ability to shop around for a better deal. And it’s not as if these pay-to-pay fees are necessary for debt collectors to offer phone or online payment options that consumers might want, as it is generally cheaper for collectors to accept payment by phone or online than to accept payment by mail (which is typically the fee-free option). Pay-to-pay fees are thus most often just a way for debt collectors to take advantage of consumers by trying to extract more money than they originally bargained for or reasonably expected to pay.

Brief of *Amicus Curiae* Consumer Financial Protection Bureau in Support of Plaintiffs-Appellants at 11, *Thomas-Lawson v. Carrington Mort. Servs.*, No. 21-55459 (9th Cir. filed Oct. 21, 2021), ECF No. 22.

59. State regulators have also taken action. In April 2022, in response to the CFPB’s request for information on this issue, the Attorney General of Illinois led a coalition of 22 state attorneys general, including New York, to call on the CFPB to prohibit mortgage servicers from charging Pay-to-Pay fees. While the CFPB had asked for information on a broad array of “junk fees” charged by financial service companies, the group submitted comments solely on the Pay-to-Pay Fees charged by mortgage servicers. *See* Ex. D, Attorney Generals’ Response dated April 11, 2022. The group noted that the fees are particularly problematic in this specific context, explaining “And since mortgage borrowers are a captive market for their particular servicer, borrowers can’t simply avoid the fees by taking their business elsewhere.” *Id.* at 2. In the comments, the coalition specifically cited PHH as an example of a servicer with unfair Pay-to-Pay

fees. *Id.* at 2, n. 3. Speaking about his reasoning for leading the charge, Illinois Attorney General Kwame Raoul stated “That consumers should face additional charges depending on how they pay their bills, for instance by paying online, is absurd. Convenience fees allow mortgage servicers to be paid twice, for simply performing their most basic function of accepting payments.” *See* [https://illinoisattorneygeneral.gov/pressroom/2022\\_04/20220411b.html](https://illinoisattorneygeneral.gov/pressroom/2022_04/20220411b.html), last accessed Feb. 22, 2023.

60. PHH, which is a fully owned subsidiary of Ocwen Financial Corporation, has also been sued by borrowers in various class action lawsuits in several different states over illegal charging of Pay-to-Pay Fees. These lawsuits include:

- a. *Torliatt v. Ocwen Loan Servicing, LLC*, Case No. 3:19-cv-04303 (N.D. Cal.) (“*Torliatt*”)
- b. *Williams v. PHH Mortg. Corp.*, Case No. 4:20-CV-04018 (S.D. Tex.) (“*Williams*”)
- c. *Thacker v. PHH Mortgage Corporation*, Case No. 5:21-cv-00174 (N.D. W.Va.) (“*Thacker*”)
- d. *Morris v. PHH Mortgage Corporation*, Case No. 0:20-cv-60633 (S.D. Fla.) (“*Morris*”)
- e. *McWhorter v. Ocwen Loan Servicing, LLC*, Case No. 2:15-cv-01831 (N.D. Ala.) (“*McWhorter*”)

61. *Torliatt*, *Williams*, *Thacker*, *Morris*, and *McWhorter* are referred to herein as “Other Class Lawsuits.” In *Torliatt*, the district court certified a class of California borrowers, *see Torliatt v. Ocwen Loan Servicing, LLC*, 570 F. Supp. 3d 781 (N.D. Cal. 2021), and in both *Torliatt* and *Thacker*, PHH settled, agreeing not to charge fees to borrowers in those states. Those settlements

have been finally approved. PHH and/or its parent Ocwen also agreed to settle the *McWhorter*, *Morris*, and *Williams* lawsuits, although it did not agree to stop charging the Pay-to-Pay Fees in those lawsuits. The *McWhorter* settlement has been finally approved, the Southern District of Florida preliminarily approved the *Morris* settlement on December 22, 2022, and the motion for preliminary approval is pending in the *Williams* lawsuit.

62. Despite being sued, PHH has tried to use class action litigation against it to force borrowers to accept its illegal fees, unsuccessfully in *Morris*, but successfully in *McWhorter*. Specifically, under the terms of the settlement reached in *McWhorter*, the settlement class members were entered into a mass amendment of their mortgage notes to authorize PHH to charge Pay-to-Pay Fees going forward. (The enforceability of these note amendments are questionable in light of the statute of frauds and other legal and policy considerations.)

63. In *Morris*, in late 2020, PHH and the plaintiff's attorney there reached an agreement similar to that in *McWhorter*, whereby tens of thousands of class members would have their notes amended to authorize the fees. But in January 2021, a coalition of 33 state attorneys general, including those representing Illinois and New York, intervened to object to this settlement in large part because of the note amendment. The New York Attorney General, speaking for the coalition, condemned the fees as unlawful:

“When Americans utilize online or phone payments to pay off their monthly mortgages, [mortgage servicer] PHH benefits, but instead of passing those savings on to homeowners PHH charged illegal fees and increased costs for nearly one million Americans,” said Attorney General James. “PHH’s sole purpose is to collect and process homeowners’ payments, which it already makes millions of dollars from each year. In the 21<sup>st</sup> century, when most Americans pay their bills online or by phone, to charge fees on top of what they are already being paid is not only unethical, but unlawful.”

For years, PHH charged nearly one million homeowners an illegal fee—ranging from \$7.50 to \$17.50—each time a homeowner made a monthly mortgage payment online or by phone, despite most Americans paying their mortgages one of these two ways. Nowhere in

these homeowners' mortgage contracts is there authorization for such fees and PHH does not charge "processing" fees for any other customers, including those who pay by check or those who set up automatic debit payments. Charging fees not mentioned in the mortgage contract is illegal and, under New York's mortgage servicing regulations, explicitly forbidden.

Press Release, N.Y. State Att'y Gen., *Attorney General James Leads Bipartisan Coalition Fighting to Protect Nearly One Million Homeowners from Unlawful Fees* (Jan. 29, 2021), <https://ag.ny.gov/press-release/2021/attorney-general-james-leads-bipartisan-coalition-fighting-protect-nearly-one>.

64. Likewise, the office of Illinois Attorney General Kwame Raoul issued a press release decrying the "illegal payment processing fees" and taking issue with the fact that the servicer would be permitted "to profit from unethical and illegal conduct." Press Release, Ill. Att'y Gen., *Attorney General Raoul Fights to Protect Homeowners for Unlawful Fees* (Jan. 29, 2021), [https://illinoisattorneygeneral.gov/pressroom/2021\\_01/20210129.html#:~:text=For%20years%20C%20PHH%20charged%20nearly,one%20of%20these%20two%20ways](https://illinoisattorneygeneral.gov/pressroom/2021_01/20210129.html#:~:text=For%20years%20C%20PHH%20charged%20nearly,one%20of%20these%20two%20ways).

65. The *Morris* court ultimately denied preliminary approval, refusing to allow PHH to amend tens of thousands of notes via settlement, and the revised settlement, which was preliminarily approved, does not contain any such provision. Since then, however PHH has continued to find ways to force borrowers to pay these fees.

66. In recent months, in Illinois and likely in other states, PHH has started informing borrowers who try to elect PHH's standard EFT option that a "signed amendment to the original Note document" is required. *See, e.g.*, Ex. C. The proposed amendment purports to require the borrower to agree to pay up to \$19.50 for use of "any payment methods not specifically provided for by the Note." *Id.* at p. 3, ¶ 2. Because the original mortgage agreement, including the note, only specifically provides for payment via check or money order, PHH would be permitted to charge

any borrower who signed this amendment \$19.50 a month for all types of payments not specified in the original agreement, including pre-authorized EFT transactions, and it would be permitted to do so for the remaining duration of the mortgage agreement.

### **PLAINTIFFS' ALLEGATIONS**

#### **A. Plaintiff Jones**

67. On or around June 29, 2021, Plaintiff Jones obtained a mortgage loan secured by her home in Amherst, New York. Plaintiff Jones executed a promissory note (“Plaintiff Jones Note”) and mortgage (“Plaintiff Jones Mortgage”) (collectively “Plaintiff Jones Standard Mortgage Agreement”) consistent with the Standard Mortgage Agreement with FHA modifications. The Plaintiff Jones Note and Plaintiff Jones Mortgage are attached as Exhibit A..

68. Plaintiff Jones obtained the mortgage loan secured by her property for personal, family or household uses.

69. Plaintiff Jones’s Lender and/or master servicer assigned PHH servicing rights under her Standard Mortgage Agreement. At no time was Plaintiff Jones provided an opportunity to select her servicer; rather, the decision to assign PHH servicing rights was made exclusively by her lender and/or master servicer.

70. Like many other borrowers whose mortgages are serviced by PHH, Plaintiff Jones’s Standard Mortgage Agreement incorporates standard language from Fannie Mae and Freddie Mac model mortgages, with the standard FHA modifications. Like those other borrowers, Plaintiff Jones Standard Mortgage Agreement does not expressly authorize Pay-to-Pay Fees, and limits PHH’s ability to collect the fees to those authorized by HUD, and prohibits lenders from charging fees prohibited by law, including the law of New York. Section 13 of Plaintiff Jones Mortgage provides, in relevant part:

**13. 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. *Lender may collect fees and charges authorized by the Secretary. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.*

Emphasis added.

71. Plaintiff Jones paid her payments via standard EFT placed over the phone or internet every month since origination including but not limited to, the months of July and November 2022. Each time she did, PHH charged her a Pay-to-Pay Fee. For example, on July 12, 2022, and November 9, 2022, PHH collected from Plaintiff Jones \$7.50 in Pay-to-Pay Fees for her standard EFT payments.

72. Each Pay-to-Pay Fee charged by PHH to process Plaintiff Jones' standard EFT payments grossly exceeded PHH's costs of accepting the EFT payment. Each fee was neither reasonably related to PHH's costs of providing the service, nor customary in the industry. Plaintiff Jones would prefer to use one of the many servicers who does not charge Pay-to-Pay Fees for routine EFT payments, but is not able to change servicers.

**B. Plaintiff Allard**

73. On or around October 4, 2005, Plaintiff Allard obtained a mortgage loan secured by her home in Chatham, Illinois. Plaintiff Allard executed a promissory note ("Plaintiff Allard Note") and mortgage ("Plaintiff Allard Mortgage") (collectively "Plaintiff Allard Standard Mortgage Agreement") consistent with the Standard Mortgage Agreement. The Allard Mortgage is attached as Exhibit B.

74. Plaintiff Allard obtained the mortgage loan secured by her property for personal, family or household uses.

75. Plaintiff Allard's Lender and/or master servicer assigned PHH servicing rights under the mortgage agreement. At no time was Plaintiff Allard provided an opportunity to select her servicer; rather, the decision to assign PHH servicing rights was made exclusively by her lender and/or master servicer.

76. Like many other borrowers whose mortgages are serviced by PHH, Plaintiff Allard's Standard Mortgage incorporates standard language from Fannie Mae and Freddie Mac model mortgages. Like those other borrowers, Plaintiff Allard's Standard Mortgage Agreement does not expressly authorize Pay-to-Pay Fees. Section 14 of Plaintiff Allard's Mortgage provides, in relevant part:

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protection of 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.

77. Plaintiff Allard paid her payments via standard EFT over the internet for most, if not all months, over the last three years. Each time she did, PHH charged her a Pay-to-Pay Fee. For example, on July 28, 2022, PHH collected from Plaintiff Allard a \$7.50 Pay-to-Pay Fee for her standard EFT payment.

78. Each Pay-to-Pay Fee charged by PHH to process Plaintiff Allard's standard EFT payments grossly exceeded PHH's costs of accepting the EFT payment. Each fee was neither reasonably related to PHH's costs of providing the service, nor customary in the industry. Plaintiff Allard would prefer to use one of the many servicers who does not charge Pay-to-Pay Fees for routine EFT payments, but is not able to change servicers.

79. Plaintiff Allard has an outstanding fee of \$15.00 on her mortgage account. When Plaintiff Allard logs on to PHH's website to make her monthly payment, Plaintiff Allard has the option to click one link that allows her to pay her monthly payment or additional principal, or another link that allows her to pay any outstanding fees on the account. However, PHH will not allow her to process the payments together. As such, if Plaintiff Allard wanted to pay her monthly payment and the \$15.00 fee, she would have to process two transactions, and thus, pay two \$7.50 Pay-to-Pay Fees.

80. On December 28, 2022, Plaintiff Allard logged on to her PHH online portal to pay her January 1, 2023 mortgage payment. However, she was unable to process the payment and was instructed to call PHH's customer service hotline. When Plaintiff Allard called, she was informed by the PHH representative that to make a phone or internet payment in the future, Plaintiff Allard had to sign a Note Amendment in which she agreed that PHH may "choose to accept payments made through means not specifically provided for in the Note[,]" and that PHH could charge up to \$19.50 per payment for those charges. Ex. C, Allard Proposed Note Amendment Agreement ¶1-4. Plaintiff Allard did not sign the amendment or otherwise agree to it. Because Plaintiff Allard's original note did not specifically provide for any form of ETF payment, had PHH secured Plaintiff Allard's signature, Plaintiff Allard risked PHH charging her \$19.50 for any form of ETF, pre-authorized or standard, for the remaining 12 years of her mortgage

**C. Notice was Provided to PHH**

81. On January 24, 2023, Plaintiffs' counsel provided the notice attached as Exhibit E to PHH and demanded it cure the violations on behalf of the putative classes. PHH did not respond.

82. On numerous occasions, including in connection with each of the lawsuits identified in paragraph 60, PHH has been put on notice that its Pay-to-Pay Fee practices violate



state and federal laws and regulations and the standard mortgage agreements as to its residential borrowers throughout the United States. As a large corporation, PHH is aware of the larger regulatory scheme, and is further aware that state and federal officials have criticized the practice as unfair, illegal, and in contravention of public policy.

83. Further time and effort to secure compliance with PHH would have been futile, as PHH has refused to modify its practices in light of years of notice, criticism, and demands that it cure, cease the practice, and provide compensation to affected borrowers.

### **CLASS ACTION ALLEGATIONS**

84. Plaintiff Jones brings this action pursuant to Federal Rule of Civil Procedure, Rule 23(a), 23(b)(2), and (b)(3) on behalf of a FHA Class defined as follows:

**FHA Class:** All persons (1) with a residential mortgage loan securing a property in the United States, (2) serviced or subserved by PHH, (3) with mortgage or deed of trust agreements incorporating standard uniform covenants from FHA model mortgages, (4) and who paid a Pay-to-Pay Fee to PHH when making a payment on their mortgage by telephone, internet, or an Interactive Voice Response system (“IVR”) during the applicable statutes of limitations through the date a class is certified.

85. Plaintiff Jones brings this action pursuant to Federal Rule of Civil Procedure, Rule 23(a), 23(b)(2), and (b)(3) on behalf of a FHA New York Subclass defined as follows:

**FHA New York Subclass:** All persons (1) with a residential mortgage loan securing a property in the state of New York, (2) serviced or subserved by PHH, (3) with mortgage or deed of trust agreements incorporating standard uniform covenants from FHA model mortgages, (4) and who paid a Pay-to-Pay Fee to PHH when making a payment on their mortgage by telephone, internet, or IVR during the applicable statutes of limitations through the date a class is certified.

86. Plaintiff Jones brings this action pursuant to Federal Rule of Civil Procedure, Rule 23(a), 23(b)(2), and (b)(3) on behalf of the New York Class defined as follows:

**New York Class:** All persons (1) with a residential mortgage loan securing a property in the state of New York, (2) serviced or subserved by PHH, (3) with mortgage or deed of

trust incorporating standard uniform covenants from Fannie Mae/Freddie Mac, FHA or similar government-backed model mortgages, and (4) and who paid a fee to PHH for making a loan payment by telephone, internet, or IVR, during the applicable statutes of limitations through the date a class is certified.

87. Plaintiff Allard brings this action pursuant to Federal Rule of Civil Procedure, Rule 23(a), 23(b)(2), and (b)(3) on behalf of the Illinois Class defined as follows:

**Illinois Class:** All persons (1) with a residential mortgage loan securing a property in the state of Illinois, (2) serviced or subserviced by PHH, (3) with mortgage or deed of trust incorporating standard uniform covenants from Fannie Mae/Freddie Mac, FHA or similar government-backed model mortgages, and (4) and who paid a fee to PHH for making a loan payment by telephone, internet, or IVR, during the applicable statutes of limitations through the date a class is certified.

88. Excluded from these classes are borrowers whose loans were modified via the previously approved class action settlement in *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH (N.D. Ala.). Further excluded from these classes are claims released by borrowers who were members of the settlement classes in *Torliatt v. Ocwen Loan Servicing, LLC*, Case Nos. 3:19-cv-04303-WHO, 3:19-cv-04356-WHO (N.D. Cal.), *Thacker v. PHH Mortgage Corp.*, No. 5:21-cv-00174-JPB (N.D. W.Va.), *Morris et al. v. PHH Mortgage Corp. et al.*, No. 0:20-cv-60633-RS (S.D. Fla.), *Williams v. PHH Mortg. Corp.*, Case No. 4:20-CV-04018 (S.D. Tex.)(settlement pending preliminary court approval). Further excluded from these classes are PHH, any entity in which PHH has or had a controlling interest or which have or had a controlling interest in any PHH, PHH's employees, officers, directors, legal representatives, assigns, and successors; the judicial officer(s) to whom this matter is assigned and their immediate family; and Class members who timely opt-out of any certified 23(b)(3) opt-out Class.

89. Plaintiffs reserve the right to modify or amend the definition of the Classes before the Court determines whether certification is appropriate.

**A. Numerosity (Rule 23(a)(1))**

90. The proposed Classes are so numerous that joinder of all members would be impracticable; PHH services hundreds of thousands of loans. The individual Class members are ascertainable, as the names and addresses of all Class members can be identified in the business records maintained by PHH. The precise number of Class members can be obtained through discovery, but the numbers are clearly more than can be consolidated in one complaint such that it would be impractical for each member to bring suit individually. Plaintiffs do not anticipate any difficulties in the management of the action as a class action.

**B. Commonality (Rule 23(a)(2))**

91. There are core questions of law and fact that are common to Plaintiffs' and Class members' claims.

92. These common questions predominate over any questions that go particularly to any individual member of the Classes. Among such common questions of law and fact are the following:

- a. whether Class members' loan agreements prohibited Pay-to-Pay Fees;
- b. whether PHH was in near functional privity or privity of contract with Class members;
- c. whether PHH was operating as an agent for its lender / note holder / trustee principals;
- d. whether PHH charged Class members Pay-to-Pay Fees;
- e. whether the Pay-to-Pay Fees were in excess of the actual cost of the fees, *i.e.*, the costs and charges incurred by PHH to accept mortgage payments by EFT;

- f. whether PHH breached Class members' loan agreements and violated state and federal law;
- g. whether PHH's cost to process Pay-to-Pay transactions is less than the amount that it charged for Pay-to-Pay Fees;
- h. whether Plaintiffs and the Classes were damaged by PHH's conduct;
- i. whether Plaintiffs and the Classes are entitled to restitution;
- j. whether Plaintiffs and the Classes are entitled to attorney's fees and costs; and
- k. the appropriate remedies due by PHH to Class members.

**C. Typicality (Rule 23(a)(3))**

93. Plaintiffs are members of the Classes they seek to represent. Plaintiffs' claims are typical of claims of the other Class members because of the similarity, uniformity, and common purpose of PHH's unlawful conduct. Each Class member has sustained, and will continue to sustain, damages in the same manner as Plaintiffs as a result of PHH's unlawful conduct.

**D. Adequacy of Representation (Rules 23(a)(4) and 23(g))**

94. Plaintiffs are adequate representatives of the Classes and will fairly and adequately protect the interests of the Classes. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel, experienced in litigation of this nature, to represent them. There is no hostility between Plaintiffs and the unnamed Class members. Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

95. To prosecute this case, Plaintiffs have chosen the undersigned law firms, who are experienced in class action litigation, fraud litigation, and mortgage litigation, and who have the

financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

**E. Predominance and Superiority (Fed. R. Civ. P. 23(b)(3))**

96. The questions of law or fact common to Plaintiffs' and each Class member's claims predominate over any questions of law or fact affecting only individual members of the Classes. All claims by Plaintiffs and the unnamed Class members are based on PHH's common fraudulent and unlawful conduct based on uniform policies involving standardized (and form) mortgage documents.

97. Moreover, common questions of law predominate, including whether the assessment of Pay-to-Pay Fees violates the mortgage agreements and are assessed in bad faith.

98. Common issues predominate when, as here, liability can be determined on a class-wide basis, even though some individualized damages determinations may be necessary.

99. A class action is superior to individual actions.

100. Joinder of all Class members would create extreme hardship and inconvenience for the affected borrowers as they are dispersed geographically and reside across multiple states.

101. Individual claims by Class members are impractical because the costs to pursue individual claims exceed the value of what any one Class member has at stake. As a result, individual Class members have no interest in prosecuting and controlling separate actions.

102. There are no known individual Class members who are interested in individually controlling the prosecution of separate actions. The interests of justice will be well served by resolving the common disputes of potential Class members in one forum. Individual suits would not be cost effective or economically maintainable, and the action is manageable as a class action.

**F. Requirements of Fed. R. Civ. P. 23(b)(2)**

103. Prosecuting separate actions by or against individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for the party opposing the Classes.

104. PHH acted or failed to act in a manner generally applicable to the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

## **COUNT I**

### **BREACH OF CONTRACT**

**(On Behalf of Plaintiff Jones, the FHA Class, the FHA New York Subclass, and the New York Class)**

105. Plaintiff Jones incorporates paragraphs 1 through 104 as if fully set forth herein.

106. Plaintiff Jones and the other members of the FHA Class, the New York Class, and the FHA New York Subclass (collectively “Breach Classes”) have executed Standard Mortgages, with all members of the FHA and New York FHA Subclass having additional FHA modifications.

107. Plaintiff Jones and all members of the Breach Classes have loans serviced by PHH. In cases where PHH purchased the servicing rights and/or took assignment of those servicing obligations under the mortgage or deed of trust agreements, PHH is in privity with the borrowers of each class. In cases where PHH services the loans as an agent for the lender/master servicer or GSE, PHH is in functional privity or near privity of contract with Plaintiff Jones and the members of the Breach Classes as a result of its fulfillment of its principals’ duties and obligations running from these Class members’ loan agreements, including but not limited to: (i) the collection of all monies due under those loan agreements; (ii) preparing and transmitting monthly statements concerning those loan agreements; (iii) performing all or nearly all customer service functions

concerning those loan agreements; (iv) engaging in written and oral communications concerning those loan agreements; (v) enforcing their principals' rights of foreclosure under the loan agreements.

108. Conceding the assignment of its powers to act as its principals' agents and near-privity relationships with Plaintiff Jones, and the members of the FHA Class, PHH stated in communications to them that "PHH Mortgage Services will perform all servicing activities for your mortgage loan." As to all members of the Breach Classes, their Standard Mortgage Agreements provide that the covenants and agreements bind the successors and assigns of the lender. *See, e.g.,* Ex. A ¶ 12. PHH thus became bound as an assignee of the mortgage agreements at the time it acquired the servicing rights to the subject mortgage loan.

109. By virtue of its acquisition of servicing rights via purchase and/or assignment, PHH stands in the shoes of the "Lender" in the Standard Mortgage Agreements in which all Breach Class members entered, and both enjoys the rights and must adhere to the obligations of those Agreements.

110. PHH breached the terms of the FHA Standard Mortgages by imposing Pay-to-Pay Fees on Plaintiff Jones and the Breach Classes in at least one of two ways.

**On Behalf of the FHA Class (including the New York FHA Subclass)**

111. As to the FHA Class, the uniform covenants of FHA Standard Mortgages state that the "*Lender may collect fees and charges authorized by the Secretary. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.*"

112. The only fees authorized by the Secretary of HUD appear in the Approved Fee Regulation at 24 C.F.R. § 203.552. That regulation further requires that "mortgagees," which

covers PHH as servicer, can collect “reasonable and customary fees and charges . . . only as provided” in the regulation.

113. Pay-to-Pay Fees are not identified among the types of charges approved in 24 C.F.R. § 203.552. Nor are they identified in implementing policy documents, including Appendix 3 of the HUD Servicing Policy. *See* HUD Servicing Policy § III(A)(1)(f).

114. In fact, HUD’s regulations specifically provide that “[c]harges for servicing activities of the mortgagee or servicer” “*shall not*” be authorized by HUD as “reasonable and customary charges.” 24 C.F.R. § 203.552(a)(12)(i) (emphasis added). And HUD prohibits servicers from charging the borrower for “activities that are normally considered a part of a prudent Mortgagee’s servicing activity.” *Id.* § III(A)(1)(f)(C).

115. The Pay-to-Pay Fees charged to Plaintiff Jones and the FHA Class are charges for PHH’s servicing activity, as PHH’s servicing work is to accept and process payment.

116. The Pay-to-Pay Fees charged to Plaintiff Jones and the FHA Class are further not reasonable, as they far exceed the cost to accept payment via standard EFT, nor are they customary, as many mortgage servicers do not charge for this service.

117. Because Pay-to-Pay Fees are not “authorized by the Secretary,” PHH breached the terms of the Standard Mortgages by collecting them.

#### **On Behalf of the New York Class**

118. The Standard Mortgage Agreements in use by the New York Class all require compliance with Applicable Law and prohibit the assessment of fees in violation of applicable law. *See, e.g.*, Ex. A, § 13, 15, and 19. Applicable law includes state laws and regulations.

119. New York law regulating the conduct of mortgage loan servicers provides that “[a] servicer may only collect a fee if it is for a service that is actually rendered to the borrower,



reasonably related to the cost of rendering that service,” and otherwise satisfies additional criteria. 3 N.Y.C.R.R. § 419.5(b). This law governs the conduct of servicers in New York.

120. PHH is a servicer within the meaning of 3 N.Y.C.R.R. § 419.1(l). In charging fees each time a borrower elects to pay via a standard EFT, PHH collects a fee for a service. PHH’s steep fees of \$7.50 to \$19.50 are not reasonably related to the cost of rendering that service; rather, its costs are significantly less.

121. By imposing Pay-to-Pay Fees in violation of 3 N.Y.C.R.R. § 419.5(b) on the New York Class, PHH breached the terms of the Standard Mortgage Agreements, which prohibiting it from assessing fees that are prohibited by applicable law.

122. Plaintiff Jones and the Breach Class members have been damaged as a direct result of PHH’s breaches of contract. Those damages comprise the wrongful imposition and collection of Pay-to-Pay Fees from Plaintiff Jones and the Breach Class members.

123. Plaintiff Jones and the Breach Class members were each making payments on their loans at the time the Pay-to-Pay Fees were charged, and were at all relevant times otherwise in compliance with and not in breach of their Standard Mortgages and other loan agreements, or alternatively, PHH elected its remedy to continue to perform under those loan agreements even after asserting a breach by Plaintiff Jones and other members of the Classes.

124. Because the above provisions are contained in the “Uniform Covenants” section of the Standard Mortgages, PHH has breached their contracts on a Class-wide basis as to the members of all Breach Classes.

125. As a result of PHH’s breaches of contract, Plaintiff Jones and the Breach Class members seek actual damages, equitable remedies including declaratory relief, an injunction,

disgorgement, restitution, and imposition of a constructive trust, in addition the payment of attorneys' fees and reasonable expenses.

## **COUNT II**

### **VIOLATION OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

**(On Behalf of Plaintiff Jones, the FHA Class, the FHA New York Subclass, and the New York Class)**

126. Plaintiffs incorporate paragraphs 1 through 125 as if fully set forth herein.

127. Plaintiffs Jones and the other members of the Breach Classes have executed Standard Mortgages for loans serviced by PHH.

128. In cases where PHH purchased the servicing rights and/or took assignment of those servicing obligations under the mortgage or deed of trust agreements, PHH is in privity with the borrowers.

129. In cases where PHH services the loans as an agent for the lender/primary servicer or GSE, PHH is in functional privity or near privity of contract with Plaintiff Jones and Breach Classes members as a result of its fulfillment of its principals' duties and obligations running from Plaintiff Jones's and Breach Classes members' loan agreements, including but not limited to: (i) the collection of all monies due under those loan agreements; (ii) preparing and transmitting monthly statements concerning those loan agreements; (iii) performing all or nearly all customer service functions concerning those loan agreements; (iv) engaging in written and oral communications concerning those loan agreements; (v) enforcing the principals' rights of foreclosure under the loan agreements.

130. Conceding the assignment of its powers to act as its principals' agents and near-privity relationships with Plaintiff Jones and Breach Classes members, PHH stated in

communications to Plaintiff Jones and Breach Classes members that “PHH Mortgage Services will perform all servicing activities for your mortgage loan.”

131. A covenant of good faith and fair dealing is implied in every contract, including the standard form mortgage agreements serviced and administered by PHH. This covenant imposes upon each party a duty of good faith and fair dealing in the performance of the contract.

132. Where an agreement affords one part the power to make a discretionary decision without defined standards, the duty to act in good faith limits that party’s ability to act capriciously to contravene the reasonable contractual expectations of the other party.

133. PHH has breached its obligations of good faith and fair dealing by abusing the discretion afforded by Plaintiff Jones’ and Breach Classes members’ Standard Mortgages by imposing improper Pay-to-Pay Fees.

**On Behalf of the FHA Class (including the New York FHA Subclass)**

134. As to the FHA Class, the FHA regulatory scheme and uniform covenants of FHA Standard Mortgages dictate that the PHH “may collect fees and charges authorized by the Secretary” and is prohibited from charging a borrower a fee for “activities that are normally considered part of a prudent Mortgagee’s servicing activity.” 24 C.F.R. § 203.552(a)(12)(i).

135. PHH breached its obligation of good faith and fair dealing by abusing its discretion under the terms of the FHA Classes members’ Standard Mortgages by imposing the improper Pay-to-Pay Fees as they are not authorized by the Secretary of HUD, and the fees are for the collection of payments, which is an activity that is normally considered part of a prudent mortgagee’s servicing activity.

**On Behalf of the New York Class (including the FHA Subclass)**

136. As to the New York Class, the Standard Mortgages in use by the New York Class all require compliance with Applicable Law and prohibit the assessment of fees in violation of Applicable Law. New York law provides “[a] servicer may only collect a fee if it is for a service that is actually rendered to the borrower, reasonably related to the cost of rendering that service,” and otherwise satisfies additional criteria. 3 N.Y.C.R.R. § 419.5(b).

137. PHH breached its obligation of good faith and fair dealing by abusing its discretion under the terms of Standard Mortgages by imposing the improper Pay-to-Pay Fees as PHH’s steep fees of \$7.50 to \$19.50 are not reasonably related to the cost of rendering the processing of a standard EFT payment as its costs are significantly less.

138. As a direct and proximate result of the aforementioned breaches of the covenant and duties of good faith and fair dealing, Plaintiff Jones, and the members of the Breach Classes have suffered damages.

139. Plaintiff Jones and the other members of the Breach Classes were each making payments on their loans at the time the Pay-to-Pay Fees were charged, and were at all relevant times otherwise in compliance with and not in breach of their Standard Mortgages and other loan agreements, or alternatively, PHH elected its remedy to continue to perform under those loan agreements even after asserting a breach by Plaintiff Jones, and other members of the Breach Classes.

140. As a result of PHH’s breach of the covenant and duties of good faith and fair dealing, Plaintiff Jones and the FHA Class, FHA New York Subclass, and New York Class seek actual damages, equitable remedies including an injunction, disgorgement, restitution and imposition of a constructive trust, in addition the payment of attorneys’ fees and reasonable expenses.

**COUNT III**

**VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349**

**(On Behalf of Plaintiff Jones and the FHA New York Subclass and New York Class)**

141. Plaintiffs incorporate paragraphs 1 through 140 as if fully set forth herein.

142. Plaintiff Jones brings this cause of action for violations of GBL § 349 individually and on behalf of the New York Class (including the New York FHA Subclass).

143. Plaintiff Jones and New York Class members are “persons” within the meaning of GBL § 349(h).

144. GBL § 349(a) states: “Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.”

145. In assessing Pay-to-Pay Fees on Plaintiff Jones and members of the New York Class, PHH deceived Plaintiff Jones and class members into believing the assessment of such fees was lawful in at least one of two ways.

146. As to the New York Class, New York law, specifically, 3 N.Y.C.R.R. § 419.5(b), prohibits mortgage servicers from collecting fees for services when those fees are not “reasonably related to the cost of rendering that service.” In collecting Pay-to-Pay Fees that were not reasonably related to the cost of accepting and processing EFT transactions, and in advertising and accepting payment for the service, PHH deceived members of the New York Class into believing that it had the legal authority to charge Pay-to-Pay Fees when it did not. As to all New York Class members, PHH omitted that its collection of Pay-to-Pay Fees violated New York law.

147. As to the New York FHA Class, federal regulations, including the Approved Fee Regulation at 24 C.F.R. § 203.552, require that PHH, as a “mortgagee” refrain from collecting fees not authorized by the Secretary of HUD and collect only those fees specifically approved by the

Secretary of HUD. As an approved FHA mortgagee, PHH only has the legal authority to collect the fees identified in the Approved Fee Regulation. Pay-to-Pay Fees have not been authorized by HUD, are prohibited fees for PHH's servicing activities, and are not otherwise reasonable and customary fees within the meaning of that regulation. In collecting Pay-to-Pay Fees that were not approved, not reasonable, not customary, and otherwise excluded from the types of fees that HUD may approve, and in advertising and accepting payment for the service, PHH deceived members of the New York FHA Class into believing that it had the legal authority to charge Pay-to-Pay Fees when it did not. As to all New York Class members, PHH omitted that its collection of Pay-to-Pay Fees violated HUD regulations.

148. Because of PHH's misrepresentations and omissions regarding its legal authority to collect Pay-to-Pay Fees, Plaintiff Jones and the members of the New York Class, including the FHA Class, were deceived into paying Pay-to-Pay Fees and/or paid those Fees at a premium (such as the amount in excess of a cost reasonably related to the provision of the service).

149. PHH's conduct is deceptive because it is likely to mislead consumers and the public by making them believe, falsely, that PHH had the legal authority to impose and collect Pay-to-Pay Fees.

150. PHH's misrepresentations were materially false and misleading and likely to deceive the consuming public because PHH knew, or reasonably should have known, and failed to disclose, that it was not permitted to impose or collect Pay-to-Pay Fees.

151. The deceptive acts and practices of PHH have directly, foreseeably, and proximately caused damages and injury to Plaintiff Jones, FHA New York Subclass members, and New York Class members.

152. In addition to pecuniary losses, Plaintiff Jones, FHA New York Subclass members, and New York Class members suffered actual harm as a result of PHH's violations GBL § 349(a) and other consumer protection statutes, including but not limited to, the annoyance, harassment, time, frustration, anger, and anxiety due to PHH's deceptive acts and practices.

153. Plaintiff Jones, FHA New York Subclass members, and New York Class members are entitled to pursue claims against PHH for damages, statutory damages, treble damages, exemplary damages, injunctive relief, costs and attorney's fees pursuant to GBL § 349(h) to redress PHH's violations of GBL § 349(a).

154. New York Class members who were sixty-five years of age or older at the time of PHH's violations of GBL § 349 are entitled to pursue additional remedies pursuant to GBL § 349-c to redress PHH's violations of GBL § 349(a) perpetrated against elderly persons.

### **COUNT V**

### **VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT**

#### **(On Behalf of Plaintiff Allard and the Illinois Class)**

155. Plaintiffs incorporate paragraphs 1 through 104 as if fully set forth herein.

156. The ICFA prohibits "unfair or deceptive acts or practices." 815 Ill. Comp. Stat. 505/2.

157. An act or practice is "unfair" if it offends public policy, if it is immoral, unethical, oppressive, or unscrupulous, or if it causes substantial injury to consumers.

158. PHH's use of its exclusive position as the mortgage servicer for captive borrowers like Plaintiff Allard's and class member's to impose Pay-to-Pay Fees to which it is neither entitled by law to add nor expressly authorized by the Standard Mortgages constitutes a "unfair" business

practice because, as alleged above, it offends established federal and Illinois public policy, is immoral, unethical, oppressive, or unscrupulous, and have resulted in substantial injuries to consumers.

159. The State of Illinois’s actions in various contexts demonstrate that Pay-to-Pay Fees offend established public policy. For example, Illinois has enacted statutory and administrative rules prohibiting the imposition of processing or service fees not authorized by law or the agreement during the collection of consumer debts. *See* 720 Ill. Comp. Stat. 5/17-5(c) (prohibits “add[ing] to the debt any service charge . . . which he, she, or it is not entitled by law to add” while attempting to collect an alleged debt.; 225 Ill. Comp. Stat. 425/9(a)(33) (authorizing disciplinary proceedings against a “collection agency” for “[c]ollecting or attempting to collect any interest or other charge or fee in excess of the actual debt unless such interest or other charge or fee is expressly authorized by the agreement creating the debt unless expressly authorized by law...”). Illinois law also prohibits mortgage servicers from “knowingly misrepresent[ing], circumvent[ing] or conceal[ing], through whatever subterfuge or device, any of the material particulars or the nature thereof, regarding a transaction to which it is a party to the injury of another party thereto[.]” 205 Ill. Comp. Stat. Ann. 635/2-4(k). The Illinois Attorney General further articulated Illinois’s public policy against Pay-to-Pay Fees with the unequivocal statement that they are “unethical and illegal.”

160. Federal public policy also disfavors Pay-to-Pay Fees. This policy is reflected in, among other things, CFPB statements and advisory opinions, the statements of the executive branch, and Congress’s prohibition in the FDCPA on debt collectors assessing Pay-to-Pay Fees.

161. PHH is neither entitled by law to add nor expressly authorized by Plaintiff Allard’s and Illinois Class members’ Standard Mortgages to collect Pay-to-Pay Fees. By assessing Pay-to-Pay Fees, PHH represented that the mortgage debts of Plaintiff Allard and Illinois Class members



may be increased by the addition of the Pay-to-Pay Fees, even though Pay-to-Pay Fees may not be legally added to the existing obligation and are not authorized by their Standard Mortgages. PHH likewise omitted that these Pay-to-Pay Fees are not authorized by law or borrowers' Standard Mortgages.

162. PHH's practice of charging Pay-to-Pay Fees not authorized by Standard Mortgages or applicable law is immoral, unethical, oppressive, and unscrupulous. Under the ICFA, conduct is oppressive when it leaves a consumer with little alternative except to submit to it, and the consumer cannot avoid the defendant's practice by seeking an alternative elsewhere. PHH's conduct is oppressive because borrowers cannot choose another loan servicer or shop around for a better deal to avoid PHH's imposition of unlawful Pay-to-Pay Fees. And as set forth in Paragraph 42, payment via mail or ACH is impractical. Borrowers are forced to have PHH as their loan servicer as a result of the unilateral decision of their lender or holder of their note. If borrowers had their choice, they could select one of the many other mortgage servicers that do not charge a fee for a standard EFT.

163. PHH's unfair practices are substantially injurious to consumers, who were and are forced to pay a "processing" or "convenience" fee each time they make payments by phone or online. In aggregate, the charging of these illegal fees has resulted in millions of dollars of harm to Illinois borrowers.

164. There is no countervailing benefits to consumers or competition that outweighs the harm suffered by Plaintiff Allard and the Illinois class as PHH charges fees well above the actual cost of providing online and phone payment services, and doing so gives PHH an unfair advantage over its competitors who do not charge the unlawful fees. The unlawful profit center gives PHH the opportunity to undercut its competitors by accepting a lower servicing fee, providing more

robust services for the same servicing fee, distributing more dividends to its shareholders, or any combination thereof. This will incentivize competitors to engage in a race to the bottom to reduce costs – likely in the form of the reducing the number of employees, or decreasing or delaying technological investment -- or increase their revenue by instituting their own unlawful fees. Either scenario, or combination thereof, is detrimental to consumers and competition.

165. PHH intended for Plaintiff Allard and the Illinois Class members to rely on its unfair practices, which they did when they paid the illegal fees.

166. PHH's unfair practices occurred during the course of conduct involving trade or commerce as PHH was servicing consumer mortgages for residential properties in Illinois.

167. As a result of the above conduct, Plaintiff Allard and Illinois Class members have suffered actual economic damages in the form of unlawful Pay-to-Pay Fees that they should not have been required to pay. As such, Plaintiff Allard requests that the Court award actual and punitive damages to the full extent provided by law, enjoin PHH from continuing to violate the ICFA in the future, and any other relief which the Court deems proper pursuant to 815 Ill. Comp. Stat. 505/10a.

## **COUNT VI**

### **UNJUST ENRICHMENT**

**(On Behalf of Plaintiff Jones, Plaintiff Allard, and the FHA Class, FHA New York Subclass, New York Class and the Illinois Class)**

168. All prior and subsequent paragraphs are hereby incorporated by reference.

169. Plaintiffs and the Class members conferred benefits on PHH. Namely, Plaintiffs and the Class members paid Pay-to-Pay Fees to PHH.

170. PHH's retention of these benefits is unjust because PHH had no right to collect the Pay-to-Pay Fees under the Standard Mortgages or applicable law.

171. Plaintiffs and the Class members are entitled to restitution and PHH is required to disgorge the benefits it unjustly obtained.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for the following relief:

1. An order certifying the proposed classes pursuant to Federal Rule of Civil Procedure 23 and appointing Plaintiffs and their counsel to represent them;
2. Monetary and/or equitable relief in an amount to be determined at trial;
3. Statutory damages and/or penalties, including treble damages;
4. Punitive or exemplary damages;
5. Pre- and post-judgment interest to the extent provided by law;
6. Attorneys' fees and costs of suit, including costs of notice, administration, and expert fees; and
7. Such other legal or equitable relief, including injunctive or declaratory relief, as the Court may deem appropriate.

**PLAINTIFFS DEMAND A TRIAL BY JURY OF ALL ISSUES SO TRIABLE.**

Dated: February 22, 2023

Respectfully submitted,

/s/ Patricia M. Kipnis

Patricia M. Kipnis, Esq. (NJSB #016962003)  
BAILEY GLASSER LLP  
1622 Locust Street  
Philadelphia, PA 19102  
Tel. (215) 274-9331  
pkipnis@baileyglasser.com

Hassan A. Zavareei\*  
Kristen G. Simplicio\*  
Peter Silva\*  
TYCKO & ZAVAREEI LLP  
2000 Pennsylvania Ave NW, Suite 1010  
Washington, D.C. 20006  
Tel.: (202) 973-0900  
Fax: (202) 973-0950  
hzavareei@tzlegal.com  
ksimplicio@tzlegal.com  
psilva@tzlegal.com

***Attorneys for Plaintiff***

\* *pro hac vice* applications to be filed

# **EXHIBIT A**

When recorded, return to:  
Premium Mortgage Corporation c/o DocProbe, LLC  
1125 Ocean Avenue  
Lakewood, NJ 08701  
844-793-0177

Title Order No.: [REDACTED]

LOAN #: [REDACTED]

[Space Above This Line For Recording Data]

## MORTGAGE

FHA Case No.

MIN: [REDACTED]  
MERS PHONE #: 1-888-679-6377

### WORDS USED OFTEN IN THIS DOCUMENT

(A) **"Security Instrument."** This document, which is dated **June 29, 2021**, together with all Riders to this document, will be called the "Security Instrument."

(B) **"Borrower."** **ANNTWANETTE JONES AND EVAN JONES, WIFE AND HUSBAND,**

whose address is [REDACTED]

sometimes will be called "Borrower" and sometimes simply "I" or "me."

(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 organized and existing under the laws of Delaware, and has a mailing address of P.O. Box 2026, Flint, MI 48501-2026, and a street address of 1901 E Voorhees Street, Suite C, Danville, IL 61834. The MERS telephone number is (888) 679-MERS. **FOR PURPOSES OF RECORDING THIS MORTGAGE, MERS IS THE MORTGAGEE OF RECORD.**

(D) **"Lender."** Premium Mortgage Corporation,

will be called "Lender."

Lender is a corporation or association which exists under the laws of **The United States of America.**  
Lender's address is [REDACTED]

(E) **"Note."** The note signed by Borrower and dated **June 29, 2021**, will be called the "Note." The Note shows that I owe Lender **TWO HUNDRED FORTY TWO THOUSAND SEVEN HUNDRED TWENTY TWO AND NO/100\*\*\*\*\* Dollars (U.S. \$242,722.00 )** plus interest and other amounts that may be payable. I have promised to pay this debt in Periodic Payments and to pay the debt in full by **July 1, 2051.**

(F) **"Property."** The property that is described below in the section titled "Description of the Property," will be called the "Property."

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

(H) **"Sums Secured."** The amounts described below in the section titled "Borrower's Transfer to Lender of Rights in the Property" sometimes will be called the "Sums Secured."

(I) **"Riders."** All Riders attached to this Security Instrument that are signed by Borrower will be called "Riders." The following Riders are to be signed by Borrower [check box as applicable]:

- ☐ Adjustable Rate Rider    ☐ Condominium Rider    ☐ Planned Unit Development Rider  
☐ Other(s) [specify]



LOAN #: [REDACTED]

**(J) "Applicable Law."** 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 will be called "Applicable Law."

**(K) "Community Association Dues, Fees, and Assessments."** All dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization will be called "Community Association Dues, Fees, and Assessments."

**(L) "Electronic Funds Transfer."** "Electronic Funds Transfer" means any transfer of money, other than 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. Some common examples of an Electronic Funds Transfer are point-of-sale transfers (where a card such as an asset or debit card is used at a merchant), automated teller machine (or ATM) transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

**(M) "Escrow Items."** Those items that are described in Section 3 will be called "Escrow Items."

**(N) "Miscellaneous Proceeds."** "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than Insurance Proceeds as defined in, and paid under the coverage 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 sale to avoid Condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property. A taking of the Property by any governmental authority by eminent domain is known as "Condemnation."

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

**(P) "Periodic Payment."** The regularly scheduled amount due for (i) principal and interest under the Note, and (ii) any amounts under Section 3 will be called "Periodic Payment."

**(Q) "RESPA."** "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (12 C.F.R. Part 1024), 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.

**(R) "Secretary"** means the Secretary of the United States Department of Housing and Urban Development or his designee.

#### **BORROWER'S TRANSFER TO LENDER OF RIGHTS IN THE PROPERTY**

I mortgage, grant and convey the Property to MERS (solely as nominee for Lender and Lender's successors and assigns) and its successors and assigns subject to the terms of this Security Instrument. This means that, by signing this Security Instrument, I am giving Lender those rights that are stated in this Security Instrument and also those rights that Applicable Law gives to lenders who hold mortgages on real property. I am giving Lender these rights to protect Lender from possible losses that might result if I fail to:

- (A) Pay all the amounts that I owe Lender as stated in the Note including, but not limited to, all renewals, extensions and modifications of the Note;
- (B) Pay, with interest, any amounts that Lender spends under this Security Instrument to protect the value of the Property and Lender's rights in the Property; and
- (C) Keep all of my other promises and agreements under this Security Instrument and the Note.

I understand and agree that MERS holds only legal title to the rights granted by me 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:

- (A) to exercise any or all of those rights, including, but not limited to, the right to foreclose and sell the Property; and
- (B) to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

#### **DESCRIPTION OF THE PROPERTY**

I give MERS (solely as nominee for Lender and Lender's successors and assigns) rights in the Property described in (A) through (G) below:

- (A) The Property which is located at [REDACTED]

[Street] [City, Town or Village]

[Zip Code]

This Property is in **Erie**  
**Town of Amherst**  
**APN #: 67.57-3-43**

County. It has the following legal description:





LOAN #: [REDACTED]

- (B) All buildings and other improvements that are located on the Property described in subsection (A) of this section;
- (C) All rights in other property that I have as owner of the Property described in subsection (A) of this section. These rights are known as "easements and appurtenances attached to the Property;"
- (D) All rights that I have in the land which lies in the streets or roads in front of, or next to, the Property described in subsection (A) of this section;
- (E) All fixtures that are now or in the future will be on the Property described in subsections (A) and (B) of this section;
- (F) All of the rights and property described in subsections (B) through (E) of this section that I acquire in the future; and
- (G) All replacements of or additions to the Property described in subsections (B) through (F) of this section and all Insurance Proceeds for loss or damage to, and all Miscellaneous Proceeds of the Property described in subsections (A) through (F) of this section.

#### **BORROWER'S RIGHT TO MORTGAGE THE PROPERTY AND BORROWER'S OBLIGATION TO DEFEND OWNERSHIP OF THE PROPERTY**

I promise that: (A) I lawfully own the Property; (B) I have the right to mortgage, grant and convey the Property to Lender; and (C) there are no outstanding claims or charges against the Property, except for those which are of public record.

I give a general warranty of title to Lender. This means that I will be fully responsible for any losses which Lender suffers because someone other than myself has some of the rights in the Property which I promise that I have. I promise that I will defend my ownership of the Property against any claims of such rights.

#### **PLAIN LANGUAGE SECURITY INSTRUMENT**

This Security Instrument contains promises and agreements that are used in real property security instruments all over the country. It also contains other promises and agreements that vary in different parts of the country. My promises and agreements are stated in "plain language."

#### **COVENANTS**

I promise and I agree with Lender as follows:

**1. Borrower's Promise to Pay.** I will pay to Lender on time principal and interest due under the Note and late charges and other amounts due under the Note. I will also pay all amounts for Escrow Items under Section 3 of this Security Instrument.

Payments due under the Note and this Security Instrument shall be made in U.S. currency. If any of my payments by check or other payment instrument is returned to Lender unpaid, Lender may require my payment be made by: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, 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 required in the Note, or at another location designated by Lender under Section 14 of this Security Instrument. Lender may return or accept any payment or partial payment if it is for an amount that is less than the amount that is then due. If Lender accepts a lesser payment, Lender may refuse to accept a lesser payment that I may make in the future and does not waive any of its rights. Lender is not obligated to apply such lesser payments when it accepts such payments. If interest on principal accrues as if all Periodic Payments had been paid when due, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until I make payments to bring the Loan current. If I do not do so within a reasonable period of time, Lender will either apply such funds or return them to me. In the event of foreclosure, any unapplied funds will be applied to the outstanding principal balance immediately prior to foreclosure. No offset or claim which I might have now or in the future against Lender will relieve me from making payments due under the Note and this Security Instrument or keeping all of my other promises and agreements secured by this Security Instrument.

**2. Application of Borrower's Payments and Insurance Proceeds.** Unless Applicable Law or this Section 2 requires otherwise, Lender will apply each of my payments that Lender accepts in the following order:

First, to the Mortgage Insurance premiums to be paid by Lender to the Secretary or the the monthly charge by the Secretary instead of the monthly mortgage insurance premiums;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and,

Fifth, to late charges due under the Note.

If Lender receives a payment from me for a late Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the late Periodic Payment and the late charge. If more than one Periodic Payment is due, Lender may apply any payment received from me: First, to the repayment of the Periodic Payments that are due if, and to the extent that, each payment can be paid in full; Next, 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.

Any application of payments, Insurance Proceeds, or Miscellaneous Proceeds to principal due under the Note will not extend or postpone the due date of the Periodic Payments or change the amount of those payments.

#### **3. Monthly Payments For Taxes And Insurance.**

**(a) Borrower's Obligations.** I will pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum 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 to be paid by Lender to the Secretary or the monthly charge by the Secretary instead of the monthly Mortgage Insurance premiums. 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.

After signing the Note, or at any time during its term, Lender may include these amounts as Escrow Items. The monthly payment I will make for Escrow Items will be based on Lender's estimate of the annual amount required.





LOAN #: [REDACTED]

I will pay all of these amounts to Lender unless Lender tells me, in writing, that I do not have to do so, or unless Applicable Law requires otherwise. I will make these payments on the same day that my Periodic Payments of principal and interest are due under the Note.

The amounts that I pay to Lender for Escrow Items under this Section 3 will be called "Escrow Funds." I will pay Lender the Escrow Funds for Escrow Items unless Lender waives my obligation to pay the Escrow Funds for any or all Escrow Items. Lender may waive my obligation to pay to Lender Escrow Funds for any or all Escrow Items at any time. Any such waiver must be in writing. In the event of such waiver, I will pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Escrow Funds has been waived by Lender and, if Lender requires, will promptly send to Lender receipts showing such payment within such time period as Lender may require. My obligation to make such payments and to provide receipts will be considered to be a promise and agreement contained in this Security Instrument, as the phrase "promises and agreements" is used in Section 9 of this Security Instrument. If I am obligated to pay Escrow Items directly, pursuant to a waiver, and I fail to pay the amount due for an Escrow Item, Lender may pay that amount and I will then be obligated under Section 9 of this Security Instrument to repay to Lender. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 14 of this Security Instrument and, upon the revocation, I will pay to Lender all Escrow Funds, and in amounts, that are then required under this Section 3.

I promise to promptly send to Lender any notices that I receive of Escrow Item amounts to be paid. Lender will estimate from time to time the amount of Escrow Funds I will have to pay by using existing assessments and bills and reasonable estimates of the amount I will have to pay for Escrow Items in the future, unless Applicable Law requires Lender to use another method for determining the amount I am to pay.

Lender may, at any time, collect and hold Escrow Funds in an amount sufficient to permit Lender to apply the Escrow Funds at the time specified under RESPA. Applicable Law puts limits on the total amount of Escrow Funds Lender can at any time collect and hold. This total amount cannot be more than the maximum amount a lender could require under RESPA. If there is another Applicable Law that imposes a lower limit on the total amount of Escrow Funds Lender can collect and hold, Lender will be limited to the lower amount.

**(b) Lender's Obligations.** Lender will keep the Escrow Funds in a savings or banking institution which has its deposits insured by a federal agency, instrumentality, or entity, or in any Federal Home Loan Bank. If Lender is such a savings or banking institution, Lender may hold the Escrow Funds. Lender will use the Escrow Funds to pay the Escrow Items no later than the time allowed under RESPA or other Applicable Law. Lender will give to me, without charge, an annual accounting of the Escrow Funds. That accounting will show all additions to and deductions from the Escrow Funds and the reason for each deduction.

Lender may not charge me for holding or keeping the Escrow Funds, for using the Escrow Funds to pay Escrow Items, for making a yearly analysis of my payment of Escrow Funds or for receiving, or for verifying and totaling assessments and bills. However, Lender may charge me for these services if Lender pays me interest on the Escrow Funds and if Applicable Law permits Lender to make such a charge. Lender will not be required to pay me any interest or earnings on the Escrow Funds unless either (1) Lender and I agree in writing that Lender will pay interest on the Escrow Funds, or (2) Applicable Law requires Lender to pay interest on the Escrow Funds.

**(c) Adjustments to the Escrow Funds.** Under Applicable Law, there is a limit on the amount of Escrow Funds Lender may hold. If the amount of Escrow Funds held by Lender exceeds this limit, then there will be an excess amount and RESPA requires Lender to account to me in a special manner for the excess amount of Escrow Funds.

If, at any time, Lender has not received enough Escrow Funds to make the payments of Escrow Items when the payments are due, Lender may tell me in writing that an additional amount is necessary. I will pay to Lender whatever additional amount is necessary to pay the Escrow Items when the payments are due, but the number of payments will not be more than 12.

When I have paid all of the Sums Secured, Lender will promptly refund to me any Escrow Funds that are then being held by Lender.

**4. Borrower's Obligation to Pay Charges, Assessments And Claims.** I will pay all taxes, assessments, water charges, sewer rents and other similar charges, and any other charges and fines that may be imposed on the Property and that may be superior to this Security Instrument. I will also make ground rents or payments due under my lease if I am a tenant on the Property and Community Association Dues, Fees, and Assessments (if any) due on the Property. If these items are Escrow Items, I will do this by making the payments as described in Section 3 of this Security Instrument. In this Security Instrument, the word "Person" means any individual, organization, governmental authority or other party.

I will promptly pay or satisfy all Liens against the Property that may be superior to this Security Instrument. However, this Security Instrument does not require me to satisfy a superior Lien if: (a) I agree, in writing, to pay the obligation which gave rise to the superior Lien and Lender approves the way in which I agree to pay that obligation, but only so long as I am performing such agreement; (b) in good faith, I argue or defend against the superior Lien in a lawsuit so that in Lender's opinion, during the lawsuit, the superior Lien may not be enforced, but only until the lawsuit ends; or (c) I secure from the holder of that other Lien an agreement, approved in writing by Lender, that the Lien of this Security Instrument is superior to the Lien held by that Person. If Lender determines that any part of the Property is subject to a superior Lien, Lender may give Borrower a notice identifying the superior Lien. Within 10 days of the date on which the notice is given, Borrower shall pay or satisfy the superior Lien or take one or more of the actions mentioned in this Section 4.

**5. Borrower's Obligation to Maintain Hazard Insurance or Property Insurance.** I will obtain hazard or property insurance to cover all buildings and other improvements that now are, or in the future will be, located on the Property. The insurance will cover loss or damage caused by fire, hazards normally covered by "Extended Coverage" hazard insurance policies, and any other hazards for which Lender requires coverage, including, but not limited to earthquakes and floods. The insurance will be in the amounts (including, but not limited to, deductible levels) and for the periods of time required by Lender. What Lender requires under the last sentence can change during the term of the Loan. I may choose the insurance company, but my choice is subject to Lender's right to disapprove. Lender may not disapprove my choice unless the disapproval is reasonable. Lender may require me to pay 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 the flood zone determination or certification. If I disagree with the flood zone determination, I may request the Federal Emergency Management Agency to review the flood zone determination and I promise to pay any fees charged by the Federal Emergency Management Agency for its review.



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If I fail to maintain any of the insurance coverages described above, Lender may obtain insurance coverage, at Lender's option and my expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage will cover Lender, but might or might not protect me, my 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. I acknowledge that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that I could have obtained. Any amounts disbursed by Lender under this Section 5 will become my additional debt secured by this Security Instrument. These amounts will bear interest at the interest rate set forth in the Note from the date of disbursement and will be payable with such interest, upon notice from Lender to me requesting payment.

All of the insurance policies and renewals of those policies will include what is known as a "Standard Mortgage Clause" to protect Lender and will name Lender as mortgagee and/or as an additional loss payee. The form of all policies and renewals will be acceptable to Lender. Lender will have the right to hold the policies and renewal certificates. If Lender requires, I will promptly give Lender all receipts of paid premiums and renewal notices that I receive.

If I obtain any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy will include a Standard Mortgage Clause and will name Lender as mortgagee and/or as an additional loss payee.

If there is a loss or damage to the Property, I will promptly notify the insurance company and Lender. If I do not promptly prove to the insurance company that the loss or damage occurred, then Lender may do so.

The amount paid by the insurance company for loss or damage to the Property is called "Insurance Proceeds." Unless Lender and I otherwise agree in writing, any Insurance Proceeds, whether or not the underlying insurance was required by Lender, will be used to repair or to restore the damaged Property unless: (a) it is not economically feasible to make the repairs or restoration; (b) the use of the Insurance Proceeds for that purpose would lessen the protection given to Lender by this Security Instrument; or (c) Lender and I have agreed in writing not to use the Insurance Proceeds for that purpose. During the period that any repairs or restorations are being made, Lender may hold any Insurance Proceeds until it has had an opportunity to inspect the Property to verify that the repair work has been completed to Lender's satisfaction. However, this inspection will be done promptly. Lender may make payments for the repairs and restorations in a single payment or in a series of progress payments as the work is completed. Unless Lender and I agree otherwise in writing or unless Applicable Law requires otherwise, Lender is not required to pay me any interest or earnings on the Insurance Proceeds. I will pay for any public adjusters or other third parties that I hire, and their fees will not be paid out of the Insurance Proceeds. If the repair or restoration is not economically feasible or if it would lessen Lender's protection under this Security Instrument, then the Insurance Proceeds will be used to reduce the amount that I owe to Lender under this Security Instrument. Such Insurance Proceeds will be applied in the order provided for in Section 2. If any of the Insurance Proceeds remain after the amount that I owe to Lender has been paid in full, the remaining Insurance Proceeds will be paid to me.

If I abandon the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If I do not answer, within 30 days, a notice from Lender stating that the insurance company has offered to settle a claim, 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 24 of this Security Instrument or otherwise, I give Lender my rights to any Insurance Proceeds in an amount not greater than the amounts unpaid under the Note and this Security Instrument. I also give Lender any other of my rights (other than the right to any refund of unearned premiums that I paid) under all insurance policies covering the Property, if the 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.

**6. Borrower's Obligations to Occupy The Property.** I will occupy the Property and use the Property as my principal residence within 60 days after I sign this Security Instrument. I will continue to occupy the Property and to use the Property as my principal residence for at least one year. The one-year period will begin when I first occupy the Property. However, I will not have to occupy the Property and use the Property as my principal residence within the time frames set forth above if Lender agrees in writing that I do not have to do so. I also will not have to occupy the Property and use the Property as my principal residence within the time frames set forth above if extenuating circumstances exist which are beyond my control.

**7. Borrower's Obligations to Maintain And Protect The Property And to Fulfill Any Lease Obligations.**

**(a) Maintenance and Protection of the Property.** I will not destroy, damage or harm the Property, and I will not allow the Property to deteriorate. Whether or not I am residing in the Property, I will keep the Property in good repair so that it will not deteriorate or decrease in value due to its condition. Unless it is determined under Section 5 of this Security Instrument that repair is not economically feasible, I will promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or Condemnation (as defined in the definition of Miscellaneous Proceeds) proceeds are paid because of loss or damage to, or Condemnation of, the Property, I will repair or restore the Property only if Lender has released those proceeds for such purposes. Lender may pay for the repairs and restoration out of proceeds 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, I promise to pay for the completion of such repair or restoration.

If condemnation proceeds are paid in connection with the taking of the property, Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts, and then to payment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments or change the amount of such payments.

**(b) Lender's Inspection of Property.** Lender, and others authorized by Lender, may enter on and inspect the Property. They will do so in a reasonable manner and at reasonable times. If it has a reasonable purpose, Lender may inspect the inside of the home or other improvements on the Property. Before or at the time an inspection is made, Lender will give me notice stating a reasonable purpose for such interior inspection.

**8. Borrower's Loan Application.** If, during the application process for the Loan, I, or any Person or entity acting at my direction or with my knowledge or consent, made false, misleading, or inaccurate statements to Lender about information important to Lender in determining my eligibility for the Loan (or did not provide Lender with such information), Lender will treat my actions as a default under this Security Instrument. False, misleading, or inaccurate statements about information important to Lender would include a misrepresentation of my intention to occupy the Property as a principal residence. This is just one example of a false, misleading, or inaccurate statement of important information.

**9. Lender's Right to Protect Its Rights in The Property.** If: (a) I do not keep my promises and agreements made in this Security Instrument; (b) someone, including me, begins a legal proceeding that may significantly affect Lender's interest in the Property or rights under this Security Instrument (such as a legal proceeding in bankruptcy, in probate, for





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Condemnation or Forfeiture (as defined in Section 10), proceedings which could give a Person rights which could equal or exceed Lender's interest in the Property or under this Security Instrument, proceedings for enforcement of a Lien which may become superior to this Security Instrument, or to enforce laws or regulations); or (c) I have abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and Lender's rights under this Security Instrument.

Lender's actions may include, but are not limited to: (a) protecting and/or assessing the value of the Property; (b) securing and/or repairing the Property; (c) paying sums to eliminate any Lien against the Property that may be equal or superior to this Security Instrument; (d) appearing in court; and (e) 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. Lender can also enter 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, have utilities turned on or off, and take any other action to secure the Property. Although Lender may take action under this Section 9, Lender does not have to do so and is under no duty to do so. I agree that Lender will not be liable for not taking any or all actions under this Section 9.

I will pay to Lender any amounts, with interest, which Lender spends under this Section 9. I will pay those amounts to Lender when Lender sends me a notice requesting that I do so. I will pay interest on those amounts at the interest rate set forth in the Note. Interest on each amount will begin on the date that the amount is spent by Lender. This Security Instrument will protect Lender in case I do not keep this promise to pay those amounts with interest.

If I do not own, but am a tenant on the Property, I will fulfill all my obligations under my lease. I also agree that, if I acquire the full title (sometimes called "Fee Title") to the Property, my lease interest and the Fee Title will not merge unless Lender agrees to the merger in writing.

**10. Agreements About Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are assigned to and will be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds will be applied to restoration or repair of the Property, if (a) the restoration or repair is economically feasible, and (b) Lender's security given in this Security Instrument is not lessened. During such repair and restoration period, Lender will have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect the Property to verify that the work has been completed to Lender's satisfaction. However, the inspection will 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 Lender and I agree otherwise in writing or unless Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender will not be required to pay Borrower any interest or earnings on the Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security given in this Security Instrument would be lessened, the Miscellaneous Proceeds will be applied to the Sums Secured, whether or not then due. The excess, if any, will be paid to me. Such Miscellaneous Proceeds will 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 will be applied to the Sums Secured, whether or not then due. The excess, if any, will be paid to me.

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 immediately before the partial taking, destruction, or loss in value, the Sums Secured will 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 me.

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, the Miscellaneous Proceeds will be applied to the Sums Secured whether or not the sums are then due.

If I abandon the Property, or if, after Lender sends me notice that the Opposing Party (as defined in the next sentence) offered to make an award to settle a claim for damages, I fail to respond to Lender within 30 days after the date Lender gives notice, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the Sums Secured, whether or not then due. "Opposing Party" means the third party that owes me Miscellaneous Proceeds or the party against whom I have a right of action in regard to Miscellaneous Proceeds.

I will be in default under this Security Instrument if any civil or criminal action or proceeding that Lender determines could result in a court ruling (a) that would require Forfeiture of the Property, or (b) that could damage Lender's interest in the Property or rights under this Security Instrument. "Forfeiture" is a court action to require the Property, or any part of the Property, to be given up. I may correct the default by obtaining a court ruling that dismisses the court action, if Lender determines that this court ruling prevents Forfeiture of the Property and also prevents any damage to Lender's interest in the Property or rights under this Security Instrument. If I correct the default, I will have the right to have enforcement of this Security Instrument discontinued, as provided in Section 18 of this Security Instrument, even if Lender has required Immediate Payment in Full (as defined in Section 24). The proceeds of any award or claim for damages that are attributable to the damage or reduction of Lender's interest in the Property are assigned, and will be paid, to Lender.

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

#### **11. Continuation of Borrower's Obligations And of Lender's Rights.**

**(a) Borrower's Obligations.** Lender may allow me, or a person who takes over my rights and obligations, to delay or to change the amount of the Periodic Payments. Even if Lender does this, however, I will still be fully obligated under the Note and under this Security Instrument unless Lender agrees to release me, in writing, from my obligations.

Lender may allow those delays or changes for me or a Person who takes over my rights and obligations, even if Lender is requested not to do so. Even if Lender is requested to do so, Lender will not be required to (1) bring a lawsuit against me or such a Person for not fulfilling obligations under the Note or under this Security Instrument, or (2) refuse to extend time for payment or otherwise modify amortization of the Sums Secured.

**(b) Lender's Rights.** Even if Lender does not exercise or enforce any right of Lender under this Security Instrument or under Applicable Law, Lender will still have all of those rights and may exercise and enforce them in the future. Even if: (1) Lender obtains insurance, pays taxes, or pays other claims, charges or Liens against the Property; (2) Lender accepts payments from third Persons; or (3) Lender accepts payments in amounts less than the amount then due, Lender will



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have the right under Section 24 below to demand that I make Immediate Payment in Full of any amounts remaining due and payable to Lender under the Note and under this Security Instrument.

**12. Obligations of Borrower And of Persons Taking Over Borrower's Rights or Obligations.** If more than one Person signs this Security Instrument as Borrower, each of us is fully obligated to keep all of Borrower's promises and obligations contained in this Security Instrument. Lender may enforce Lender's rights under this Security Instrument against each of us individually or against all of us together. This means that any one of us may be required to pay all of the Sums Secured. However, if one of us does not sign the Note: (a) that Person is signing this Security Instrument only to give that Person's rights in the Property to Lender under the terms of this Security Instrument; (b) that Person is not personally obligated to pay the Sums Secured; and (c) that Person agrees that Lender may agree with the other Borrowers to delay enforcing any of Lender's rights, to modify, or make any accommodations with regard to the terms of this Security Instrument or the Note without that Person's consent.

Subject to the provisions of Section 17 of this Security Instrument, any Person who takes over my rights or obligations under this Security Instrument in writing, and is approved by Lender in writing, will have all of my rights and will be obligated to keep all of my promises and agreements made in this Security Instrument. Borrower will not be released from Borrower's obligations and liabilities under this Security Instrument unless Lender agrees to such release in writing. Any Person who takes over Lender's rights or obligations under this Security Instrument will have all of Lender's rights and will be obligated to keep all of Lender's promises and agreements made in this Security Instrument except as provided under Section 19.

**13. Loan Charges.** Lender may charge me fees for services performed in connection with my 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. Lender may collect fees and charges authorized by the Secretary. Lender may not charge fees that are prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to Applicable Law which sets maximum loan charges, and that Applicable Law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed permitted limits: (a) any such loan charge will be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. 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 with no changes in the due date or in the monthly payment amount unless the Note holder agrees in writing to those changes. If I accept such a refund that is paid directly to me, I will waive any right to bring a lawsuit against Lender because of the overcharge.

**14. Notices Required under this Security Instrument.** All notices given by me or Lender in connection with this Security Instrument will be in writing. Any notice to me in connection with this Security Instrument is considered given to me when mailed by first class mail or when actually delivered to my notice address if sent by other means. Notice to any one Borrower will be notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address is the address of the Property unless I give notice to Lender of a different address. I will promptly notify Lender of my change of address. If Lender specifies a procedure for reporting my change of address, then I will 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 will be given by delivering it or by mailing it by first class mail to Lender's address stated on the first page of this Security Instrument unless Lender has given me notice of another address. Any notice in connection with this Security Instrument is given to Lender when it is 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.

**15. Law That Governs this Security Instrument; Word Usage.** This Security Instrument is governed by federal law and the law of New York State. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might allow the parties to agree by contract or it might be silent, but such silence does not mean that Lender and I cannot agree by contract. If any term of this Security Instrument or of the Note conflicts with Applicable Law, the conflict will not affect other provisions of this Security Instrument or the Note which can operate, or be given effect, without the conflicting provision. This means that the Security Instrument or the Note will remain as if the conflicting provision did not exist.

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

**16. Borrower's Copy.** I will be given one copy of the Note and of this Security Instrument.

**17. Agreements about Lender's Rights If the Property Is Sold or Transferred.** Lender may require Immediate Payment in Full of all Sums Secured by this Security Instrument if all or any part of the Property, or if any right in the Property, is sold or transferred without Lender's prior written permission. If Borrower is not a natural Person and a beneficial interest in Borrower is sold or transferred without Lender's prior written permission, Lender also may require Immediate Payment in Full. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender requires Immediate Payment in Full under this Section 17, Lender will give me a notice which states this requirement. The notice will give me at least 30 days to make the required payment. The 30-day period will begin on the date the notice is given to me in the manner required by Section 14 of this Security Instrument. If I do not make the required payment during that period, Lender may act to enforce its rights under this Security Instrument without giving me any further notice or demand for payment.

**18. Borrower's Right to Have Lender's Enforcement of this Security Instrument Discontinued.** If I meet certain conditions, I shall have the right to reinstatement of a mortgage. These conditions are that:

- (a) I pay to Lender the full amount that then would be due under this Security Instrument and the Note as if Immediate Payment in Full had never been required;
- (b) I correct my failure to keep any of my other promises or agreements made in this Security Instrument;
- (c) I pay all of Lender's reasonable expenses in enforcing this Security Instrument including, for example, 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) I do whatever Lender reasonably requires to assure that Lender's interest in the Property and rights under this Security Instrument and my obligations under the Note and under this Security Instrument continue unchanged.

However, Lender is not required to reinstate if: (i) Lender has accepted reinstatement after the beginning of foreclosure proceedings within two years immediately prior to the beginning of current foreclosure proceedings; (ii) reinstatement





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will prevent foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

Lender may require that I pay the sums and expenses mentioned in (a) through (d) 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 drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer.

If I fulfill all of the conditions in this Section 18, then this Security Instrument will remain in full effect as if Immediate Payment in Full had never been required. However, I will not have the right to have Lender's enforcement of this Security Instrument discontinued if Lender has required Immediate Payment in Full under Section 17 of this Security Instrument.

**19. Note Holder's Right to Sell the Note or an Interest in the Note; Borrower's Right to Notice of Change of Loan Servicer; Lender's and Borrower's Right to Notice of Grievance.** The Note, or an interest in the Note, together with this Security Instrument, may be sold one or more times. I might not receive any prior notice of these sales.

The entity that collects the Periodic Payments and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law is called the "Loan Servicer." There may be a change of the Loan Servicer as a result of the sale of the Note. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. Applicable Law requires that I be given written notice of any change of the Loan Servicer. The notice will state the name and address of the new Loan Servicer, and also tell me the address to which I should make my payments. The notice also will contain any other information required by RESPA or Applicable Law. 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 me 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 I nor Lender may commence, join, or be joined to any court action (as either an individual party 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 has not fulfilled any of its obligations under this Security Instrument, unless the other is notified (in the manner required under Section 14 of this Security Instrument) of the unfulfilled obligation and given a reasonable time period to take corrective action. If Applicable Law provides a time period which will 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 me under Section 24 and the notice of the demand for payment in full given to me under Section 24 will be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 19. All rights under this paragraph are subject to Applicable Law.

**20. Borrower Not Third-Party Beneficiary to Contract of Insurance.** Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if I do not repay the Loan as agreed. I acknowledge and agree that I am not a third party beneficiary to the contract of insurance between the Secretary and Lender, nor am I entitled to enforce any agreement between Lender and the Secretary, unless explicitly authorized to do so by Applicable Law.

**21. Continuation of Borrower's Obligations to Maintain and Protect the Property.** The federal laws and the laws of New York State that relate to health, safety or environmental protection are called "Environmental Law." Environmental Law classifies certain substances as toxic or hazardous. There are other substances that are considered hazardous for purposes of this Section 21. These substances are gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. The substances defined as toxic or hazardous by Environmental Law and the substances considered hazardous for purposes of this Section 21 are called "Hazardous Substances." "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law. An "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not do anything affecting the Property that violates Environmental Law, and I will not allow anyone else to do so. I will not cause or permit Hazardous Substances to be present on the Property. I will not use or store Hazardous Substances on the Property. I also will not dispose of Hazardous Substances on the Property, or release any Hazardous Substance on the Property, and I will not allow anyone else to do so. I also will not do, nor allow anyone else to do, anything affecting the Property that: (a) is in violation of any Environmental Law; (b) 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 promises in this paragraph do not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized as appropriate for normal residential use and maintenance of the Property (including, but not limited to, Hazardous Substances in consumer products). I may use or store these small quantities on the Property. In addition, unless Environmental Law requires removal or other action, the buildings, the improvements and the fixtures on the Property are permitted to contain asbestos and asbestos-containing materials if the asbestos and asbestos-containing materials are undisturbed and "non-friable" (that is, not easily crumbled by hand pressure).

I will 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 I have 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 I learn, or any governmental or regulatory authority, or any private party, notifies me that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I will promptly take all necessary remedial actions in accordance with Environmental Law.

Nothing in this Security Instrument creates an obligation on Lender for an Environmental Cleanup.

**22. Grounds for Acceleration of Debt.**

**(a) Default.** Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) I default by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) I default by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

**(b) Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:



LOAN #: [REDACTED]

- (i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and
- (ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

**(c) No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

**(d) Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

**(e) Mortgage Not Insured.** I agree that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

## NON-UNIFORM COVENANTS

I also promise and agree with Lender as follows:

**23. Assignment of Rents.** I unconditionally assign and transfer to Lender all the rents and revenues of the Property. I authorize Lender or Lender's agents to collect the rents and revenues and hereby direct each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to me of my breach of any covenant or agreement in the Security Instrument, I shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and me. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to me: (a) all rents received by me shall be held by me as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

I have not executed any prior assignment of the rents and have not and will not perform any act that would prevent Lender from exercising its rights under this Section 23.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to me. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

**24. Lender's Rights If Borrower Fails to Keep Promises and Agreements.** Lender shall give notice to me prior to acceleration following my breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 17 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to me, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform me 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 I have to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender 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 will have the right to collect all costs allowed by law, including, but not limited to reasonable attorneys' fees and costs of title evidence.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Section 22, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Section 24 or applicable law.

**25. Lender's Obligation to Discharge this Security Instrument.** When Lender has been paid all amounts due under the Note and under this Security Instrument, Lender will discharge this Security Instrument by delivering a certificate stating that this Security Instrument has been satisfied. I will pay all costs of recording the discharge in the proper official records. I agree to pay a fee for the discharge of this Security Instrument, if Lender so requires. Lender may require that I pay such a fee, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted by Applicable Law.

**26. Agreements about New York Lien Law.** I will receive all amounts lent to me by Lender subject to the trust fund provisions of Section 13 of the New York Lien Law. This means that I will: (a) hold all amounts which I receive and which I have a right to receive from Lender under the Note as a trust fund; and (b) use those amounts to pay for "Cost of Improvement" (as defined in Section 13 of the New York Lien Law) before I use them for any other purpose. The fact that I am holding those amounts as a trust fund means that for any building or other improvement located on the Property I have a special responsibility under the law to use the amount in the manner described in this Section 26.

## 27. Borrower's Statement Regarding the Property [check box as applicable].

- ☒ This Security Instrument covers real property improved, or to be improved, by a one or two family dwelling only.
- ☐ This Security Instrument covers real property principally improved, or to be improved, by one or more structures containing, in the aggregate, not more than six residential dwelling units with each dwelling unit having its own separate cooking facilities.
- ☐ This Security Instrument does not cover real property improved as described above.



LOAN #: [REDACTED]

BY SIGNING BELOW, I accept and agree to the promises and agreements contained in pages 1 through 10 of this Security Instrument and in any Rider signed by me and recorded with it.

ANNTWANETTE JONES \_\_\_\_\_ (Seal)  
DATE

EVAN JONES \_\_\_\_\_ (Seal)  
DATE

State of NEW YORK )  
 ) SS:  
County of ERIE )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared ANNTWANETTE JONES AND EVAN JONES, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the Instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Lender: Premium Mortgage Corporation  
NMLS ID: 3254  
Loan Originator: Alexander S Long  
NMLS ID: 491494



---

**stewart title**

Title Number: [REDACTED]  
Date Created: 6/10/2021

**SCHEDULE A – DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, and State of New York, being part of Lot No. 19, Township 12, Range 7 of the Holland Land Company’s Survey and further distinguished as Subdivision Lot No. 857 as shown on a map filed in the Erie County Clerk’s Office under Cover No. 1492.



**NOTE**

**June 29, 2021**  
[Date]

**Rochester,**  
[City]

**New York**  
[State]

[Property Address]

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. **\$242,722.00** (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is **Premium Mortgage Corporation, a Corporation**.

I will make all payments under this Note in the form of cash, check or money order.

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

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of **2.875 %**.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS**

**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the **1st** day of each month beginning on **August 1, 2021**.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest and any other items in the order described in the Security Instrument before Principal. If, on **July 1, 2051**, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at [REDACTED]

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

**(B) Amount of Monthly Payments**

My monthly payment will be in the amount of U.S. **\$1,007.04**.

**4. 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 the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. 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 the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

**5. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this 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 me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

**6. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of **15** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **4.000 %** of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

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

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and





all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

**(D) No Waiver By Note Holder**

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

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

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

**7. GIVING OF NOTICES**

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

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

**8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**9. WAIVERS**

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

**10. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

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

If Lender requires immediate payment in full under this Section 17, Lender will give me a notice which states this requirement. The notice will give me at least 30 days to make the required payment. The 30-day period will begin on the date the notice is given to me in the manner required by Section 14 of this Security Instrument. If I do not make the required payment during that period, Lender may act to enforce its rights under this Security Instrument without giving me any further notice or demand for payment.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

\_\_\_\_\_  
ANNTWANETTE JONES (Seal)

\_\_\_\_\_  
EVAN JONES (Seal)

Lender: Premium Mortgage Corporation  
NMLS ID: 3254  
Loan Originator: Alexander S Long  
NMLS ID: 491494

[Sign Original Only]



ALLONGE TO NOTE

LOAN # 

LOAN AMOUNT **\$242,722.00**

PROPERTY ADDRESS 

ALLONGE TO NOTE DATED **June 29, 2021**

IN FAVOR OF **Premium Mortgage Corporation, a Corporation**

AND EXECUTED BY **Anntwanette Jones AND Evan Jones**

PAY TO THE ORDER OF

WITHOUT RECOURSE **Premium Mortgage Corporation, a Corporation**

BY \_\_\_\_\_

TITLE **Assistant Secretary**



## **EXHIBIT B**

10/17/2005 04:21PM

SANGAMON COUNTY  
ILLINOIS

REC FEE: 54.00  
 REC REST FEE: 4.00  
 GIS FEE: 9.00  
 GIS REST FEE: 1.00  
 RHSP FEE: 18.00  
 ST STAMP FEE:  
 CD STAMP FEE:  
 UCC FEE:  
 TOTAL: \$78.00  
 PAGES: 16  
 CHRISTINE

~~Return To~~

Wilmington Finance, a division of AIG Federal Savings Bank  
 401 Plymouth Road, Suite 400  
 Plymouth Meeting, PA 19062

MARY ANN LAMM  
 SANGAMON COUNTY RECORDER

Prepared By

Wilmington Finance a division of AIG Federal Savings Bank  
 501 Office Center Drive  
 Fort Washington, PA 19034

[Space Above This Line For Recording Data]

**MORTGAGE**

Loan Number

**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 October 04, 2005, together with all Riders to this document.

(B) "Borrower" is  
 ERIC L ALLARD AND LUCINDA M ALLARD, AS JOINT TENANTS

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.

**001022**


**(D) "Lender" is**

Wilmington Finance, a division of AIG Federal Savings Bank  
 Lender is a Federal Savings Bank  
 organized and existing under the laws of United States of America  
 Lender's address is [REDACTED]

**(E) "Note" means the promissory note signed by Borrower and dated October 04, 2005**

The Note states that Borrower owes Lender One Hundred Fourteen Thousand Seven Hundred Fifty  
 & 00/100 Dollars  
 (U S \$114 750 00 ) plus interest Borrower has promised to pay this debt in regular Periodic

Payments and to pay the debt in full not later than October 15, 2035

**(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 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**

**(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**

**001023**

*RESA*  
*JMA*

(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 of [Type of Recording Jurisdiction]

of SANGAMON [Name of Recording Jurisdiction]

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

Parcel ID Number [REDACTED]

which currently has the address of

[Street]

[City], [REDACTED]

[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

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

*EJA*  
*JMA*



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 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

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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 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

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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

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

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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.

**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

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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.

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 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

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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 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.

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**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 Section 22 of 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 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 unless as otherwise provided under Applicable Law. 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

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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.

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.

001033

*EDH*  
*LMA*



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

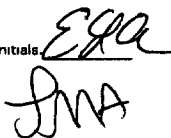
**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise) The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice 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 on or before the date specified in the notice, 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, reasonable attorneys' fees and costs of title evidence

**23. Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release 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 Waiver of Homestead.** In accordance with Illinois law, the Borrower hereby releases and waives all rights under and by virtue of the Illinois homestead exemption laws

**25. Placement of Collateral Protection Insurance.** Unless Borrower provides Lender with evidence of the insurance coverage required by Borrower's agreement with Lender, Lender may purchase insurance at Borrower's expense to protect Lender's interests in Borrower's collateral This insurance may, but need not, protect Borrower's interests The coverage that Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the collateral Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by Borrower's and Lender's agreement If Lender purchases insurance for the collateral, Borrower will be responsible for the costs of that insurance, including interest and any other charges Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance The costs of the insurance may be added to Borrower's total outstanding balance or obligation The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own

**001034**

Initials 

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

Michelle Smith  
Michelle Smith

Lucinda M Allard (Seal)  
-Borrower  
LUCINDA M ALLARD

\_\_\_\_\_

Eric L Allard (Seal)  
-Borrower  
ERIC L ALLARD

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

**001035**

STATE OF ILLINOIS,

I, MARIAN C. Hopper  
state do hereby certify thatSangamon

County ss:

, a Notary Public in and for said county and

Eric L. Allard & Lucinda M. Allard, husband and wife

personally known to me to be the same person(s) whose name(s) subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he/she/they signed and delivered the said instrument as his/her/their free and voluntary act, for the uses and purposes therein set forth

Given under my hand and official seal, this 4th day of October 2005

My Commission Expires

7/21/09Marian C. Hopper  
Notary Public

001036

EJA  
LMA

**LEGAL DESCRIPTION  
(Exhibit A)**

05NL31433

LOT 14, LAKE KNOLLS, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF  
THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 14 NORTH, RANGE 5 WEST OF THE  
THIRD PRINCIPAL MERIDIAN, SITUATED IN SANGAMON COUNTY, ILLINOIS

Tax Id 29-09-276-006

\*\*\*\*\*

001037

## **EXHIBIT C**



  
**newrez**  
C/O PHH Mortgage Services  
PO Box 24738  
West Palm Beach, FL 33416

Tel 888-820-6474  
Fax 856-917-8300

December 28, 2022

Account Number: [REDACTED]  
Property Address: [REDACTED]

Lucinda M Allard  
Eric L Allard  
[REDACTED]

A SIGNED AMENDMENT TO THE ORIGINAL NOTE IS REQUIRED

Dear Customer(s),

We require a signed amendment to the original Note document to process non-recurring payments over the phone or online.

Please sign and return the enclosed Note Amendment. All signers of the original Note need to sign this document.

For fastest processing, return the Note Amendment to us via email or fax. Send signed document to:

Email: [LoanSupport@mortgagefamily.com](mailto:LoanSupport@mortgagefamily.com)  
Attn: Research Loan Support Department

Fax: 1-856-917-8300  
Attn: Research Loan Support Department

Mail: PHH Mortgage Services  
Attn: Research Loan Support Department  
PO Box 24736  
West Palm Beach, FL 33416-4736

Other payment methods do not require this Amendment and are still available free of charge:

**Autopay Program (Direct Debit)**  
To enroll in the Autopay program, please visit our website listed below or contact us at phone number listed above to verify that the account is eligible and request an Autopay application form.

**Regular Mail**  
PHH Mortgage Services  
P.O.Box 94087  
Palatine, IL 60094-4087

Make checks payable to  
PHH Mortgage Services.

Please note, not all accounts are eligible to enroll in Autopay.

Once we receive the amendment signed by all borrowers, we will update the account to allow future non-recurring payments to be processed over the phone or online. If the signed amendment is not returned, we will be unable to accept such payments over the phone or through our website.

*Log in to [MortgageQuestions.com](http://MortgageQuestions.com) --- your servicing website connection.*



For any questions, please contact our Customer Care Center at 888-820-6474 Monday through Friday from 8:00 AM to 9:00 PM and Saturday from 8:00 AM to 5:00 PM ET. Depending on the status of the account, specific information may also be available online at the website listed below.

Sincerely,

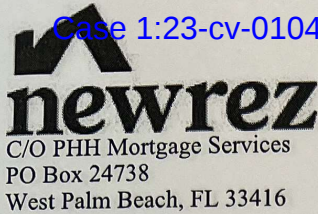
Loan Servicing

CS404 BO1

- In consideration of the mutual promises and covenants herein, the parties hereby agree as follows (notwithstanding anything to the contrary contained in the attached documents):
1. Accountholder(s) acknowledge(s) the Holder, or a servicing agent collecting payments under the Note, may in the discretion, choose to accept payments made through means not specifically provided for in the Note.
  2. Accountholder(s) acknowledge(s) and agree(s) the Holder, or a servicing agent collecting payments under the Note, may charge Accountholder(s) fees of up to (and not exceeding) \$12.50 per payment for the use of any payment methods not specifically provided for in the Note, and such fees are not limited to and are not restricted to be limited to the cost of processing such payments or making such payment methods available.
  3. Accountholder(s) hereby agree(s) with this Amendment, and are not limited to, fees, charges, and amounts added to payments made over the telephone with the assistance of a telephone answering system, payment through an automated telephone system, payment with paper, and other payment methods not specifically provided for by the Note.
  4. Accountholder(s) acknowledge(s) and agree(s) with this Amendment to the extent the personal liability of an Accountholder(s) under the Note has been discharged in whole or in part prior to the date of this Amendment, then such Accountholder(s) has no obligation, and agrees to repay the debt associated with the Note. This Amendment is not a discharge of the debt or remove any discharge provided, in whole or in part, to the Note, and this Amendment will not be construed as a waiver of Accountholder(s) discharge as an attempt to collect on the debt. The Accountholder(s) personally, shall remain liable for the discharged personal liability, under a debt obligation to the Holder(s) - subject to applicable law - of Holder's liability hereunder to the property described in the Mortgage, and any payments made by Accountholder(s), including any fees for the use of any payment methods not specifically provided for by the Note, are voluntary and are the result of any demand for payment of discharged debt.

*Log in to MortgageQuestions.com --- your servicing website connection.*





Tel 888-820-6474  
Fax 856-917-8300

Account Number: [REDACTED]

# NOTE AMENDMENT

This Note Amendment ("Amendment"), made on December 28, 2022 between Lucinda M Allard Eric L Allard (collectively, "Accountholder(s)") and "Investor," "Lender/Servicer" or "Agent for Lender/Servicer" ("Lender"), amends and supplements the account documents for the property located at [REDACTED]

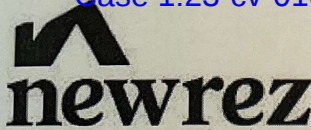
which created a debt in the original principal amount of \$ 114,750. The Lender or anyone who takes the Note by transfer and who is entitled to receive payments under the Note is called the "Holder."

In consideration of the mutual promises and agreements exchanged, the parties hereby agree as follows (notwithstanding anything to the contrary contained in the account documents):

1. Accountholder(s) acknowledge(s) the Holder, or a servicing agent collecting payments under the Note, may in its discretion, choose to accept payments made through means not specifically provided for in the Note.
2. Accountholder(s) acknowledge(s) and agree(s) the Holder, or a servicing agent collecting payments under the Note, may charge Accountholder(s) fees of up to (and not exceeding) \$19.50 per payment for the use of any payment methods not specifically provided for by the Note, and such fees are not limited to and are not represented to be limited to the costs of processing such payments or making such payment methods available.
3. Accountholder(s) hereby agree(s) such fees may include, but are not limited to, fees, charges, and expenses related to payments made over the telephone with the assistance of a representative, payments made through an automated telephone system, payments made online, and other payment methods not expressly provided for by the Note.
4. Accountholder(s) acknowledge(s) and agree(s) that if and to the extent the personal liability of an Accountholder under the Note has been discharged in bankruptcy prior to the effective date of this Amendment, then such Accountholder has no personal obligation to repay the debt associated with the Note, this Amendment to the Note does not re-impose or revive any discharged personal liability with respect to the Note, and this Amendment will not be construed as a waiver of Accountholder(s)' discharge or an attempt to collect against the Accountholder(s) personally. With respect to any such discharged personal liability, Lender's sole recourse is the enforcement - subject to applicable law - of Lender's security interest in the property described in the Mortgage, and any payments made by Accountholder(s), including any fees for the use of any payment methods not specifically provided for by the Note, are voluntary and not the result of any demand for payment of discharged debt.

*Log in to MortgageQuestions.com --- your servicing website connection.*





C/O PHH Mortgage Services  
PO Box 24738  
West Palm Beach, FL 33416

Tel 888-820-6474  
Fax 856-917-8300

5. Accountholder(s) acknowledge(s) and agree(s) that if and to the extent Accountholder(s) is (are) in an active bankruptcy case, this Amendment and any payments made by Accountholder(s), including any fees for the use of any payment methods not specifically provided for by the Note, are subject to applicable bankruptcy law and applicable bankruptcy court orders, and Lender is not making a demand herein for any payment from any such Accountholder(s).
6. Nothing in this Amendment shall be understood or construed to be a satisfaction or release in whole or in part of the existing Note or any existing account modification agreement. Except as otherwise specifically provided in this Amendment, the Note and any existing account modification agreement will remain unchanged, and the parties will be bound by, and comply with, all of the terms and provisions thereof, as amended by this Amendment.
7. The parties agree to make and execute other documents or papers as may be necessary to effectuate the terms and conditions of this Amendment.
8. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

\_\_\_\_\_  
Date (MM/DD/YYYY)

\_\_\_\_\_  
Lucinda M Allard

\_\_\_\_\_  
Date (MM/DD/YYYY)

\_\_\_\_\_  
Eric L Allard





Tel 888-820-6474  
Fax 856-917-8300

Important Messages

This communication is from a debt collector attempting to collect a debt; any information obtained will be used for that purpose. However, if the debt is in active bankruptcy or has been discharged through bankruptcy, this communication is provided purely for informational purposes only with regard to our secured lien on the above referenced property. It is not intended as an attempt to collect a debt from you personally. As may be required by state law, you are hereby notified that a negative credit report reflecting on an accountholder's credit record may be submitted to a credit reporting agency if credit obligation terms are not fulfilled.

*Log in to [MortgageQuestions.com](https://www.MortgageQuestions.com) --- your servicing website connection.*

## **EXHIBIT D**



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

April 11, 2022

Submitted electronically

Rohit Chopra  
Director, Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

Re: Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services, Docket No. CFPB-2022-0003

Dear Director Chopra:

Thank you for the opportunity to comment on the Bureau's request for information regarding the various fees that are imposed upon consumers in the consumer financial marketplace. We, the Attorneys General of Illinois, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, and Washington, as well as the Hawaii Office of Consumer Protection, applaud the Bureau for recognizing that some of the fees charged by banks, credit card companies, prepaid debit card providers, and others are excessive and exploitative. While we share the Bureau's broad concern about the proliferation of junk fees in the consumer financial marketplace, we are focusing these comments on a specific type of fee that we have found to be unfair and abusive to consumers: convenience fees imposed by mortgage servicers.

Some financial service providers charge fees if a consumer decides to use a certain type of payment method, such as making a payment over the telephone, through a website, or through a third party service. While these type of "pay to pay" fees are charged by service providers in several different markets, the issues raised by these fees are particularly insidious in the mortgage industry because, unlike most marketplaces, homeowners have no choice in their mortgage servicer.

When consumers decide to take out a mortgage, many believe that they are entering into a long-term relationship with a specific financial institution. Unfortunately, after origination many mortgage loans and their servicing rights are sold in secondary markets, and may be sold many times over the course of the loan. In short, consumers don't and can't know which company will service their mortgage loan, and they have no ability to change servicers.<sup>1</sup> Considering the length of mortgage loans, and their importance in the financial and emotional wellbeing of consumers' lives, the lack of consumer choice warrants special attention to discretionary fees imposed by mortgage servicers, like convenience fees. This is especially true given that some servicers have attempted to impose convenience fees even when the fees are not authorized by the original mortgage loan documents and therefore may be unlawful in certain jurisdictions.<sup>2</sup>

Additionally, there is no uniformity in convenience fees among mortgage servicers. Some charge them and some don't. And the charges can add up. For example, one servicer currently charges its borrowers \$7.50 to make an online payment or pay via telephone through an automated service.<sup>3</sup> If the consumer wants to speak to a live operator to make their payment, they will be charged \$17.50.<sup>4</sup> Other servicers charge more, or less, or not at all for the exact same options. And since mortgage borrowers are a captive market for their particular servicer, borrowers can't simply avoid the fees by taking their business elsewhere.

Mortgage servicers who charge these fees will no doubt argue that borrowers are able to submit their payment without incurring any fee by using alternative methods, like sending in a check or perhaps by setting up automatic deductions from a bank account. But like refinancing, this purported choice is actually illusory for many borrowers. In most instances, a borrower is choosing to submit a payment by phone or through a website because they want the payment to post immediately; mailing a check would take too long to post to avoid a late fee. And the late fee that a servicer may impose will likely exceed the cost of making a payment by phone or through a website. In this scenario, the convenience fee actually operates as an alternative late fee – perhaps cheaper, but with a shorter grace period, and in contravention to the contractual terms in most mortgages that outline the specific amount and timing of late fees. So, rationally, the consumer chooses the option that costs less and accepts the convenience fee charge. But simply choosing the less bad option doesn't mean that the consumer really has a choice.

---

<sup>1</sup> While some may argue that consumers have the option of refinancing if they don't like their servicer, this option is illusory. First, refinancing is usually only available for consumers who are current in their existing loan obligations; consumers with delinquent loans typically cannot refinance. Second, the ability to refinance is subject to external market factors like fluctuating property values and interest rates. Third, refinancing presents significant cost barriers to consumers, as they have to pay a new round of origination fees to obtain the new loan. And finally, even after all of this is done, the consumer still has no control over which company will ultimately service their loan – it's entirely possible that their loan could be transferred to the very servicer that the consumer was trying to avoid through the refinancing. Whether it's a purchase money mortgage or a refinanced mortgage, consumers have no choice in who services their loan.

<sup>2</sup> See, e.g., *Alexander v. Carrington*, 23 F.4th 370, 379 (4th Cir. 2022) (holding that a mortgage servicer's imposition of convenience fees violated Maryland's state debt collection practices act because the fees were not authorized by the mortgage loan documents or permitted by law); see also Amicus Brief of 33 Attorney Generals in Opposition to the Motion for Preliminary Approval the Proposed Settlement in *Morris v. PHH Mortgage Corp.*, Case No.: 20-CV-60633-RS (Doc. 120), (S.D. FL) (convenience fees violate laws of certain states when they are not expressly authorized in the mortgage loan documents or exceed or are not reasonably related to the servicer's actual cost).

<sup>3</sup> <https://www.phhmortgage.com/Tools-Resources/FAQs/General-FAQs> (description of "SpeedPay" charges under "What are some of the common fees that may be charged or assessed to me during the servicing of my mortgage?").

<sup>4</sup> *Id.*



Moreover, we have concerns that the convenience fees charged by these servicers exceed the actual cost to the servicer to accept payments made through a website or over a phone. In *Alexander v. Carrington Mortgage Services, LLC*, the United States Court of Appeals for the Fourth Circuit noted that an industry study found that processing a check cost debt collectors between \$1 and \$4, whereas “processing payments made online or by phone typically costs debt collectors substantially less, about \$0.50 per transaction.”<sup>5</sup> The most basic function of a mortgage servicer is to accept payments. The concept that a servicer ought to be able to impose an additional charge for performing its core function is fundamentally flawed. We don’t deny that servicers incur some costs to set up their business to accept payments – but that’s true of every business in every setting, and accepting payments is the core business of mortgage servicing. Lenders are supposed to earn their profit for servicing the loan in the origination charges and interest rate that consumers pay. In other words, mortgage servicers have already been compensated for the costs of accepting payments submitted by the borrower when these servicers either enter into the original loan or choose to acquire the servicing rights for the loan. Through their convenience fees, mortgage servicers are essentially getting compensated twice for accepting a payment.

For these reasons, we urge the Bureau to consider prohibiting mortgage servicers from imposing convenience fees on consumers. Alternatively, we urge the Bureau to prohibit servicers from charging convenience fees that exceed the actual cost of processing the consumer’s payment and require servicers to fully document the costs supporting the imposition of these fees.

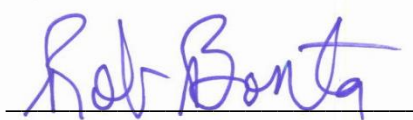
The “pay to pay” fees charged by mortgage servicers are just one example of potentially unfair junk fees charged to consumers in a multitude of financial products and services. We note the recent announcements<sup>6</sup> from some financial institutions concerning their reduction or elimination of overdraft and insufficient funds fees, and believe these highlight additional examples of harmful junk fees. We urge the Bureau to investigate fees in other captive markets where consumers do not have the ability to take their business elsewhere to avoid the fees, or where fees imposed on consumers are hidden profit centers for companies without an ability by consumers to adequately avoid such fees.

Thank you again for this opportunity, and thank you for taking the initiative to investigate and ultimately prohibit excessive and exploitative fees in the consumer financial marketplace.

Respectfully Submitted,



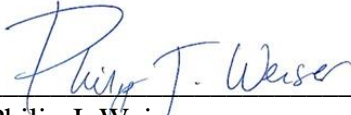
Kwame Raoul  
Illinois Attorney General



Rob Bonta  
California Attorney General

<sup>5</sup> *Alexander*, 23 F.4th at 379, citing Association for Financial Professionals, *Payments Cost Benchmarking Survey*, at 7-8 (2015).

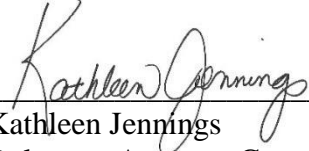
<sup>6</sup> See, e.g., <https://www.nytimes.com/2022/02/24/business/citigroup-overdraft-fees-banks.html>.



Philip J. Weiser  
Colorado Attorney General



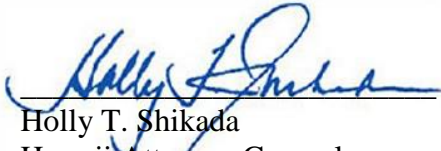
William Tong  
Connecticut Attorney General



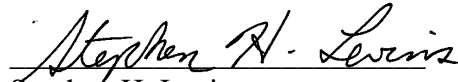
Kathleen Jennings  
Delaware Attorney General



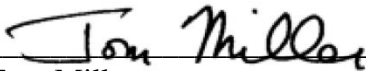
Karl A. Racine  
District of Columbia Attorney General



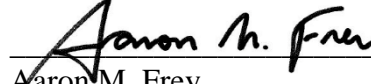
Holly T. Shikada  
Hawaii Attorney General



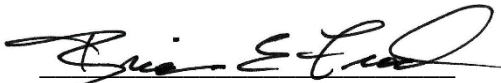
Stephen H. Levins  
Executive Director, Hawaii Office of  
Consumer Protection



Tom Miller  
Iowa Attorney General



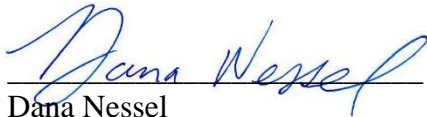
Aaron M. Frey  
Maine Attorney General



Brian E. Frosh  
Maryland Attorney General



Maura Healey  
Massachusetts Attorney General



Dana Nessel  
Michigan Attorney General



Keith Ellison  
Minnesota Attorney General



Aaron D. Ford  
Nevada Attorney General



Matthew J. Platkin  
Acting Attorney General of New Jersey

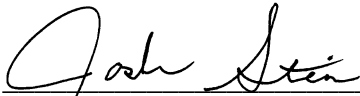


Hector Balderas  
New Mexico Attorney General



Letitia James  
New York Attorney General





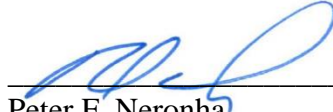
Josh Stein  
North Carolina Attorney General



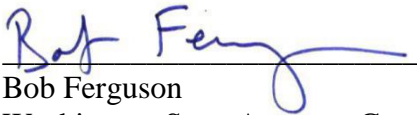
Ellen F. Rosenblum  
Oregon Attorney General



Josh Shapiro  
Pennsylvania Attorney General



Peter F. Neronha  
Rhode Island Attorney General



Bob Ferguson  
Washington State Attorney General

## **EXHIBIT E**



2000 Pennsylvania Avenue NW | Suite 1010  
Washington, DC 20006  
Telephone: (202) 973-0900  
Fax: (202) 973-0950  
tzlegal.com

**VIA CERTIFIED MAIL**

January 24, 2023

PHH Mortgage Services  
P.O. Box 66002  
Lawrenceville, NJ 08648

**RE: Demand for Relief**

To Whom it May Concern:

My law firm represents Lucinda Allard, a resident of Illinois, and Anntwanette Jones, a resident of New York. PHH Mortgage Corporation ("PHH") is the servicer of their mortgage loans. I write to notify PHH that it has breached, and continues to breach, its contracts with Ms. Allard and Ms. Jones, and other similarly situated borrowers. PHH has also violated various laws and statutes of New York, Illinois, and similar states, and as to Ms. Jones and similarly situated borrowers with mortgages backed by the Federal Housing Administration, has violated FHA regulations.

My clients' allegations will be familiar to PHH, as they concern PHH's practice of assessing a fee each time a borrower makes a mortgage payment online or over the phone ("Pay-to-Pay Fees"). These fees are not expressly authorized or permitted under the terms of their mortgage agreements, violate the laws of many states, including New York and Illinois, violate FHA regulations, and run in contravention of public policy and are otherwise unfair. By assessing these improper Pay-to-Pay Fees, PHH has violated the legal rights of Ms. Allard, Ms. Jones, and other similarly situated borrowers.

Further, we have learned that PHH has begun requesting that borrowers sign a deceptive document purporting to be an amendment to her mortgage agreement to permit the charging of these fees; Ms. Allard is one such recipient of this document. The mortgage notes authorize payment of funds via electronic transfer without cost, and any attempt to modify or amend those notes lacks consideration and is an unfair and deceptive practice.

Ms. Allard, Ms. Jones, and other similarly situated borrowers, including those in New York and Illinois, as well as those nationwide who hold an FHA mortgage, have been or will be injured by these practices. Accordingly, they request that PHH correct its violations by (1) immediately discontinuing the practices outlined above, (2) providing restitution of such fees paid by Ms. Allard, Ms. Jones, and other borrowers similarly situated, plus interest, as well as debt forgiveness for such fees that were charged but have yet to be paid, and (3) paying their reasonable attorneys' fees and expenses. We understand that certain PHH borrowers are bound by various class action settlements, and do not seek to recover money for claims released pursuant to one of those settlements.

 January 24, 2023  
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PHH has been on notice of its illegal Pay to Pay practices for years while many of its competitors have stopped the practice. We hope PHH will change course this time, stop the practice for good, and make borrowers whole. In the event that we are unable to reach a resolution of this demand within seven days, Ms. Allard and Ms. Jones intends to file a class action lawsuit on behalf of themselves and those similarly situated.

Regards,



Kristen G. Simplicio

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

ANNTWANETTE JONES and LUCINDA ALLARD, individually,  
and on behalf of a class of similarly situated persons

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Patricia M. Kipnis, Bailey & Glasser LLP 856.324.8219  
932 Haddonfield Rd, Ste 307, Cherry Hill, NJ 08002

**DEFENDANTS**

PHH MORTGAGE CORPORATION D/B/A

PHH MORTGAGE SERVICES

County of Residence of First Listed Defendant Burlington

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>INTELLECTUAL PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1332

Brief description of cause:

Breach of contract, violation of the covenant of good faith and fair dealing, consumer fraud and deceptive practices act

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

February 21, 2023

SIGNATURE OF ATTORNEY OF RECORD

/s/ Patricia M. Kipnis

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 12/09) Summons in a Civil Action

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UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_  
*Plaintiff*

v.

\_\_\_\_\_  
*Defendant*

)  
)  
)  
)  
)  
)  
)

Civil Action No. \_\_\_\_\_

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: