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**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
George Van Wagner,	:	
	:	
Plaintiff,	:	Adv. Proc. 12-01913 (MG)
	:	
v.	:	
	:	
Residential Funding Company, LLC, et al.	:	
	:	
Defendants.	:	
-----X	:	
In re	:	
	:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, <i>et al.</i> ,	:	
	:	Chapter 11
	:	
Debtors	:	Jointly Administered
-----X	:	

**DEBTORS' MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT
TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(5), AND (6) OR, IN THE
ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1)**



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Defendants Residential Funding Company, LLC (“RFC”) and GMAC Mortgage, LLC (“GMACM” and, together with RFC, the “Debtor Defendants”), each a debtor and debtor in possession in the above-captioned chapter 11 cases (collectively with all affiliated debtors and debtors in possession, the “Debtors”), submit this motion (the “Motion”) to dismiss the above-referenced adversary proceeding (the “Adversary Proceeding”) commenced by *pro se* plaintiff George Van Wagner (“Plaintiff”) for insufficient service of process and failure to state a claim upon which relief can be granted or, in the alternative, requesting that the Court exercise its discretion to abstain from exercising jurisdiction over the Adversary Proceeding. In support of hereof, the Debtor Defendants submit the Declaration of Jennifer Scoliard, dated November 16, 2012 (the “Scoliard Decl.”), attached hereto as Exhibit 1, and respectfully represent:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 (a) and 1334(b). Venue is proper under 28 U.S.C. § 1409. This is a non-core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2). Nonetheless, pursuant to Local Bankruptcy Rule 7012-1, the Debtor Defendants consent to entry of a final order or judgment by this Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

II. BACKGROUND

A. General Bankruptcy Case Background

2. On May 14, 2012 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in this Court.

3. The Debtors are a leading residential real estate finance company indirectly owned by Ally Financial Inc., which is not a Debtor. As of the Petition Date, the Debtors and their non-debtor affiliates operated the fifth largest mortgage servicing business and the tenth largest mortgage origination business in the United States.

4. The Debtors are managing and operating their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. Their chapter 11 cases (collectively, the “Bankruptcy Case”) are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). No trustee has been appointed in the Bankruptcy Case.

5. On May 16, 2012, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed a nine member official committee of unsecured creditors.

6. On July 3, 2012, the U.S. Trustee appointed the Honorable Arthur T. Gonzalez, former Chief Judge of this Court, as examiner (the “Examiner”).

B. Events Giving Rise to the Adversary Proceeding

(i) Origination of Plaintiff’s Loan

7. Plaintiff was a borrower under a mortgage loan (the “Loan”) that was originated by Shenandoah Mortgage, LLC (“Shenandoah”) on October 30, 2006. (Scoliard Decl., ¶ 5.) The Loan was evidenced by a note in the amount of \$240,000.00 (the “Note”), which was secured by real property located at 409 Three Run Road, Bunker Hill, West Virginia 25413 (the “Property”) pursuant to a security deed (the “Security Deed”) executed contemporaneously with the Note. Id. On or about December 6, 2006, Shenandoah assigned the Security Deed to National City Mortgage Co. (“National City”). Id. On December 8, 2006, National City

assigned the Security Deed to Mortgage Electronic Registration Systems, Inc. (“MERS”), its successors and assigns. Id. The Note has an allonge showing an endorsement from Shenandoah to National City and National City to blank. Id.

8. On July 11, 2007, Plaintiff allegedly conveyed the Property to VAC, LLC, an entity formed and managed by Plaintiff, subject to the Note. (Compl. at 4.)

(ii) Plaintiff’s Bankruptcy Cases

9. On March 28, 2008, Plaintiff filed a petition for chapter 11 protection in the Bankruptcy Court for the Northern District of West Virginia (the “West Virginia Bankruptcy Court”), Case No. 08-00435 (“Plaintiff’s Bankruptcy Case”).¹ (Scoliard Decl., ¶ 6.)

10. According to pleadings filed by National City, at the time of his bankruptcy filing, Plaintiff was in arrears under the Loan. (See Motion for Order Granting Relief From Automatic Stay, or, in the Alternative, to Seek Adequate Protection, annexed as Exhibit G to Scoliard Decl.) On July 8, 2008, National City filed a motion for relief from the automatic stay to foreclose on the Property. (Id.)

11. On November 13, 2008, the West Virginia Bankruptcy Court entered an agreed order between National City and Plaintiff terminating the automatic stay based on certain payment conditions (the “Agreed Order”).

12. On November 20, 2008, Plaintiff filed a motion to refute the Agreed Order, on the grounds that the Agreed Order was inaccurate in that it had misleading information regarding an agreement reached between National City and Plaintiff regarding the allocation of

¹ The Complaint indicates that the debtor in Case No. 08-00435 is VAC, LLC. That is incorrect. (See Voluntary Petition, annexed as Exhibit E to Scoliard Decl.) To the contrary, Plaintiff filed a “Motion to Add VAC, LLC, to Debtor’s Bankruptcy,” which was denied. (See Order Denying Motion To Add Party, annexed as Exhibit F to Scoliard Decl.) An ECF search for the debtor “VAC, LLC” or likely variations thereon on ECF did not produce any results.

past payments of tax obligations between the parties (the “Payment Terms”). (See Order, annexed as Exhibit I to Scoliard Decl.) At a hearing on December 18, 2008, National City acknowledged that the complained of fees and charges would not be passed on to Plaintiff. Id. National City was to provide an amended order to address the misleading information. Id. That amended order was never filed. Id.

13. On March 13, 2009, Plaintiff filed a “Motion to Remove National City Mortgage on 409 Three Run Road Property and to Have Withdrawn Order with Self Activating Provision.” Id. The basis for the motion was that National City had transferred the Loan to GMACM. Id. The transfer of the Loan to GMACM is discussed below. In the absence of any objection, the West Virginia Bankruptcy Court granted the motion on April 20, 2009, and, on June 2, 2009, entered an additional order vacating the Agreed Order. Id.

14. Plaintiff’s Bankruptcy Case was converted to a proceeding under chapter 7 on July 1, 2009. (Scoliard Decl., ¶ 12.)

15. On February 18, 2010, GMACM filed a motion for relief from the automatic stay in Plaintiff’s Bankruptcy Case to proceed with a foreclosure on the Property (the “GMACM Stay Relief Motion”). (Scoliard Decl., ¶ 13.) A review of the docket shows that Plaintiff did not object to the GMACM Stay Relief Motion.

16. On March 8, 2010, the West Virginia Bankruptcy Court entered an order granting the GMACM Stay Relief Motion. (Scoliard Decl., ¶ 14.) Plaintiff did not assert any claims against GMACM regarding the Property at that time. Instead, Plaintiff filed amended schedules of assets and liabilities (the “Amended Schedules”) on March 30, 2010 in which he stated that he owned no contingent and unliquidated claims. Id.

17. An order granting Plaintiff a chapter 7 discharge was entered on June 25, 2010. (Scoliard Decl., ¶ 15.)

(iii) Transfer and Attempted Foreclosure of the Loan

18. On or about February 1, 2009, GMACM replaced National City as servicer of the Loan. (Scoliard Decl., ¶ 16.)

19. By a letter dated February 4, 2009, National City notified Plaintiff of the transfer of the Loan (the “National City Notice of Transfer”). (Scoliard Decl., ¶ 17.)

20. By a letter dated February 6, 2009, GMACM also notified Plaintiff of the transfer of the Loan, and directed that, effective as of February 1, 2009, any future payments under the Loan should be sent to GMACM (the “GMACM Notice of Transfer”). (Scoliard Decl., ¶ 18.)

21. Plaintiff acknowledges that he ceased making payments on the Loan after receiving the National City Notice of Transfer and the GMACM Notice of Transfer. (Compl. at 6-7.)

22. As described above, as a result of Plaintiff’s continuing default under the Loan, GMACM sought and obtained stay relief in Plaintiff’s Bankruptcy Case and, acting in its capacity as mortgage loan servicer for the Loan, thereafter initiated a non-judicial foreclosure with respect to the Property. Id.

23. On August 2, 2011, GMACM sent Plaintiff a Notice of Trustee’s Sale. (Scoliard Decl., ¶ 20.) The foreclosure sale was suspended in light of an action filed by Plaintiff in the United States District Court for the Northern District of West Virginia (discussed below). Id. To date, no foreclosure of the Property has occurred. Id.

(iv) Plaintiff's Prior Litigation

(a) State Court Action

24. On May 19, 2010, Plaintiff filed a complaint (the "2010 Complaint") in the Circuit Court for Berkeley County, West Virginia (the "State Court"), thereby commencing an action, Case No. 10-C-390, (the "State Court Action"), against multiple defendants including Debtor GMACM, by which he sought (i) to quiet title with respect to the Property, (ii) to enforce the Payment Terms agreed to between himself and National City against GMACM as National City's successor in interest, and (iii) the return of \$3,299.80 in payments. (Scoliard Decl., ¶ 21.)

25. On March 9, 2011, the State Court entered an order granting GMACM's motion to dismiss the 2010 Complaint pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure for failure to state a claim upon which relief could be granted. (See Order Granting GMAC Mortgage, LLC's Motion to Dismiss, annexed as Exhibit S to Scoliard Decl.) The State Court entered the final order dismissing Plaintiff's case against the last remaining defendant on April 29, 2011, which order constituted a final order under Rule 54 of the West Virginia Rules of Civil Procedure.² (Scoliard Decl., ¶ 23.)

26. The thirty (30) day time period in which to appeal the order dismissing the State Court Action expired well over a year ago and, as a result, any appeal of the dismissal is now barred.³

² See W. VA. R. CIV. P. 54 (providing that an "order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties").

³ See W. VA. R. APP. P. 5(b) ("Within thirty days of entry of the judgment being appealed, the party appealing shall file the notice of appeal...").

(b) District Court Action

27. On August 12, 2011, Plaintiff filed a complaint (the “2011 Complaint”) against RFC, GMACM, and others in the United States District Court for the Northern District of West Virginia (the “District Court”), Case No. 3:11-CV-66 (the “District Court Action”) seeking to enjoin the foreclosure. (See 2011 Complaint, annexed as Exhibit U to Scoliard Decl., ¶ 24.)

28. In the 2011 Complaint, Plaintiff reasserted his claim to enforce the Payment Terms against GMACM on the grounds that the failure to apply said terms constituted a violation of the Truth in Lending Act. (*Id.* at 5.) Plaintiff also asserted claims for violations of the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §§ 2601, et seq. (“RESPA”) and the West Virginia Code. (2011 Complaint at 5-6.) As a remedy for the alleged violations, Plaintiff requested that the District Court “enjoin the foreclosure and . . . issue an injunction to stop the sale.” (2011 Complaint at 7.) Plaintiff also requested punitive and compensatory damages for “any negligence found to be committed by the Court.” *Id.*

29. The 2011 Complaint was dismissed by the District Court for lack of jurisdiction pursuant to an order entered on November 17, 2011 (the “Dismissal Order”). (See Exhibit V to Scoliard Decl.)

30. On November 23, 2011, Plaintiff filed a motion for reconsideration of the Dismissal Order, as well as a notice of appeal of the Dismissal Order. (Scoliard Decl., ¶ 26.)

31. On December 15, 2011, the District Court denied Plaintiff’s motion for reconsideration. (Scoliard Decl., ¶ 27.)

32. On April 2, 2012, the United States Court of Appeals for the Fourth Circuit affirmed the Dismissal Order. (Scoliard Decl., ¶ 28.)

(v) **The Adversary Proceeding**

33. On October 11, 2012, Plaintiff filed the instant complaint (the “Complaint”) initiating the Adversary Proceeding. A summons and notice of pretrial conference (the “Summons”) was issued with respect to the Adversary Proceeding on October 17, 2012.

34. An affidavit of service of the Complaint and Summons was filed on November 14, 2012. The affidavit of service states that Plaintiff served a copy of the Complaint and Summons on the Debtor Defendants at the following addresses:

Residential Funding Company, LLC
8400 Normandale Blvd, Ste 250
Minneapolis, Minnesota 55437

GMAC Mortgage,
P.O. Box 4622
Waverlo, IA 50704

Neither of the above addresses are the correct addresses for service. (Scoliard Decl., ¶ 31.) The address for RFC lists the wrong suite number - 250. Id. The correct suite number is 350. Id. The address for GMACM is a payment processing address. Id. Also as of the date hereof, the Debtor Defendants have no record of being served by any other legally sufficient means, either directly upon an officer or through their registered agent. Id. at ¶¶ 31-32.)

35. The Debtor Defendants learned of the this adversary proceeding through its default counsel, Samuel I. White, P.C., who sent a copy of the Complaint and Summons to GMACM’s default supplier relations team, who then forwarded the Complaint and Summons to the Debtors’ Legal Department. Id. The Debtor Defendants also learned of this case through their monitoring of the Bankruptcy Case docket.

36. The Complaint is brought against the same defendants named in the District Court Action, and asserts essentially identical claims and requests for relief as those made in the 2011 Complaint. By the Complaint, Plaintiff asks this Court “to enjoin the

foreclosure and to issue an injunction to stop the sale.” (Complaint at 11.) Plaintiff also requests punitive and compensatory damages for “any negligence found to be committed by the Court.”

Id.

37. In support of these claims, Plaintiff asserts that the Note was sold to RFC without his knowledge and points to claims for negligent practices asserted against the various named defendants in other jurisdictions. Id. at 10-11.

III. ARGUMENT

A. The Adversary Proceeding Should Be Dismissed Pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(5) and (6)

38. Bankruptcy Rule 7012 incorporates by reference Rule 12(b)-12(i) of the Federal Rules of Civil Procedure (“FRCP”). FRCP 12(b) provides that a party may assert specified defenses by motion, including lack of subject matter jurisdiction, insufficient service of process, and failure to state a claim upon which relief can be granted, and that a motion asserting any of these defenses may be made before pleading. The Adversary Proceeding should be dismissed pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(5) because Plaintiff failed to provide sufficient service of process. The Adversary Proceeding should also be dismissed pursuant to Bankruptcy Rule 7012(b)(6) because Plaintiff has failed to state a claim upon which relief can be granted.

(i) Insufficient Service of Process

39. Bankruptcy Rule 7004 incorporates by reference FRCP 4(c)(1), 4(h) and 4(l). FRCP 4(c)(1) in turn provides that the plaintiff is responsible for having the summons and complaint served within the time allowed, and FRCP 4(h) requires that a corporation must be served in the manner prescribed by FRCP 4(e)(1) for serving an individual, or by delivering a copy of the summons and complaint to an authorized agent and by mailing a copy of each to the

defendant. In addition, under Bankruptcy Rule 7004(b)(3), service may also be effectuated by mailing a copy of the summons and complaint to “an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process” Fed. R. Bankr. P. 7004(b)(3). Bankruptcy Rule 7004(e) further requires that service of the summons and complaint be delivered or deposited in the mail within 14 days after the summons is issued, and FRCP 4(l) requires that proof of service must be made to the court by the server’s affidavit. Rule 9078-1 of the Local Bankruptcy Rules provides that, unless the Court orders otherwise, “any party serving a pleading or other document shall file proof of service by the earlier of (i) three days following the date of service, and (ii) the hearing date.

40. Upon information and belief, the Debtor Defendants have not been served with the Complaint and Summons by any means prescribed by Bankruptcy Rule 7004. (Scoliard Decl., ¶¶ 31-32.) Accordingly, the Debtor Defendants request that the Adversary Proceeding be dismissed for insufficient service of process pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(5).

(ii) Failure to State a Claim

(a) Legal Standard

41. Plaintiff’s Complaint should also be dismissed on the ground that Plaintiff has failed to plead sufficient facts to establish his claims against the Debtor Defendants.

42. FRCP 12(b)(6) permits dismissal of an action for failure to state a claim upon which relief can be granted. For FRCP 12(b)(6) purposes, a court must accept the plaintiff’s factual allegations as true, drawing all reasonable inferences in the plaintiff’s favor. Bernheim v. Litt, 79 F.3d 318, 321 (2d Cir. 1996).

43. The Court’s review on a motion to dismiss pursuant to FRCP 12(b)(6) is generally limited to “the facts as asserted within the four corners of the complaint, the documents attached to the complaint as exhibits, and any documents incorporated in the complaint by reference.” McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 191 (2d Cir. 2007). In addition, the Court may also consider “matters of which judicial notice may be taken” and “documents either in plaintiffs’ possession or of which plaintiffs had knowledge and relied on in bringing suit.” Brass v. Am. Film Techs., Inc., 987 F.2d 142, 150 (2d Cir. 1993). See also, Fed. R. Evid. 201(b), (d) (“A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned . . . [A] court shall take judicial notice if requested by a party and supplied with the necessary information.”); Norris v. Hearst Trust, 500 F.3d 454, 461 n.9 (5th Cir. 2007), (“[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.”); Hirsch v. Arthur Andersen & Co., 72 F.3d 1085, 1088, 1092 (2d Cir. 1995) (noting that, in connection with a motion to dismiss, a court may consider all papers appended as well as matters of judicial notice).

(b) Plaintiff’s Claims Are Supported By Insufficient Facts To Be Plausible

44. To survive a motion to dismiss pursuant to FRCP 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). The sole issue raised by a motion to dismiss pursuant to FRCP 12(b)(6) is whether the facts pleaded, if established, would support a claim for relief. Neitzke v. Williams, 490 U.S. 319, 326-27 (1989). If as a matter of

law “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations,” a claim must be dismissed. Id. at 327.

45. “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Bell Atlantic Corp., 550 U.S. at 555 (citations omitted). A plaintiff must allege a factual predicate concrete enough to warrant further proceedings. See, e.g., DM Research v. College of Am. Pathologists, 170 F.3d 53, 55-56 (1st Cir. 1999). See also Conley v. Gibson, 355 U.S. 41, 47 (U.S. 1957) (plaintiffs are required to “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests”).

46. Moreover, while facts must be accepted as alleged, this does not automatically extend to bald assertions, subjective characterizations, or legal conclusions, which are not entitled to the assumption of truth. Hirsch, 72 F.3d at 1088, 1092. A court considering a motion to dismiss can disregard conclusory allegations and judge the complaint only on well-pleaded factual allegations. Starr v. Sony BMG Music Entm’t, 592 F.3d 314, 321 (2d Cir. 2010). See also Papasan v. Allain, 478 U.S. 265, 286 (1986) (on a motion to dismiss, courts “are not bound to accept as true a legal conclusion couched as a factual allegation”).

47. Although complaints drafted by *pro se* plaintiffs are to be “construed liberally,” claims asserted by *pro se* plaintiffs must nonetheless be supported by specific and detailed factual allegations sufficient to provide the court and the defendant with “a fair understanding of what the plaintiff is complaining about and . . . whether there is a legal basis for recovery.” Iwachiw v. N.Y. City Bd. of Elections, 126 Fed. Appx. 27, 29 (2d Cir. 2005) (citations omitted). Plaintiff’s Complaint fails to satisfy this *de minimus* standard.

(i) Negligence Claims

48. Plaintiff suggests he has claims for negligence (Comp. at 7), but fails to specify which of the dozen named defendants those claims may lie against, much less identify any specific factual support for this conclusory statement. Thus, the Complaint fails to plead sufficient facts to determine whether Plaintiff may hold valid claims for negligence and those claims should be dismissed.

(ii) Fraud Claims

49. Under FRCP 9(b), which is applicable to these proceedings pursuant to Bankruptcy Rule 7009, to the extent Plaintiff seeks to assert claims of fraud or mistake against the individual defendants (Comp. at 11), he must “state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). There are three elements required to plead common law fraud in West Virginia: (1) that the act claimed to be fraudulent was the act of the defendant or induced by him; (2) that it was material and false; that plaintiff relied upon it and was justified under the circumstances in relying upon it; and (3) that he was damaged because he relied upon it. Bowens v. Allied Warehousing Servs., 729 S.E.2d 845, 851-852 (W. Va. 2012) (citations omitted). Each fraud claim must be plead with particularity as to each defendant against which Plaintiff raises such claims. To establish fraud it must be clearly and specifically alleged: “He who alleges fraud must clearly and distinctly prove it, either by circumstantial or direct evidence. It will not be presumed from doubtful evidence, or circumstances of suspicion. The presumption is always in favor of innocence and honesty.” Id. (citations omitted). Plaintiff has not plead his claims for fraud with the requisite specificity and, accordingly, such claims should be dismissed.

(iii) Claims for Illegal Pursuit of Foreclosure/Wrongful Foreclosure

50. To the extent the Court construes the Complaint to include a claim for wrongful foreclosure or attempted foreclosure, Plaintiff has failed to plead facts that, taken as true, would entitle him to relief. West Virginia state courts have recognized a cause of action for illegal pursuit of foreclosure. See, e.g., Lucas v. Fairbanks Capital Corp., 618 S.E.2d 488, 489-90 (W.V. 2005). Lucas held that, under West Virginia law, creditors in a deed of trust, or their representatives, are not required to pursue remedies that are not set out in the deed of trust or any relevant statute to attempt to cure a default prior to pursuing a foreclosure under W. Va. Code § 38-1-3, which governs non-judicial foreclosure sales.⁴ Accordingly, Plaintiff's allegations that GMACM has wrongfully failed to consult with Plaintiff or to otherwise permit Plaintiff to cure his default under the Loan (see Compl. at 7-9) do not establish a claim for illegal pursuit of foreclosure as a matter of state law.⁵

⁴ That provision states in full:

The trustee in any trust deed given as security shall, whenever required by any creditor secured or any surety indemnified by the deed, or the assignee or personal representative of any such creditor or surety, after the debt due to such creditor or for which such surety may be liable shall have become payable and default shall have been made in the payment thereof, or any part thereof, by the grantor or other person owing such debt, and if all other conditions precedent to sale by the trustee, as expressed in the trust deed, shall have happened, sell the property conveyed by the deed, or so much thereof as may be necessary, at public auction, having first given notice of such sale as prescribed in the following section.

⁵ Plaintiff's citation to W. Va. Code § 46A-2-106 is inapposite, as that provision relates to "consumer credit sales," "consumer loans," or "consumer leases," which are each defined, among other things, to exclude transactions where the principal amount of debt at issue does not exceed forty-five thousand dollars or the debt is secured by an interest in land or a factory-built home (where "factory-built home" is defined to include modular homes, mobile homes, house trailers and manufactured homes W. Va. Code §§ 46A-1-101, *et seq.*, § 37-15-2. Instead, Plaintiff's Loan and the related deed of trust are governed by chapter 38 of the W. Va. Code relating to liens. See W. Va. Code § 38-1-1a ("This article shall apply to deeds of trust that convey real property or some interest therein or both real property or some interest therein and personal property."); Compl. at 3 (describing property at issue as six acre parcel of "real estate, together with its improvements, easements and appurtenances thereunto belonging. . . .").

51. Moreover, in the event the foreclosure is allowed to proceed, Plaintiff cannot currently allege any facts that would give rise to a subsequent claim for wrongful foreclosure because states that recognize the tort of wrongful foreclosure generally require the trustor to prove that either he was not in default at the time of the foreclosure or that the foreclosing party caused the default. See, e.g., Contreras v. US Bank, 2009 U.S. Dist. LEXIS 121944 (D. Ariz. Dec. 14, 2009) (surveying case law in other jurisdictions and finding that plaintiffs failed to state a claim for wrongful foreclosure under any of the standards applied in those jurisdictions because they did not allege (1) that they were not in default, (2) the existence of any statutory requirement or other duty that required defendants to possess and produce the original note or to provide a detailed accounting in order to exercise the trustee's power of sale under the deed of trust, or (3) that foreclosing party's actions caused their default) (citations omitted).

52. Plaintiff does not allege that he is not in default on the Loan or that GMACM caused his failure to make Loan payments. To the contrary, Plaintiff acknowledges that he ceased making payments on the Loan in 2009. (Compl. at 6-7.) Although Plaintiff alleges that he stopped payments because he did not know to whom he should remit funds (Compl. at 6) or, alternatively, that he was advised to stop making payments (Compl. at 11), these allegations are directly contradicted by the documentary evidence Plaintiff attached to his Complaint—both the National City Transfer Notice and the GMAC Mortgage Transfer Notice, which notified him of the transfer of the Loan to GMACM, and indicated that payments and inquiries should be directed to GMACM going forward, along with relevant contact information. (See Compl. at 15, 16.) Because, based on the current facts as alleged and documented in the

Complaint, Plaintiff cannot state a claim for illegal pursuit of foreclosure or wrongful foreclosure, any such claims should be dismissed.

(iv) Claims for Injunctive Relief

53. Plaintiff has also failed to allege facts that support his request for injunctive relief. West Virginia courts have held that an injunction of a non-judicial foreclosure may be appropriate in certain instances, including “when the proper amount due on the debt is in dispute.” See Villers v. Wilson, 172 W. Va. 111, 115 (W. Va. 1983) (citation omitted).⁶ Here, Plaintiff alleges that he reached an agreement with PNC for a lower interest payment (see Compl. at 11), (presumably, the same Payment Terms that caused the State Court to vacate the Agreed Order), but does not contest the amount actually claimed as due by GMACM, nor does he allege facts sufficient to show that is entitled to enforce such terms against GMACM. Further, Villers held that a non-judicial foreclosure should not be enjoined where the sole ground relied upon for the issuance of the injunction is that the grantor of the trust deed has an unliquidated claim against the creditor whose debt is secured by that trust deed for damages arising out of a transaction unrelated to the trust deed agreement. Here, Plaintiff asserts that he is entitled to “compensatory damages” for negligence (see Compl. at 11), but as stated above, has failed to allege facts in support of such claim. Nor has Plaintiff alleged any other facts that would require, much less weigh in favor of, injunctive relief. Accordingly, such claims should be dismissed.

⁶ “Additionally, a trustee’s foreclosure sale may not be enjoined because poor economic conditions or inclement weather would depress the sale price of the property.” Id. at *9 n.3 (citing Lopinsky v. Preferred Realty Co., 163 S.E. 1, 1 (W. Va. 1932); Caperton v. Landcraft, 3 W. Va. 540, 540-41 (1869)).

54. For the reasons set forth above, the Adversary Proceeding should be dismissed in its entirety for failure to state a claim upon which relief can be granted pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(6).

B. The Court Should Abstain from Exercising Jurisdiction Over the Adversary Proceeding

55. In the alternative, the Court should abstain from exercising jurisdiction pursuant to 28 U.S.C. § 1334(c)(1). Notwithstanding the presence of “related to” jurisdiction, a district court may abstain from exercising that jurisdiction on “any equitable ground,” including “the interest of justice, or in the interest of comity with State courts or respect for State law.” 28 U.S.C. § 1334(c)(1). Courts consider one or more—though not necessarily all—of the following factors when determining whether to exercise permissive abstention under § 1334(c):

(1) the effect or lack thereof on the efficient administration of the estate if a [c]ourt recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable state law, (4) the presence of a related proceeding commenced in state court or other non-bankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted “core” proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the court’s] docket, (10) the likelihood that the commencement of the proceeding in a bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of non-debtor parties.

Allstate Ins. Co. v. CitiMortgage, Inc., 2012 U.S. Dist. LEXIS 39616, 16-18 (S.D.N.Y. Mar. 13, 2012) (citing In re Cody, Inc., 281 B.R. 182, 190-91 (S.D.N.Y. 2002) (citation and internal quotation marks omitted); Baker v. Simpson, 413 B.R. 38, 45 (E.D.N.Y. 2009)).

56. Almost all of those factors (to the extent applicable) weigh in favor of this Court’s abstention from exercising jurisdiction over the Adversary Proceeding. Specifically, the Court’s abstention from the Adversary Proceeding, which involves the validity of a foreclosure

with respect to a single loan owned by the Debtors, will have virtually no effect on the administration of the Debtors' estates. Conversely, however, exercising jurisdiction will likely encourage many other similarly-situated parties to initiate non-core adversary proceedings before this Court, potentially swamping the Court's docket and distracting both the Court and the Debtors' professionals from the critical issues affecting the Debtors' restructuring efforts.

57. Issues concerning the validity of the foreclosure and whether the Payment Terms can be enforced against GMACM are purely state law questions, and are wholly unrelated to the administration of the Debtors' bankruptcy cases. Accordingly, they should be left to judges sitting in West Virginia to decide.

58. To the extent Plaintiff believes he has monetary claims against the Debtor Defendants under RESPA or any state statute, he may file a proof of claim and have those claims administered as part of the Debtors' main Bankruptcy Case. To the extent he wishes to further litigate issues related to the Property itself, however, the proper venue for their adjudication is West Virginia, as there is no jurisdictional basis for Plaintiff to prosecute his claims in this District other than under 28 U.S.C. § 1334. Additionally, a number of the other named defendants are individuals with no apparent ties to, or interest in, the Debtors' Bankruptcy Case, further weighing in favor of abstention.

59. Although there is no related proceeding currently pending in state court, that factor should not weigh against abstention in this instance. First, to the extent Plaintiff has valid claims and defenses to the foreclosure of the Property, relief from the automatic stay enjoining actions against the Debtors has already been granted pursuant to the Supplemental

Servicing Order⁷ previously entered by this Court. Second, Plaintiff's filing of the present Complaint comes after the dismissal of similar actions brought by Plaintiff in both federal and state courts in West Virginia. The Adversary Proceeding is thus a clear example of forum shopping by Plaintiff. As discussed above, the proper forum for Plaintiff's claims and defenses to be litigated is in West Virginia, not before this Court. Plaintiff's attempts to circumvent that fact following his lack of success in the correct venues should not be countenanced.

60. Substantially all of the applicable factors weigh heavily in favor of this Court's abstention from asserting jurisdiction over the Adversary Proceeding. As such, the Debtor Defendants respectfully request that the Court decline to exercise jurisdiction and dismiss the Adversary Proceeding.

⁷ The term "Supplemental Servicing Order" refers to the *Final Supplemental Order Under Bankruptcy Code Sections 105(a), 362, 363, 502, 1107(a), And 1108 And Bankruptcy Rule 9019 (I) Authorizing The Debtors To Continue Implementing Loss Mitigation Programs; (II) Approving Procedures For Compromise And Settlement Of Certain Claims, Litigations And Causes Of Action; (III) Granting Limited Stay Relief To Permit Foreclosure And Eviction Proceedings, Borrower Bankruptcy Cases, And Title Disputes To Proceed; And (IV) Authorizing And Directing The Debtors To Pay Securitization Trustee Fees And Expenses* [Dkt. No. 774], which was entered on July 13, 2012.

IV. CONCLUSION

Accordingly, for the reasons set forth herein the Debtor Defendants respectfully requests that the Court dismiss the Adversary Proceeding with prejudice and grant such other and further relief as it deems just and proper.

Dated: November 16, 2012
New York, New York

/s/ Norman S. Rosenbaum

Norman S. Rosenbaum

Stefan W. Engelhardt

Erica J. Richards

MORRISON & FOERSTER LLP

1290 Avenue of the Americas

New York, New York 10104

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*Counsel for the Debtors and
Debtors in Possession*

EXHIBIT 1

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Norman S. Rosenbaum
Stefan W. Engelhardt
Erica J. Richards

*Counsel for the Debtors and
Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
George Van Wagner,	:	
	:	Adv. Proc. 12-01913 (MG)
Plaintiff,	:	
	:	
v.	:	
	:	
Residential Funding Company, LLC, et al.	:	
	:	
Defendants.	:	
-----X	:	
In re	:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, <i>et al.</i> ,	:	
	:	Chapter 11
	:	
Debtors	:	Jointly Administered
-----X	:	

**DECLARATION OF JENNIFER SCOLIARD, IN-HOUSE SENIOR BANKRUPTCY
COUNSEL AT RESIDENTIAL CAPITAL, LLC, IN SUPPORT OF DEBTORS' MOTION
FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY
RULE 7012(b) AND FRCP 12(b)(5), AND (6) OR, IN THE ALTERNATIVE,
PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1)**

I, Jennifer Scoliard, declare as follows:

A. Background and Qualifications

1. I serve as In-House Senior Bankruptcy Counsel in the legal department
(the "Legal Department") at Residential Capital, LLC ("ResCap"), a limited liability company

organized under the laws of the state of Delaware and the parent of the other debtors and debtors in possession in the above-captioned Chapter 11 cases (collectively, the “Debtors”). I joined ResCap in January 2008 and have been ResCap’s In-House Bankruptcy counsel since September 2010.

2. In my role as In-House Senior Bankruptcy Counsel at ResCap, I am responsible for the management of all non-routine bankruptcy litigation nationwide, including contested bankruptcy matters.

3. I am authorized to submit this declaration (the “Declaration”) in support of the *Debtors’ Motion For Dismissal Of Adversary Proceeding Pursuant To Bankruptcy Rule 7012(b)(5) And (b)(6) Or, In The Alternative, Permissive Abstention Pursuant To 28 U.S.C. §1334(c)(1)*, dated November 12, 2012 (the “Motion”).⁸

4. In my capacity as In-House Senior Bankruptcy Counsel, I am generally familiar with the Debtors’ litigation matters, including the prior bankruptcy proceedings involving Plaintiff. Except as otherwise indicated, all statements in this Declaration are based upon my personal knowledge; information supplied or verified by personnel in departments within the Debtors’ various business units; my review of the Debtors’ litigation case files, books and records as well as other relevant documents; my discussions with other members of the Legal Department; information supplied by the Debtors’ consultants; or my opinion based upon experience, expertise, and knowledge of the Debtors’ litigation matters, financial condition and history. In making my statements based on my review of the Debtors’ litigation case files, books and records, relevant documents, and other information prepared or collected by the Debtors’

⁸ Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Objection.

employees or consultants, I have relied upon these employees and consultants accurately recording, preparing, collecting, or verifying any such documentation and other information. If I were called to testify as a witness in this matter, I would testify competently to the facts set forth herein.

B. Events Giving Rise to the Adversary Proceeding

(i) Origination of Plaintiff's Loan

5. Plaintiff was a borrower under a mortgage loan (the "Loan") that was originated by Shenandoah Mortgage, LLC ("Shenandoah") on October 30, 2006. See Adjustable Rate Note, annexed hereto as **Exhibit A**. The Loan was evidenced by a note in the amount of \$240,000.00 (the "Note") (see id.), which was secured by real property located at 409 Three Run Road, Bunker Hill, West Virginia 25413 (the "Property") pursuant to a security deed (the "Security Deed") executed contemporaneously with the Note. See Deed of Trust, annexed hereto as **Exhibit B**. On or about December 6, 2006, Shenandoah assigned the Security Deed to National City Mortgage Co. ("National City"). See Assignment of Deed of Trust, annexed hereto as **Exhibit C**. On December 8, 2006, National City assigned the Security Deed to Mortgage Electronic Registration Systems, Inc. ("MERS"), its successors and assigns. See Assignment of Deed of Trust, annexed hereto as **Exhibit D**. The Note has an allonge showing an endorsement from Shenandoah to National City and National City to blank. See **Exhibit A**.

(ii) Plaintiff's Bankruptcy Cases

6. On March 28, 2008, Plaintiff filed a petition for chapter 11 protection in the Bankruptcy Court for the Northern District of West Virginia (the "West Virginia Bankruptcy").

Court”), Case No. 08-00435 (“Plaintiff’s Bankruptcy Case”).⁹ See Voluntary Petition, annexed hereto as **Exhibit E**.

7. On September 22, 2008, Plaintiff filed a “Motion to Add VAC, LLC, to Debtor’s Bankruptcy,” which was denied. See Order Denying Motion To Add Party, annexed hereto as **Exhibit F**.

8. According to pleadings filed by National City, at the time of his bankruptcy filing, Plaintiff was in arrears under the Loan. See Motion for Order Granting Relief From Automatic Stay, or, in the Alternative, to Seek Adequate Protection, annexed hereto as **Exhibit G**. On July 8, 2008, National City filed a motion for relief from the automatic stay to foreclose on the Property. Id.

9. On November 13, 2008, the West Virginia Bankruptcy Court entered an agreed order between National City and Plaintiff terminating the automatic stay based on certain payment conditions (the “Agreed Order”). See Order With “Self-Activating” Provision, annexed hereto as **Exhibit H**.

10. On November 20, 2008, Plaintiff filed a motion to refute the Agreed Order, on the grounds that the Agreed Order was inaccurate in that it had misleading information regarding an agreement reached between National City and Plaintiff regarding the allocation of past payments of tax obligations between the parties (the “Payment Terms”). See Order, annexed hereto as **Exhibit I**. At a hearing on December 18, 2008, National City acknowledged that the complained of fees and charges would not be passed on to Plaintiff. Id. National City

⁹ To the contrary, An ECF search for the debtor “VAC, LLC” or likely variations thereon on ECF did not produce any results.

was to provide an amended order to address the misleading information. Id. That amended order was never filed. Id.

11. On March 13, 2009, Plaintiff filed a “Motion to Remove National City Mortgage on 409 Three Run Road Property and to Have Withdrawn Order with Self Activating Provision.” Id. The basis for the motion was that National City had transferred the Loan to GMACM. Id. In the absence of any objection, the West Virginia Bankruptcy Court granted the motion on April 20, 2009, and, on June 2, 2009, entered an additional order vacating the Agreed Order. Id.

12. Plaintiff’s Bankruptcy Case was converted to a proceeding under chapter 7 on July 1, 2009. See Order, annexed hereto as **Exhibit J.**

13. On February 18, 2010, GMACM filed a motion for relief from the automatic stay in Plaintiff’s Bankruptcy Case to proceed with a foreclosure on the Property (the “GMACM Stay Relief Motion”). See Motion For Order Granting Relief From Automatic Stay Or In The Alternative, To Seek Adequate Protection, annexed hereto as **Exhibit K.** A review of the docket shows Plaintiff did not object to the GMACM Stay Relief Motion.

14. On March 8, 2010, the West Virginia Bankruptcy Court entered an order granting the GMACM Stay Relief Motion. See Order Granting Motion For Relief From Automatic Stay, annexed hereto as **Exhibit L.** Plaintiff did not assert any claims against GMACM regarding the Property at that time. Instead, Plaintiff filed amended schedules of assets and liabilities (the “Amended Schedules”) on March 30, 2010 in which he stated that he owned no contingent and unliquidated claims. See Schedules B and D to Amended Schedules A, B, C and D Summery [*sic*] of Schedules and Statistical Summery [*sic*] Bankruptcy Forms, annexed hereto as **Exhibit M.**

15. An order granting Plaintiff a chapter 7 discharge was entered on June 25, 2010. See Discharge of Debtor(s), annexed hereto as **Exhibit N**.

(iii) Transfer and Attempted Foreclosure of the Loan

16. On or about February 1, 2009, GMACM replaced National City as servicer of the Loan.

17. By a letter dated February 4, 2009, National City notified Plaintiff of the transfer of the Loan (the “National City Notice of Transfer”). See Letter, annexed hereto as **Exhibit O** and attached to Compl. at 16.

18. By a letter dated February 6, 2009, GMACM also notified Plaintiff of the transfer of the Loan, and directed that, effective as of February 1, 2009, any future payments under the Loan should be sent to GMACM (the “GMACM Notice of Transfer”). See Letter, annexed hereto as **Exhibit P** and attached to Compl. at 15.

19. As described above, as a result of Plaintiff’s continuing default under the Loan, GMACM sought and obtained stay relief in Plaintiff’s Bankruptcy Case and, acting in its capacity as mortgage loan servicer for the Loan, thereafter initiated a non-judicial foreclosure with respect to the Property.

20. On August 2, 2011, GMACM’s agent sent Plaintiff a Notice of Trustee’s Sale. See Notice of Trustee’s Sale, annexed hereto as **Exhibit Q** and attached to Compl. at 12-14. The foreclosure sale was suspended in light of the District Court Action (defined and discussed below). To date, no foreclosure of the Property has occurred.

(iv) Plaintiff's Prior Litigation

(a) State Court Action

21. On May 19, 2010, Plaintiff filed a complaint (the "2010 Complaint") in the Circuit Court for Berkeley County, West Virginia (the "State Court"), thereby commencing an action, Case No. 10-C-390, (the "State Court Action"), against multiple defendants including Debtor GMACM, by which he sought (i) to quiet title with respect to the Property, (ii) to enforce the Payment Terms agreed to between himself and National City against GMACM as National City's successor in interest, and (iii) the return of \$3,299.80 in payments. See Complaint, annexed hereto as **Exhibit R**

22. On March 9, 2011, the State Court entered an order granting GMACM's motion to dismiss the 2010 Complaint pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure for failure to state a claim upon which relief could be granted. See Order Granting GMAC Mortgage, LLC's Motion to Dismiss, annexed hereto as **Exhibit S**.

23. The State Court entered the final order dismissing Plaintiff's case against the last remaining defendant on April 29, 2011. See Order Granting Motion to Dismiss Defendant Golden & Amos PLLC, annexed hereto as **Exhibit T**.

(b) District Court Action

24. On August 12, 2011, Plaintiff filed a complaint (the "2011 Complaint") against RFC, GMACM, and others in the United States District Court for the Northern District of West Virginia (the "District Court"), Case No. 3:11-CV-66 (the "District Court Action") seeking to enjoin the foreclosure. (See Complaint and Motion to Enjoin Wrongful Foreclosure, annexed hereto as **Exhibit U**).

25. The 2011 Complaint was dismissed by the District Court for lack of jurisdiction pursuant to an order entered on November 17, 2011 (the “Dismissal Order”). See Order Dismissing Case For Lack Of Subject Matter Jurisdiction, annexed hereto as **Exhibit V**.

26. On November 23, 2011, Plaintiff filed a motion for reconsideration of the Dismissal Order (see Plaintiff’s Motion for Reconsideration of Order Dismissing Case, annexed hereto as **Exhibit W**), as well as a notice of appeal of the Dismissal Order. See Notice of Appeal, annexed hereto as **Exhibit X**.

27. On December 15, 2011, the District Court denied Plaintiff’s motion for reconsideration. See Order, annexed hereto as **Exhibit Y**.

28. On April 2, 2012, the United States Court of Appeals for the Fourth Circuit affirmed the Dismissal Order. See order, annexed hereto as **Exhibit Z**.

C. Insufficient Service of Process

29. The Debtors receive complaints generally through their registered agents, investors and/or MERS.¹⁰ The Debtors also receive complaints through various departments, outside counsel and United States mail. Complaints received from the Debtors’ registered agents, investors and/or MERS are routed to designated service of process handlers (“SOP”) in the Debtors’ Legal Department, who then send the complaints to the appropriate business area or in-house legal staff. Complaints received through various departments, outside counsel and United States mail are sent to the Legal Department directly or through SOP, where they are assigned to the appropriate in-house attorney.

¹⁰ Mortgage Electronic Registration Systems, Inc.

30. I am the designated in-house attorney for bankruptcy litigation. All bankruptcy contested matters and adversary complaints the Debtors receive (with the exception of lien strips, cramdowns and general accounting disputes) are sent to me. Upon receipt of a contested matter or complaint, I review the pleading and decide whether the matter will remain in the Legal Department and assigned to litigation counsel or be sent to the Debtors' Bankruptcy Department to be addressed by default counsel.

31. An affidavit of service of the Complaint and Summons was filed on November 14, 2012. The affidavit of service states that Plaintiff served a copy of the Complaint and Summons on the Debtor Defendants at the following addresses:

Residential Funding Company, LLC
8400 Normandale Blvd, Ste 250
Minneapolis, Minnesota 55437

GMAC Mortgage,
P.O. Box 4622
Warerloo, IA 50704

Neither of the above addresses are the correct addresses for service. The address for RFC lists the wrong suite number – Suite 250. The correct suite number is Suite 350. The address for GMACM is a payment processing address.

32. I have confirmed with SOP that the Debtor Defendants did not receive service of the Complaint or Summons via a registered agent, investor or MERS. The Debtor Defendants learned of this adversary through its default counsel, Samuel I. White, P.C., who sent a copy of the Complaint and Summons to GMACM's default supplier relations team, who then forwarded the Complaint and Summons to the Debtors' Legal Department.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
is true and correct.

Dated: November 16, 2012

/s/ Jennifer Scoliard
Jennifer Scoliard
In-House Senior Bankruptcy Counsel for
Residential Capital, LLC

Exhibit A

ORIGINAL

ADJUSTABLE RATE NOTE

(6-Month LIBOR Index - Rate Caps)
(Assumable during Life of Loan) (45 Day Lookback)

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

October 30, 2006

[Date]

MARTINSBURG

[City]

WEST VIRGINIA

[State]

409 THREE RUN RD, BUNKER HILL, West Virginia 25413

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 240,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is SHENANDOAH MORTGAGE, LLC

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 8.250 %. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(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 first day of each month beginning on December 1, 2006

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 before Principal. If, on November 1, 2036, 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

National City Mortgage Co. P O Box 17677, Baltimore, MD 21297-1677
or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,803.05 . This amount may change.

(C) Monthly Payment Changes

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

MULTISTATE ADJUSTABLE RATE NOTE - 6-Month LIBOR Index (Assumable during Life of Loan) (45 Day Lookback) - Single Family - Freddie Mac UNIFORM INSTRUMENT
Amended for West Virginia

VMP-194N(WV) (0406)

Form 5522 5/04

VMP Mortgage Solutions, Inc. (800)521-7291



4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of November 2009, and may change on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

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

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding THREE percentage point(s) (3.000 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.250 % or less than 5.250 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than ONE percentage point(s) (1.000 %) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than 14.250 %.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under 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 dates of my monthly payment unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. 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.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be of that portion of the installment of principal and interest that is overdue, but not more than U.S. \$ I will pay this late charge promptly but only once on each late payment.

15	calendar days after
	5.00 %
	15.00

(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 (except attorneys' fees) in enforcing this Note to the extent not prohibited by applicable law.

8. 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.

9. 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.

10. 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.

11. 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:

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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

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

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

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

GEORGE VANWAGNER (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

National City. Mortgage

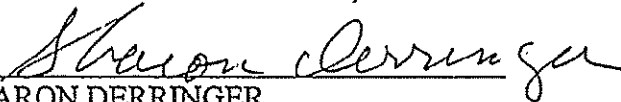
National City Mortgage Co.
3232 Newmark Drive • Miamisburg, Ohio 45342
Telephone (937) 910-1200

Mailing Address:
P.O. BOX 1820
Dayton, Ohio 45401-1820

NOTE ALLONGE

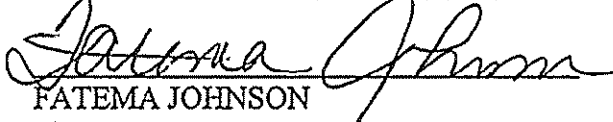
LOAN NUMBER	4920821
BORROWER	GEORGE VANWAGNER
PROPERTY	409 THREE RUN RD BUNKER HILL, WV 25413
LOAN AMOUNT	\$240,000.00

PAY TO THE ORDER OF
NATIONAL CITY MORTGAGE CO.
WITHOUT RECOURSE
SHENANDOAH MORTGAGE, LLC


SHARON DERRINGER
MORTGAGE OFFICER

PAY TO THE ORDER OF

WITHOUT RECOURSE
NATIONAL CITY MORTGAGE CO.


FATEMA JOHNSON
DELIVERY SHIPPER

No one Cares More !

INTEREST ONLY PAYMENT PERIOD NOTE ADDENDUM TO ADJUSTABLE RATE NOTE

(Index: Six-Month London Interbank Offered Rate ("LIBOR") As Published in *The Wall St. Journal* - Rate Caps)
(Not to be Used for Texas Homestead Loans Unless Proceeds Used Only for Purchase Money or Refinance of Purchase Money)

THIS ADDENDUM TO NOTE PROVIDES FOR A PERIOD OF MONTHLY PAYMENTS OF INTEREST ONLY FOLLOWED BY MONTHLY PAYMENTS OF BOTH PRINCIPAL AND INTEREST. THE INTEREST RATE AND MONTHLY PAYMENT CAN CHANGE DURING AND AFTER THE INTEREST ONLY PAYMENT PERIOD. THIS ADDENDUM LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

This Interest Only Payment Period Note Addendum to Adjustable Rate Note (this "Addendum") is made this 30th day of October, 2006 and is incorporated into and shall be deemed to amend and supplement the Adjustable Rate Note of the same date (the "Note") given by the undersigned (the "Borrower") to evidence Borrower's indebtedness to SHENANDOAH MORTGAGE, LLC

(the "Lender"), which indebtedness is secured by a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), of the same date and covering the property described in the Security Instrument and located at:

409 THREE RUN RD, BUNKER HILL,

West Virginia 25413

ADDITIONAL COVENANTS: Unless specifically defined in this Addendum, any capitalized terms shall have the same meaning as in the Note. Notwithstanding anything to the contrary set forth in the Note or Security Instrument, Borrower further covenants and agrees as follows:

I. The Note is modified to provide that the initial one hundred twenty (120) payments due consist of interest only on the unpaid principal balance of the Note ("Interest Only Payment Period") at the interest rates determined in accordance with Section 2 of the Note and Section 4 of this Addendum. Sections 3, 4, 5 and 7(A) of the Note are hereby restated as follows:

3. PAYMENTS

(A) Time and Place of Payments

I will pay interest on the unpaid principal balance of this Note during the Interest Only Payment Period, and principal and interest thereafter, by making payments every month.

I will make my monthly payments on the first day of each month beginning on December 2006. 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, if the payment includes both principal and interest, it will be applied to interest before principal. If, on November 1st, 2036, 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 National City Mortgage Co. P O Box 17677,
Baltimore, MD 21297-1677 or at a different place if required by the Note Holder.

(B) Amount of My Interest On

Each of my initial Thirty Six (36) monthly payments will be in the amount of U.S. \$ 1,650.00 . The next Eighty Four (84) monthly payments may change in accordance with Sections 3(C) and 4(C)(i) below. These payments are called the "Interest Only Payments." No payments of principal are due during the Interest Only Payment Period. The Interest Only Payments will not reduce the principal amount of this Note.

(C) Monthly Payment Changes and Date of First Principal and Interest Payment

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Sections 4 and 5 of this Addendum.

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Due Date") is December 1st, 2016 , which is the first monthly payment date after the one hundred twentieth (120th) monthly payment is due.

Before the First Principal and Interest Due Date, my monthly payment may change to reflect changes in the interest rate as provided in Section 4(C) of this Addendum. My payment may also change if I make a partial Prepayment as provided in Section 5 of this Addendum. Before the effective date of any change in my monthly payment, the Note Holder will deliver or mail to me a notice of the change as provided in this Note.

Beginning with the First Principal and Interest Due Date, my monthly payment will change to an amount sufficient to repay the unpaid principal and interest at the rate described in Section 4(C) of this Addendum in substantially equal payments by the Maturity Date.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of November 2009 and may change on that day every sixth (6th) month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

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

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding THREE percentage point(s) (3.000 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. The Note Holder will then determine my new monthly payment as follows:

(i) **Interest Only Payment Period.** For monthly payments due after the first Change Date up to but not including the First Principal and Interest Due Date, the Note Holder will determine the amount of the monthly payment that would be sufficient to pay the interest that accrues on the unpaid principal that I am expected to owe at the Change Date at my new interest rate determined above in this Section 4(C). The result of this calculation will be the new amount of my Interest Only Payment until the next Change Date unless I make a partial Prepayment as provided in Section 5 of this Addendum.

(ii) **Principal and Interest Payments Due Beginning With the First Principal and Interest Due Date.** For monthly payments due on or after the First Principal and Interest Due Date, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate determined above in this Section 4(C) in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(A) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.250 % or less than 5.250 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than ONE percentage points (1.000 %) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than 14.250 %.

(B) Effective Date of Changes

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

(C) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under 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 dates of my monthly payment unless the Note Holder agrees in writing to those changes. If I make a partial Prepayment during the Interest Only Payment Period, the amount of the monthly payment will decrease until the next Change Date. At the next Change Date during the Interest Only Payment Period, any reduction due to a partial Prepayment may be offset by an interest rate increase. If I make a partial Prepayment after the First Principal and Interest Due Date, my partial Prepayment may reduce the amount of my monthly payments starting with the next Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of my 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 5.00 % of my overdue payment of interest, during the Interest Only Payment Period, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

II. All other provisions of the Note are unchanged by this Addendum and remain in full force and effect.

By signing below, Borrower accepts and agrees to the terms and conditions contained in this Interest Only Payment Period Note Addendum to Adjustable Rate Note.

Borrower GEORGE VANWAGNER (Seal)

Borrower (Seal)

Borrower (Seal)

Borrower (Seal)

I understand that if I only make Interest Only Payments during the Interest Only Payment Period, at the end of the Interest Only Payment Period the principal balance will not be reduced.

Borrower GEORGE VANWAGNER (Seal)

Borrower (Seal)

Borrower (Seal)

Borrower (Seal)

ADJUSTABLE RATE RIDER

(Index: Six-Month London Interbank Offered Rate ("LIBOR") As Published in *The Wall St. Journal* - Rate Caps)
(Assumable during Life of Loan) (45 Day Lookback)

This Adjustable Rate Rider is made this 30th day of October 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note as amended and supplemented by the Interest Only Payment Period Note Addendum to Adjustable Rate Note (collectively the "Note") to SHENANDOAH MORTGAGE, LLC

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:

409 THREE RUN RD , BUNKER HILL , West Virginia 25413

THE NOTE PROVIDES FOR A PERIOD OF MONTHLY PAYMENTS OF INTEREST ONLY AND FOLLOWED BY MONTHLY PAYMENTS OF BOTH PRINCIPAL AND INTEREST. THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INITIAL INTEREST RATE AND MONTHLY PAYMENT DURING AND AFTER THE INTEREST ONLY PAYMENT PERIOD. THE NOTE ALSO LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE BORROWER MUST PAY.

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 8.250 %. The First Principal and Interest Due Date is the first monthly payment date after the one hundred twentieth (120th) monthly payment is due. The Note provides for changes in the interest rate and the monthly payments as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of November 2009, and may change on that day every sixth (6th) month thereafter. Each date on which my interest rate could change is called a "Change Date."

(A) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the six month Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market, as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index." If the Index is no longer available, the Note Holder will choose a new index based upon comparable information. The Note Holder will give me notice of this choice.

(B) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding

THREE percentage points (**3.000** %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. The Note Holder will then determine my new monthly payment as follows:

(i) **Interest Only Payment Period.** For monthly payments due after the first Change Date up to but not including the First Principal and Interest Due Date, the Note Holder will determine the amount of the monthly payment that would be sufficient to pay the interest that accrues on the unpaid principal that I am expected to owe at the Change Date at my new interest rate determined above in this Section 4(C). The result of this calculation will be the new amount of my Interest Only Payment until the next Change Date unless I make a partial Prepayment as provided in Section 5 of the Note.

(ii) **Principal and Interest Payments Due Beginning With the First Principal and Interest Due Date.** For monthly payments due on or after the First Principal and Interest Due Date, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate determined above in this Section 4(C) in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(C) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **11.250** % or less than **5.250** %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than **ONE** percentage points (**1.000** %) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than **14.250** %.

(D) Effective Date of Changes

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

(E) Effective Date of Changes

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

(F) Notice of Changes

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

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

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

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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

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

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

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



GEORGE VANWAGNER (Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

[Sign Original Only]

Exhibit B

Return To:

National City Bank
P.O. Box 8800
Dayton, OH 45401-8800

Lnt# 4920821
VANWAGNER
(17)
4/P

40636

[Space Above This Line For Recording Data]

DEED OF TRUST

0004920821

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 30, 2006 together with all Riders to this document.

(B) "Borrower" is

GEORGE VANWAGNER Sole Owner

Borrower's mailing address is 409 THREE RUN RD ,
BUNKER HILL , West Virginia 25413

Borrower is the trustor under this Security Instrument.

(C) "Lender" is SHENANDOAH MORTGAGE, LLC

Lender is a Corporation
organized and existing under the laws of THE STATE OF INDIANA
Lender's address is 253 AIKENS CENTER, STE 2 MARTINSBURG, WV 25401

Lender is the beneficiary under this Security Instrument.

WEST VIRGINIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3049 1/01

VMP -6(WV) (0005).01

Page 1 of 16

Initials:

VMP Mortgage Solutions, Inc.



(D) "Trustee" is Richard A. Pill

The Trustee resides at 1444 Edwin Miller Boulevard
Martinsburg, West Virginia 25
Berkeley County, West Virginia.

(E) "Note" means the promissory note signed by Borrower and dated October 30, 2006
The Note states that Borrower owes Lender

TWO HUNDRED FORTY THOUSAND & 00/100 Dollars
(U.S. \$ 240,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than November 1, 2036

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

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

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

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

Attachment "A" Legal Description

(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.

(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 hereby irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

County
[Type of Recording Jurisdiction]

of

Berkeley
[Name of Recording Jurisdiction]

SEE ATTACHED

Parcel ID Number:

**409 THREE RUN RD,
BUNKER HILL**

("Property Address"):

which currently has the address of

[Street]
[City], West Virginia **25413** [Zip Code]

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."

IN TRUST FOREVER to secure the payment of the Note which is payable to the order of Lender, the beneficial owner of said Note, at its principal office at the top of this Security Instrument, the residence of said beneficial owner, and to secure also any and all extensions, modifications and renewals of said Note, or any part thereof, however changed in form, manner or amount, and all other indebtedness of Borrower to Lender or Trustee hereunder.

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

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

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

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

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

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

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied first 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 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 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 within thirty days after the date of the Notice of Placement of Insurance sent by Lender pursuant to W. Va. Code Section 46A-3-109a(c).

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

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

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

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.

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

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

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, 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.

(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.

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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 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.

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's

Initials: _____

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. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). 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 and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. 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 invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable fees and costs of title evidence.

If Lender invokes the power of sale, Lender or Trustee shall give Borrower, in the manner provided in Section 15, notice of Lender's election to sell the Property. Trustee shall give notice of sale by public advertisement for the time and in the manner prescribed by Applicable Law. Borrower hereby waives personal service of notice of any sale made hereunder, upon Borrower, its devisees, agents, successors or assigns, and also waives the posting of notice of sale at the courthouse. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

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

In the event that foreclosure proceedings are instituted hereunder but are not completed, Trustee shall be reimbursed for all costs and expenses incurred by it in commencing such proceedings; and all costs and expenses so incurred by Trustee, together with interest thereon until paid at the Note default rate shall be and become a part of the obligations secured hereby and shall be collectible as such.

Initials: _____

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

24. Beneficiary's Address. The beneficial owner and holder of the Note at the time of execution and delivery hereof is Lender, whose residence address is stated on the first page of this Security Instrument.

25. Attorneys' Fees. The provisions in this Security Instrument for Borrower to pay "attorneys' fees" shall be void.

26. Notice of Trustee's Sale. Any notice of other liens which may be given to Lender pursuant to W. Va. Code Section 38-1-4, shall be effective upon the receipt of such notice, in writing, through the regular United States mail, postage prepaid, addressed to Lender at its address set forth on the face of this Security Instrument.

A copy of any notice of Trustee's sale under this Security Instrument shall be served on Borrower by certified mail, return receipt requested, directed to Borrower at the address stated above or such other address given to Lender in writing by Borrower, subsequent to the execution and delivery of this Security Instrument.

27. Trustees and Substitution of Trustees. It is hereby expressly covenanted and agreed to all parties hereto that Lender may, at any time and from time to time hereafter, without notice, appoint and substitute another Trustee or Trustees, corporations or person, in place of the Trustee herein named to execute the trust herein created. Upon such appointment, either with or without a conveyance to said substituted Trustee or Trustees by the Trustees herein named, or by any substituted Trustee in case the said right of appointment is exercised more than once, the new and substituted Trustee or Trustees in each instance shall be vested with all the rights, titles, interests, powers, duties and trusts in the premises which are vested in and conferred upon the Trustees herein named; and such new and substituted Trustee or Trustees shall be considered the successors and assigns of the Trustees who are named herein within the meaning of this Security Instrument, and substituted in their place and stead. Each such appointment and substitution shall be evidenced by an instrument in writing which shall recite the parties to, and the book and page of record of, this Security Instrument, and the description of the real property herein described, which instrument, executed and acknowledged by Lender and recorded in the office of the Clerk of the County Commission of the County wherein the Property is situate, shall be conclusive proof of the proper substitution and appointment of such successor Trustee or Trustees, and notice of such proper substitution and appointment to all parties in interest.

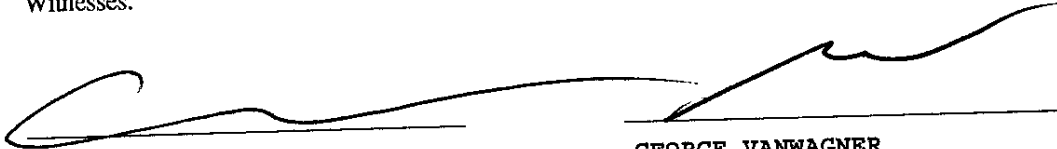
The Trustees, or either of them or the survivor thereof, may act in the execution of this trust and in the event either of the Trustees shall act alone, the authority and power of the Trustee so acting shall be as full and complete as if the powers and authority granted to the Trustees herein jointly had been granted to such Trustee alone. Either or both of the Trustees are hereby authorized to act by agent or attorney in the execution of this trust, and it shall not be necessary for any Trustee to be present in person at any foreclosure sale.

28. Waiver of Homestead Exemption. Borrower hereby waives all right of homestead exemption in the Property.

29. Lender's Purchase of Property Insurance. Unless Borrower provides Lender with evidence of the insurance coverage required and described above, Lender may purchase insurance at Borrower's expense to protect its interest in Borrower's Property. 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 Property. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by this Security Instrument. If Lender purchases insurance for the Property, 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 Borrower's own.

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:



GEORGE VANWAGNER (Seal)
-Borrower

(Seal)
-Borrower

(Seal) (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

STATE OF WEST VIRGINIA,

Berkeley

County ss:

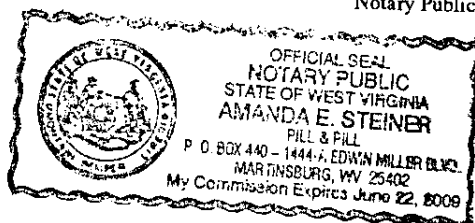
The foregoing instrument was acknowledged before me this 30th day of October 2006,
by George VanWagner

My Commission Expires:

6-22-09

Notary Public

(Seal)



This instrument was prepared by

ATTACHMENT "A" - LEGAL DESCRIPTION

All that certain lot or parcel of real estate together with the improvements thereon and appurtenances thereto belonging, situate in Mill Creek District, Berkeley County, West Virginia, and more particularly described as follows:

All that certain lot or parcel containing 6.000 acres as shown on a plat made by Gamma Associates, Arnold L. Godlove, C.E., dated September 19.1975, and recorded in the Office of the Clerk of the County Court of Berkeley County, West Virginia, in Deed Book 291, at page 40, being subject to easements of record and in existence.

AND BEING the same parcel of real estate conveyed to George VanWagner by deed dated the 30th day of October 2006, from Rodney Allen Patrick and Wendy Lee Patrick, his wife, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, immediately preceding this instrument.

FOR PURPOSES OF SECTION 4, ARTICLE I, CHAPTER 38 OF THE CODE OF WEST VIRGINIA, ANY NOTICE OF TRUSTEE'S SALE SHALL BE MAILED TO THE GRANTORS HEREUNDER AT THE FOLLOWING ADDRESS (OR SUCH OTHER ADDRESS SUBSEQUENTLY GIVEN TO LENDER IN WRITING BY THE GRANTOR):
594 Eagle School Road, Martinsburg, WV 25401

dsb/40562 VanWagner Attachment

A handwritten signature in black ink, consisting of a stylized 'V' followed by a long, sweeping horizontal line that ends in a small upward hook.

BERKELEY COUNTY, WV

FILED

November 02, 2006 11:18:34

JOHN W. SMALL JR.

COUNTY CLERK

TRANSACTION NO: 2006040636

BOOK OF TRUST

Book: 02016 Page: 00355

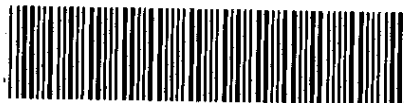


Exhibit C

This Instrument Prepared By:

Gary M. Bullio

National City Mortgage

P.O Box 8800 Dayton,

OH 45401-8800

Recording Requested by &
When Recorded Return To:
US Recordings, Inc.
PO Box 19989
Louisville, KY 40259

37556709

24763

Parcel:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NCM#: 4920821 00001

MIN and MERS Phone:

Record 1st 10810988 VANWAGNER, GEORGE
Recording District: Berkeley

ASSIGNMENT OF Deed of Trust

For value received, the undersigned, hereby grants, assigns and transfers to: National City Mortgage Co. located at 3232 Newmark Dr, Miamisburg, Oh 45342. All beneficial interest under that certain Deed of Trust dated 10/30/2006 executed by:

Trustor(s) GEORGE VANWAGNER

to Trustee for Shenandoah Mortgage, LLC recorded 11-2-06 as Instrument No.: 200604 0636 in Book/Volume: 02016
Page: 355 of the Official Records of Berkeley County, West Virginia describing the land therein:

Property Address: 409 THREE RUN RD, BUNKER HILL, WV 25413

Together with the Note or Notes therein described or referenced to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

~~10/30/2006 to be executed the Date of Filing/Recording.~~

Shenandoah Mortgage, LLC

Wendy Trhlin
Wendy Trhlin, Mortgage Officer

State of OHIO County of MONTGOMERY

On 12/6/2006 before me, CARRIE MOTZ the undersigned, a Notary Public in and for the State of OHIO, personally appeared Wendy Trhlin, Mortgage Officer of Shenandoah Mortgage, LLC personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that for her signature on the instrument the person, or the entity upon behalf of which she acted, executed the instrument.



Carrie Motz

CARRIE MOTZ, Notary Public in and for the State of OHIO

My Commission Expires: 7/2/2011 My County of Residence: WARREN



U37556709-03GM01

ASGMT DOT
LOAN# 10810988
US Recordings



BERKELEY COUNTY, WV

FILED

July 09, 2007 12:47:00

JOHN W. SMALL JR.

COUNTY CLERK

TRANSACTION NO: 2007024763

BOOK OF DEEDS

Book: 00873 Page: 00132



Exhibit D

This Instrument Prepared By:
Todd Schaney, Delivery Shipper
National City Mortgage Co.
3232 Newmark Drive
Miamisburg, OH 45342

Recording Requested by &
When Recorded Return To:
US Recordings, Inc.
PO Box 19989
Louisville, KY 40259

37556822

24764

Parcel:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NCM#: 0004920821 POOL#: 0001246793 1

MIN and MERS Phone:

Record 2nd 10810988

VANWAGNER, GEORGE

Recording District: Berkeley

Assignment Of Deed of Trust

For value received, the undersigned, hereby grants, assigns and transfers to:

Mortgage Electronic Registration Systems, Inc., its successors
and assigns, PO Box 2026 Flint, Michigan 48501-2026

All beneficial interest under that certain Deed of Trust dated 10/30/2006 executed by:

Trustor(s) **GEORGE VANWAGNER**

to the Trustee for SHENANDOAH MORTGAGE, LLC recorded 11-2-06 as Instrument No.:

2006040636 in Book/Volume: 02016 Page: 00355 of the Official Records of
Berkeley County, West Virginia describing the land therein:

Property Address: 409 THREE RUN RD, BUNKER HILL, WV 25413


MERS Phone: 1-888-679-6377

mi #: 100269610108109885

Together with the Note or Notes therein described or referenced to, the money due and to become due thereon with
interest, and all rights accrued or to accrue under said Deed of Trust.

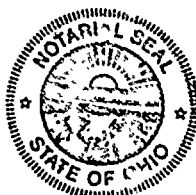
~~Assignment Executed to be Effective as of 1/18/2007~~

National City Mortgage Co.


DONNA E. FOUDRAY
SUPERVISOR

State of Ohio County of Montgomery

On 12/08/06 before me, KATHLEEN LEWIS the undersigned, a Notary Public in and for the State of Ohio,
personally appeared DONNA E. FOUDRAY, SUPERVISOR of National City Mortgage Co. personally known to
me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed
the same in her authorized capacity, and that for her signature on the instrument the person, or the entity upon behalf
of which she acted, executed the instrument.



KATHLEEN LEWIS, Notary Public in and for the State of Ohio

My Commission Expires: 1/6/2009 My County of Residence: Montgomery



U37556822-03GM01

ASGHT DOT
LOAN# 10810988
US Recordings



BERKELEY COUNTY, WV

FILED

July 09, 2007 12:49:13

JOHN W. SMALL JR.

COUNTY CLERK

TRANSACTION NO: 2007024764

BOOK OF DEEDS

Book: 00873 Page: 00134



Exhibit E

United States Bankruptcy Court <u>Northeastern</u> District of <u>West Virginia</u>		Voluntary Petition																				
Name of Debtor (if individual, enter Last, First, Middle): <u>Van Wagner, George</u>		Name of Joint Debtor (Spouse) (Last, First, Middle):																				
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):																				
Last four digits of Soc. Sec./Complete EIN or other Tax I.D. No. (if more than one, state all): <u>6853</u>		Last four digits of Soc. Sec./Complete EIN or other Tax I.D. No. (if more than one, state all):																				
Street Address of Debtor (No. & Street, City, and State): <u>127 Walker Court</u> <u>Hedgesville, WV</u>		Street Address of Joint Debtor (No. & Street, City, and State):																				
County of Residence or of the Principal Place of Business: <u>Berkeley County</u>		County of Residence or of the Principal Place of Business:																				
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):																				
Location of Principal Assets of Business Debtor (if different from street address above): <u>PO Box 867 Martinsburg, WV</u>		ZIP CODE																				
Type of Debtor (Form of Organization) (Check one box.) <input checked="" type="checkbox"/> Individual (includes Joint Debtors) <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and provide the information requested below.) State type of entity: _____	Nature of Business (Check all applicable boxes.) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Nonprofit Organization qualified under 15 U.S.C. § 501(c)(3)	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box) <input type="checkbox"/> Chapter 7 <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding <input type="checkbox"/> Chapter 13																				
Filing Fee (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (Applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		Nature of Debts (Check one box) <input checked="" type="checkbox"/> Consumer/Non-Business <input type="checkbox"/> Business Chapter 11 Debtors Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input checked="" type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts owed to non-insiders or affiliates are less than \$2 million.																				
Statistical/Administrative Information <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		THIS SPACE IS FOR COURT USE ONLY																				
Estimated Number of Creditors <table style="width:100%; text-align: center;"> <tr> <td>1-49</td> <td>50-99</td> <td>100-199</td> <td>200-999</td> <td>1,000-5,000</td> <td>5,001-10,000</td> <td>10,001-25,000</td> <td>25,001-50,000</td> <td>50,001-100,000</td> <td>OVER 100,000</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>			1-49	50-99	100-199	200-999	1,000-5,000	5,001-10,000	10,001-25,000	25,001-50,000	50,001-100,000	OVER 100,000	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1-49	50-99		100-199	200-999	1,000-5,000	5,001-10,000	10,001-25,000	25,001-50,000	50,001-100,000	OVER 100,000												
<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>												
Estimated Assets <table style="width:100%; text-align: center;"> <tr> <td>\$0 to \$50,000</td> <td>\$50,001 to \$100,000</td> <td>\$100,001 to \$500,000</td> <td>\$500,001 to \$1 million</td> <td>\$1,000,001 to \$10 million</td> <td>\$10,000,001 to \$50 million</td> <td>\$50,000,001 to \$100 million</td> <td>More than \$100 million</td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>		\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
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Estimated Debts <table style="width:100%; text-align: center;"> <tr> <td>\$0 to \$50,000</td> <td>\$50,001 to \$100,000</td> <td>\$100,001 to \$500,000</td> <td>\$500,001 to \$1 million</td> <td>\$1,000,001 to \$10 million</td> <td>\$10,000,001 to \$50 million</td> <td>\$50,000,001 to \$100 million</td> <td>More than \$100 million</td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>		\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million															
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>															

Voluntary Petition <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s):	
Prior Bankruptcy Case Filed Within Last 8 Years (If more than one, attach additional sheet)			
Location Where Filed:		Case Number:	
Date Filed:		Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor: <i>See attached</i>		Case Number:	
District:		Date Filed:	
Relationship:		Judge:	
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.) <input type="checkbox"/> Exhibit A is attached and made a part of this petition.		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts.) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by § 342(b) of the Bankruptcy Code. X _____ Signature of Attorney for Debtor(s) Date	
Exhibit C Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? <input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No		Certification Concerning Debt Counseling by Individual/Joint Debtor(s) <input type="checkbox"/> I/we have received approved budget and credit counseling during the 180-day period preceding the filing of this petition. <input type="checkbox"/> I/we request a waiver of the requirement to obtain budget and credit counseling prior to filing based on exigent circumstances. (Must attach certification describing.)	
Information Regarding the Debtor (Check the Applicable Boxes)			
Venue (Check any applicable box)			
<input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.			
<input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.			
<input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Statement by a Debtor Who Resides as a Tenant of Residential Property <i>Check all applicable boxes.</i>			
<input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)			
_____ (Name of landlord that obtained judgment)			
_____ (Address of landlord)			
<input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and			
<input type="checkbox"/> Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.			

Name	case #	date filed	District	Relationship	Judge
Hickory Ridge, LLC	07-01251	9/24/2007	Northeastern WV	partner	Patrick Flately
Manor Park, LLC	07-01672	12/27/2007	Northeastern WV	partner	Patrick Flately
Winchester Storage LLC	07-01673	12/27/2007	Northeastern WV	partner	Patrick Flately
Vanwood, LLC	07-01671	12/27/2007	Northeastern WV	partner	Patrick Flately

Voluntary Petition

(This page must be completed and filed in every case)

Name of Debtor(s):

George Van Wagner

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by § 342(b) of the Bankruptcy Code.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X
Signature of Debtor

X
Signature of Joint Debtor

Telephone Number (If not represented by attorney)

Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by § 1515 of title 11 are attached.

☐ Pursuant to § 1511 of title 11, United States Code, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X
(Signature of Foreign Representative)

(Printed Name of Foreign Representative)

Date

Signature of Attorney

X
Signature of Attorney for Debtor(s)

Printed Name of Attorney for Debtor(s)

Firm Name

Address

Telephone Number

Date

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19B is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

X

Date

Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose social security number is provided above.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Official Form 1, Exhibit D (10/06)

United States Bankruptcy Court
Northern District of West Virginia

In re George Van Wagner

Debtor(s)

Case No.
Chapter

11

**EXHIBIT D - INDIVIDUAL DEBTOR'S STATEMENT OF COMPLIANCE WITH
CREDIT COUNSELING REQUIREMENT**

Warning: You must be able to check truthfully one of the five statements regarding credit counseling listed below. If you cannot do so, you are not eligible to file a bankruptcy case, and the court can dismiss any case you do file. If that happens, you will lose whatever filing fee you paid, and your creditors will be able to resume collection activities against you. If your case is dismissed and you file another bankruptcy case later, you may be required to pay a second filing fee and you may have to take extra steps to stop creditors' collection activities.

Every individual debtor must file this Exhibit D. If a joint petition is filed, each spouse must complete and file a separate Exhibit D. Check one of the five statements below and attach any documents as directed.

☐ 1. Within the 180 days before the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, and I have a certificate from the agency describing the services provided to me. *Attach a copy of the certificate and a copy of any debt repayment plan developed through the agency.*

☐ 2. Within the 180 days before the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me. *You must file a copy of a certificate from the agency describing the services provided to you and a copy of any debt repayment plan developed through the agency no later than 15 days after your bankruptcy case is filed.*

☒ 3. I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the five days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy case now. *[Must be accompanied by a motion for determination by the court.] [Summarize exigent circumstances here.] cannot be scheduled in time. Emergency filing.*

If the court is satisfied with the reasons stated in your motion, it will send you an order approving your request. You must still obtain the credit counseling briefing within the first 30 days after you file your bankruptcy case and promptly file a certificate from the agency that provided the briefing, together with a copy of any debt management plan developed through the agency. Any extension of the 30-day deadline can be granted only for cause and is limited to a maximum of 15 days. A motion for extension must be filed within the 30-day period. Failure to fulfill these requirements may result in dismissal of your case. If the court is not satisfied with your reasons for filing your bankruptcy case without first receiving a credit counseling briefing, your case may be dismissed.

Official Form 1, Exh. D (10/06) - Cont.

☐ 4. I am not required to receive a credit counseling briefing because of: *[Check the applicable statement.] [Must be accompanied by a motion for determination by the court.]*

☐ Incapacity. (Defined in 11 U.S.C. § 109(h)(4) as impaired by reason of mental illness or mental deficiency so as to be incapable of realizing and making rational decisions with respect to financial responsibilities.);

☐ Disability. (Defined in 11 U.S.C. § 109(h)(4) as physically impaired to the extent of being unable, after reasonable effort, to participate in a credit counseling briefing in person, by telephone, or through the Internet.);

☐ Active military duty in a military combat zone.

☐ 5. The United States trustee or bankruptcy administrator has determined that the credit counseling requirement of 11 U.S.C. § 109(h) does not apply in this district.

I certify under penalty of perjury that the information provided above is true and correct.

Signature of Debtor: _____

Date: _____

3/29/08

Form B22B (Chapter 11) (10/05)

In re

George Van Wagner
Debtor(s)

Case Number: _____

(If known)

STATEMENT OF CURRENT MONTHLY INCOME
FOR USE IN CHAPTER 11

In addition to Schedules I and J, this statement must be completed by every individual Chapter 11 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. CALCULATION OF CURRENT MONTHLY INCOME

1	Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10. b. <input type="checkbox"/> Married, not filing jointly. Complete only Column A ("Debtor's Income") for Lines 2-10. c. <input type="checkbox"/> Married, filing jointly. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10. All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.			Column A Debtor's Income	Column B Spouse's Income
2	Gross wages, salary, tips, bonuses, overtime, commissions.			\$ 0	\$
3	Net income from the operation of a business, profession, or farm. Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number less than zero.				
	a.	Gross receipts	\$		
	b.	Ordinary and necessary business expenses	\$		
	c.	Business income	Subtract Line b from Line a	\$	\$
4	Net rental and other real property income. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero.				
	a.	Gross receipts	\$ 36000.00		
	b.	Ordinary and necessary operating expenses	\$ 40000.00		
	c.	Rental income	Subtract Line b from Line a	\$ <4000.00>	\$
5	Interest, dividends, and royalties.			\$	\$
6	Pension and retirement income.			\$	\$
7	Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support. Do not include contributions from the debtor's spouse if Column B is completed.			\$ <4655.00>	\$
8	Unemployment compensation. Enter the amount in Column A and, if applicable, Column B. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: Unemployment compensation claimed to be a benefit under the Social Security Act Debtor \$ _____ Spouse \$ _____			\$	\$
9	Income from all other sources. If necessary, list additional sources on a separate page. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. Specify source and amount.				
	a.		\$		
	b.		\$		
	Total and enter on Line 9			\$	\$
10	Subtotal of current monthly income. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).			\$ <8655.00>	\$
11	Total current monthly income. If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the			<8655.00>	

amount from Line 10, Column A.

\$ 68655.00

Part II: VERIFICATION

I declare under penalty of perjury that the information provided in this statement is true and correct. (If this a joint case, both debtors must sign.)

12

Date: 3/29/08

Signature:

(Debtor)

Date:

Signature:

(Joint Debtor, if any)

Official Form 7
(10/05)

UNITED STATES BANKRUPTCY COURT

Northeastern DISTRICT OF West Virginia

In re: George Van Wagner
Debtor

Case No. _____
(if known)

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. Do not include the name or address of a minor child in this statement. Indicate payments, transfers and the like to minor children by stating "a minor child." See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None
☐

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

0.00
235,000.00
147,000.00

SOURCE

2008 income
approximate 2007 (income tax not complete)
2006 Gross income (income tax reporting)

2. Income other than from employment or operation of business

None
☒

State the amount of income received by the debtor other than from employment, trade, profession, operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

3. Payments to creditors

None
☒

Complete a. or b., as appropriate, and c.

a. *Individual or joint debtor(s) with primarily consumer debts:* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case if the aggregate value of all property that constitutes or is affected by such transfer is not less than \$600. Indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATES OF
PAYMENTS

AMOUNT
PAID

AMOUNT
STILL OWING

None
☐

b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case if the aggregate value of all property that constitutes or is affected by such transfer is not less than \$5,000. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATES OF
PAYMENTS/
TRANSFERS

AMOUNT
PAID OR
VALUE OF
TRANSFERS

AMOUNT
STILL
OWING

None
☒

c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR
AND RELATIONSHIP TO DEBTOR

DATE OF
PAYMENT

AMOUNT
PAID

AMOUNT
STILL OWING

4. Suits and administrative proceedings, executions, garnishments and attachments

in re: George Van Wagner
debtor

Statement of Financial Affairs

attachment to 3b.

Name and date	Security Address	principle	acct #	security	90 pd
National City Mortgage	PO Box 1820 Dayton, Ohio 45401	\$465,000.00	4920821	409 Three Run Rd Bunker Hill, WV 25413	
National City Mortgage	PO Box 1820 Dayton, Ohio 45401	\$451,985.00	4829305	127 Walker Ct Hedgesville, WV 25427	
EMC Mortgage Corp.	PO Box 293150 Lewisville, TX 75029	\$160,000.00	19710508	140 Topaz Lane Inwood, WV 25428	
EMC Mortgage Corp.	PO Box 293150 Lewisville, TX 75029	\$159,925.00	19730019	160 Topaz Lane Inwood, WV 25428	
CMS, LLC	PO Box 79001 Phonix, AZ 85062	\$139,749.00	7000001177	226 Topaz Lane Inwood, WV 25428	
Wells Fargo	PO Box 14411 Des Moines, IA 50306	\$457,657.00	68387919	44 Stallion Ct Hedgesville, WV 25427	
America Servicing Co	PO Box 10388 Des Moines, IA 50306	\$315,370.00	1127055054	2887 Middleway Pk Bunker Hill, WV 25413	
HSBC	PO Box 37282 Baltimore, MD 21297	\$79,461.00	13390927	2887 Middleway Pk Bunker Hill, WV 25413	
Jefferson Security Bank	PO Box 35 Sheperdstown, WV 25443	\$100,000.00	1203355	168 Ms. Stacy Lane Martinsburg, WV	\$2,481.00
Total		\$2,329,147.00			\$2,481.00

Name	Address	account #	balance	stmt date	90 pd
GE Money Bank	PO Box 960061	6019171201662270	\$1,618.15	2/21/2008	\$170.00
866-396-8254	Orlando, FL 32896				
Citifinancial	PO Box 22060	6032590298940015	\$6,047.28	3/8/2008	
800-250-6748	Tempe, AZ 85285				
JC Penny	PO Box 981131	47675812691	\$246.38	2/7/2008	\$100.00
800-527-0881	El Paso, TX 79998				
Kohls	PO Box 3043	047-3438-018	\$839.66	3/14/2008	\$100.00
800-564-5740	Milwaukee, WI 53201				
King Size	PO Box 182273	167-088-587	\$620.00	2/1/2008	\$125.00
866-705-3391	Columbus, OH 43218				
BB&T	PO Box 698	4856711000588060	\$2,187.84	3/13/2008	
800-476-4228	Wilson, NC 27894				
American General	281 Aikens Ctr	4302607	\$5,280.40	3/17/2008	\$310.00
304-264-9400	Martinsburg, WV 25404				
City Hospital	PO Box 2869	V00001821744	\$4,017.00	2/28/2008	
888-802-1092	Martinsburg, WV 25402				
Home Depot	PO Box 689100	6035320207883453	\$605.74	12/17/2007	\$50.00
800-677-1232	Des Moines, IA 50368				
Shell Credit Card	PO Box 689151	180-511-255	\$1,676.36	1/7/2008	\$200.00
800-331-3703	Des Moines, IA 50368				
Capital One	PO Box 30285	4862362627690400	\$1,430.00	2/14/2008	\$750.00
800-903-3637	Salt Lake City, UT 84130				
Total			\$24,568.81		\$1,805.00

Name & Date	Address	account #	balance	vehicle	90 days paid
FirstUnited Bank	PO Box 636	1072-2990216409	\$42,000.00	Ford Exp 2008	
Jul-07	Oakland, MD 21550				
GMAC	PO Box 380901	020-9117-62420	\$22,000.00	Chevy Van 2008	\$1,602.00
Oct-07	Bloomington, MN 55438				
FirstUnited Bank	PO Box 636	1072-3990217369	\$16,000.00	Kia Serento 2007	\$1,248.00
Sep-07	Oakland, MD 21550				
BB&T	PO Box 2306	9052709978	\$11,751.00	Kia 2007	\$292.00
Sep-07	Wilson, NC 27894				
Kubota	1175 S Guild Ave.	16782385	\$10,718.00	tractor	
Apr-06	Lodi, CA 95240				
Total			\$102,469.00		\$3,142.00
The balance is					
the debtors					
interest					

None
☐

a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
------------------------------------	----------------------	---------------------------------	--------------------------

see attached

None
☒

b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
--	--------------------	---

5. Repossessions, foreclosures and returns

None
☐

List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
---	--	---

*Leisure Living, LLC
26 Veronica Dr.
Martinsburg, WV 25404*

3-7-2008

*43 Residential lots
1,200,000.00*

6. Assignments and receiverships

None
☒

a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
---------------------------------	-----------------------	---

in re: George Van Wagner
debtor

Statement of Financial Affairs

attachment 4a.

Name	case #	date filed	District	nature of proceeding	Judge	status
Hickory Ridge, LLC	07-01251	9/24/2007	Northeastern WV	chapter 7 bankruptcy	Patrick Flately	in litigation
Manor Park, LLC	07-01672	12/27/2007	Northeastern WV	chapter 7 bankruptcy	Patrick Flately	in litigation
Winchester Storage LLC	07-01673	12/27/2007	Northeastern WV	chapter 7 bankruptcy	Patrick Flately	in litigation
Vanwood, LLC	07-01671	12/27/2007	Northeastern WV	chapter 7 bankruptcy	Patrick Flately	in litigation

☒ None

b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
----------------------------------	--	------------------	---

7. Gifts

☒ None

List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
--	--------------------------------------	-----------------	-------------------------------------

8. Losses

☒ None

List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
---	--	-----------------

9. Payments related to debt counseling or bankruptcy

☒ None

List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYER IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
------------------------------	---	--

10. Other transfers

☒ None

- a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE,
RELATIONSHIP TO DEBTOR

DATE

DESCRIBE PROPERTY
TRANSFERRED AND
VALUE RECEIVED

☒ None

- b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER
DEVICE

DATE(S) OF
TRANSFER(S)

AMOUNT OF MONEY OR DESCRIPTION
AND VALUE OF PROPERTY OR DEBTOR'S
INTEREST IN PROPERTY

11. Closed financial accounts

☒ None

- List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS
OF INSTITUTION

TYPE OF ACCOUNT, LAST FOUR
DIGITS OF ACCOUNT NUMBER,
AND AMOUNT OF FINAL BALANCE

AMOUNT AND
DATE OF SALE
OR CLOSING

12. Safe deposit boxes

☒ None

- List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS
OF BANK OR
OTHER DEPOSITORY

NAMES AND ADDRESSES
OF THOSE WITH ACCESS
TO BOX OR DEPOSITORY

DESCRIPTION
OF
CONTENTS

DATE OF TRANSFER
OR SURRENDER,
IF ANY

13. Setoffs

6

None
☒

List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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14. Property held for another person

None
☒

List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
---------------------------	-----------------------------------	----------------------

15. Prior address of debtor

None
☐

If debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
44 Stallion Ct Hedgesville, WV	G. Van Wagner George Van Wagner	3-2006 thru 9-2006
594 Eagle School Rd. Martinsburg, WV		7-2004 thru 3-2006

16. Spouses and Former Spouses

None
☒

If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law.

None
☒

a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
--------------------------	--	-------------------	----------------------

None
☒

b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
--------------------------	--	-------------------	----------------------

None
☒

c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
--	---------------	--------------------------

18. Nature, location and name of business

None
☐

a. *If the debtor is an individual*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

in re: George Van Wagner
debtor

Statement of Financial Affairs

attachment 18a

Name	Tax ID	address	business	dates	comments
Hickory Ridge	34-2020911	PO Box 867 Martinsburg, WV	residential construction		
Manor Park Plaza	20-4368514	PO Box 867 Martinsburg, WV	land developement		
Norwood	55-0779177	PO Box 867 Martinsburg, WV	residential construction		
Stallion Ranch	20-4947013	PO Box 867 Martinsburg, WV	residential construction		
Topaz	51-0594800	PO Box 867 Martinsburg, WV	residential construction		
Vanwood	74-3154388	PO Box 867 Martinsburg, WV	residential construction		
Winchester Storage	20-5431161	PO Box 867 Martinsburg, WV	land developement		
VAC LLC		PO Box 867 Martinsburg, WV	residential construction		
Leisure Living		PO Box 867 Martinsburg, WV	residential construction		forclosed 3/7/2008
Eagle Properties		PO Box 867 Martinsburg, WV	residential construction		

NAME	LAST FOUR DIGITS OF SOC. SEC. NO./ COMPLETE EIN OR OTHER TAXPAYER I.D. NO.	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
------	--	---------	--------------------	-------------------------------

see attached

None
☒

b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
------	---------

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)

19. Books, records and financial statements

None
☐

a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
Buzz Cole 115 Aikens St 11 Martinsburg, WV	2005-present
Alaria Sun 26 Veronica Dr. Martinsburg, WV	2004-2007

None
☐

b. List all firms or individuals who within **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED
Cole & Co.	115 Aikens Cntr St 11	2005-present
Buzz Cole, CPA	Martinsburg, WV 25401	

None
☐

c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS
George Van Wagner Available	127 Walker Ct - Hedgesville, WV 25427

None
☐

d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS

DATE ISSUED

*B&T Bank
148 Queen St
Martinsburg, WV 25104*

renewed every 6 months

20. Inventories

None
☒

a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY

INVENTORY SUPERVISOR

DOLLAR AMOUNT
OF INVENTORY
(Specify cost, market or other basis)

None
☒

b. List the name and address of the person having possession of the records of each of the inventories reported in a., above.

DATE OF INVENTORY

NAME AND ADDRESSES
OF CUSTODIAN
OF INVENTORY RECORDS

21. Current Partners, Officers, Directors and Shareholders

None
☒

a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS

NATURE OF INTEREST

PERCENTAGE OF INTEREST

None
☒

b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS

TITLE

NATURE AND PERCENTAGE
OF STOCK OWNERSHIP

22. Former partners, officers, directors and shareholders

None
☒

a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME

ADDRESS

DATE OF WITHDRAWAL

None
☒

b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS

TITLE

DATE OF TERMINATION

23. Withdrawals from a partnership or distributions by a corporation

None
☐

If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS
OF RECIPIENT,
RELATIONSHIP TO DEBTOR

DATE AND PURPOSE
OF WITHDRAWAL

AMOUNT OF MONEY
OR DESCRIPTION
AND VALUE OF PROPERTY

Berkley Plaza, LLC
26 Veronica Dr.
Martinsburg, WV 25404

10-2007
Sold Interest

\$25,000.00

24. Tax Consolidation Group.

None
☒

If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION

TAXPAYER IDENTIFICATION NUMBER (EIN)

25. Pension Funds.

None
☒

If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND

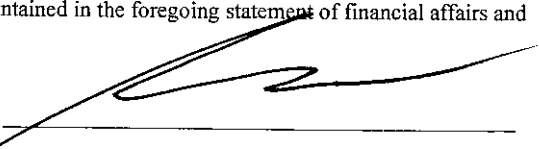
TAXPAYER IDENTIFICATION NUMBER (EIN)

* * * * *

[If completed by an individual or individual and spouse]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date 3/29/08

Signature
of Debtor 

Date _____

Signature
of Joint Debtor
(if any) _____

[If completed on behalf of a partnership or corporation]

I, declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date _____

Signature _____

Print Name and Title _____

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

____ continuation sheets attached

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer _____

Social Security No. (Required by 11 U.S.C. § 110.) _____

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.

Address _____

X _____
Signature of Bankruptcy Petition Preparer

Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 18 U.S.C. § 156.

In re George Van Wagner,
Debtor

Case No. _____
(If known)

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
409 Three Run Rd Dunker Hill WV 25413 rental property	owned by debtor		500,000.00	239,985.00
personal house 127 Walker Ct. Hedgesville, WV 25427	owned by debtor		530,000.00	451,985.00
44 Stallion Ct. Hedgesville, WV 25427	owned by debtor		530,000.00	457,057.00
160 Topaz Lane Inwood, WV 25428 rental property	owned by debtor		185,000.00	159,925.00
140 Topaz Lane Inwood, WV rental property	owned by debtor		185,000.00	160,000.00

Sub Total > 1,930,000.00
(Report also on Summary of Schedules.)
continued

In re George Van Wagner
Debtor

Case No. _____
(If known)

SCHEDULE A - REAL PROPERTY *continued*

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
rental Property 226 Topaz Lane Inwood, WV 25428	owned by debtor		185,000.00	139,749.00
rental Property 1108 Ms Staci Lane Martinsburg, WV	owned by debtor		155,000.00	100,000.00
2887 Middleway Pk Bunker Hill, WV 25413	owned by debtor		425,000.00	395,000.00
rental property				
See attached.				

Sub Total ➤ 2,695,000.00
(Report also on Summary of Schedules)
continued

In re George Van Wagner
Debtor

Case No. _____
(If known)

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
Hickory Ridge, LLC Berkeley County, WV	50%		4.6 million	5.5 million
Manor Park Plaza, LLC Berkeley County, WV	100%		2.2 million	1.5 million
Vanwood, LLC Berkeley County, WV	100%		4 million	2.6 million
Winchester Storage, LLC Berkeley County, WV	50%		700,000.00	900,000.00

Grand Total 14,195,000.00
(Report also on Summary of Schedules.)

In re George Van Wagner
DebtorCase No. _____
(If known)**SCHEDULE B - PERSONAL PROPERTY**

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." In providing the information requested in this schedule, do not include the name or address of a minor child. Simply state "a minor child."

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and home- stead associations, or credit unions, brokerage houses, or cooperatives.		Jefferson Security Martinsburg, WV Acct# 10502326		800.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.		furniture, computer, TV's etc. 127 Walker Ln. Hedgesville, WV 25427		7000.00
5. Books, pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.		Clothing 127 Walker Ln. Hedgesville, WV 25427		1000.00
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c); Rule 1007(b)).	X			

In re George Van Wagner
Debtor

Case No. _____
(If known)

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		Norwood Inc. 100% currently out of Business		0.00
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.		2007 Taxes not completed		
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			

In re

George Van Wagner
Debtor

Case No. _____

(If known)

SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		See attached		79,000.00
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.		tractor Kubota (see attached)		12,000.00
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			
1 continuation sheets attached Total ➤				\$ 99,800.00

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

vehicle	location	Amount Owed	Current Value
Ford Explorer 2008	127 Walker Ct	\$42,000.00	\$32,000.00
	Hedgesville, WV 25427		
Uplander Van 2008	127 Walker Ct	\$22,000.00	\$20,000.00
	Hedgesville, WV 25427		
Kia Serento 2007	127 Walker Ct	\$16,000.00	\$16,000.00
	Hedgesville, WV 25427		
Kia 2007	Berkeley County	\$11,751.00	\$11,000.00
tractor	44 Stallion Ct	\$10,718.00	\$12,000.00
	Hedgesville, WV 25427		
Total		\$102,469.00	\$91,000.00

In re

George Van Wagner

Debtor

Case No. _____
(If known)**SCHEDULE C - PROPERTY CLAIMED AS EXEMPT**Debtor claims the exemptions to which debtor is entitled under:
(Check one box)

- ☐ 11 U.S.C. § 522(b)(2)
☐ 11 U.S.C. § 522(b)(3)

☐ Check if debtor claims a homestead exemption that exceeds \$125,000.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
Home	38-10-4	25000.00	160,000.00
clothing	38-10-4	1000.00	1000.00
furnishings	38-10-4	7000.00	7000.00
checking account	38-10-4	800.00	800.00
tractor	38-10-4	12,000.00	12,000.00

Form B6D

(10/05)

In re

George Van Wagner
Debtor

Case No. _____

(If known)

SCHEDULE D – CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H – Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.



Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND A ACCOUNT NUMBER (See Instructions Above)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.								
see attached								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					

X continuation sheets
attached

3

Subtotal ►
(Total of this page)

Total ►
(Use only on last page)

\$

\$9,731,616.00

Name & Date	Address	account #	balance	vehicle
FirstUnited Bank	PO Box 636	1072-2990216409	\$42,000.00	Ford Exp 2008
Jul-07	Oakland, MD 21550			
GMAC	PO Box 380901	020-9117-62420	\$22,000.00	Chevy Van 2008
Oct-07	Bloomington, MN 55438			
FirstUnited Bank	PO Box 636	1072-3990217369	\$16,000.00	Kia Serento 2007
Sep-07	Oakland, MD 21550			
BB&T	PO Box 2306	9052709978	\$11,751.00	Kia 2007
Sep-07	Wilson, NC 27894			
Kubota	1175 S Guild Ave.	16782385	\$10,718.00	tractor
Apr-06	Lodi, CA 95240			
Total			\$102,469.00	
The balance is				
the debtors				
interest				

in re: George Van Wagner
debtor

Schedule D

attachment 3 of 3

Name and date	Security Address	principle	acct #	security
National City Mortgage	PO Box 1820	\$465,000.00	4920821	409 Three Run Rd
	Dayton, Ohio 45401			Bunker Hill, WV 25413
National City Mortgage	PO Box 1820	\$451,985.00	4829305	127 Walker Ct
Sep-06	Dayton, Ohio 45401			Hedgesville, WV 25427
EMC Mortgage Corp.	PO Box 293150	\$160,000.00	19710508	140 Topaz Lane
Sep-07	Lewisville, TX 75029			Inwood, WV 25428
EMC Mortgage Corp.	PO Box 293150	\$159,925.00	19730019	160 Topaz Lane
Jul-07	Lewisville, TX 75029			Inwood, WV 25428
CMS, LLC	PO Box 79001	\$139,749.00	7000001177	226 Topaz Lane
Aug-07	Phonix, AZ 85062			Inwood, WV 25428
Wells Fargo	PO Box 14411	\$457,657.00	68387919	44 Stallion Ct
Mar-07	Des Moines, IA 50306			Hedgesville, WV 25427
America Servicing Co	PO Box 10388	\$315,370.00	1127055054	2887 Middleway Pk
Sep-06	Des Moines, IA 50306			Bunker Hill, WV 25413
HSBC	PO Box 37282	\$79,461.00	13390927	2887 Middleway Pk
Sep-06	Baltimore, MD 21297			Bunker Hill, WV 25413
Jefferson Security Bank	PO Box 35	\$100,000.00	1203355	168 Ms. Stacy Lane
Jan-08	Sheperdstown, WV 25443			Martinsburg, WV
Total		\$2,329,147.00		

Form B6E
(10/05)

In re George Van Wagner
Debtor

Case No. _____
(if known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed.R.Bankr.P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. If applicable, also report this total on the Means Test form.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$10,000* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

In re George Van Wagner,
Debtor

Case No. _____
(if known)

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$4,925* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to \$2,225* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☒ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507 (a)(9).

☐ **Claims for Death or Personal Injury While Debtor Was Intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on April 1, 2007, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

____ continuation sheets attached

Form B6E - Cont.
(10/05)

In re George Van Wagner
Debtor

Case No. _____
(If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS
(Continuation Sheet)

Taxes
TYPE OF PRIORITY

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY
Account No. United States Government IRS			1-07 thru 12-07				unknown at this time	
Account No. State of WV Income Tax Division			1-07 thru 12-07				unknown at this time	
Account No.								
Account No.								
Account No.								

Sheet no. ____ of ____ sheets attached to Schedule of Creditors
Holding Priority Claims

Subtotal ▶
(Total of this page)

\$ \$

Total ▶

\$ \$

(Use only on last page of the completed Schedule E.
(Report total also on Summary of Schedules)

In re George Van Wagner,
DebtorCase No. _____
(If known)**SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed.R.Bankr.P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community maybe liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO.			see attached				
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
Subtotal ▶							\$
Total ▶							\$ 24568.81

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules.)

____ continuation sheets attached

Name	Address	account #	balance
GE Money Bank	PO Box 960061	6019171201662270	\$1,618.15
866-396-8254	Orlando, FL 32896		
Citifinancial	PO Box 22060	6032590298940015	\$6,047.28
800-250-6748	Tempe, AZ 85285		
JC Penny	PO Box 981131	47675812691	\$246.38
800-527-0881	El Paso, TX 79998		
Kohls	PO Box 3043	047-3438-018	\$839.66
800-564-5740	Milwaukee, WI 53201		
King Size	PO Box 182273	167-088-587	\$620.00
866-705-3391	Columbus, OH 43218		
BB&T	PO Box 698	4856711000588060	\$2,187.84
800-476-4228	Wilson, NC 27894		
American General	281 Aikens Ctr	4302607	\$5,280.40
304-264-9400	Martinsburg, WV 25404		
City Hospital	PO Box 2869	V00001821744	\$4,017.00
888-802-1092	Martinsburg, WV 25402		
Home Depot	PO Box 689100	6035320207883453	\$605.74
800-677-1232	Des Moines, IA 50368		
Shell Credit Card	PO Box 689151	180-511-255	\$1,676.36
800-331-3703	Des Moines, IA 50368		
Capital One	PO Box 30285	4862362627690400	\$1,430.00
800-903-3637	Salt Lake City, UT 84130		
Total			\$24,568.81

Form B6G
(10/05)

In re George Van Wagner,
Debtor

Case No. _____
(if known)

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed.R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.
All Phase, Inc. lessor PO Box 867 Martinsburg, WV 25402	debtor is the purchaser-residential 168 Ms Staci Lane 1000.00 per month Martinsburg, WV Pemberton-lessee's lease-10-23-07 thru 4-23-08
	debtor is the purchaser-residential 409 Threekind Rd. 1200.00 per month Bunker Hill, WV Stribaugh-lessee month to month starting 5-07
	debtor is the purchaser-residential 140 Topaz Lane 900.00 per month Inwood, WV Powers-lessee 2-2008 thru 2-2009
	debtor is the purchaser-residential 160 Topaz Lane 900.00 per month Inwood, WV Jett/Hough-lessee
	debtor is the purchaser-residential 226 Topaz Lane 900.00 per month Inwood, WV Zane/Witcomb-lessees
	debtor is the purchaser-residential 2887 Middleway Pike 1100.00 per month Bunker Hill, WV Hernandez-lessee month to month starting 9-07

In re George Van Wagner
DebtorCase No. _____
(if known)**SCHEDULE H - CODEBTORS**

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
Steve Crites 412 Cheswick Dr. Martinsburg, WV 25403	Winchester Storage, LLC 50% PO Box 867 Martinsburg, WV 25402 Hickory Ridge, LLC 45% PO Box 867 Martinsburg, WV 25402 VAC, LLC 50% PO Box 867, Martinsburg, WV 25402 Eagle Properties, LLC 50% PO Box 867, Martinsburg, WV 25402

In re George Van Wagner,
Debtor

Case No. _____
(if known)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 7, 11, 12, or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child.

Debtor's Marital Status: <u>S</u>	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP:	AGE:
Employment:	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

INCOME: (Estimate of average monthly income)

- Current monthly gross wages, salary, and commissions
(Prorate if not paid monthly.)
- Estimate monthly overtime

DEBTOR	SPOUSE
\$ <u>0.00</u>	\$ _____
\$ _____	\$ _____

3. SUBTOTAL

\$ <u>0.00</u>	\$ _____
----------------	----------

4. LESS PAYROLL DEDUCTIONS

- Payroll taxes and social security
- Insurance
- Union dues
- Other (Specify): _____

\$ <u>0.00</u>	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ <u>↓</u>	\$ _____

5. SUBTOTAL OF PAYROLL DEDUCTIONS

\$ <u>0.00</u>	\$ _____
----------------	----------

6. TOTAL NET MONTHLY TAKE HOME PAY

\$ <u>0.00</u>	\$ _____
----------------	----------

7. Regular income from operation of business or profession or farm.
(Attach detailed statement)

\$ <u>0.00</u>	\$ _____
----------------	----------

8. Income from real property

\$ <u>0.00</u>	\$ _____
----------------	----------

9. Interest and dividends

\$ <u>0.00</u>	\$ _____
----------------	----------

10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above.

\$ <u>0.00</u>	\$ _____
----------------	----------

11. Social security or government assistance
(Specify): _____

\$ <u>0.00</u>	\$ _____
----------------	----------

12. Pension or retirement income

\$ <u>0.00</u>	\$ _____
----------------	----------

13. Other monthly income

\$ <u>0.00</u>	\$ _____
----------------	----------

(Specify): _____

14. SUBTOTAL OF LINES 7 THROUGH 13

15. TOTAL MONTHLY INCOME (Add amounts shown on lines 6 and 14)

\$ <u>0.00</u>	\$ _____
----------------	----------

16. TOTAL COMBINED MONTHLY INCOME: \$ _____

\$ <u>0.00</u>	\$ _____
----------------	----------

(Report also on Summary of Schedules.)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

In re George Van Wagner,
DebtorCase No. _____
(if known)**SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)**

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home) \$ 2900.00
- a. Are real estate taxes included? Yes _____ No _____
- b. Is property insurance included? Yes _____ No X _____
2. Utilities: a. Electricity and heating fuel \$ 300.00
- b. Water and sewer \$ —
- c. Telephone \$ 60.00
- d. Other cable \$ 80.00
3. Home maintenance (repairs and upkeep) \$ 50.00
4. Food \$ 200.00
5. Clothing \$ 0
6. Laundry and dry cleaning \$ 40.00
7. Medical and dental expenses \$ 200.00
8. Transportation (not including car payments) \$ 250.00
9. Recreation, clubs and entertainment, newspapers, magazines, etc. \$ 100.00
10. Charitable contributions \$ —
11. Insurance (not deducted from wages or included in home mortgage payments)
- a. Homeowner's or renter's \$ 250.00
- b. Life \$ —
- c. Health \$ —
- d. Auto \$ 225.00
- e. Other _____ \$ —
12. Taxes (not deducted from wages or included in home mortgage payments)
(Specify) _____ \$ —
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)
- a. Auto \$ —
- b. Other _____ \$ —
- c. Other _____ \$ —
14. Alimony, maintenance, and support paid to others \$ —
15. Payments for support of additional dependents not living at your home \$ —
16. Regular expenses from operation of business, profession, or farm (attach detailed statement) \$ 2000.00
17. Other _____ \$ —
18. TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules) \$6655.00
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document: _____
20. STATEMENT OF MONTHLY NET INCOME
- a. Total monthly income from Line 16 of Schedule I \$ 6000.00
- b. Total monthly expenses from Line 18 above \$ 6655.00
- c. Monthly net income (a. minus b.) \$ <655.00>

United States Bankruptcy Court

Northeastern District Of West Virginia

In re George Van Wagner,
Debtor

Case No. _____

Chapter _____

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities."

AMOUNTS SCHEDULED

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property			\$ 14,195,000.00		
B - Personal Property			\$ 99,800.00		
C - Property Claimed as Exempt					45,800.00
D - Creditors Holding Secured Claims				<9,731,616.00>	
E - Creditors Holding Unsecured Priority Claims				\$ 0.00	
F - Creditors Holding Unsecured Nonpriority Claims				<24,569.00>	
G - Executory Contracts and Unexpired Leases					6000.00
H - Codebtors					
I - Current Income of Individual Debtor(s)					\$ 0.00
J - Current Expenditures of Individual Debtors(s)					\$ 6655.00
TOTAL			\$ 14,294,800.00	\$ 9,756,185.00	

Form 6-Summ2
(10/05)

United States Bankruptcy Court
Northeastern District Of West Virginia

In re George Van Wagner,
Debtor

Case No. _____

Chapter _____

STATISTICAL SUMMARY OF CERTAIN LIABILITIES (28 U.S.C. § 159)
[Individual Debtors Only]

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	\$ 0.00
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	\$ to be determined
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E)	\$ 0.00
Student Loan Obligations (from Schedule F)	\$ 0.00
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	\$ 0.00
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	\$ 0.00
TOTAL	\$ 0.00

The foregoing information is for statistical purposes only under 28 U.S.C. § 159.

Form B6
(10/05)

FORM 6. SCHEDULES

Summary of Schedules
Statistical Summary of Certain Liabilities

Schedule A - Real Property
Schedule B - Personal Property
Schedule C - Property Claimed as Exempt
Schedule D - Creditors Holding Secured Claims
Schedule E - Creditors Holding Unsecured Priority Claims
Schedule F - Creditors Holding Unsecured Nonpriority Claims
Schedule G - Executory Contracts and Unexpired Leases
Schedule H - Codebtors
Schedule I - Current Income of Individual Debtor(s)
Schedule J - Current Expenditures of Individual Debtor(s)

Unsworn Declaration under Penalty of Perjury

GENERAL INSTRUCTIONS: The first page of the debtor's schedules and the first page of any amendments thereto must contain a caption as in Form 16B. Subsequent pages should be identified with the debtor's name and case number. If the schedules are filed with the petition, the case number should be left blank

Schedules D, E, and F have been designed for the listing of each claim only once. Even when a claim is secured only in part or entitled to priority only in part, it still should be listed only once. A claim which is secured in whole or in part should be listed on Schedule D only, and a claim which is entitled to priority in whole or in part should be listed on Schedule E only. Do not list the same claim twice. If a creditor has more than one claim, such as claims arising from separate transactions, each claim should be scheduled separately.

Review the specific instructions for each schedule before completing the schedule.

In re George Van Wagner
Debtor

Case No. _____
(If known)

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ (Total shown on summary page plus 1.) sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date 3/25/08

Signature: _____
Debtor

Date _____

Signature: _____
(Joint Debtor, if any)
[If joint case, both spouses must sign.]

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h) and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

George Van Wagner
Printed or Typed Name of Bankruptcy Petition Preparer

Social Security No.

(Required by 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.

Address

X _____
Signature of Bankruptcy Petition Preparer

3/29/08
Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the _____ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the _____ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ sheets, and that they are true and correct to the best of my knowledge, information, and belief. (Total shown on summary page plus 1.)

Date _____

Signature: _____

[Print or type name of individual signing on behalf of debtor.]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

-----Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

United States Bankruptcy Court
Northern District of West Virginia

In re

George Van Wagner

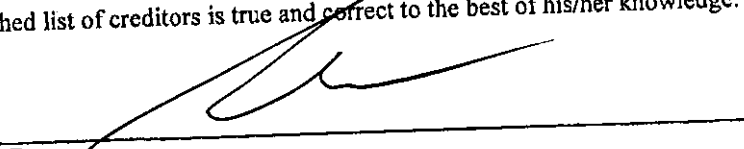
Debtor(s)

Case No.
Chapter11

VERIFICATION OF CREDITOR MATRIX

The above-named Debtor hereby verifies that the attached list of creditors is true and correct to the best of his/her knowledge.

Date:

3/29/08
Signature of Debtor

GE Money Bank 866-396-8254	PO Box 960061 Orlando, FL 32896	FirstUnited Bank PO Box 636 Oakland, MD 21550
Citifinancial 800-250-6748	PO Box 22060 Tempe, AZ 85285	GMAC PO Box 380901 Bloomington, MN 55438
JC Penny 800-527-0881	PO Box 981131 El Paso, TX 79998	FirstUnited Bank PO Box 636 Oakland, MD 21550
Kohls 800-564-5740	PO Box 3043 Milwaukee, WI 53201	BB&T PO Box 2306 Wilson, NC 27894
King Size 866-705-3391	PO Box 182273 Columbus, OH 43218	Kubota 1175 S Guild Ave. Lodi, CA 95240
BB&T 800-476-4228	PO Box 698 Wilson, NC 27894	Wells Fargo PO Box 14411 Des Moines, IA 50306
American General 304-264-9400	281 Aikens Ctr Martinsburg, WV 25404	America Servicing Co PO Box 10388 Des Moines, IA 50306
City Hospital 888-802-1092	PO Box 2869 Martinsburg, WV 25402	HSBC PO Box 37282 Baltimore, MD 21297
Home Depot 800-677-1232	PO Box 689100 Des Moines, IA 50368	Jefferson Security Bank PO Box 35 Shepherdstown, WV 25443
Shell Credit Card 800-331-3703	PO Box 689151 Des Moines, IA 50368	
Capital One 800-903-3637	PO Box 30285 Salt Lake City, UT 84130	
National City Mortgage	PO Box 1820 Dayton, Ohio 45401	
National City Mortgage	PO Box 1820 Sep-06 Dayton, Ohio 45401	
EMC Mortgage Corp.	PO Box 293150 Sep-07 Lewisville, TX 75029	
EMC Mortgage Corp.	PO Box 293150 Jul-07 Lewisville, TX 75029	
CMS, LLC	PO Box 79001 Aug-07 Phoenix, AZ 85062	

Exhibit F


Patrick M. Flatley
United States Bankruptcy Judge
Dated: Tuesday, September 23, 2008 4:07:39 PM

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

IN RE:)	
)	
George VAN WAGNER,)	Case No. 3:08-bk-00435
)	
)	
Debtor.)	Chapter 11

ORDER

On September 22, 2008, George Van Wagner filed a pleading with the court entitled “Motion to Add VAC, LLC, to Debtor's Bankruptcy” (Document No. 216). Under Fed. R. Bankr. P. 1002(a), a bankruptcy case must be commenced by filing a petition. Because VAC, LLC is not a named debtor in a bankruptcy petition, no bankruptcy case exists to consolidate with the chapter 11 case of George Van Wagner. For the forgoing reason, the court does hereby

ORDER that the “Motion to Add VAC, LLC to Debtor’s Bankruptcy” is DENIED.

Exhibit G

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN THE MATTER OF:
GEORGE VAN WAGNER
DEBTOR

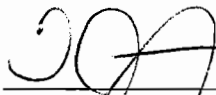
CASE NO. 08-00435

CHAPTER 11

**NOTICE OF MOTION TO CREDITORS
AND OTHER PARTIES IN INTEREST**

NOTICE IS HEREBY GIVEN THAT: By Motion filed herein, NATIONAL CITY MORTGAGE CO., a corporation, for itself, its successors and or assigns or as servicer, will move the Court for an Order granting relief from the automatic stay upon real estate whose address is 409 Three Run Rd., Bunker Hill, WV 25413. Failure to respond in writing to the Court within 15 days from the date of this Notice may result in the requested relief being granted by the Court without a hearing or further notice. Any such objection or request shall be filed with the Clerk of this Court and served upon the Debtor, George Van Wagner, Pro Se at 127 Walker Court, Hedgesville, WV 25427; and Timothy J. Amos, attorney for National City Mortgage Co., at Post Office Box 81, Parkersburg, WV 26102. If a hearing on the Motion is scheduled, the Clerk of the Bankruptcy Court will notify all interested parties.

National City Mortgage Co.
By Counsel,



Timothy J. Amos
WV State Bar #7683
Post Office Box 81
Parkersburg, WV 26102
Telephone: 304/485-3851
Fax: 304/485-0261

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN THE MATTER OF:
GEORGE VAN WAGNER
DEBTOR

CASE NO. 08-00435

CHAPTER 11

**MOTION FOR ORDER GRANTING RELIEF FROM AUTOMATIC STAY
OR, IN THE ALTERNATIVE, TO SEEK ADEQUATE PROTECTION**

NATIONAL CITY MORTGAGE CO., for itself and its successors or assigns or as servicer, herein referred to as the Secured Creditor, by counsel, for its Motion, alleges as follows:

1. On or about the 28th day of March, 2008 the above named debtor filed his current Chapter 11 Petition in Bankruptcy in this case.
2. The Secured Creditor is the current payee of a promissory note dated the 30th day of October, 2006, in the principal amount of \$240,000.00, secured by a first deed of trust of the same date upon property generally described in the Security Agreement as being situate in the County of Berkeley, State of West Virginia, and having a mailing address of 409 Three Run Rd, Bunker Hill, WV 25413.
3. The Secured Creditor is informed and believes, and based upon such information and belief, alleges that title to said property is currently vested in the name of the Debtor.
4. There is now due and owing to the Secured Creditor as of July 7, 2008, a principal sum of \$239,985.00. According to the Debtor's filing, the debtors have a pre-petition arrearage balance of \$6,735.00. The Debtor is currently due post petition, for four (4) payments in the amount of \$1,649.90 each for the months of April 2008 through July 2008; plus late charges of \$45.00; for a total post-petition arrearage of \$6,644.60.
5. The Secured Creditor has elected to initiate foreclosure proceedings on the subject property with respect to the subject deed of trust; however, Secure Creditor is precluded from commencing foreclosure action as a result of the automatic stay in effect during the pendency of the instant case.

6. The Secured Creditor is informed and believes, and based upon such information and belief, alleges that absent this Court's Order allowing it to proceed with the pending foreclosure, its security is significantly jeopardized.


7. The Secured Creditor alleges that there may be no or insufficient equity with respect to said property, and that Secured Creditor is not adequately protected.

8. In support of the Secured Creditor's Motion, there is attached hereto a copy of the original Note, Deed of Trust, Assignment to Deed of Trust, and computer printout showing sums due upon the Note.

WHEREFORE, the Secured Creditor moves as follows:

For an Order granting relief from the automatic stay permitting Secured Creditor to move ahead with foreclosure proceedings under Secured Creditor's Trust Deed, and to sell the subject property at a trustee sale by a trustee, including necessary action to obtain possession of the property or in the alternative for adequate protection.

National City Mortgage Co.
By Counsel,



Timothy J. Amos
WVSB #7683
Post Office Box 81
Parkersburg, WV 26102
Telephone: 304/485-3851
Fax: 304/485-0261

ORIGINAL

ADJUSTABLE RATE NOTE

(6-Month LIBOR Index - Rate Caps)
(Assumable during Life of Loan) (45 Day Lookback)

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

October 30, 2006

[Date]

MARTINSBURG

[City]

WEST VIRGINIA

[State]

409 THREE RUN RD, BUNKER HILL, West Virginia 25413

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 240,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is SHENANDOAH MORTGAGE, LLC

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 8.250 %. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(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 first day of each month beginning on December 1, 2006

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 before Principal. If, on November 1, 2036, 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

National City Mortgage Co. P O Box 17677, Baltimore, MD 21297-1677
or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,803.05 . This amount may change.

(C) Monthly Payment Changes

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

MULTISTATE ADJUSTABLE RATE NOTE - 6-Month LIBOR Index (Assumable during Life of Loan) (45 Day Lookback) - Single Family - Freddie Mac UNIFORM INSTRUMENT
Amended for West Virginia

VMP-194N(WV) (0408)

Form 5522 5/04

VMP Mortgage Solutions, Inc. (800)521-7291

Page 1 of 4

Initials: _____



4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**(A) Change Dates**

The interest rate I will pay may change on the first day of November 2009, and may change on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

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

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding THREE percentage point(s) (3.000 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.250 % or less than 5.250 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than ONE percentage point(s) (1.000 %) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than 14.250 %.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under 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 dates of my monthly payment unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. 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.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be of that portion of the installment of principal and interest that is overdue, but not more than U.S. \$ I will pay this late charge promptly but only once on each late payment.

15	calendar days after
5.00	%
15.00	

(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 (except attorneys' fees) in enforcing this Note to the extent not prohibited by applicable law.

8. 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.

9. 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.

10. 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.

11. 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:

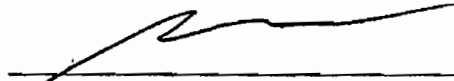
Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales 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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

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

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

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

 _____ GEORGE VANWAGNER	(Seal) _____ -Borrower	_____ (Seal) _____ -Borrower
_____ (Seal) _____ -Borrower	_____ (Seal) _____ -Borrower	
_____ (Seal) _____ -Borrower	_____ (Seal) _____ -Borrower	
_____ (Seal) _____ -Borrower	_____ (Seal) _____ -Borrower	

[Sign Original Only]

**INTEREST ONLY PAYMENT PERIOD NOTE ADDENDUM
TO ADJUSTABLE RATE NOTE**

(Index: Six-Month London Interbank Offered Rate ("LIBOR") As Published in *The Wall St. Journal* - Rate Caps)
(Not to be Used for Texas Homestead Loans Unless Proceeds Used Only for Purchase Money or Refinance of Purchase Money)

THIS ADDENDUM TO NOTE PROVIDES FOR A PERIOD OF MONTHLY PAYMENTS OF INTEREST ONLY FOLLOWED BY MONTHLY PAYMENTS OF BOTH PRINCIPAL AND INTEREST. THE INTEREST RATE AND MONTHLY PAYMENT CAN CHANGE DURING AND AFTER THE INTEREST ONLY PAYMENT PERIOD. THIS ADDENDUM LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

This Interest Only Payment Period Note Addendum to Adjustable Rate Note (this "Addendum") is made this 30th day of October, 2006 and is incorporated into and shall be deemed to amend and supplement the Adjustable Rate Note of the same date (the "Note") given by the undersigned (the "Borrower") to evidence Borrower's indebtedness to **SHENANDOAH MORTGAGE, LLC**

(the "Lender"), which indebtedness is secured by a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), of the same date and covering the property described in the Security Instrument and located at:

409 THREE RUN RD, BUNKER HILL,

West Virginia 25413

ADDITIONAL COVENANTS: Unless specifically defined in this Addendum, any capitalized terms shall have the same meaning as in the Note. Notwithstanding anything to the contrary set forth in the Note or Security Instrument, Borrower further covenants and agrees as follows:

I. The Note is modified to provide that the initial one hundred twenty (120) payments due consist of interest only on the unpaid principal balance of the Note ("Interest Only Payment Period") at the interest rates determined in accordance with Section 2 of the Note and Section 4 of this Addendum. Sections 3, 4, 5 and 7(A) of the Note are hereby restated as follows:

3. PAYMENTS

(A) Time and Place of Payments

I will pay interest on the unpaid principal balance of this Note during the Interest Only Payment Period, and principal and interest thereafter, by making payments every month.

I will make my monthly payments on the first day of each month beginning on **December 2006**. 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, if the payment includes both principal and interest, it will be applied to interest before principal. If, on **November 1st, 2036**, 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 **National City Mortgage Co. P O Box 17677, Baltimore, MD 21297-1677** or at a different place if required by the Note Holder.

(B) Amount of My Interest On

Each of my initial Thirty Six (36) monthly payments will be in the amount of U.S. \$ 1,650.00 . The next Eighty Four (84) monthly payments may change in accordance with Sections 3(C) and 4(C)(i) below. These payments are called the "Interest Only Payments." No payments of principal are due during the Interest Only Payment Period. The Interest Only Payments will not reduce the principal amount of this Note.

(C) Monthly Payment Changes and Date of First Principal and Interest Payment

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Sections 4 and 5 of this Addendum.

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Due Date") is December 1st, 2016 , which is the first monthly payment date after the one hundred twentieth (120th) monthly payment is due.

Before the First Principal and Interest Due Date, my monthly payment may change to reflect changes in the interest rate as provided in Section 4(C) of this Addendum. My payment may also change if I make a partial Prepayment as provided in Section 5 of this Addendum. Before the effective date of any change in my monthly payment, the Note Holder will deliver or mail to me a notice of the change as provided in this Note.

Beginning with the First Principal and Interest Due Date, my monthly payment will change to an amount sufficient to repay the unpaid principal and interest at the rate described in Section 4(C) of this Addendum in substantially equal payments by the Maturity Date.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of November 2009 and may change on that day every sixth (6th) month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

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

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding THREE percentage point(s) (3.000 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. The Note Holder will then determine my new monthly payment as follows:

(i) **Interest Only Payment Period.** For monthly payments due after the first Change Date up to but not including the First Principal and Interest Due Date, the Note Holder will determine the amount of the monthly payment that would be sufficient to pay the interest that accrues on the unpaid principal that I am expected to owe at the Change Date at my new interest rate determined above in this Section 4(C). The result of this calculation will be the new amount of my Interest Only Payment until the next Change Date unless I make a partial Prepayment as provided in Section 5 of this Addendum.

(ii) **Principal and Interest Payments Due Beginning With the First Principal and Interest Due Date.** For monthly payments due on or after the First Principal and Interest Due Date, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate determined above in this Section 4(C) in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(A) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.250 % or less than 5.250 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than ONE percentage points (1.000 %) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than 14.250 %.

(B) Effective Date of Changes

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

(C) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under 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 dates of my monthly payment unless the Note Holder agrees in writing to those changes. If I make a partial Prepayment during the Interest Only Payment Period, the amount of the monthly payment will decrease until the next Change Date. At the next Change Date during the Interest Only Payment Period, any reduction due to a partial Prepayment may be offset by an interest rate increase. If I make a partial Prepayment after the First Principal and Interest Due Date, my partial Prepayment may reduce the amount of my monthly payments starting with the next Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

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

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

If the Note Holder has not received the full amount of my 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 5.00 % of my overdue payment of interest, during the Interest Only Payment Period, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

II. All other provisions of the Note are unchanged by this Addendum and remain in full force and effect.

By signing below, Borrower accepts and agrees to the terms and conditions contained in this Interest Only Payment Period Note Addendum to Adjustable Rate Note.

Borrower GEORGE VANWAGNER (Seal)

Borrower (Seal)

Borrower (Seal)

Borrower (Seal)

I understand that if I only make Interest Only Payments during the Interest Only Payment Period, at the end of the Interest Only Payment Period the principal balance will not be reduced.

Borrower GEORGE VANWAGNER (Seal)

Borrower (Seal)

Borrower (Seal)

Borrower (Seal)

Ln# 1920821
VANWAGNER
(17)
y/p

Return To:

National City Bank
P.O. Box 8800
Dayton, OH 45401-8800

40636

[Space Above This Line For Recording Data]

DEED OF TRUST

0004920821

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 30, 2006 together with all Riders to this document.

(B) "Borrower" is

GEORGE VANWAGNER Sole Owner

Borrower's mailing address is 409 THREE RUN RD ,
BUNKER HILL , West Virginia 25413

Borrower is the trustor under this Security Instrument.

(C) "Lender" is SHENANDOAH MORTGAGE, LLC

Lender is a Corporation

organized and existing under the laws of THE STATE OF INDIANA

Lender's address is 253 AIKENS CENTER, STE 2 MARTINSBURG, WV 25401

Lender is the beneficiary under this Security Instrument.

WEST VIRGINIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3049 1/01

VMP -6(WV) (0005).01

Page 1 of 16

Initials:

VMP Mortgage Solutions, Inc.



(D) "Trustee" is Richard A. Pill

The Trustee resides at 1444 Edwin Miller Boulevard
Martinsburg, West Virginia 25
Berkeley County, West Virginia.

(E) "Note" means the promissory note signed by Borrower and dated October 30, 2006
The Note states that Borrower owes Lender

TWO HUNDRED FORTY THOUSAND & 00/100 Dollars
(U.S. \$ 240,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than November 1, 2036

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

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

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

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

Attachment "A" Legal Description

(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.

(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 hereby irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

County
[Type of Recording Jurisdiction]

of

Berkeley
[Name of Recording Jurisdiction]

SEE ATTACHED

Parcel ID Number:

409 THREE RUN RD,
BUNKER HILL

("Property Address"):

which currently has the address of

[Street]
[City], West Virginia 25413 [Zip Code]

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."

IN TRUST FOREVER to secure the payment of the Note which is payable to the order of Lender, the beneficial owner of said Note, at its principal office at the top of this Security Instrument, the residence of said beneficial owner, and to secure also any and all extensions, modifications and renewals of said Note, or any part thereof, however changed in form, manner or amount, and all other indebtedness of Borrower to Lender or Trustee hereunder.

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

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

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

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

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

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

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

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

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

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

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

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

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

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

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 within thirty days after the date of the Notice of Placement of Insurance sent by Lender pursuant to W. Va. Code Section 46A-3-109a(c).

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

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

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

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

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

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

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

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

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.

(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 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.

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's

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

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

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

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

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). 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 and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. 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 invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable fees and costs of title evidence.

If Lender invokes the power of sale, Lender or Trustee shall give Borrower, in the manner provided in Section 15, notice of Lender's election to sell the Property. Trustee shall give notice of sale by public advertisement for the time and in the manner prescribed by Applicable Law. Borrower hereby waives personal service of notice of any sale made hereunder, upon Borrower, its devisees, agents, successors or assigns, and also waives the posting of notice of sale at the courthouse. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

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

In the event that foreclosure proceedings are instituted hereunder but are not completed, Trustee shall be reimbursed for all costs and expenses incurred by it in commencing such proceedings; and all costs and expenses so incurred by Trustee, together with interest thereon until paid at the Note default rate shall be and become a part of the obligations secured hereby and shall be collectible as such.

23. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

24. **Beneficiary's Address.** The beneficial owner and holder of the Note at the time of execution and delivery hereof is Lender, whose residence address is stated on the first page of this Security Instrument.

25. **Attorneys' Fees.** The provisions in this Security Instrument for Borrower to pay "attorneys' fees" shall be void.

26. **Notice of Trustee's Sale.** Any notice of other liens which may be given to Lender pursuant to W. Va. Code Section 38-1-4, shall be effective upon the receipt of such notice, in writing, through the regular United States mail, postage prepaid, addressed to Lender at its address set forth on the face of this Security Instrument.

A copy of any notice of Trustee's sale under this Security Instrument shall be served on Borrower by certified mail, return receipt requested, directed to Borrower at the address stated above or such other address given to Lender in writing by Borrower, subsequent to the execution and delivery of this Security Instrument.

27. **Trustees and Substitution of Trustees.** It is hereby expressly covenanted and agreed to all parties hereto that Lender may, at any time and from time to time hereafter, without notice, appoint and substitute another Trustee or Trustees, corporations or person, in place of the Trustee herein named to execute the trust herein created. Upon such appointment, either with or without a conveyance to said substituted Trustee or Trustees by the Trustees herein named, or by any substituted Trustee in case the said right of appointment is exercised more than once, the new and substituted Trustee or Trustees in each instance shall be vested with all the rights, titles, interests, powers, duties and trusts in the premises which are vested in and conferred upon the Trustees herein named; and such new and substituted Trustee or Trustees shall be considered the successors and assigns of the Trustees who are named herein within the meaning of this Security Instrument, and substituted in their place and stead. Each such appointment and substitution shall be evidenced by an instrument in writing which shall recite the parties to, and the book and page of record of, this Security Instrument, and the description of the real property herein described, which instrument, executed and acknowledged by Lender and recorded in the office of the Clerk of the County Commission of the County wherein the Property is situate, shall be conclusive proof of the proper substitution and appointment of such successor Trustee or Trustees, and notice of such proper substitution and appointment to all parties in interest.

The Trustees, or either of them or the survivor thereof, may act in the execution of this trust and in the event either of the Trustees shall act alone, the authority and power of the Trustee so acting shall be as full and complete as if the powers and authority granted to the Trustees herein jointly had been granted to such Trustee alone. Either or both of the Trustees are hereby authorized to act by agent or attorney in the execution of this trust, and it shall not be necessary for any Trustee to be present in person at any foreclosure sale.

28. **Waiver of Homestead Exemption.** Borrower hereby waives all right of homestead exemption in the Property.

29. **Lender's Purchase of Property Insurance.** Unless Borrower provides Lender with evidence of the insurance coverage required and described above, Lender may purchase insurance at Borrower's expense to protect its interest in Borrower's Property. 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 Property. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by this Security Instrument. If Lender purchases insurance for the Property, 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 Borrower's own.

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:



GEORGE VANWAGNER (Seal)
-Borrower

(Seal)
-Borrower

(Seal) (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

STATE OF WEST VIRGINIA,

Berkeley

County ss:

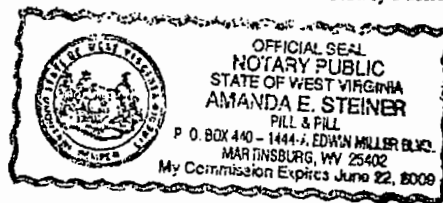
The foregoing instrument was acknowledged before me this 30th day of October 2006,
by George VanWagner

My Commission Expires:

6-22-09

Notary Public

(Seal)



This instrument was prepared by

ATTACHMENT "A" - LEGAL DESCRIPTION

All that certain lot or parcel of real estate together with the improvements thereon and appurtenances thereto belonging, situate in Mill Creek District, Berkeley County, West Virginia, and more particularly described as follows:

All that certain lot or parcel containing 6.000 acres as shown on a plat made by Gamma Associates, Arnold L. Godlove, C.E., dated September 19, 1975, and recorded in the Office of the Clerk of the County Court of Berkeley County, West Virginia, in Deed Book 291, at page 40, being subject to easements of record and in existence.

AND BEING the same parcel of real estate conveyed to George VanWagner by deed dated the 30th day of October 2006, from Rodney Allen Patrick and Wendy Lee Patrick, his wife, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, immediately preceding this instrument.

FOR PURPOSES OF SECTION 4, ARTICLE I, CHAPTER 38 OF THE CODE OF WEST VIRGINIA, ANY NOTICE OF TRUSTEE'S SALE SHALL BE MAILED TO THE GRANTORS HEREUNDER AT THE FOLLOWING ADDRESS (OR SUCH OTHER ADDRESS SUBSEQUENTLY GIVEN TO LENDER IN WRITING BY THE GRANTOR):
594 Eagle School Road, Martinsburg, WV 25401

dsb/40562 VanWagner Attachment

A handwritten signature in black ink, consisting of a large checkmark-like stroke followed by a series of connected loops and a final upward stroke.

1-4 FAMILY RIDER (Assignment of Rents)

THIS 1-4 FAMILY RIDER is made this 30th day of October 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to
SHENANDOAH MORTGAGE, LLC

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

409 THREE RUN RD, BUNKER HILL, West Virginia 25413

[Property Address]

1-4 FAMILY COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT. In addition to the Property described in the Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

B. USE OF PROPERTY; COMPLIANCE WITH LAW. Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

C. SUBORDINATE LIENS. Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

D. RENT LOSS INSURANCE. Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

**MULTISTATE 1-4 FAMILY RIDER - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3170 1/01**

VMP-57R (0411)

Page 1 of 3

Initials: _____

VMP Mortgage Solutions, Inc.
(800)521-7291



E. "BORROWER'S RIGHT TO REINSTATE" DELETED. Section 19 is deleted.

F. BORROWER'S OCCUPANCY. Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

G. ASSIGNMENT OF LEASES. Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until: (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument, and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

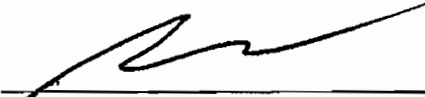
If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. 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 all the sums secured by the Security Instrument are paid in full.

I. CROSS-DEFAULT PROVISION. Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this 1-4 Family Rider.

 _____ (Seal) _____ (Seal)
GEORGE VANWAGNER -Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

ADJUSTABLE RATE RIDER

(Index: Six-Month London Interbank Offered Rate ("LIBOR") As Published in *The Wall St. Journal* - Rate Caps)
(Assumable during Life of Loan) (45 Day Lookback)

This Adjustable Rate Rider is made this 30th day of October 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note as amended and supplemented by the Interest Only Payment Period Note Addendum to Adjustable Rate Note (collectively the "Note") to SHENANDOAH MORTGAGE, LLC

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:

409 THREE RUN RD , BUNKER HILL , West Virginia 25413

THE NOTE PROVIDES FOR A PERIOD OF MONTHLY PAYMENTS OF INTEREST ONLY AND FOLLOWED BY MONTHLY PAYMENTS OF BOTH PRINCIPAL AND INTEREST. THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INITIAL INTEREST RATE AND MONTHLY PAYMENT DURING AND AFTER THE INTEREST ONLY PAYMENT PERIOD. THE NOTE ALSO LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE BORROWER MUST PAY.

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 8.250 %. The First Principal and Interest Due Date is the first monthly payment date after the one hundred twentieth (120th) monthly payment is due. The Note provides for changes in the interest rate and the monthly payments as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of November 2009, and may change on that day every sixth (6th) month thereafter. Each date on which my interest rate could change is called a "Change Date."

(A) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the six month Interbank Offered Rate ("LIBOR") which is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market, as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index." If the Index is no longer available, the Note Holder will choose a new index based upon comparable information. The Note Holder will give me notice of this choice.

(B) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding **THREE** percentage points (**3.000** %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. The Note Holder will then determine my new monthly payment as follows:

(i) **Interest Only Payment Period.** For monthly payments due after the first Change Date up to but not including the First Principal and Interest Due Date, the Note Holder will determine the amount of the monthly payment that would be sufficient to pay the interest that accrues on the unpaid principal that I am expected to owe at the Change Date at my new interest rate determined above in this Section 4(C). The result of this calculation will be the new amount of my Interest Only Payment until the next Change Date unless I make a partial Prepayment as provided in Section 5 of the Note.

(ii) **Principal and Interest Payments Due Beginning With the First Principal and Interest Due Date.** For monthly payments due on or after the First Principal and Interest Due Date, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate determined above in this Section 4(C) in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(C) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **11.250** % or less than **5.250** %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than **ONE** percentage points (**1.000** %) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than **14.250** %.

(D) Effective Date of Changes

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

(E) Effective Date of Changes

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

(F) Notice of Changes

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

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

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


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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

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

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

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

 _____ GEORGE VANWAGNER	(Seal) Borrower	_____ (Seal) Borrower
_____ (Seal) Borrower	_____ (Seal) Borrower	_____ (Seal) Borrower
_____ (Seal) Borrower	_____ (Seal) Borrower	_____ (Seal) Borrower
_____ (Seal) Borrower	_____ (Seal) Borrower	_____ (Seal) Borrower

[Sign Original Only]

BERKELEY COUNTY, WV

FILED

November 02, 2006 11:18:34

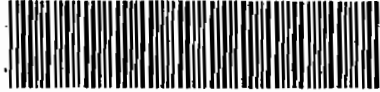
JOHN W. SMALL JR.

COUNTY CLERK

TRANSACTION NO: 2006040636

BOOK OF TRUST

Book: 02016 Page: 00355



PCH1 0004920821 PAYMENT CHANGES 07/02/08 07:45:01
NAME G VANWAGNE TYPE 13 1ST MTG,CONVEN W/O INS GROUP

-----* PAYMENT DATA *-----
DUE CURRENT PENDING EFF DATE COUPONS CM: 12
02/08 COUNTY .00 ESC 0
 CITY .00
 HAZARD .00
 MI .00
 LIEN .00 STOP DATE
 O/S .00
 MISC .00 0 -
 BSC .00
 1ST P&I 1649.90
 2ND P&I .00
 A&H .00
 LIFE .00
 REPL .00 0
 HUD .00 .00 DELETE
 NET 1649.90 MAINT?
 1ST INT RATE 8.25000 CURR N
 2ND INT RATE 0.00000 PEND N

-----* ADDITIONAL MESSAGES *-----
BNKHLD: BT NOT ABLE TO REFER TO FC BASED ON ACTIVE BANKRUPTCY
BNKTAX: BANKRUPTCY DEPARTMENT TO VERIFY IF TAXES CAN BE PAID

P194 COLLECTION INFORMATION 07/01/08

LN 0004920821

NAME G VANWAGNE INV-LN 404-040-0010810988 DUE 02-01-08 TYPE 13-A

BR RE MAN B P-TYPE 1 INT .0825000 FIRST PB 239,985.00 2ND PB .00

ORIG MTG 240000 LN DATE 10-30-06 TERM 360 MO P&I 1649.90 PAY PER 12

BILL GEORGE VANWAGNER

TEL C 304-754-8021 304-260-0332

NAME

TAX NAME GEORGE VANWAGNER

& 127 WALKER CT

PROPERTY 409 THREE RUN RD

ADDR HEDGESVILLE

WV 25427

ADDRESS BUNKER HILL

WV 25413

AMOUNTS DUE

ASM 00-00-00 MAT 11-36 XFER DEED - -

DUE DATE 02-01-08

BALANCES

STOPS

REG PAYMENT 1649.90

SUSPENSE 15.00

PROCESS 4

MONTHS 6

RES ESC .00

CASHIER 4 TIMES 7

TOT REG PAY 9899.40

HUD BAL .00

DISB 0

ACCRUED LC 105.00

ESC ADV .00

BD CK 0

REP RES .00

PIF 0

NSF BAL .00

REG ESC .00

FC 0 TRACK

OTHER FEE .00

NOTICE 6

TOTAL DUE 10004.40

ANALYZE 4

LC FACTR .05000 MAX LC AMT 15.00 MAX LC RATE .00000

L/C 2

LC CODE A MIN LC AMT .00 GRACE DAYS

PMT/BD CK TAB 711122224777

REMINDER DAYS FINAL NOTICE DAYS

DELQ TAB THRU 03-08 000001111111

ACTIVE B/R = SEE TASK SCREEN ISK20004920821

LOAN ASSUMPTION STATUS UNKNOWN

BNKA 0004920821 _____ BANKRUPTCY RECEIPTS CH 11 INV 404 07/01/08 07:43:40
G VANWAGNE DUE 02/01/08 PMT 1,649.90 TYPE CONV. RES. ARM MAN B
409 THREE RUN RD BUNKER HILL WV 25413 GROUP B____

-DEBT-----* POST-PETITION PAYMENTS *-----PRO BNK-----
RECEIVED PP PMTS EFF DATE 1098 CHECK DATE / NUMBER L/C ADJ CNT REASON
.00 00 MM/DD/YY MM/DD/YY .00 0 _
PMTS PMT AMT L/C PD SUSPENSE NSF PD ESCROW ADTL PRIN OVR
1 1649.90 .00 .00 .00 .00 .00 .00 1

PLAN 1: AMOUNT DUE DATE PLAN 2: AMOUNT DUE DATE
.00 MM/DD/YY .00 MM/DD/YY PMT 1 OF 0

-----* PRESS PF2 FOR ADDITIONAL MESSAGES *-----

MOTION FOR RELIEF REQ 07/01/08 POST-PETITION PAST DUE 152 DAYS
NDN-ESCROW LOAN

BNKHLD: BT NOT ABLE TO REFER TO FC BASED ON ACTIVE BANKRUPTCY

-SUSP-----* POST-PETITION *-----

MSP SUSPENSE: 15.00 DUE DATE PAYMENT LATE CHG
TRUSTEE SUSP: .00 02-01-08 1649.90 5.00
DEBTOR SUSP: 15.00 00 PP-PMTS
POST 1 DUE: PMT
POST 2 DUE: PMT
LATE CHARGES DUE: 105.00 NSF FEES DUE: .00
GRACE DAYS: PROCESSOR: BANKRUPTCY DEPT

*postret. due for
april 2008 through july 2008
4 payments @ \$1,649.90 ea = \$ 6,599.60
3 late charges @ 15.00 ea = 45.00
6,644.60*

P309 LN 0004920821 MORTGAGE LOAN HISTORY 07-01-08

NAME G VANWAGNE INV-LN 404-040-0010810988 DUE 02-01-08 TYPE 13-A

BR RE MAN B P-TYPE 1 INT .0825000 FIRST PB 239,985.00 2ND PB .00

HUD .00 NET 1649.90 SF .00250000 SUSP 15.00 STOP D B P F N A D L

REP .00 RES .00 4 0 0 0 6 4 0 2

	09-24	09-17	08-10	07-13
APP				
DUE	09-07	09-07	08-07	07-07
TYPE/TRAN	1 72	1 52	1 72	1 72
AMOUNT	1,649.90	.00	1,649.90	1,649.90
PRIN-PD	.00	.00	.00	.00
PRIN-BAL	239,985.00	239,985.00	239,985.00	239,985.00
INT-PD	1,649.90	.00	1,649.90	1,649.90
ESC-PD	.00	.00	.00	.00
ESC-BAL	.00	.00	.00	.00
A&H-INS	.00	.00	.00	.00
LIFE-INS	.00	.00	.00	.00
LC/FEES	.00 1	15.00-	.00	.00
MISC-PD	.00	.00	.00	.00
ADV-BAL	.00	.00	.00	.00
SUSP	.00	.00	.00	.00
SC/PAYEE *		*	*	

PAGE 003 OF 003 **PRESS PF10 FOR 25 MONTHS** OLDEST TRAN 07-13-07 /P

PAGE 002 OF 003 TOTAL TRANS AVAILABLE 0014 OLDEST TRAN 07-13-07 /P

P309 LN 0004920821 MORTGAGE LOAN HISTORY 07-01-08

NAME G VANWAGNE INV-LN 404-040-0010810988 DUE 02-01-08 TYPE 13-A

BR RE MAN B P-TYPE 1 INT .0825000 FIRST PB 239,985.00 2ND PB .00

HUD .00 NET 1649.90 SF .00250000 SUSP 15.00 STOP D B P F N A D L

REP .00 RES .00 4 0 0 0 6 4 0 2

	03-17	03-06	02-19	02-06	01-16
APP					
DUE	02-08	01-08	01-08	12-07	12-07
TYPE/TRAN	1 52	1 73	1 52	1 73	1 52
AMOUNT	.00	1,669.90	.00	1,654.90	.00
PRIN-PD	.00	.00	.00	.00	.00
PRIN-BAL	239,985.00	239,985.00	239,985.00	239,985.00	239,985.00
INT-PD	.00	1,649.90	.00	1,649.90	.00
ESC-PD	.00	.00	.00	.00	.00
ESC-BAL	.00	.00	.00	.00	.00
A&H-INS	.00	.00	.00	.00	.00
LIFE-INS	.00	.00	.00	.00	.00
LC/FEES 1	15.00- S	5.00 1	15.00- S	5.00 1	15.00-
MISC-PD	.00	.00	.00	.00	.00
ADV-BAL	.00	.00	.00	.00	.00
SUSP	.00	15.00	.00	.00	.00
SC/PAYEE		*		*	

PAGE 001 OF 003 TOTAL TRANS AVAILABLE 0014 OLDEST TRAN 07-13-07 /P

P192 LN 0004920821 L O A N S I A I U S 2 07/01/08

NAME G VANWAGNE INV-LN 404-040-0010810988 DUE 02-01-08 TYPE 13-A

BR RE MAN B P-TYPE 1 INT .0825000 FIRST PB 239,985.00 2ND PB .00

<u>MISCELLANEOUS</u>		<u>STEP SERVICE FEES</u>	<u>SECOND MORTGAGE</u>
EMPLOYEE CD	0	STEP1 AMT	INV/CAT /
S294 SW	0	STEP1 RATE	INV LN NO
L/I FLAG	RLIC ARM IND	STEP2 AMT	LOAN TYPE
COUPON MD	12	STEP2 RATE	MAN
NEXT PMT NO	15	STEP3 AMT	TERM
ASSUMP DATE	00-00-00	STEP3 RATE	NEXT PYMT
LAST INV CHG	02-07	STEP4 AMT	ANNUAL SF
DEFICIT START/STOP	00-00 11-36	STEP4 RATE	LEVEL SF
DEFICIT INC	.00		2ND P&I
OLD TOT PMT	1650.00		INT RATE
OLD ESCROW MTH	.00		ORIG LOAN
1ST PRIN BEG	239985.00	AGENT NO	2ND PRIN BEG
ESCROW BEG	.00	<u>LOCATION DATA</u>	
ADVANCE BEG	.00	STATE 47	COUNTY 003 CITY 0000
DRFT BANK/DELAY	00000000	SMSA	CENSUS 972100 OCCUPY 3
DRAFT ACCT		CRA COMM N LOW INC	MOD INC
DRAFT ADDL PRIN		MINORITY COMM	
MTGR REC CORP ADV	.00	3RD REC CORP ADV	.00
NON-REC CORP ADV	.00	INT-ONLY FLAG Y EXPIRES 12-01-16	
<u>PLEASE ENTER NEXT TRANSACTION</u>		<u>PXXX0004920821</u> SEE SCREEN P191	

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN THE MATTER OF:
GEORGE VAN WAGNER
DEBTOR

CASE NO. 08-00435

CHAPTER 11

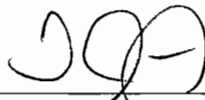
CERTIFICATE OF SERVICE

The undersigned, Timothy J. Amos, attorney for NATIONAL CITY MORTGAGE CO., a corporation, for itself, its successors and/or assigns, or as servicer, hereby certifies that on the 8th day of July, 2008, he served the foregoing and hereto annexed MOTION FOR ORDER GRANTING RELIEF FROM AUTOMATIC STAY OR, IN THE ALTERNATIVE, TO SEEK ADEQUATE PROTECTION, NOTICE OF MOTION TO CREDITORS AND OTHER PARTIES IN INTEREST, and proposed ORDER by mailing, postage prepaid, true copies thereof through the United States Mail, addressed as follows:

George Van Wagner
127 Walker Court
Hedgesville, WV 25427

Debra A. Wertman
U. S. Trustee's Office
300 Virginia Street East
Room 2025
Charleston, WV 25301

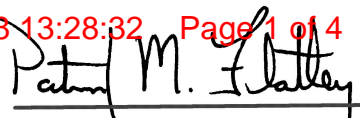
Douglas A. Kilmer
U.S. Trustee's Office
300 Virginia Street East
Room 2025
Charleston, WV 25301



Timothy J. Amos
WV State Bar #7683
Post Office Box 81
Parkersburg, WV 26102
Telephone: 304/485-3851
Fax: 304/485-0261

Exhibit H

No. 3:08-bk-00435 Doc 277 Filed 11/13/08 Entered 11/13/08 13:28:32 Page 1 of 4


Patrick M. Flatley
United States Bankruptcy Judge
Dated: Thursday, November 13, 2008 1:06:56 PM

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN THE MATTER OF:
GEORGE VAN WAGNER
DEBTOR

CASE NO. 08-00435

CHAPTER 11

ORDER WITH "SELF-ACTIVATING" PROVISION

On the 9th day of October, 2008, this matter came on for consideration upon the motion of NATIONAL CITY MORTGAGE CO., for an order granting relief from the automatic stay herein. The movant appeared by Counsel Timothy J. Amos and the Debtor appeared in person, pro se. The parties informed the Court that an agreement had been reached regarding disposition of the subject motion for relief and upon discussing this matter with the parties and hearing the positions of the parties, the Court finds that said motion is well taken, and it is,

ORDERED that the automatic stay of Title 11 U.S.C. § 362 shall terminate as hereinafter set forth in the Debtors' interest in the hereinafter described real estate, situate in the County of Berkeley, State of West Virginia, to-wit:

All that certain lot or parcel of real estate together with the improvements thereon and appurtenances thereto belonging, situate in Mill Creek District, Berkeley County, West Virginia, and more particularly described as follows:

All that certain lot or parcel containing 6.000 acres as shown on a plat made by Gamma Associates, Arnold L. Godlove, C. E., dated September 19, 1973, and recorded in the Office of the Clerk of the County Court of

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Berkeley County, West Virginia, in Deed Book 291, at page 40, being subject to easements of record and inexistence.

AND BEING the same parcel of real estate conveyed to George Van Wagner by deed dated the 30th day of October 2006, from Rodney Allen Patrick and Wendy Lee Patrick, his wife, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, immediately preceding this instrument.

The movant shall forbear from foreclosing during the pendency of this case as long as the Debtor complies and makes payments as follows. The parties agree that the as of October 9, 2008 the Debtor is in arrears pre-petition for two (2) monthly payments in the amount of \$1,649.90 each for the months of February 2008 through March 2008 for a total of \$3,299.80; plus non-escrowed delinquent 2007 county taxes in the amount of \$1,680.30 paid by National City Mortgage Co.; plus accrued late charges in the amount of \$105.00; for a total pre-petition arrearage of \$5,085.10; and the Debtor is in arrears post petition for eight (8) monthly payments in the amount of \$1,649.90 each for the months of April 2008 through November 2008 for a total of \$13,199.20; plus late charges in the amount of \$90.00 for a total post petition arrearage of \$13,289.20; for a total delinquency of pre-petition arrearages and post petition arrearages in the amount of \$18,374.30. The November 2008 payment is calculated into the post petition arrearage amount because the debtor wishes to use the available funds to pay the real estate taxes.

The Debtor agrees that the sum of \$18,374.30 shall be paid on or before November 1, 2009 OR THE STAY IS AUTOMATICALLY LIFTED. The total amount shall be paid directly to Movant at: National City Mortgage Co. 3232 Newmark Drive,

No. 3:08-bk-00435 Doc 277 Filed 11/13/08 Entered 11/13/08 13:28:32 Page 3 of 4

Number on his check or money order.

The Debtor agrees to keep the insurance on said property current. Should insurance lapse for even the slightest period of time, then the STAY IS AUTOMATICALLY LIFTED.

The Debtor agrees to bring the real estate taxes current on or before November 15, 2008. Should the real estate taxes on the subject real property become delinquent, even for the slightest period of time, then the STAY IS AUTOMATICALLY LIFTED.

Beginning December 1, 2008, in addition to the obligation to cure the arrearages, the debtor shall resume his regular monthly payments in the amount of \$1,649.90 each. Each payment is due on the first day of the month and there shall be ¹⁰ ~~no~~ grace period on said payments. The Debtor agrees that if any monthly payment thereafter is past due for even the slightest period of time, then the STAY SHALL BE AUTOMATICALLY LIFTED.

The Movant shall forbear from foreclosing during the pendency of this case as long as the Debtor complies with the above described payment(s) and continues to promptly make his monthly payments of \$1,649.90 each.

Upon the foreclosure, it is further ORDERED that the above real estate be abandoned as an asset of the estate but if any proceeds are derived from a foreclosure of

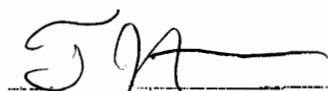
No. 3:08-bk-00435 Doc 277 Filed 11/13/08 Entered 11/13/08 13:28:32 Page 4 of 4

the security interest in excess of the amount of the liens against the property and reasonable costs of the foreclosure, said excess shall be paid over to the Trustee.

The entry of this Order relieves the Trustee from making any further disbursements upon a foreclosure pursuant to the claim previously filed by National City Mortgage Co. in this case unless it files an amended claim within 90 days for a deficiency claim from the liquidation of the collateral. This Order takes effect immediately upon its being signed by the Court.

All communications including but not limited to, notices required by state law, sent by Creditor in connection with proceedings against the property may be sent directly to the Debtor. Debtor is pro se.

PREPARED BY:




Timothy J. Amos,

WVSB # 7083

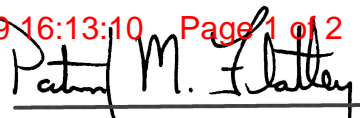
Counsel for National City Mortgage Co.

APPROVED:


George VanWagner
Pro Se Debtor

11/5/08

Exhibit I


 Patrick M. Flatley
 United States Bankruptcy Judge
 Dated: Tuesday, June 02, 2009 3:09:48 PM

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

IN RE:)	
)	
GEORGE VAN WAGNER)	CASE NO. 08-435
)	
Debtor.)	Chapter 11

ORDER

On July 8, 2008, National City Mortgage Company filed a motion for relief from the automatic stay with regard to property described as 409 Three Run Road, Bunker Hill, West Virginia. (Document No. 129). On November 13, 2008, National City Mortgage and George Van Wagner (the “Debtor”) executed an agreed order terminating the automatic stay based on certain payment conditions. (Document No. 277).

Subsequently, on November 20, 2008, the Debtor file a “Motion to Refute Order with Self Activating Provision” (Document No. 281), concerning agreed order (Document No. 277). In the Motion the Debtor complains that the Agreed Order is inaccurate in that it had misleading information regarding the past payment of tax obligations. At a hearing on December 18, 2008, National City Mortgage acknowledged that the complained of fees and charges would not be passed onto the Debtor. National City was to provide an amended order to address the misleading information. That amended order was never filed.

Meanwhile, on February 12, 2009, National City filed another motion for relief from the automatic stay with regard to property described as 127 Walker Court, Hedgesville, West Virginia. (Document No. 353). On March 12, 2009, the court granted the motion without conditions. (Document No. 369).

On March 13, 2009, the Debtor filed a “Motion to Remove National City Mortgage on 409 Three Run Road Property and to Have Withdrawn Order with Self Activating Provision.”

(Document No. 374). The basis for the motion was that National City Mortgage had transferred the loan to GMAC Mortgage. In the absence of any objection, the court granted the motion on April 20, 2009. (Document No. 392). By separate entry (Document No. 391), the court intended to vacate the agreed order granting conditional relief from the automatic stay with regard to the property at 409 Three Run Road, Bunker Hill, West Virginia. Through inadvertence, the court mistakenly vacated the order granting relief from the automatic stay with regard to the property located at 127 Walker Court, Hedgesville, West Virginia.

Therefore, it is

ORDERED that the Court's Order of April 20, 2009 (Document No. 391), be and hereby is VACATED and the Order Granting Motion for Relief from Stay to National City Mortgage, entered on March 12, 2009 (Document No. 369), be and hereby is REINSTATED. It is

FURTHER ORDERED that the Order Granting Motion for Relief of Stay to National City Mortgage, entered on November 13, 2008 (Document No. 277), be and hereby is VACATED. It is

FURTHER ORDERED that the Motion to Refute Order with Self Activating Provision filed by the Debtor on November 20, 2008 (Document No. 281), be and hereby is DENIED AS MOOT, and the court's oral request to National City Mortgage to submit an order amending the agreed order (Document No. 277) may be disregarded inasmuch as the agreed order is now vacated.

Exhibit J


 Patrick M. Flatley
 United States Bankruptcy Judge
 Dated: Wednesday, July 01, 2009 11:43:13 AM

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

IN RE:)	
)	
GEORGE VAN WAGNER)	CASE NO. 08-435
)	
Debtor.)	Chapter 11

ORDER

George Van Wagner (the “Debtor”), pro se, filed a motion to voluntarily convert his Chapter 11 case to one under Chapter 7 pursuant to 11 U.S.C. § 1112(a). The Debtor, however, objects to the appointment of a Chapter 7 trustee. He argues that “the estate will benefit from administration of the case [by him because he] can make a thorough determination as to whether there is any value to be extracted from the estate after considering the claims of creditors.” (Document No. 532). In support of his position, the Debtor cites to a statement in the legislative history to § 1112(a):

§ 1112. Conversion or dismissal

This section brings together all of the conversion and dismissal rules for chapter 11 cases. Subsection (a) gives the debtor an absolute right to convert a voluntarily commenced chapter 11 case in which the debtor remains in possession to a liquidation case.

Report of the Committee on the Judiciary, House of Representatives, To Accompany H.R. 8200, H.R. Rep. No. 95-595, 95th Cong., 1st Sess. (1977).

Contrary to the Debtor’s reading of this legislative history, it does not support a finding that the Debtor may remain in control of his bankruptcy estate and liquidate it for the benefit of his creditors. The legislative history merely recognizes that most Chapter 11 cases are controlled by debtors-in-possession, which is a defining characteristic of Chapter 11. *E.g.*, 11 U.S.C. §§ 1106 and 1107(a) (giving a Chapter 11 debtor the powers of a trustee). No corresponding provision exists in

Chapter 7 granting a debtor similar powers. In fact, the appointment of a trustee in a Chapter 7 case is mandatory. § 701(a) (“Promptly after the order for relief under this chapter, the United States trustee shall appoint one disinterested person that is a member of the panel of private trustees . . . to serve as interim trustee in the case.”). After the appointment of the interim trustee, a different trustee may be elected, but it is only creditors of the estate that have the right of election – not the debtor. § 702.

Moreover, the court is without any sufficient basis to believe that a Chapter 7 trustee would be ineffective in liquidating the Debtor’s estate in Chapter 7. While the court appreciates the Debtor’s assertions that he is in the best position to know how to maximize the value of the bankruptcy estate, the panel trustees in this District are fully capable of accomplishing this task. The panel trustees are professionals, bonded, and are statutorily charged with collecting and reducing to money the property of the estate as expeditiously as is compatible with the best interests of the parties in interest. § 704(a)(1). No basis exist in this case for the court to exercise its § 105(a) powers, as requested by the Debtor, to refuse to allow an interim trustee to be appointed. The court’s § 105(a) powers cannot be used to contravene another statute in the Bankruptcy Code. *E.g.*, *Marrama v. Citizens Bank*, 549 U.S. 365, 383 (2007) (“[W]hatever steps a bankruptcy court may take pursuant to § 105(a) or its general equitable powers, a bankruptcy court cannot contravene the provisions of the Code.”).

Therefore, it is

ORDERED that the Motion to Convert filed by George Van Wagner on June 8, 2009 (Document No. 513), be and hereby is GRANTED as follows:

A. This case be and hereby is CONVERTED to one under Chapter 7 of the Bankruptcy Code.

B. The Debtor’s request to remain as a debtor in possession of his Chapter 7 bankruptcy estate is DENIED.

It is

FURTHER ORDERED that:

A. The Debtor shall:

(1) forthwith turn over to the Chapter 7 trustee all records and property of the estate under the Debtor’s custody and control as required by Fed. R. Bankr. P. 1019(4).

- (2) within 15 days of the date of this Order, file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim as required by Fed. R. Bankr. P. 1019(5)(A)(I).
- (3) within 30 days of the date of this Order, file and transmit to the United States trustee a final report and account as required by Fed. R. Bankr. P. 1019(5)(A)(ii).
- B. All lists, inventories, schedules, and statements of financial affairs previously filed shall be deemed filed in the Chapter 7 case. If they have not been previously filed, the Debtor shall comply with Fed. R. Bankr. P. 1007 as if an order for relief had been entered on an involuntary petition on the date of the entry of this Order.
- C. If a statement of intention is required, the Debtor shall file the statement within 30 days after entry of this Order, or, before the date first set for the meeting of creditors, whichever is earlier.
- D. All claims actually filed by a creditor before conversion of the case are deemed filed in the Chapter 7 case.
- E. Any request for payment of a pre-conversion administrative expense incurred by any entity other than a governmental unit is timely if it is filed within 90 days of the date first set for the meeting of creditors. A governmental unit's request for payment of a pre-conversion administrative expense is timely if it is filed within 180-days of the entry of this Order.
- F. Any claim against the Debtor that arose after the filing of the petition and before the entry of this Order shall be treated as if such claim had arisen immediately before the date of the filing of the petition and may be filed in accordance with Fed. R. Bankr. P. 3001(a-d) and 3002.
- G. The interim Chapter 7 trustee appointed in this case is: Robert W. Trumble, P.O. Box 2509 Martinsburg WV 25402.
- H. The interim Chapter 7 trustee shall post a bond in an amount determined by the United States trustee.

Exhibit K

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG DIVISION**

In Re:

CASE NO. 08-00435

GEORGE VAN WAGNER

CHAPTER 7

Debtor(s)

**MOTION FOR ORDER GRANTING RELIEF FROM AUTOMATIC STAY
OR IN THE ALTERNATIVE, TO SEEK ADEQUATE PROTECTION**

Comes now GMAC Mortgage, LLC, for itself and its successors or assigns or as servicer, hereinafter referred to as the Secured Creditor, by counsel, for its Motion, alleges as follows:

1. This Court has jurisdiction pursuant to 28 U.S.C. §1334 and §157 and 11 U.S.C. §362. This is a core matter.
2. On or about March 28, 2008, the above named Debtor(s) filed a Chapter 11 bankruptcy petition in this Court and thereafter converted to Chapter 7 on July 1, 2009.
3. The Secured Creditor is the current payee of a promissory note dated the 30th day of October, 2006, in the principal amount of \$240,000.00, secured by a deed of trust of the same date upon property generally described in the Security Agreement as being situate in Berkeley County, West Virginia, and having a mailing address of **409 Three Run Road, Bunker Hill, WV 25413**, hereinafter referred to as the “Secured Property”. A copy of the deed of trust is attached hereto as Exhibit “A” and incorporated herein by reference.
4. The Secured Creditor is informed and believes, and based upon such information and belief, alleges that title to said property is currently vested in the name of the Debtor(s).
5. Debtor(s) has/have defaulted pursuant to the terms of the perfected promissory agreement by which this Secured Creditor holds its lien as follows:

Current Principal Balance	\$239,985.00
NINETEEN (19) Monthly payments (04/01/08 -10/01/09) @ 1,649.91	\$31,348.29
ONE (1) Monthly payment (11/01/09) @ 2,693.37	\$2,693.37
THREE (3) Monthly payments (12/01/09- 02/01/10) @ 2,093.40	\$6,280.20
Late Charges	\$110.00
Total delinquency through February, 2010	\$40,431.86

6. Upon information and belief, the Debtor(s) has/have no equity in the subject Secured Property.

7. The Secured Creditor is informed and believes, and based upon such information and belief, alleges that absent this Court's Order allowing it to proceed with the foreclosure, its security is significantly jeopardized.

WHEREFORE, the Secured Creditor moves the Court for an Order granting relief from the automatic stay imposed by §362 of the Bankruptcy Code to enable the Secured Creditor to foreclose on the subject Secured Property pursuant to West Virginia State Law, including necessary action to obtain possession of the Secured Property or, in the alternative, for adequate protection, and further requests that the fourteen (14) day stay be waived as to any Order entered on this Motion for Relief.

GMAC MORTGAGE, LLC

By counsel

/s/ Fabio Crichigno

Fabio Crichigno, Esquire (W. Va. #10074)

Sarah Crichigno, Esquire (W. Va. #10083)

Samuel I. White, P.C.

965 Hartman Run Road, Suite 1105

Morgantown, WV 26505

(304) 413-0010

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF
WEST VIRGINIA (MARTINSBURG)**

In Re:

CASE NO. 08-00435

GEORGE VAN WAGNER

CHAPTER 7

Debtor(s)

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February, 2010, I served the foregoing **MOTION FOR ORDER GRANTING RELIEF FROM AUTOMATIC STAY OR, IN THE ALTERNATIVE, TO SEEK ADEQUATE PROTECTION and NOTICE OF MOTION TO CREDITORS AND OTHER PARTIES IN INTEREST and PROPOSED ORDER**, upon the following by U. S. Mail, postage prepaid:

George Van Wagner
Post Office Box 867
Martinsburg, WV 25402
PRO-SE *Debtor*

Thomas H. Fluharty
408 Lee Avenue
Clarksburg, WV 26301
Bankruptcy Trustee

/s/ Fabio Crichigno

Fabio Crichigno, Esquire (W. Va. #10074)
Sarah Crichigno, Esquire (W. Va. #10083)
Samuel I. White, P.C.
965 Hartman Run Road, Suite 1105
Morgantown, WV 26505
Counsel for GMAC Mortgage, LLC

Exhibit L


Patrick M. Flatley
United States Bankruptcy Judge
Dated: Monday, March 08, 2010 1:01:55 PM

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG DIVISION**

In Re:

CASE NO. 08-00435

GEORGE VAN WAGNER

CHAPTER 7

Debtor(s)

ORDER GRANTING MOTION FOR RELIEF FROM AUTOMATIC STAY

This matter came on for consideration upon the Motion of GMAC Mortgage, LLC, for itself, and its successors or assigns or as servicer, for an order granting relief from the automatic stay in order to proceed with a foreclosure sale pursuant to West Virginia State Law;

1. This Court has jurisdiction pursuant to 28 U.S.C. §1334 and §157 and 11 U.S.C. §362. This is a core matter.
2. On or about March 28, 2008, the above named Debtor(s) filed a Chapter 7 bankruptcy petition in this Court and thereafter converted to Chapter 7 on July 1, 2009.
3. The Secured Creditor is the current payee of a promissory note dated the 30th day of October, 2006, in the principal amount of \$240,000.00, secured by a deed of trust of the same date upon property generally described in the Security Agreement as being situate in Berkeley County, West Virginia, and having a mailing address of **409 Three Run Road, Bunker Hill, WV 25413**, hereinafter referred to as the “Secured Property”.

4. The Secured Creditor is informed and believes, and based upon such information and belief, alleges that title to said property is currently vested in the name of the Debtor(s).

5. Debtor(s) has/have defaulted pursuant to the terms of the perfected promissory agreement by which this Secured Creditor holds its lien as follows:

Current Principal Balance	\$239,985.00
NINETEEN (19) Monthly payments (04/01/08 -10/01/09) @ 1,649.91	\$31,348.29
ONE (1) Monthly payment (11/01/09) @ 2,693.37	\$2,693.37
THREE (3) Monthly payments (12/01/09- 02/01/10) @ 2,093.40	\$6,280.20
Late Charges	\$110.00
Total delinquency through February, 2010	\$40,431.86

6. Upon information and belief, the Debtor(s) has/have no equity in the subject Secured Property.

7. The Secured Creditor is informed and believes, and based upon such information and belief, alleges that absent this Court's Order allowing it to proceed with the foreclosure, its security is significantly jeopardized.

It is ORDERED that the Secured Property be abandoned as an asset of the estate, but if proceeds are derived from the repossession and foreclosure of the Secured Property in excess of the amount of the liens against the Secured Property and reasonable costs of the foreclosure, said excess shall be paid over to the Trustee.

It is further ORDERED that the Automatic Stay is hereby modified to allow GMAC Mortgage, LLC to proceed with the repossession of the Secured Property and hold a foreclosure sale on the Secured Property.

It is further ORDERED that the fourteen (14) day stay is waived.

I ask for this:

/s/ Fabio Crichigno

Fabio Crichigno, Esquire (W. Va. #10074)

Sarah Crichigno, Esquire (W. Va. #10083)

Samuel I. White, P.C.

965 Hartman Run Road, Suite 1105

Morgantown, WV 26505

(304) 413-0010

Counsel for GMAC Mortgage, LLC

Exhibit M

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In re: George Van Wagner
Debtor

Bankruptcy # 08-00435
Chapter 7

**AMENDED SCHEDULES A, B, C AND D SUMMERY OF SCHEDULES AND
STATISTICAL SUMMERY BANKRUPTCY FORMS**

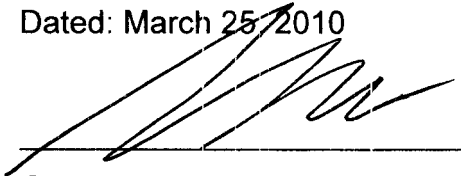
To the Honorable Judge Flatley;

I George Van Wagner, Debtor, Pro Se, request that the Court accepts these amended Bankruptcy Schedules A, B, C, and D, Summery of Schedules and Statistical Summery Bankruptcy Forms.

I am submitting these because of changed circumstances. I have had properties repossessed, replaced a vehicle, and included depreciation.

I wanted to submit an updated and accurate accounting.

Dated: March 25, 2010

A handwritten signature in black ink, appearing to read 'George Van Wagner', is written over a horizontal line.

George Van Wagner, Debtor, *pro se*

In re George Van Wagner,
DebtorCase No. 08-00435
(If known)**SCHEDULE A - REAL PROPERTY***Amended 3-25-10*

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
1999 Redman Mobile Home	Debtors Primary residence		23,000.00	0.00
Hickory Ridge, LLC	partnership		1,000.00	0.00

Total ► **24,000.00**
(Report also on Summary of Schedules.)

In re George Van Wagner
DebtorCase No. 08-00435
(If known)**SCHEDULE B - PERSONAL PROPERTY***Amended 3-25-10*

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.	x			
2. Checking, savings or other financial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and home-stead associations, or credit unions, brokerage houses, or cooperatives.		1 Checking Account City National Bank 231 Aikens Center Martinsburg, WV	1 Checking Account BB&T Bank 1815 Edwin Miller Blvd Martinsburg, WV	800.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	x			
4. Household goods and furnishings, including audio, video, and computer equipment.		Furniture, computer, TV, Stereo, Appliances 418 Royal Crest Dr. Martinsburg, WV		8,000.00
5. Books, pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.		Coins, 418 Royal Crest Dr. Martinsburg, WV		1,500.00
6. Wearing apparel.		clothing 418 Royal Crest Dr Martinsburg, WV		500.00
7. Furs and jewelry.	x			
8. Firearms and sports, photographic, and other hobby equipment.	x			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	x			
10. Annuities. Itemize and name each issuer.	x			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	x			

In re George Van Wagner,
Debtor

Case No. 08-00435
(If known)

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

Amended 3-25-10

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		Norwood, Inc. 100% Currently Out of Business		0.00
14. Interests in partnerships or joint ventures. Itemize.		Hickory Ridge, LLC		1,000.00
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.		2007, 2008, 2009 taxes not complete Federal and State		
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A – Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			

In re George Van Wagner,
Debtor

Case No. 08-00435
(If known)

SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

Amended 3-25-10

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories		1992 Chevrolet Van 1999 Redman Mobile Home (residence)		24,000.00
26. Boats, motors, and accessories	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			
0 continuation sheets attached Total				\$ 38,500.00

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

In re George Van Wagner,
DebtorCase No. 08-00435
(If known)**SCHEDULE C - PROPERTY CLAIMED AS EXEMPT**Debtor claims the exemptions to which debtor is entitled under:
(Check one box)

- ☐ 11 U.S.C. § 522(b)(2)
☐ 11 U.S.C. § 522(b)(3)

☐ Check if debtor claims a homestead exemption that exceeds
\$136,875.

Amended 3-25-10

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
Home	38-10-4	23,000.00	23,000.00
Van	38-10-4	1,000.00	1,000.00
Clothing	38-10-4	500.00	500.00
Furnishings	38-10-4	8,000.00	8,000.00
Checking accounts	38-10-4	800.00	800.00
Hickory Ridge, LLC	38-10-4	1,000.00	1,000.00

B 6D (Official Form 6D) (12/07)

In re George Van Wagner,
DebtorCase No. 08-00435

(If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS*Amended 3-25-10*

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is the creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H—Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.



Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.—2385			April 2006 financer Kubota Tractor				10,000.00	
Kubota Corp. 1175 S. Guild Ave. Lodi, CA 95240			VALUE \$ 10,000.00					
ACCOUNT NO.—9173			February 2009 bought mortgage 409 3 Run Rd. rental property				240,000.00	
GMAC PO Box 9001719 Louisville, KY 40290			VALUE \$ 350,000.00					
ACCOUNT NO.—5054			Sept 2006 mortgager 2887 MiddlewayP rental property				315,000.00	
American Servicing Co. PO Box 10388 Des Moines, IA 50306			VALUE \$ 425,000.00					
Subtotal ► (Total of this page)							\$ 565,000.00	\$
Total ► (Use only on last page)							\$	\$

1 continuation sheets
attached

(Report also on Summary of Schedules.)

(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

B 6D (Official Form 6D) (12/07) – Cont.

In re George Van Wagner,
DebtorCase No. 08-00435
(if known)**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**
(Continuation Sheet)*Amended 3-25-10*

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above.)	CODEBATOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. ----0927 HSBC PO Box 37282 Baltimore, MD 21297			Sept 2006 2nd Mortgager 2887 Middleway Pk rental property VALUE \$ 425,000.00				79,000.00	
ACCOUNT NO. ----3355 Jefferson Sec. Bank PO Box 35 Sheperdstown, WV			January 2008 mortgager 168 Ms. Stacey Ln. rental property VALUE \$ 155,000.00				100,000.00	
ACCOUNT NO. 			 VALUE \$					
ACCOUNT NO. 			 VALUE \$					
ACCOUNT NO. 			 VALUE \$					
ACCOUNT NO. 			 VALUE \$					
Sheet no. <u>2</u> of <u>0</u> continuation sheets attached to Schedule of Creditors Holding Secured Claims Subtotal (s) ► (Total(s) of this page) Total(s) ► (Use only on last page)							\$ 179,000.00	\$
							\$ 744,000.00	\$

(Report also on Summary of Schedules.)

(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

United States Bankruptcy Court

Northern District of West Virginia

In re George Van Wagner,
DebtorCase No. 08-00435Chapter 7

SUMMARY OF SCHEDULES

Amended 3-25-10

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors also must complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	yes	1	\$ 24,000.00		
B - Personal Property	yes	3	\$ 35,800.00		
C - Property Claimed as Exempt	yes	1			
D - Creditors Holding Secured Claims	yes	2		\$ 744,000.00	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	no			\$	
F - Creditors Holding Unsecured Nonpriority Claims	no			\$ 24,569.00	
G - Executory Contracts and Unexpired Leases					
H - Codebtors					
I - Current Income of Individual Debtor(s)					\$ 7,000.00
J - Current Expenditures of Individual Debtors(s)					\$ 6,500.00
TOTAL		7	\$ 59,800.00	\$ 768,569.00	

United States Bankruptcy Court

Northern District of West Virginia

In re George Van Wagner,
DebtorCase No. 08-00435Chapter 7*Amended 3-25-10***STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)**

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

☐ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	\$ 0.00
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	\$
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	\$ 0.00
Student Loan Obligations (from Schedule F)	\$ 0.00
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	\$ 0.00
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	\$ 0.00
TOTAL	\$

State the following:

Average Income (from Schedule I, Line 16)	\$ 7,000.00
Average Expenses (from Schedule J, Line 18)	\$ 6,500.00
Current Monthly Income (from Form 22A Line 12; OR , Form 22B Line 11; OR , Form 22C Line 20)	\$ 7,000.00

State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column	\$ 0.00
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column.	\$ 0.00
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column	\$ 0.00
4. Total from Schedule F	\$ 24,569.00
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)	\$ 24,569.00

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

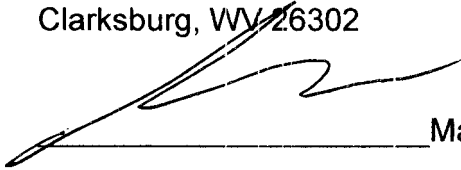
**In re: George Van Wagner
Debtor**

**Bankruptcy # 08-00435
Chapter 07**

CERTIFICATE OF SERVICE

I, George Van Wagner, Debtor, Per Se, do hereby certify that I have served a true copy of the foregoing "Amended Schedules" by mailing, regular first class United States mail, all postage fully prepaid, a true copy thereto:

Thomas Fluharty, Esq.
408 Lee Ave
Clarksburg, WV 26302



March 25, 2010

George Van Wagner, Debtor, *pro se*

Exhibit N

United States Bankruptcy Court

Northern District of West Virginia

Case No. 3:08-bk-00435

Chapter 7

In re: Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

George Van Wagner
Post Office Box 867
Martinsburg, WV 25402

Social Security / Individual Taxpayer ID No.:

xxx-xx-6853

Employer Tax ID / Other Nos.:

DISCHARGE OF DEBTOR(S)

It appearing that the debtor(s) is/are entitled to a discharge,

IT IS ORDERED:

The debtor(s) is/are granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

BY THE COURT

Dated: 6/25/10

Patrick M. Flatley
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property:* There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts That are Not Discharged.

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes;
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts; and
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

Exhibit O

Exhibit P

Exhibit Q

Exhibit R

FACSIMILE TRANSMISSION

TO: Troutman Sander

FAX PHONE NUMBER: 757-687-1591

CASE NUMBER: 10-C-390

SUBJECT: George VanWagner

DATE: 07/22/2010

NO. PAGES SENT: 29 (INCLUDING THIS PAGE)

FROM CIRCUIT CLERK

NAME:

COMPANY: BERKELEY COUNTY CIRCUIT CLERK'S OFFICEFAX NO: 1-304-262-3139 TELEPHONE NO: 1-304-264-1918
Ext. 4271

CASE NO. 10-C-390

OPENED 5/19/2010

JUDGE... 3 GRAY SILVER III

PLAINTIFF. GEORGE VAN WAGNER
VS DEFENDANT. NATIONAL CITY MORTGAGE

PRO ATTY.. PRO SE
DEF ATTY..

PAGE# DATE MEMORANDUM.....

00001	5/19/10	Civil Case Information Sheet
00002	5/19/10	Complaint filed
00003	5/20/10	Receipt Filing fee and Handling fee for Sec. of St., Copy
00004	5/20/10	Of Money Order to Sec. of St.
00005	5/20/10	Summons Issued and Sent to Sec. of St.
00006	5/27/10	Summons Return/Golden & Amos PLLC, Received by WV Sec. of
00007	5/27/10	State
00008	5/27/10	Summons Return/GMAC Mortgage, Received by WV Sec. of State
00009	5/27/10	Summons Return/National City Mortgage, Received by WV
00010	5/27/10	Sec. of State
00011	6/03/10	Answer of Defendant Golden & Amos PLLC; Cert. of Service
00012	7/06/10	Notice of Non-Service; Certificate of Service

IN THE CIRCUIT COURT FOR BERKELEY COUNTY WEST VIRGINIA

George Van Wagner,
P.O. Box 867
Martinsburg, WV 25402

Plaintiff,

CIVIL NUMBER 10-C-390

v.

National City Mortgage,
PO Box 1820
Dayton, OH 45401
800-822-5626,

GMAC Mortgage
PO Box 4622
Waterloo, IA 50704
800-766-4622

and
Golden & Amos PLLC
PO Box 81
Parkersburg, WV 26102
304-485-3851

Defendants

BERKELEY COUNTY
CIRCUIT CLERK
2010 MAY 19 PM 12:30
VIRGINIA M. SINE, CLERK

COMPLAINT

TO THE HONORABLE JUDGES OF THIS COURT:

COMES NOW, Plaintiff, George Van Wagner, *pro se*, ("Plaintiff") as equity security holder of VAC, LLC to request this Honorable Court to grant VAC, LLC Quiet Title to a certain parcel of land, located in Berkeley County, West Virginia 6.000 acres in the Mill Creek District, recorded in Deed Book 852 on page 131, and more fully described in **Exhibit A bottom of page 1 of the deed**, ("Property"). In support of his request the Plaintiff states as follows:

1. George Van Wagner is the beneficial owner of the assets of VAC, LLC, in particular, the above referenced property, herein after the "Property".

2. VAC, LLC owner of the above referenced Property took title to the Property on July 11, 2007, at the office of Pill and Pill, settlement attorneys.

3. National City Mortgage ("NCM"), as the note holder of the Property, failed to serve this Plaintiff or VAC, LLC, at their known address, any documents in relation to their sale of the note.

4. The title to the property did not transfer and is still in the legal and record ownership of George Van Wagner and VAC, LLC.

5. The Plaintiff has knowledge and belief that there is currently a dispute over the legal and beneficial title of the Property.

6. The Plaintiff and NCM had negotiated an agreement which included a lower interest rate and NCM agreed to pay the taxes. The Plaintiff made 2 payments under the new agreement totaling \$3299.80.

7. On February 16, 2009 the Debtor received a letter from NCM stating that the loan was transferred from NCM to GMAC Mortgage effective February 2, 2009 (see **Exhibit B**). The transfer did not include the conditions of the new agreement nor did it credit the payments totaling \$3299.80.

8. The Debtor contacted GMAC Mortgage and told them he was in Bankruptcy and they should address themselves to the Bankruptcy Court. They did not believe the Debtor so he sent them written notification. The Debtor feels NCM should have informed GMAC of the status of the Debtor before they sold the note.

9. NCM changed the Order (see **Exhibit C**) and requested the Debtor resign. GMAC is demanding full payment (see **Exhibit D**). This constitutes a conflict of interest.

10. This Complaint, which is supported by the attached title of the Berkeley County Land Records, see attached **Exhibit A** is filed for the purpose of quieting the title to the property.

WHEREFORE, the above considered, Plaintiff, George Van Wagner, respectfully requests that this Honorable Court grants him the following relief:

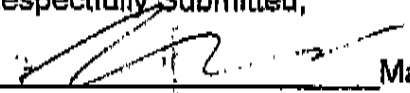
A. Entry of an Order quieting title to the subject property.

B. Entry of an Order directing GMAC to honor the payment plan negotiated between NCM and the Plaintiff.

C. Entry of an Order for the two payments totaling \$3299.80 be returned to the Plaintiff.

D. Entry of an Order granting all reasonable expenses including counsel fees for the pursuit of this matter.

Respectfully Submitted,


May 18, 2010
George Van Wagner, Plaintiff, *pro se*
PO Box 867
Martinsburg, West Virginia 25402

LIST OF ATTACHED EXHIBITS

Exhibit A, Deed recorded at the Berkeley County Land Records describing the subject property,

Exhibit B, National City Mortgage loan transfer to GMAC Mortgage

Exhibit C, National City Mortgage order change

Exhibit D, GMAC full payment request

Exhibit E, Lis Pendens

A thick black line forming a continuous, irregular wavy pattern, resembling a stylized letter 'S' or a series of connected loops. The line starts at the top left, curves to the right, then back to the left, and continues this oscillating motion, ending at the bottom right. The curves are smooth and fluid, with varying amplitudes and frequencies.

**25267
DEED**

THIS DEED, made and entered into this 11th day of July, 2007, by and between DAVID D. PILL, as Trustee, party of the first part, hereinafter referred to as Grantor, and VAC, LLC, a limited liability company, party of the second part, hereinafter referred to as Grantee.

WITNESSETH: That for and in consideration of the sum of Five Dollars (\$5.00), cash in hand paid, and other good and valuable consideration, the receipt of all of which is hereby acknowledged, the said Grantor does hereby grant, bargain, sell and convey, and by these presents has granted, bargained, sold and conveyed unto the Grantee, in fee simple, with covenants of special warranty, all that certain lot or parcel of real estate, with the improvements and appurtenances thereunto belonging, situate in the Falling Waters District, Berkeley County, West Virginia, and more particularly described as follows:

"Lot No. 35, Phase I, Section II of Leisure Living Estates, containing 8,452 square feet, as described more particularly on a plat prepared by Truman, Yebometsky & Roberts, Inc., Engineers, dated October 18, 1998, recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Plat Cabinet No. 7, at Slide 80."

AND BEING the same real estate conveyed unto George VanWagner, by deed dated December 5, 2008, from Jackie Lee Harris and Christina Faith Harris, and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book 865, at Page 157.

All that certain lot or parcel of real estate, with the improvements and appurtenances thereunto belonging, situate in the Mill Creek District, Berkeley County, West Virginia, and more particularly described as follows: All that certain lot or parcel containing 6.3652 acres, more or less, as set forth on a Plat of Survey dated December 4, 1981, prepared by P.C. DiMugno, Engineers-Surveyors, a copy of which is recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book 355, at Page 671.

AND BEING the same real estate conveyed unto George Vanwagner, by deed dated January 16, 2006, from David S. Wilson and Paula D. Wilson, and recorded in the aforesaid Clerk's Office, in Deed Book 825, at Page 538.

All that certain lot or parcel of real estate, with the improvements and appurtenances thereunto belonging, situate in the Mill Creek District, Berkeley County, West Virginia, and more particularly described as follows: All that certain lot or parcel containing 6.000 acres as shown on a plat made by Gamma Associates, Arnold L. Godlove, C.E., dated September 19, 1975, and recorded in the Office of the Clerk of the County Court of Berkeley County, West Virginia, in Deed Book 281, at Page 40, being subject to easements of record and in existence.

AND BEING the same real estate conveyed unto George Vanwagner, by deed dated October 30, 2006, from Rodney Allen Patrick and Wendy Lee Patrick, and recorded in the aforesaid Clerk's Office, in Deed Book 652, at Page 131.

All that certain lot or parcel of real estate, with the improvements and appurtenances thereunto belonging, situate in the Hedgesville District, Berkeley County, West Virginia, and more particularly described as follows: All that certain lot or parcel of real estate containing 33.6834 acres, more or less, as set forth on a Final Plat dated September 12, 1990, prepared by Davis, Renn & Associates, Inc., a copy of which is recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Plat Cabinet 4, at Slide 118, TOGETHER WITH AND SUBJECT TO any and all rights-of-ways set forth in the aforesaid plat.

LESS AND EXCEPTING THEREFROM all that certain parcel containing 2.2265 acres, more or less, as set forth on a Plat of Survey dated September 27, 2001, prepared by Berry Surveying Associates a copy of which is recorded in the aforesaid Clerk's office in Deed Book 798, at page 327, which was conveyed in Deed Book 798, at Page 327.

AND BEING the same real estate conveyed unto George H. Vanwagner, III, by deed dated October 13, 2005, from Robert Double, and recorded in the aforesaid Clerk's Office, in Deed Book 813, at Page 409. And by said Deed of Confirmation and Correction conveyed unto George H. Vanwagner, Jr., by deed dated April 24, 2006, from Robert Double and Tihance Fama Homeowners Association, Inc., and recorded in the aforesaid Clerk's Office, in Deed Book 835, at Page 448.

All of that certain lot or parcel of real estate, with the improvements thereon and the appurtenances thereunto belonging, situate in the Mill Creek District of Berkeley County, West Virginia, more particularly bounded and described as follows: Lot No. 388, as set forth on a Plat entitled "Minor Subdivisions for George VanWagner", dated July 10, 2006, prepared by P.C. DiMagno, Engineers-Surveyors, and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book 845, at Page 580.

AND BEING the same real estate conveyed unto George H. Vanwagner, by deed dated June 20, 2007, from Topaz, LLC, a West Virginia limited liability company, and recorded in the aforesaid Clerk's Office, in Deed Book 872, at Page 264.

All that certain lot or parcel of real estate, with the improvements and appurtenances thereunto belonging, situate in the Mill Creek District, Berkeley County, West Virginia, and more particularly described as follows: Lot No. 26, as set forth on a Plat entitled "Minor Subdivisions for George VanWagner", dated July 10, 2006, prepared by P.C. DiMagno, Engineers-Surveyors, and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book 811, at Page 286.

AND BEING the same real estate conveyed unto Steven A. Critos, by deed dated April 3, 2007, from Topaz, LLC, a West Virginia limited liability company, and recorded in the aforesaid Clerk's Office, in Deed Book 885, at Page 185.

All of that certain lot or parcel of real estate, with the improvements thereon and the appurtenances thereunto belonging, situate in the Mill Creek District of Berkeley County, West Virginia, more particularly bounded and described as follows: Lot No. 28A, as set forth on a Plat entitled "Minor Subdivisions for George VanWagner", dated July 10, 2006, prepared by P.C. DiMagno, Engineers-Surveyors, and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book 844, at Page 286.

AND BEING the same real estate conveyed unto Steven A. Crites, by deed dated March 16, 2007, from Topaz, LLC, a West Virginia limited liability company, and recorded in the aforesaid Clerk's Office, in Deed Book 863, at Page 860.

All of that certain lot or parcel of real estate, with the improvements thereon and the appurtenances thereunto belonging, situate in the Mill Creek District of Berkeley County, West Virginia, more particularly bounded and described as follows: Lot No. 33A, as set forth on a Plat entitled "Minor Subdivisions for George VanWagner", dated July 10, 2006, prepared by P.C. DiMagno, Engineers-Surveyors, and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book 844, at Page 288.

AND BEING the same real estate conveyed unto Steven A. Crites, by deed dated April 27, 2007, from Topaz, LLC, a West Virginia limited liability company, and recorded in the aforesaid Clerk's Office, in Deed Book 867, at Page 287.

All of that certain lot or parcel of real estate, with the improvements thereon and the appurtenances thereunto belonging, situate in the Mill Creek District of Berkeley County, West Virginia, more particularly bounded and described as follows: Lot No. 36B, as set forth on a Plat entitled "Minor Subdivisions for George VanWagner", dated July 10, 2006, prepared by P.C. DiMagno, Engineers-Surveyors, and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book 845, at Page 580.

AND BEING the same real estate conveyed unto Steven A. Crites, by deed dated April 27, 2007, from Topaz, LLC, a West Virginia limited liability company, and recorded in the aforesaid Clerk's Office, in Deed Book 867, at Page 279.

All of that certain lot or parcel of real estate, with the improvements thereon and the appurtenances thereunto belonging, situate in the Mill Creek District of Berkeley County, West Virginia, more particularly bounded and described as follows: Lot No. 37B, as set forth on a Plat entitled "Minor Subdivisions for George VanWagner", dated July 10, 2006, prepared by P.C. DiMagno, Engineers-Surveyors, and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book 845, at Page 580.

AND BEING the same real estate conveyed unto Steven A. Crites, by deed dated April 27, 2007, from Topaz, LLC, a West Virginia limited liability company, and recorded in the aforesaid Clerk's Office, in Deed Book 867, at Page 281.

All of that certain lot or parcel of real estate, with the improvements thereon and the appurtenances thereunto belonging, situate in the Hodgesville District of Berkeley County, West Virginia, more particularly bounded and described as follows: Lot 5, containing 0.0577 acre,

Townhome located at THE COVE, as set forth on a Final Plat dated May 26, 2005, prepared by Kevin D. Nelson, WVLS#2084, a copy of which is recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Plat Cabinet 11, at Slide 92.

AND BEING the same real estate conveyed unto Steven A. Crites, by deed dated June 8, 2007, from Eagle Properties, LLC, a limited liability company, and recorded in the aforesaid Clerk's Office, in Deed Book 870, at Page 565.

This conveyance is made subject to and together with any and all covenants, conditions, agreements, easements, rights, rights-of-way and/or restrictions of record and in existence.

DECLARATION OF CONSIDERATION OR VALUE

Under the penalties of fine and imprisonment as provided by law, the undersigned Grantors hereby declare that the total consideration for the property transferred by the document in which this declaration is appended is exempt pursuant to West Virginia Code §11-22-1.

WITNESS the following signatures.

GRANTOR:

David D. Pili
DAVID D. PILL, as Trustee

GRANTEE:

VAC, LLC, a limited liability company

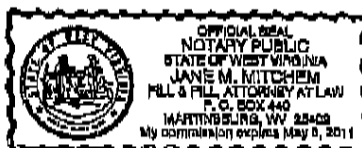
BY: [Signature]
Its Member

STATE OF WEST VIRGINIA
COUNTY OF BERKELEY, to-wit:

July The foregoing instrument was acknowledged before me this 14th day of July, 2007, by David D. Pili, as Trustee, the Grantor named herein.

Jane M. Mitchem
Notary Public

My commission expires: 5/09/11

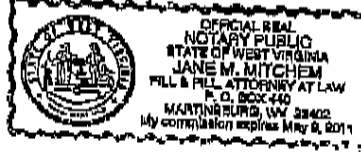


STATE OF WEST VIRGINIA
COUNTY OF BERKELEY, to-wit:

The foregoing instrument was acknowledged before me this 14th day of July, 2007, by Steven A. Criles as member, who executes this instrument on behalf of VAC, LLC, a limited liability company, the Grantee named herein.

Jane M. Mitchem
Notary Public

My commission expires: 5/09/11



NO SEARCH - NO CERTIFICATION

THIS DEED PREPARED BY:
David D. Pill, Esquire, PILL & PILL,
Attorneys at Law,
P.O. Box 440, 83 Alkens Center,
Martinsburg, West Virginia 25404

AFTER RECORDING RETURN TO:

VAC, LLC

✓ 26 Vernonia Drive
✓ Martinsburg WV 25401

[Signature]

Imm#55092/VAC Deed

BERKELEY COUNTY, WV
FILED

July 12, 2007 11:02:12

JOHN W. SMALL JR.

COUNTY CLERK

TRANSACTION NO: 2007025267

BOOK OF DEEDS

Book: 00573 Page: 00300

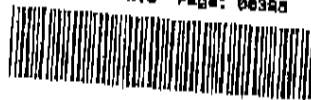
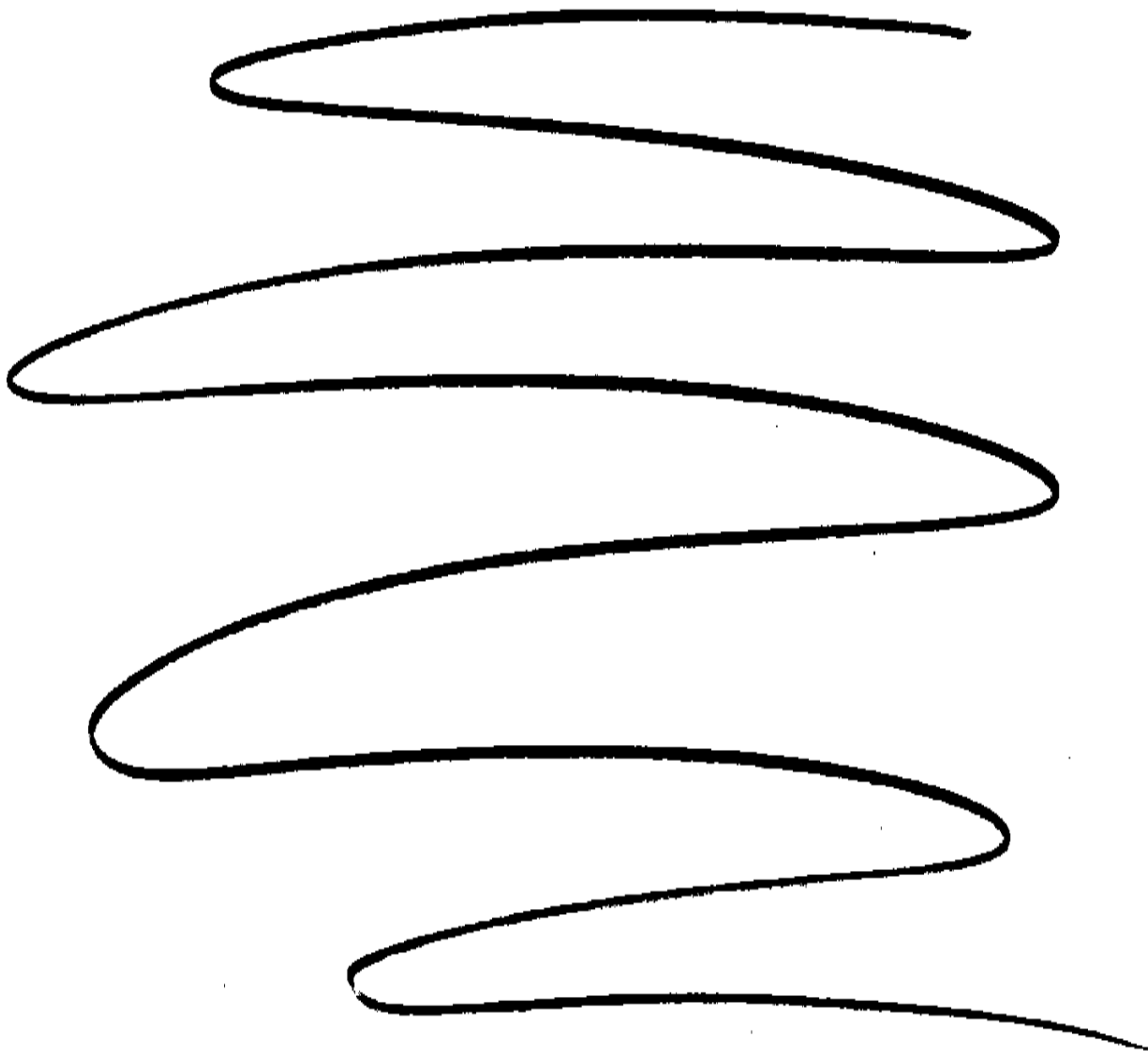


Exhibit B



National City
Mortgage Co.**National City Mortgage Co.**

A Subsidiary of National City Bank
3232 Newmark Drive • Miamisburg, Ohio 45342
Telephone: (937) 810-1200

Mailing Address:

P.O. Box 1820
Dayton, Ohio 45401-1820

February 04, 2009

GEORGE VAN WAGNER
PRO SE
127 WALKER COURT
HEDGESVILLE WV 25427

RECEIVED
FEB 16 2009

RE: Loan No. 0004920821
Case No. 0800435
Name: GEORGE VANWAGNER

The servicing of this loan has been transferred from National City Mortgage to GMAC MORTGAGE effective 02-02-2009.

All future correspondence/inquiries should be directed to the following address and telephone number:

GMAC MORTGAGE
PAYMENT PROCESSING
P O BOX 780

WATERLOO IA 50704-0780 215-734-5382

Sincerely,

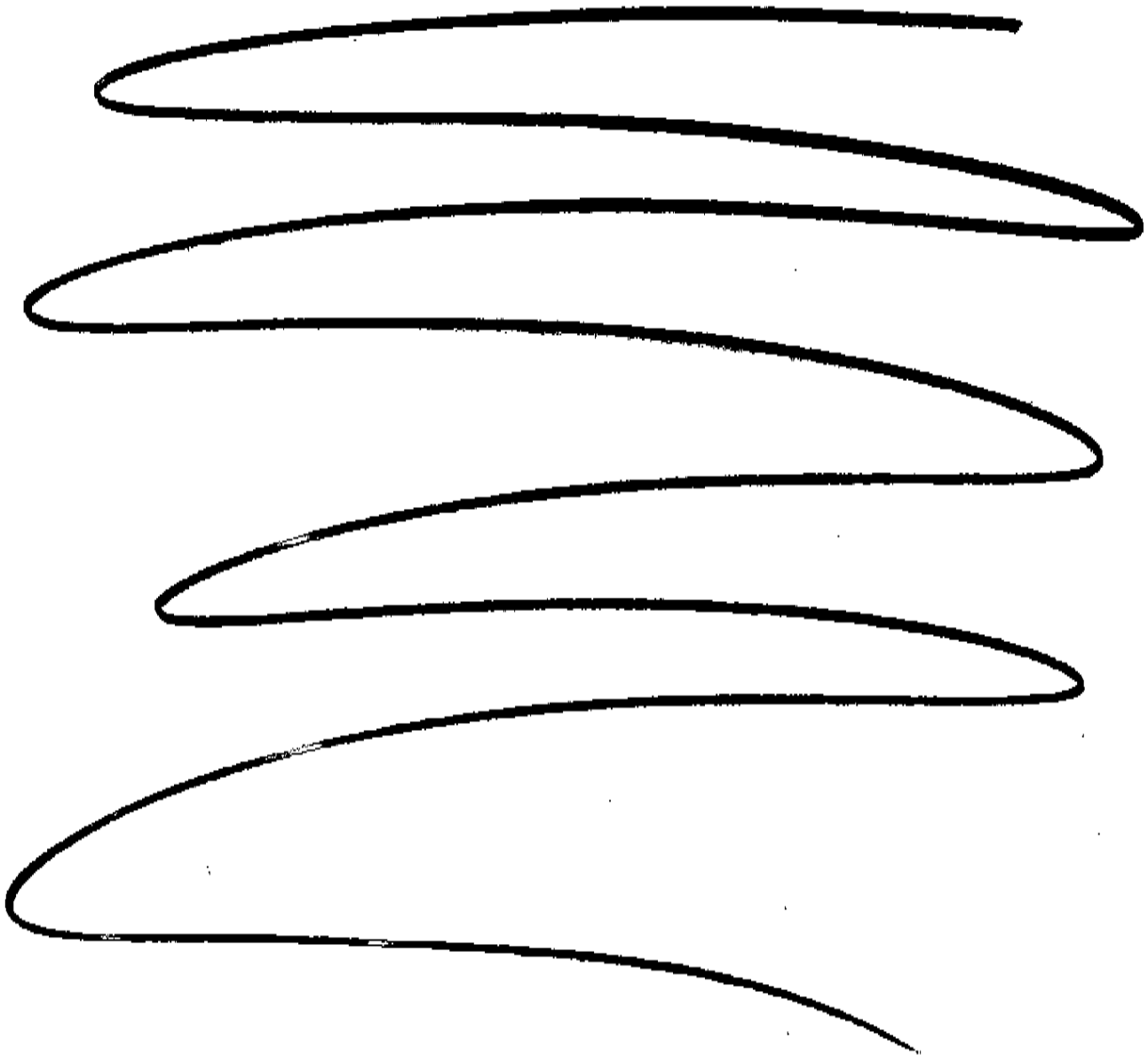
Bankruptcy Department

copy to: Trustee:
Attorney: GEORGE VAN WAGNER

BD097 009 KMV

409 3rd Rd.

Exhibit C



RECEIVED
FEB 16 2009

**GOLDEN & AMOS
ATTORNEYS AT LAW**



543 Fifth Street
P.O. Box 81

Parkersburg, WV 26101

PH (304) 485-3851 Ext 28 FAX (304) 485-0261

DATE: February 13, 2009

FROM: Diania Cramlet

E-MAIL: dcramlet@goldenamos.com

TO: George Van Wagner

FAX NO: 304-262-2746

IN RE: Self Activating Order on property located at 409 Three Run Road,
Bunker Hill, WV

COMMENTS:

Mr. Van Wagner,

Please see the Amended Order with "Self-Activating" Provision for your review and endorsement. If you have any questions or concerns, please do not hesitate to call me. I am also sending you the Certificate of Redemption from Berkeley County Clerk provided by National City. Thank you. Diania

409 3 Run Rd.

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN THE MATTER OF:
GEORGE VAN WAGNER
DEBTOR

CASE NO. 08-00435

CHAPTER 11

AMENDED ORDER WITH "SELF-ACTIVATING" PROVISION

On the 13th day of November, 2008, an Order With Self Activating Provision was filed as agreed by all parties at a hearing on the 9th day of October, 2008, upon a matter for consideration upon the motion of NATIONAL CITY MORTGAGE CO., for an order granting relief from the automatic stay herein. The Movant appeared by Counsel Timothy J. Amos and the Debtor appeared in person, pro se. After entry of said Self Activating Order it was brought to the attention of counsel for the Movant that when the pro se debtor went to pay his current taxes he was not able to pay said taxes because National City had not paid the 2007 taxes. A telephonic hearing was held on the 18th day of December, 2008 on the Pro Se Debtors Motion to Refute Order With Self Activating Provision because these taxes had not been paid as stated in said Order. Counsel for National City Mortgage Co. informed the parties that there had been a miscommunication between departments, and therefore the taxes had not actually been paid by National City as was stated in said Order. On the 12th day of December, 2008 National City Mortgage Co. issued check number 181113 in the amount of \$3,276.64, check number 177977 in the

amount of \$35.00, and check number 177976 in the amount of \$294.71 payable to the Berkeley County Sheriff's Office to redeem said property; and on December 15, 2008 the funds were sent via Federal Express to Berkeley County Delinquent Land Department to redeem the property with an address of 409 Three Run Rd, Bunker Hill, WV 25413. National City Mortgage Company will be responsible for all penalties and additional fees incurred in the redemption of said property. The only amount that the pro se debtor will be responsible for is the \$1680.30 for the 2007 taxes; and the base amount of \$3,260.25 for the 2008 taxes to be paid through an escrow account.

WHEREFORE, the Court ORDERED that the Order With Self Activating Provision to be amended to reflect an accurate accounting for the pro se debtor, and it appearing to the Court that an agreement had been reached regarding disposition of the motion for relief and motion to refute and upon discussing this matter with the parties and hearing the positions of the parties, the Court finds that said motion is well taken, and it is,

ORDERED that the automatic stay of Title 11 U.S.C. § 362 shall terminate as hereinafter set forth in the Debtors' interest in the hereinafter described real estate, situate in the County of Berkeley, State of West Virginia, to-wit:

All that certain lot or parcel of real estate together with the improvements thereon and appurtenances thereto belonging, situate in Mill Creek District, Berkeley County, West Virginia, and more particularly described as follows:

All that certain lot or parcel containing 6.000 acres as shown on a plat made by Gamma Associates, Arnold L. Godlove, C. E., dated September 19, 1975, and recorded in the Office of the Clerk of the County Court of

Berkeley County, West Virginia, in Deed Book 291, at page 40, being subject to easements of record and inexistence.

AND BEING the same parcel of real estate conveyed to George Van Wagner by deed dated the 30th day of October 2006, from Rodney Allen Patrick and Wendy Lee Patrick, his wife, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, immediately preceding this instrument.

The movant shall forbear from foreclosing during the pendency of this case as long as the Debtor complies and makes payments as follows. The parties agree that the as of October 9, 2008 the Debtor is in arrears pre-petition for two (2) monthly payments in the amount of \$1,649.90 each for the months of February 2008 through March 2008 for a total of \$3,299.80; plus accrued late charges in the amount of \$105.00; for a total pre-petition arrearage of \$3,404.80; and the Debtor is in arrears post petition for eight (8) monthly payments in the amount of \$1,649.90 each for the months of April 2008 through November 2008 for a total of \$13,199.20; plus late charges in the amount of \$90.00 for a total post petition arrearage of \$13,289.20; for a total delinquency of pre-petition arrearages and post petition arrearages in the amount of \$16,694.00. The November 2008 payment is calculated into the post petition arrearage amount.

The Debtor agrees that the sum of \$6,694.00 shall be paid on or before November 1, 2009 OR THE STAY IS AUTOMATICALLY LIFTED. The total amount shall be paid directly to Movant at: National City Mortgage Co. 3232 Newmark Drive, Miamisburg, OH 45342, Attn: Bankruptcy Department. The Debtor shall include his loan Number on his check or money order.

The Debtor agrees to keep the insurance on said property current. Should insurance lapse for even the slightest period of time, then the STAY IS AUTOMATICALLY LIFTED.

The Debtor agrees to bring the real estate taxes current on or before November 1, 2008. Should the real estate taxes on the subject real property become delinquent, even for the slightest period of time, then the STAY IS AUTOMATICALLY LIFTED.

done Rec'd Jan
Beginning December 1, 2008, in addition to the obligation to cure the arrearages, the debtor shall resume his regular monthly payments in the amount of \$1,649.90 each. Beginning March 1, 2009, the pro se debtor shall repay the 2007 county taxes in the amount of \$1,680.30 and the 2008 county taxes in the amount of \$3,260.25 for a total of \$4,940.55 by making monthly escrow shortage payments in the amount of \$273.05 to be added to his regular monthly payment in the amount of \$1,649.90 for a total monthly payment of \$1,922.95 until such time as the 2007 taxes and 2008 taxes are paid in full. Each payment is due on the first day of the month and there shall be no grace period on said payments. The Debtor agrees that if any monthly payment thereafter is past due for even the slightest period of time, then the STAY SHALL BE AUTOMATICALLY LIFTED.

The Movant shall forebear from foreclosing during the pendency of this case as long as the Debtor complies with the above described payment(s) and continues to promptly make his monthly payments of \$1,922.95 each.

Upon the foreclosure, it is further ORDERED that the above real estate be abandoned as an asset of the estate but if any proceeds are derived from a foreclosure of the security interest in excess of the amount of the lien against the property and reasonable costs of the foreclosure, said excess shall be paid over to the Trustee.

The entry of this Order relieves the Trustee from making any further disbursements upon a foreclosure pursuant to the claim previously filed by National City Mortgage Co. in this case unless it files an amended claim within 90 days for a deficiency claim from the liquidation of the collateral. This Order takes effect immediately upon its being signed by the Court.

All communications including but, not limited to, notices required by state law, sent by Creditor in connection with proceedings against the property may be sent directly to the Debtor. Debtor is pro se.

PREPARED BY:

Timothy J. Amos,
WVSB #7683
Counsel for National City Mortgage Co.

APPROVED:

George VanWagner
Pro Se Debtor

JAN-15-2009 THU 08:54 AM BERKELEY CO FIDUCIARY

FAX NO. 3042877830

P. 01/01

437 - 713 - 17125

Certificate of Redemption
Berkeley County, West Virginia

No:

WVSACCCOR Revised May 2003

West Virginia Code §11A-3-25 and §11A-3-25

Date of Redemption:

12/18/08

Assessor's Account Number: 07030956

Tax Ticket No.: 4117

Tax Year: 2007

Map: 11

Parcel No.: 0015

Taxes listed in the name of:

Patrick Rodney Allen

Property located in

Municipality

and Described As:

LT A Patrick L D 600

Redeemed by:

National City Mortgage

Address:

3733 Newmarket Dr

Minneapolis, MN 55412

RECEIPT FOR REDEMPTION

Amount of tax, interest, and other charges due on the date of the sale, plus interest at the rate of 1% per month from the date of the sale to the date of redemption.	Amount of tax, interest, and other charges due on the date of the sale, plus interest at the rate of 1% per month from the date of the sale to the date of redemption.	Amount of tax, interest, and other charges due on the date of the sale, plus interest at the rate of 1% per month from the date of the sale to the date of redemption.
Additional taxes paid by the purchaser, his or her heirs or assigns, that have been recorded in the county clerk's office and county clerk's fees for recording (\$2.00), plus interest at the rate of 1% per month from the date of the payment to the date of redemption.	Additional taxes paid by the purchaser, his or her heirs or assigns, that have been recorded in the county clerk's office and county clerk's fees for recording (\$2.00), plus interest at the rate of 1% per month from the date of the payment to the date of redemption.	Additional taxes paid by the purchaser, his or her heirs or assigns, that have been recorded in the county clerk's office and county clerk's fees for recording (\$2.00), plus interest at the rate of 1% per month from the date of the payment to the date of redemption.
Expenses for title examination and preparation of deed of redemption from January of the year following the sheriff's sale of the property to the date of redemption, but that the tax and must be verified in accordance with §11A-3-19.	Expenses for title examination and preparation of deed of redemption from January of the year following the sheriff's sale of the property to the date of redemption, but that the tax and must be verified in accordance with §11A-3-19.	Expenses for title examination and preparation of deed of redemption from January of the year following the sheriff's sale of the property to the date of redemption, but that the tax and must be verified in accordance with §11A-3-19.
County Clerk's fees and notice to redeem (\$5.00 original, \$0.00 copy).	County Clerk's fees and notice to redeem (\$5.00 original, \$0.00 copy).	County Clerk's fees and notice to redeem (\$5.00 original, \$0.00 copy).
Cost of certified mail for notice to redeem (\$4.42 per notice).	Cost of certified mail for notice to redeem (\$4.42 per notice).	Cost of certified mail for notice to redeem (\$4.42 per notice).
Cost of publication for notice to redeem.	Cost of publication for notice to redeem.	Cost of publication for notice to redeem.
All other statutory costs paid by purchaser.	All other statutory costs paid by purchaser.	All other statutory costs paid by purchaser.
Total Amount Payable to Sheriff - Make check payable to the Sheriff	Total Amount Payable to Sheriff - Make check payable to the Sheriff	Total Amount Payable to Sheriff - Make check payable to the Sheriff
Cost of Certificate of Redemption - Make check payable to the Clerk	Cost of Certificate of Redemption - Make check payable to the Clerk	Cost of Certificate of Redemption - Make check payable to the Clerk
Total Amount Paid	Total Amount Paid	Total Amount Paid

Certificate Number:

2008-5

Certificate of Sale

Date Issued: 11-18-07

Purchaser Name:

Patrick Rodney Allen

Address:

3733 Newmarket Dr

Charges to be Made to Land Books

This certificate is a receipt for the money paid for the redemption of this property. Furthermore, this certificate of redemption and record thereof shall be prima facie evidence of the redemption of the above named certificate of sale and release of the lien that such certificate, on the lands therein described.

Given this 18 day of Dec 2008

Clerk of Berkeley County

Exhibit D



2014 Mortgage Account Statement

CUSTOMER INFORMATION

Name: George Vanvagner
Account Number: 0359529173
Home Phone #: (304)754-8021

PROPERTY ADDRESS

463 THREE RUN RD
BUNKER HILL WV 25413

GMAC Mortgage

Visit us at www.gmacmortgage.com for account information or to apply on-line.

[illegible]

#BWNH1PY
#KW04729B34944P

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 104

GEORGE VANWAGNER
127 WALKER CT
HEDGESVILLE WV 25427-3831

RECEIVED

FEB 22 2009

Customer Care Inquiries: 1-800-766-4822
Home Financing Needs: 1-866-690-8322

Please verify your mailing address, borrower and co-borrower information. Make necessary corrections on this portion of the statement, detach and mail to address listed for inquiries on the reverse side. If you do not want GMAC Mortgage to send you mortgage account statements in the future, please contact us at 800-850-4622.

Account Number	0359529173
Current Statement Date	February 10, 2009
Maturity Date	November 01, 2036
Interest Rate	8.25000
Current Principal Balance*	\$239,985.00
Current Escrow Balance	\$6,779.98-
Interest Paid Year-to-Date	\$0.00
Taxes Paid Year-to-Date	\$0.00

Principal and Interest	\$1,649.90
Subsidy/Buydown	\$0.00
Escrow	\$0.01
Unpaid Amount	\$18,149.01
Late Charges	\$50.00
Other	\$1,485.01
Total Unpaid Amount	\$21,333.93
Payment Date	April 01, 2008

Please call 1-800-850-4022 for any questions
relating to conflict of interest or non-competition.

Account Activity Since Last Statement

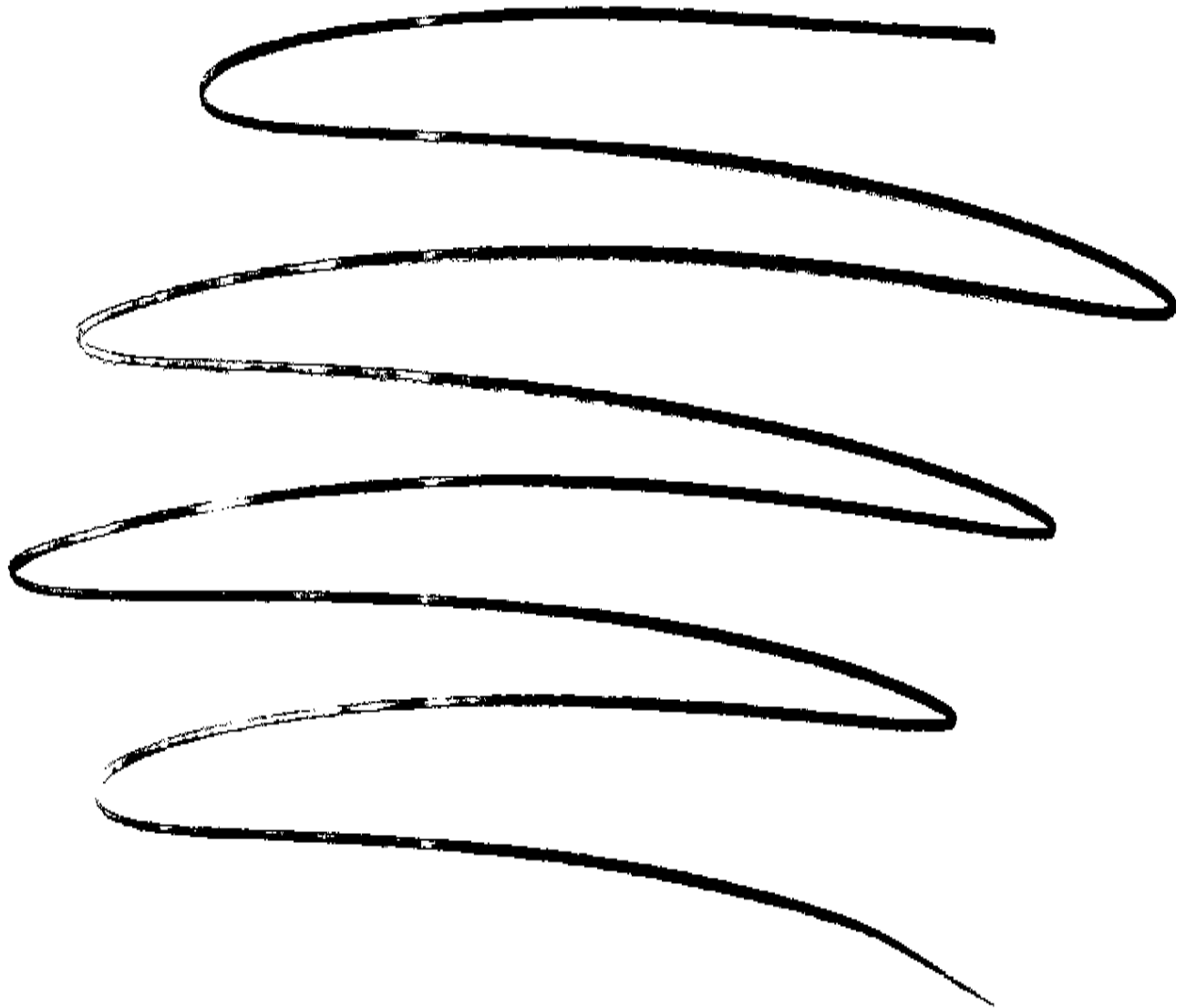
Description	Due Date	Tran. Date	Tran. Total	Principal	Interest	Escrow	Add'l Products	Late Charge	Other
PD EXPENSE ADVANCES	03/01/08	02/10/09	\$1,500.00-						\$1,500.00-
Receipt	03/01/08	02/05/09	\$6,524.99-			\$6,539.98-			\$14.99

***This is your Principal Balance only, not the amount you are required to pay the loan in full. For payoff figures and mailing instructions, call the Customer Care number above or visit us online at www.automatedpayments.com. For payoff figures through our automated system (24 hours a day, 7 days a week). See back for automatic payment sign-up information and other terms, conditions.**

Important News

Our goal is to indicate a Bankruptcy has been filed in connection with this account. This statement is being furnished for informational purposes only and is not an attempt to collect a debt. Please disregard the payment information below to the extent it conflicts with any Order or requirement of the Court. Please call the number listed above for questions relating specifically to your bankruptcy.

Exhibit E



IN THE CIRCUIT COURT FOR BERKELEY COUNTY WEST VIRGINIA

**George Van Wagner
PO Box 867
Martinsburg, WV 25402**

Plaintiff

Vs.

**CIVIL ACTION 10-C-390
JUDGE**

**National City Mortgage, et al
Defendants**

NOTICE OF LIS PENDENS

KNOW ALL MEN BY THESE PRESENTS that George Van Wagner, the Plaintiff in the above enlisted action by this memorandum filed with the Clerk of Berkeley County, West Virginia, on the ____ day of May, 2010, claims a lien against the property described below, and states that the lien is based on a suit for Quiet Title on a portion of said real estate, which suit is now pending in the Circuit Court of Berkeley County, West Virginia. The title of action is George Van Wagner vs. National City Mortgage, et al. The names of the parties are George Van Wagner, National City Mortgage, GMAC, and Golden & Amos PLLC. The description of the property to be affected is:

All that certain lot or parcel of real estate together with the improvements thereon and appurtenances thereto belonging, situate in Mill Creek District, Berkeley County, West Virginia and more particularly described as follows:
All that certain lot or parcel containing 6.000 acres, as shown on a plat made by Gamma Associates, Arnold L. Goodlove, C.E. dated September 19, 1975, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book 291, at Page 40, being subject to easements of record and in existence.

AND BEING the same parcel of real estate conveyed unto George Van Wagner, by deed dated October 30, 2006, from Rodney Allen Patrick and Wendy

Lee Patrick, and recorded in the aforesaid Clerk's office in Deed Book No. 852, at page 131.

The nature of the lien, right, or interest sought to be enforced against said property in the aforementioned Civil Action is based on a suit for Quiet Title on a portion of said real estate. A lien is sought against all of said real estate with the improvements and appurtenances located thereon, and any funds that may be expected to be received by the Defendant by the sale of said real estate. The name of the party whose estate is intended to be affected is VAC, LLC.

Dated this day of , 2010

George Van Wagner
Plaintiff

NOTARY CERTIFICATE

Commonwealth of West Virginia

County of Berkeley,

The foregoing instrument was acknowledged by _____

Before me on _____ 2010

Notary Public

My Commission Expires:

S U M M O N S

CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

GEORGE VAN WAGNER
P.O. BOX 867
MARTINSBURG WV 25402

v. 10-C-390 GRAY SILVER III

NATIONAL CITY MORTGAGE
P.O. BOX 1820
DAYTON OH 45401

GMAC MORTGAGE
P.O. BOX 4622
WATERLOO IA 50704

GOLDEN & AMOS PLLC
P.O. BOX 81
PARKERSBURG WV 26102

To the Above-Named Defendant(s):

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon GEORGE VAN WAGNER Plaintiff's Attorney, whose address is P.O. BOX 867 MARTINSBURG, WV 25402

an answer, including any related counter-claim you may have, to the complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

DATED: 05/20/10

VIRGINIA M. SINE, Clerk
Berkeley County Circuit Court

By: Dusan C Phillips, Deputy

cc
served to
not to file.
HPT.

Exhibit S

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

GEORGE VAN WAGNER,

Plaintiff.

v.

CIVIL ACTION NO.: 10-C-390
Honorable Gray Silver, III

GMAC MORTGAGE, LLC, ET AL

Defendants.

**ORDER GRANTING GMAC MORTGAGE, LLC'S
MOTION TO DISMISS**

On the 10th day of February, 2011, came the Plaintiff George Van Wagner, *Pro* and came Defendant GMAC Mortgage LLC by counsel, Jason Manning, and came Defendant PNC Bank, National Association, successor in interest to National City Bank, by counsel Peter T. DeMasters, and came Defendant, Golden & Amos PLLC by counsel, Timothy Amos on GMAC Mortgage, LLC's Motion to Dismiss. The Court having read the motion and opposition, and hearing the arguments finds the following:

1. PNC Bank, National Association is the successor in interest to National City Bank.
2. National City Bank extended a loan to Plaintiff secured by certain real estate owned by VAC LLC.
3. PNC Bank, National Association, sold the note to GMAC Mortgage, LLC in February 2009.
4. Plaintiff brought this action against PNC Bank, National Association and others to quiet title to the real estate and to have GMAC honor an agreement negotiated by Van Wagner and National City Bank.

2011 MAR 10 AM 9:47
VIRGINIA N. SINE, CLERK

5. Said real estate is owned by VAC LLC. Plaintiff George Van Wagner is not the owner of the real estate.

6. Plaintiff, while he may be a member of the LLC, is a separate legal entity from VAC LLC.

7. Because Plaintiff does not hold any interest in the real estate, he is not a real party in interest.

8. Even if Plaintiff were allowed to amend the Complaint to add VAC LLC as a Plaintiff, he would not be able to proceed *Pro Se*, as a limited liability company cannot proceed *Pro Se* and must have a licensed attorney represent it.

9. Because PNC is no longer holder of the note, it has no interest in the real estate that is the subject of this suit.

CONCLUSIONS OF LAW

1. Rule 12(b)(6) of the West Virginia Rules of Civil Procedure requires a dismissal of a Complaint when it appears beyond a doubt that Plaintiff cannot prove any set of facts which would entitle him to relief. Syllabus Point 3 Chapman v. Kane Transfer Co. Inc., 236 S.E. 2d 207 (W.Va. 1977). For the purposes of a Motion to Dismiss under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, the Court assumes the truth of all allegations in the Complaint. Sedlock v. Moyle, 688 S.E. 2d 176, 179 (W.Va. 2008).

2. West Virginia Rules of Civil Procedure Rule 17(a) require that every action shall be prosecuted in the name of the real party in interest to ensure that a party who asserts a cause of action possesses under substantial law, right to be enforced. Kessecker v. Bird, 490 S.E. 2d 754 (W.Va. 1997).

3. Plaintiff George Van Wagner is not a real party in interest inasmuch as the cause of action he asserts are for property held in the name of VAC LLC, a non party to this action.

4. Further, even if this matter was to be construed is being brought in the name of VAC LLC, Plaintiff, George Van Wagner is not a licensed attorney and cannot represent VAC LLC.

5. To sustain a quiet title action in West Virginia a Plaintiff must show that (1) he has a valid and equitable title to the property at issue, (2) that he has actual possession of the property at issue, and, (3) that the Defendant has some claim to the property of issue. Hyman v. Swint, 119 S.E. 866, 867 (W.Va. 1923).


6. Plaintiff in this case has no valid and equitable claim to the real estate and the Defendant PNC has no claim to the real estate, therefore, Plaintiff cannot sustain a claim.

Based on the above, this Court ORDERS that the Complaint against GMAC Mortgage, LLC be, and the same hereby is, dismissed without prejudice.


The Court notes the objections and exceptions of Plaintiff.

The Clerk is directed to provide a certified copy of this Order to all counsel of record and to Plaintiff, *Pro Se*, at his last known address.

ENTERED this 9th day of March, 2011.

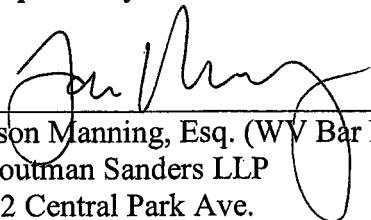


Honorable Gray Silver, III
A TRUE COPY
ATTEST

Virginia M. Sine
Clerk Circuit Court
By: 

Deputy Clerk

Prepared by:

A handwritten signature in black ink, appearing to read "Jason Manning", is written over a horizontal line.

Jason Manning, Esq. (WV Bar No. 11277)
Troutman Sanders LLP
222 Central Park Ave.
Suite 2000
Virginia Beach, VA 23462

Exhibit T

80-81

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

GEORGE VAN WAGNER,
Plaintiff,

v.

Civil Action No: 10-C-390
Judge SilverNATIONAL CITY MORTGAGE,
GMAC MORTGAGE, and
GOLDEN & AMOS PLLC.
Defendants.CIVIL ORDER BOOK NO. 225
PAGE 185-186
DATE 4-30-11

VIRGINIA PL. CLERK

2011 APR 18 AM 10:55

ORDER GRANTING MOTION TO DISMISS DEFENDANT
GOLDEN & AMOS PLLC

On the 28th day of February, 2011, the parties appeared for a properly noticed and scheduled Hearing on multiple Motions by the Plaintiff and Defendants. Defendant Golden & Amos PLLC orally moved the Court to dismiss it from the instant case. The Defendant objected to the Court ruling on the Defendant's oral Motion to Dismiss. All other Defendants were dismissed from the action without prejudice. Pursuant to the Plaintiff's objection, the Defendant **GOLDEN & AMOS PLLC**, filed and presented a *no Plaintiff filed an Objection to Dismiss the Motion to Dismiss.* MOTION TO DISMISS for the Court's Consideration. Upon considering the same the Court finds that

1. The Plaintiff's Complaint fails to state a claim upon which relief can be granted against this Defendant as this Defendant has neither a claim to quiet with regard to the subject real property nor has it received payment from the Plaintiff. Reading the Complaint in a light most favorable to the Plaintiff, this Defendant is, at most, a witness.

2. The Plaintiff is attempting to represent VAC, LLC, a Limited Liability Company.

In West Virginia, a limited liability company must be represented by counsel.

After the issues raised in the subject Motion were thoroughly argued at the February 28, 2011 hearing, the Plaintiff agreed to waive a hearing on the subject Motion and let the Court decide it on the written submissions.

CC
4-18-11
G Van Wagner
T Amos
P DeMasters

George VanWagner is not an attorney licensed to practice law in the State of West Virginia.

3. On February 28, 2011, all other parties were dismissed from this action and none of the pleadings allege any wrongdoing by this Defendant.

WHEREFORE, IT IS ORDERED THAT:

1. Defendant **GOLDEN & AMOS PLLC** is **DISMISSED WITHOUT PREJUDICE.**

2. The case is dismissed without prejudice and is retired from the Court's docket.

*Plaintiff's objection is noted -
The Clerk shall forward an attached copy of this Order to Plaintiff's counsel Attorney Amos.*

ENTERED THIS 18th DAY OF APRIL, 2011


The Honorable Gray Silver III

Prepared By
Defendant
GOLDEN & AMOS PLLC
By Counsel

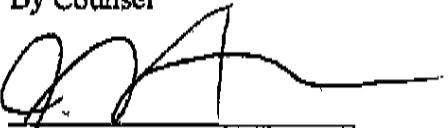

Timothy J. Amos
Counsel for Defendant
WV Bar ID # 7683
GOLDEN & AMOS PLLC
543 Fifth Street
Parkersburg, WV 26101
(304) 485-3851

Exhibit U

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

FILED

AUG 12 2011

US DISTRICT COURT
MARTINSBURG, WV 25401

GEORGE VAN WAGNER,

Plaintiff.

V

RESIDENTIAL FUNDING COMPANY, LLC, et al.,

NATIONAL CITY MORTGAGE,

GOLDEN & AMOS PLLC;

TIM AMOS

GMAC MORTGAGE;

PETER T. DEMASTERS;

FLAHERTY, SESABAUGH, BONASSO PLLC;

SUSAN ROMAIN

PNC BANK NATIONAL ASSOCIATION;

SENECA TRUSTEES, INC;

JASON MANNING,

TROUTMAN SANDERS LLP

Civil Action

3:11cv666

Defendants.

**COMPLAINT AND MOTION
TO ENJOIN WRONGFUL FORECLOSURE ACTION**

Comes now, George Van Wagner (hereinafter Van Wagner) Pro se in good faith, and in accordance with Rule 3 of the Federal Rules of Civil Procedure and files his Complaint and Motion to Enjoin Wrongful Foreclosure Action.

JURISDICTION

This honorable court has jurisdiction to entertain this complaint within USC 28 §1332, PART 4 chapter 85 whereas there is a diversity in citizenship of parties and the amount in controversy exceeds \$75,000. As well as companies named herein as defendants have federal charters to engage in business in a intrastate as well as interstate capacity

PARTIES INVOLVED

GEORGE VAN WAGNER, PRO SE
P.O. BOX 867
MARTINSBURG, WV 25402

RESIDENTIAL FUNDING COMPANY, LLC (Charter and entity unknown)
8400 Normandale Blvd., Ste. 250
Minneapolis, Minnesota 55437

SENECA TRUSTEES, INC.
6108 MID ATLANTIC DRIVE
MORGANTOWN, WV 26505

NATIONAL CITY MORTGAGE
P.O. Box 1820
Dayton, Ohio 45401-1820

Golden & Amos PLLC (*Tim Amos*) Counsel for National City Mortgage
P.O. Box 81
Parkersburg, WV 26102

PNC BANK (Successor to City National)
249 5th Ave., Ste. 30
Pittsburgh, PA 15222

Flaherty, Sensabaugh, Bonasso, PLLC (*Susan Romain and Peter T. Demasters*) (counsel for PNC)
P.O. BOX 3843
Charleston, WV 25338-3843

GMAC MORTGAGE
P.O. BOX 4622

WATERLOO, IA. 50704

TROUTMAN SANDERS LLP -Jason Manning (counsel of record for GMAC)
222 CENTRAL PARK AVENUE SUITE 2000
VIRGINIA BEACH, VA 23462

PROPERTY IN QUESTION

At the heart of this dispute is the following described real estate, together with its improvements, easements and appurtenances thereunto belonging, situate in Mill Creek District, Berkeley County, West Virginia, and more particularly described.

All that certain lot or parcel containing 6.000 acres as shown on plat made by Gamma Associates, Arnold L. Godlove, C.E., dated September 19, 1975 and recorded in the Office of the Clerk of the County Court of Berkeley County, West Virginia, in Deed Book 291, at page 40, being subject to easements of record and in existence. At the time of the execution of the Deed of Trust, this property was reported to have an address of (and currently has an address of) 409 three Run Road, Bunker Hill, WV. 25413

WRONGFUL AND NEGLIGENT ACTIONS BY DEFENDANTS

***LOAN WAS SOLD 3 TIMES WITHOUT NOTIFYING ALL PARTIES
DECEIT AND FRAUDULENT PRACTICE OF FORECLOSURES
RENEGE ON AGREEMENT VIOLATED TRUTH-IN-LENDING ACT
NOT GIVEN TIME TO CURE TO REDEEM
FAILURE TO PERFORM TITLE TAKEDOWN
THE SALE AND RESALE(S) OF THE LOAN, OR THE SERVICING OF IT, WAS RIDDLED
WITH UNFAIR AND DECEPTIVE PRACTICES***

STATEMENT OF FACTS

On October 30, 2006, real estate parcel as described above was conveyed unto the Plaintiff, George Van Wagner and recorded in the Clerk of the County Commission for Berkeley County WV In Deed Book 852 at page 131 On July 11, 2007, same property was conveyed from George Van Wagner to VAC, LLC through David Pill, trustee. VAC LLC held and holds title to said property, George Van Wagner held and holds deed of trust therein, and City National held the Mortgage Note.

On or about November 2009, in lieu of bankruptcy, a compromise was made to lower the interest rate and National City agreed to pay the taxes. All parties agreed and the presiding Judge signed off on the avoidance of bankruptcy.

Sometime thereafter, National City Mortgage sold the loan and failed to serve VAC, LLC or Van Wagner any documents relating to their sale of the note. On February 16, 2009 National City sent Van Wagner (not VAC) a letter advising that the servicing of the loan was transferred to GMAC.

National never informed GMAC of the bankruptcy proceedings or the new agreement. Although Van Wagner had indeed started paying his new lower payment as agreed, when the transfer to GMAC took place, the payments were not included in the conditions, nor were the amounts credited and the transfer and sale transpired without disclosing the factual terms of the agreement.

Van Wagner believed the payments were to be made to National City as the agreement stipulated, and when Van Wagner received a letter on 02/23/09 from GMAC advising that National City Mortgage will be unable to accept payments after 02/01/09, Van Wagner believing he was a victim of deceit did not know who he was supposed to pay, and payments ceased.

On August 02, 2011, Van Wagner received a letter from Seneca Trustees, Inc. advising that as a substitute trustee at the direction of Residential Funding Company, that the property accelerated to declare all sums due and that property would be sold on August 23, 2011

Van Wagner has no idea as to the entity of Residential Funding, how they have any claim to the property, or how they retain any right to seek foreclosure, and Residential Funding have yet to produce documentation they hold any interest.

ARGUMENT

Van Wagner has a right to know the rightful owner of the note so an offer for payment of the note at a discount and at fair market value can be made. If the note has been pledged and

encumbered, then that party must be made aware of the foreclosure and your right to negotiate with them a payment and release of the note by you, other lien holders or private parties.

Van Wagner had the right to have his modified term honored, and the renegeing thereof constituted a violation of the truth in lending act.

The Real Estate Settlement Procedures Act of 1974

(RESPA) (12 USC 2601 *et seq.*) (the "Act") became effective on June 20, 1975. The Act requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process. The Act also protects borrowers against certain abusive practices, including the resale of loan without notifying all parties, and requiring that the Lender must give the "Borrowers" notice of the loan default and an opportunity to cure the default before the loan can be accelerated.

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT 3500.21

d)Notices of Transfer; loan servicing.(1)Requirement for notice. (i)Except as provided in this paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section, each transferor servicer and transferee servicer of any mortgage servicing loan shall deliver to the borrower a written Notice of Transfer, containing the information described in paragraph (d)(3) of this section, of any assignment, sale, or transfer of the servicing of the loan. The following transfers are not considered an assignment, sale, or transfer of mortgage loan servicing for purposes of this requirement if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:

(A)Transfers between affiliates; (B)Transfers resulting from mergers or acquisitions of servicers or subservicers; and (C)Transfers between master servicers, where the subservicer remains the same

WEST VIRGINIA CODE

§46A-2-106. Notice of consumer's right to cure default; cure; acceleration

Except as hereinafter provided in this section, after a default on any installment obligation or any other secured obligation other than with respect to a covenant to provide insurance for or otherwise to protect and preserve the property covered by a security interest or lease, a creditor may not accelerate maturity of the unpaid balance of any such installment obligation or any other such secured obligation, commence any action or demand or take possession of collateral on account of default until ten days after notice has been given to the consumer of his or her right to cure such default. Until such period expires, the consumer shall have the right to cure any default by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges and by tendering any other performance necessary to cure such default. Any such cure shall restore a consumer to all his or her rights under the agreement the same as if there had been no default. A consumer who has been in default three or more times on the same obligation and who has been given notice of such fact three or more times shall not have the right to cure a default under this section even though previous defaults have been cured and his or her creditor's right to proceed against him or her and his or her collateral shall not be impaired or limited in any way by this section. There shall be no acceleration of the maturity of all or part of any amount owing in such a consumer credit sale, consumer lease or consumer loan, except where nonperformance specified in the agreement as constituting default has occurred.

COMPANIES HISTORY OF FRAUDULENT PRACTICES

Without getting into a lengthy discussion of the wide-spread problems of fraud and deceit associated with reselling loans and wrongful foreclosures across the country, the defendants herein have themselves been subjected to litigation for negligent practices; to wit:

A jury, sitting in state court in Jackson County, Missouri had previously found that **Residential Funding Company LLC** and 2 other entities owed the plaintiffs 5.1 million dollars in actual damages, and \$99,000,000.00 in punitive damages for tainted, fraudulent, and deceptive practices regarding reselling loans and foreclosures therein.

WASHINGTON Dept. of Justice— **National City Mortgage Inc.** has agreed to pay the United States \$4.6 million to settle allegations arising under the False Claims Act concerning 58 federally insured loans for mortgages submitted to the Department of Housing and Urban Development (HUD), the Justice Department announced

In June 2003, **PNC Bank** agreed to pay \$115 million to settle federal securities fraud charges after one of its subsidiaries fraudulently transferred \$762 million in bad loans and other venture-capital investments to an **AIG** entity in order to conceal them from investors

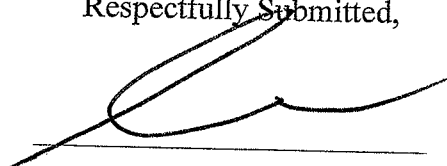
Ally Financial and its subsidiary **GMAC Mortgage** are being sued by the Ohio Attorney General for allegedly submitting fraudulent documents in hundreds of foreclosure cases across the state.

CONCLUSION

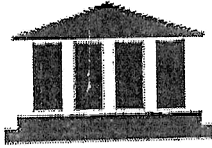
George Van Wagner in good faith avoided a bankruptcy proceeding and settled on a lower interest payment. He made two payments of the new term and during the two payments, the loan was sold. He was advised to stop paying a Note Holder. The Note was then sold again, and Van Wagner had no idea and had no documentations. Through deceit and fraud, Residential Funding Company comes out of no where and claims to be the lender, and that the property is going to be sold.

Accordingly, George Van Wagner respectfully requests this Court to enjoin the foreclosure and to issue an injunction to stop the sale, and in light of any negligence found to be committed by the Court, Van Wagner asks for punitive and compensatory damages as well as any other equally effective relief deemed necessary and just.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'George Van Wagner', written over a horizontal line.

George Van Wagner, Pro se



SENECA TRUSTEES, INC.

6108 Mid Atlantic Drive | Morgantown, WV 26505
Toll Free 1-888-534-3132

August 2, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND FIRST CLASS U.S. MAIL

George VanWagner aka Georg VanWagner III
594 Eagle School Road
Martinsburg, WV 25401

Re: Notice of Trustee's Sale
Loan No. 0359529173
Property 409 Three Run Rd, Bunker Hill, WV 25413
Our File No. 48-012527-09

NOTICE is hereby given that Seneca Trustees Inc., Substitute Trustees under that certain Deed of Trust dated October 30, 2006, and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia in Trust Deed Book 2016 at page 00355, at the direction of the lender, Residential Funding Company, LLC f/k/a Residential Funding Corporation, does hereby:

1. Accelerate and declare all sums secured by said Deed of Trust to be immediately due and payable without further demand, subject to terms of said Deed of Trust and applicable laws; and,
2. Invoke the power given by said Deed of Trust to sell the above-described real estate at public auction on August 23, 2011, at 11:00 o'clock am, at the front door of the Berkeley County Courthouse, Martinsburg, West Virginia.

Notice is also given that any personal property and/or belongings remaining at the property after the foreclosure sale will be deemed to constitute ABANDONED PROPERTY AND WILL BE DISPOSED OF ACCORDINGLY. Insofar as this letter may be interpreted by a Court of competent jurisdiction, that the undersigned is attempting to collect a debt on behalf of a lender, you are informed that any information given by you to the undersigned is information which may be passed on to the lender may be used for the collecting a debt.

You have the right to bring a Court action to assert the non-existence of the default or any other defense you may have to stop the acceleration of the sale. Copy of the Notice of Trustee's sale of valuable real estate is enclosed herewith.

Respectfully,

SENECA TRUSTEES, INC

TRUSTEE'S SALE OF VALUABLE REAL ESTATE

The undersigned Substitute Trustee, by virtue of the authority vested in him by that certain Deed of Trust, dated the **30th day of October, 2006**, and duly recorded in the Office of the Clerk of the County Commission of **Berkeley County, West Virginia**, in **Trust Deed Book 2016, at page 00355**, **George VanWagner aka Georg VanWagner III** did convey unto **Richard A. Pill, Esq.**, Trustee(s), certain real property described in said Deed of Trust; and the beneficiary has elected to appoint **Seneca Trustees, Inc.**, as Substitute Trustee by a Substitution of Trustee dated **June 14, 2011** and recorded in the aforesaid Clerk's office; and default having been made under the aforementioned Deed of Trust, and the undersigned Substitute Trustee having been instructed by Residential Funding Company, LLC f/k/a Residential Funding Corporation to foreclose thereunder, will offer for sale at public auction at the front door of the **Berkeley County Courthouse in Martinsburg, West Virginia**, on

August 23, 2011 at 11:00 o'clock am

the following described real estate, together with its improvements, easements and appurtenances thereunto belonging, situate in **Mill Creek District, Berkeley County, West Virginia**, and more particularly described as follows:

All that certain lot or parcel of real estate together with the improvements thereon and appurtenances thereto belonging, situate in Mill Creek District, Berkeley County, West Virginia, and more particularly described as follows:

All that certain lot or parcel containing 6.000 acres as shown on a plat made by Gamma Associates, Arnold L. Godlove, C.E., dated September 19, 1975 and recorded in the Office of the Clerk of the County Court of Berkeley County, West Virginia, in Deed Book 291, at page 40, being subject to easements of record and in existence.

At the time of the execution of the Deed of Trust, this property was reported to have an address of: **409 Three Run Rd, Bunker Hill, WV 25413**.

The referenced real estate will be conveyed with no covenants of warranty, and subject to all covenants, restrictions, easements, rights of way and reservations which may be a matter of record in the aforesaid Clerk's Office or visible upon the ground, all prior liens and encumbrances, including, without limitation, liens for real estate taxes, incinerator, sanitary and sewer charges. The purchasers at the sale shall be responsible for paying the recording costs and also the tax on the privilege of transferring real property (the cost of the tax stamp to be affixed to the deed). The purchasers shall be responsible for payment of all real estate taxes.

The subject property will be sold in "AS IS" condition. The Substitute Trustee shall be under no duty to cause any existing tenant or person occupying the subject property to vacate said property

TERMS: \$24,000.00 in cash and/or certified funds as deposit with the balance due and payable within 30 days of the day of sale.

FEDERAL TAX LIEN: In the event that there are Federal Tax Liens against the property, the United States would have the right to redeem the property within a period of 120 days from the date of such sale or the period allowable for redemption under local law, whichever is longer

Pursuant to the Deed of Trust, the Trustee may postpone the sale by public announcement at the time and place designated or by posting a notice of the same, and act by agent in the execution of the sale. The parties secured by the Deed of Trust reserve the right to purchase the property at such sale.

SENECA TRUSTEES, INC.
6108 Mid Atlantic Drive
Morgantown, WV 26508
(304) 413-0044
(304) 292-2918
Toll free: (888) 534-3132
Reference File No. 48-012527-09

cc: The Journal
08/12/11, 08/19/11

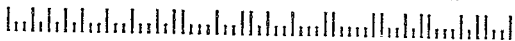
√ _____

GMAC Mortgage
Transfer Dept.
PO Box 780
Waterloo IA 50704-0780

GMAC Mortgage

February 6, 2009

10/27/08 09:00 0000423 20090209 18097101 DEFLT 1 OZ DOM 1809710000* 146316 W1



GEORGE VANWAGNER
127 WALKER CT
HEDGESVILLE WV 25427-3831

RECEIVED

FEB 23 2009



RE. Account Number 0359529173
Property Address 409 THREE RUN RD
BUNKER HILL WV 25413-0000

Dear George Vanwagner

Welcome to GMAC Mortgage. You were recently notified by National City Mortgage that the servicing of the above referenced account was transferred to our office effective 02/01/09. The new GMAC Mortgage Account Number is listed above.

We are pleased to serve you and hope you find our services a perfect match for your needs.

Beginning 02/01/09, payments should be sent to GMAC Mortgage as National City Mortgage will be unable to accept payments and apply them to the account on or after that date. We realize you may have inquiries regarding the transfer of the account and have included contact information below. For questions regarding the transfer of servicing to GMAC Mortgage or past servicing of the account, please contact National City Mortgage's Customer Service at 800-822-5626 (call collect if not toll-free). For consumer information that may be required by your state, please see the enclosed Required Disclosures.

GMAC Mortgage is committed to providing superior service to our customers! Please detach the contact information below and keep it for future reference.

Sincerely,

Charles R. Hoecker
Sr Vice President, Customer Care
Loan Servicing

Enclosure(s)

National City
Mortgage Co.

National City Mortgage Co.
A Subsidiary of National City Bank
3232 Newmark Drive • Miamisburg, Ohio 45342
Telephone: (937) 910-1200

Mailing Address:
P.O. Box 1820
Dayton, Ohio 45401 1820

February 04, 2009

GEORGE VAN WAGNER
PRO_SE
127 WALKER COURT
HEDGESVILLE WV 25427

RECEIVED
FEB 16 2009

RE• Loan No. 0004920821
Case No 0800435
Name: GEORGE VANWAGNER

The servicing of this loan has been transferred from National City Mortgage to GMAC MORTGAGE effective 02-02-2009

All future correspondence/inquiries should be directed to the following address and telephone number:

GMAC MORTGAGE
PAYMENT PROCESSING
P O BOX 780

WATERLOO IA 50704-0780 215-734-5382

Sincerely,

Bankruptcy Department

copy to• Trustee:
Attorney: GEORGE VAN WAGNER

BD097 009 KMV

409 3rd Ben Rd.

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA**

**GEORGE VAN WAGNER,
P.O. Box 867
Martinsburg, WV. 25402**

Plaintiff.

V

**RESIDENTIAL FUNDING COMPANY, LLC,
et al.,**

Defendants.

Civil Action 3:11cv66

NOTICE OF LIS PENDENS

KNOW ALL MEN BY THESE PRESENTS that George Van Wagner, the Plaintiff in the above enlisted action by this memorandum filed with the Clerk of Berkeley County, West Virginia, on this 12 day of August, 2011 claims a lien against the property described below, and states that the lien is base on a suit involving said real estate, which suit is now pending in the United States District Court for the Northern District of West Virginia.

The title of action is **George Van Wagner v. Residential Funding Company, LLC., et al.** The names of the parties are George Van Wagner, Residential Funding Company, LLC Seneca Trustees, Inc. National City Mortgage, Golden & Amos, PLLC, Tim Amos, PNC Bank ,Flaherty,Sensabaugh,& Bonasso, PLLC Susan Romain, Peter T Demaster, GMAC Mortgage, Troutman Sanders LLP ,and Jason Manning.

The description of the property to be affected is VAC LLC in Deed Book 873 at Page 398. All that certain lot or parcel of real estate together with improvements thereon and appurtenances thereto belonging, situate in Mill Creek District, Berkeley County, West Virginia and more particularly described as follows:

All that certain lot or parcel containing 6.000 acres, as shown on a plat made by Gamma Associates, Arnold L. Goodlove, C.E. Dated September 19, 1975, and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia in Deed Book 291, at

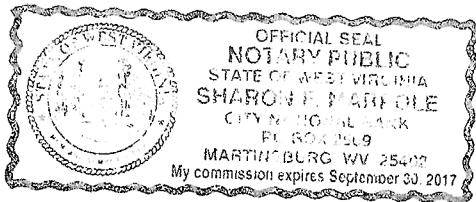
Page 40, being subject to easements of record and in existence.

AND BEING the same parcel of real estate conveyed unto George Van Wagner, by deed dated October 30, 2006, from Rodney Allen Patrick and Wendy Lee Patrick, and recorded in the aforesaid Clerk's office in Deed Book 852 at Page 131 AND being made and entered on July 11, 2007 by and between David D. Pill, as Trustee, party of the first part, hereinafter referred to as Grantor, and VAC, LLC, a limited liability company, party of the second part, hereinafter referred to as Grantee.

The nature of the lien, right, or interest sought to be enforced against said property in the aforementioned Civil Action is based on a suit relating to said real estate. A lien is sought against all of said real estate with the improvements and appurtenances located thereon, and any funds that may be expected by the Defendant by the sale of said real estate.

The name of the party whose estate is intended to be affected is VAC, LLC. In Deed Book 873 at Page 398.

Signed and dated this 12 day of August, 2011 by,



Sharon E. Manole

A handwritten signature in black ink, appearing to read 'George Van Wagner', written over a horizontal line.

George Van Wagner

Plaintiff

GEORGE VAN WAGNER 8-12-11

John W Small Jr
BERKELEY County 10:10:39 AM
Instrument No 20110035179
Date Recorded 08/12/2011
Document Type LISP
Pages Recorded 2
Book-Page 987-249
Recording Fee \$5.00
Additional \$6.00

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

GEORGE VAN WAGNER,

Plaintiff,

v.

**Civil Action No. 3:11-CV-66
(BAILEY)**

RESIDENTIAL FUNDING COMPANY, LLC, et al.,

Defendants.

**ORDER DISMISSING CASE FOR
LACK OF SUBJECT MATTER JURISDICTION**

On this day, the above-styled civil action came before this Court for consideration of the *pro se* plaintiff's Amended Complaint and Motion to Enjoin Wrongful Foreclosure Action [Docs. 7 and 8], filed September 2, 2011. The plaintiff seeks to amend his Complaint to assert "minimal diversity" pursuant to the United States Constitution, Article III, Section 2, and argues that the Court has subject matter jurisdiction pursuant to this doctrine [See Doc. 50 at 4]. For the reasons that follow, this Court finds that it lacks subject matter jurisdiction and, thus, that this civil action should be dismissed.

PROCEDURAL BACKGROUND

On September 12, 2011, Residential Funding Company, LLC; GMAC Mortgage, LLC; Troutman Sanders, LLP; and Jason E. Manning filed a Motion to Dismiss Plaintiff's Amended Complaint and Motion to Enjoin Wrongful Foreclosure Action [Doc. 13] and a Memorandum in Support [Doc. 14]. Plaintiff filed his response in opposition thereto [Doc. 17] on September 14, 2011. Defendant Seneca Trustees, Inc., filed a Motion to Dismiss

and Joinder in Defendants' Residential Funding Company, LLC; GMAC Mortgage, LLC; Troutman Sanders, LLP; and Jason Manning's Motion to Dismiss [Doc. 32] and a Memorandum of Law in Support [Doc. 33] on September 21, 2011. Plaintiff filed his response in opposition thereto on September 27, 2011 [Doc. 37]. On October 13, 2011, Defendant PNC Bank, National Association filed a Motion to Dismiss [Doc. 42] and a Memorandum in Support [Doc.43]. Plaintiff filed his response thereto on November 14, 2011 [Doc. 49]. On October 14, 2011, Defendants Peter Demasters, Susan Romaine, and Flaherty Sensabaugh Bonasso PLLC filed a Motion to Dismiss [Doc. 45]. Plaintiff filed his response in opposition thereto on November 14, 2011 [Doc. 50].

In the Amended Complaint [Doc. 7], the plaintiff states that this Court "has jurisdiction to entertain [the] complaint [under 28 U.S.C. § 1332] whereas there is a diversity in citizenship of parties and the amount in controversy exceeds \$75,000 [*Id.* at 7 (emphasis added)]. Among other reasons, various defendants claim that the case should be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure because "there is no complete diversity among the parties" [See Doc. 45 at 3, 6-9 and FED. CIV. R. P. 12(b)(1)]. In one of his filings, the plaintiff states that "'minimal diversity' . . . requires the existence of at least [one] party who is diverse in citizenship from a party on the other side of the case" and that such diversity is present in this case [Doc. 50 at 4].

APPLICABLE LAW

The requirement of complete diversity of citizenship was imposed by the Supreme Court of the United States more than 200 years ago in ***Strawbridge v. Curtiss***, 7 U.S. (3

Cranch) 267 (1806); see also *Slavchev v. Royal Caribbean Cruises, Ltd.*, 559 F.3d 251, 255 (4th Cir. 2009) (citing *Strawbridge* for requirement of complete diversity). Since then, only three statutory exceptions have been recognized by Congress. Specifically, minimal diversity suffices to create federal subject matter jurisdiction in cases arising under either the Interpleader Act, 28 U.S.C. § 1335; the Multiparty, Multiforum Jurisdiction Act, 28 U.S.C. § 1369; or the Class Action Fairness Act, 28 U.S.C. §§ 1332(d)(2) and 1453.

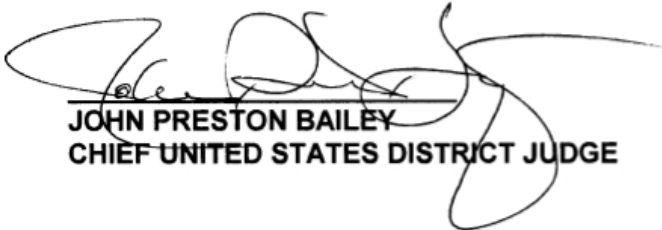
CONCLUSION

The plaintiff's action does not arise under either of the Acts listed above and, therefore, fails to fall within an exception to the requirement of complete diversity. Complete diversity is not met because plaintiff is a resident of West Virginia and defendant Seneca Trustees, Inc., is incorporated in the state of West Virginia, which is where its principal place of business is also located. Thus, because complete diversity is required but not present here, this Court lacks subject matter jurisdiction. Accordingly, the plaintiff's Complaint [Doc. 1] is hereby **DISMISSED** and the plaintiff's Motion for Leave to File an Amended Complaint [Doc. 8] is **DENIED AS MOOT**. Finally, this matter is **ORDERED STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* plaintiff.

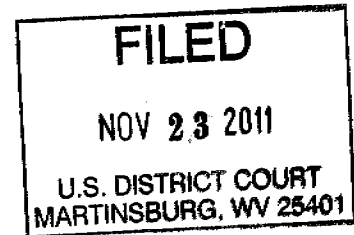
DATED: November 17, 2011.



JOHN PRESTON BAILEY
CHIEF UNITED STATES DISTRICT JUDGE

Exhibit W

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA**



GEORGE VAN WAGNER,

Plaintiff,

V

Civil Action 3:11-CV-00066

RESIDENTIAL FUNDING COMPANY, LLC, et al.,

NATIONAL CITY MORTGAGE,

GOLDEN & AMOS PLLC,

GMAC MORTGAGE,

FLAHERTY, SESABAUGH, BONASSO PLLC,

PNC BANK NATIONAL ASSOCIATION,

SENECA TRUSTEES, INC.,

TROUTMAN SANDERS LLP.,

**PLAINTIFF'S MOTION FOR RECONSIDERATION
OF ORDER DISMISSING CASE**

George Van Wagner, Pro se
P.O. Box 867
Martinsburg, WV. 25402
(304)261-4195

Comes now, George Van Wagner (Van Wagner), Pro se, and in good faith, and petitions this Court to revisit, reconsider its Ruling, and modify same as requested herein. In support thereof, Van Wagner states:

PROCEDURAL BACKGROUND

On August 12, 2011, Van Wagner filed his Complaint to enjoin wrongful action [Doc. 1]. Van Wagner, pursuant to the Courts Order on August 30, 2011 [Doc. 4] to Show Cause why Court shouldn't Dismiss Complaint. In his response, Van Wagner informed the Court and parties affected, how he (and not a company he owned – VAC) had standing to bring the suit, and on September 02, 2011, filed an Amended Complaint [Docs. 7 and 8].

On September 12, 2011, Residential Funding Company, LLC; GMAC Mortgage, LLC; Troutman Sanders, LLP; and Jason E. Manning filed a Motion to Dismiss Plaintiff's Amended Complaint and Motion to Enjoin Wrongful Foreclosure Action [Doc. 13] and a Memorandum in Support [Doc. 14].

Van Wagner filed his response in opposition thereto [Doc.17] on September 14, 2011. Defendant Seneca Trustees, Inc., filed a Motion to Dismiss and Joinder in Defendants' Residential Funding Company, LLC; GMAC Mortgage, LLC; Troutman Sanders, LLP; and Jason Manning's Motion to Dismiss [Doc. 32] and a Memorandum of Law in Support [Doc. 33] on September 21, 2011.

Van Wagner filed his response in opposition thereto on September 27, 2011 [Doc. 37]. On October 13, 2011, Defendant PNC Bank, National Association filed a Motion to Dismiss [Doc. 42] and a Memorandum in Support [Doc.43]. Van Wagner filed his response thereto on November 14, 2011 [Doc. 49].

On October 14, 2011, Defendants Peter Demasters, Susan Romaine, and Flaherty Sensabaugh Bonasso PLLC filed a Motion to Dismiss [Doc. 45]. Van Wagner filed his response in opposition thereto on November 14, 2011 [Doc. 50]. In the Amended Complaint [Doc. 7], Van Wagner stated that this Court “has jurisdiction to entertain [the] complaint [under 28 U.S.C. § 1332] whereas there is a diversity in citizenship of parties and the amount in controversy exceeds \$75,000 [*Id.* At 7 (emphasis added)]. Among other reasons, various defendants claim that the case should be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure because “there is no complete diversity among the parties” [*See* Doc. 45 at 3, 6-9 and FED. CIV. R. P. 12(b)(1)].

In one of his filings, Van Wagner stated that “minimal diversity”. . . requires the existence of at least [one] party who is diverse in citizenship from a party on the other side of the case” pursuant to the United States Constitution, Article III, Section 2, and argued that the Court has subject matter jurisdiction pursuant to this doctrine [*See* Doc. 50 at 4].

On November 17, 2011, this Court in addressing the Complaint and Amended Complaint cited the 200 year old case *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806) and *Slavchev v.*

Royal Caribbean Cruises, Ltd., 559 F.3d 251, 255 (4th Cir. 2009) (citing Strawbridge for requirement of complete diversity).

In its reasoning, the Court held that Strawbridge requires “complete diversity” among parties. In addressing Van Wagner's assertion that “minimal diversity” exists, the Court concluded that minimal diversity suffices to create federal subject matter jurisdiction in cases arising under either the Interpleader Act, 28 U.S.C. § 1335; the Multiparty, Multiforum Jurisdiction Act, 28 U.S.C. § 1369; or the Class Action Fairness Act, 28 U.S.C. §§ 1332(d)(2) and 1453, and that Van Wagner's action does not arise under either of the Acts listed above therefore, fails to fall within an exception to the requirement of complete diversity.

On November 17, 2011 this Honorable Court Dismissed the Complaint, and denied as Moot the Amended Complaint [Doc. 51] in conjunction with its reasoning.

ARGUMENT

Van Wagner respectfully believes that this Court erred in its reasoning that minimal diversity did not exist and its reliance in Strawbridge was flawed. Strawbridge was ruled in State Farm Fire & Casualty Co. v. Tashire 386 U.S. 523 (1967) to have been interpreting the diversity statute in U.S.C. 28 §1332, not Article III §2 of the Constitution. State Farm v. Tashire ruled that to be diverse under Article III, one defendant had to be diverse from one plaintiff (“minimal diversity”), not all of them, as Strawbridge’s interpretation held.

A diversity case cannot be heard in federal court unless the amount in controversy exceeds \$75,000, exclusive of interest and costs, as also is the case here. The amount-in-controversy requirement is another area where the statutory grant is narrower than the constitutional authority available since Article III §2 contains no monetary restriction on diversity cases.

Diversity Jurisdiction is derived from Article III §2 of the Constitution (requiring "minimal diversity", *State Farm*) and 28 USC 1332 (requires "complete diversity", *Strawbridge*)

As determined in *GRUPO DATAFLUX V. ATLAS GLOBAL GROUP, L.P.* 541 U.S. 567 (2004), the Court held "We understand "minimal diversity" to mean the existence of at least *one* party who is diverse in citizenship from one party on the other side of the case, even though the extraconstitutional "complete diversity" required by our cases is lacking. It is possible, that one can have opposing parties in a two-party case who are co-citizens, and yet have minimal Article III jurisdiction because of the multiple citizenship of one of the parties. Although the Court has previously said that minimal diversity requires "two adverse parties [who] are not co-citizens," *State Farm Fire & Casualty Co. v. Tashire*, 386 U. S. 523, 531 (1967), the Court did not have before it a multiple-citizenship situation.

The dissent contends that the existence of minimal diversity was clear because the rule of *Carden v. Arkoma Associates*, 494 U. S. 185 (1990), is not required by the Constitution".

Notwithstanding the fact that Van Wagner has survived the initial Show Cause Order in being able to bring this suit, he believes that there is at least minimal diversity in this case, but


the Court also has jurisdiction whereas the amount in controversy does exceed \$75,000.00.

Nonetheless, Van Wagner would ask that this Honorable Court revisit its Ruling, and to reconsider its Order. Van Wagner would request that his pleading be liberally construed for the merit that lies within the complaint as held in *Woods v. Carey*, 525 F.3d 886, 889 (2008).

CONCLUSION

Accordingly, and for the reasons herein, Van Wagner humbly requests that this Court Reconsider its Order on November 17, 2011, to allow the case to move forward as surviving diversity, that the case advance to be litigated, along with any other relief deemed necessary and just.

Respectfully,



George Van Wagner, Pro se

Exhibit X

FRAP/Form 1 | USDC/APP-001 Notice of Appeal (11/07)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA**

AT MARTINSBURG

FILED

NOV 23 2011

**U.S. DISTRICT COURT
MARTINSBURG, WV 25401**

George Van Wagner, Pro se

Plaintiff,

NOTICE OF APPEAL

V.


CIVIL ACTION NO. 3:11-CV-0066

Residential Funding Company, LLC., et al.

Defendants.

On this date, I (or we) George Van Wagner

Plaintiff in the above named case hereby appeal(s) to the United States Court of Appeals for the Fourth Circuit from the Order Dismissing case for lack of Subject Matter Jurisdiction (Doc. #6) entered in this action on November 17, 2011.



Attorney for Appellant(s)

George Van Wagner, Pro se
P.O. Box 867
Martinsburg, WV. 25402
(304) 261-4195

Exhibit Y

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

GEORGE VAN WAGNER,

Plaintiff,

v.

**Civil Action No. 3:11-CV-66
(BAILEY)**

RESIDENTIAL FUNDING COMPANY, LLC, et al.,

Defendants.

ORDER

On this day, the above-styled civil action came before this Court for consideration of the plaintiff's Motion for Reconsideration of Order Dismissing Case [Doc. 53], filed November 23, 2011. In support of the motion, Mr. Van Wagner states that he "respectively believes that this Court['s] . . . reliance in [*sic*] Strawbridge was flawed" because that case was "interpreting the diversity statute in [28 U.S.C. § 1332], not Article III §2 of the Constitution" [*Id.* at 4]. On December 6, 2011, defendants Peter DeMasters, Susan Romaine, and Flaherty Sensabaugh Bonasso, PLLC, filed a Response in Opposition to Plaintiff's Motion for Reconsideration of Order Dismissing Case [Doc. 57], stating that "[u]nless Congress authorizes something less than complete diversity, the established construction of the general diversity statute, 28 U.S.C. § 1332, applies" [*Id.* at 3]. Defendant PNC Bank National Association ("PNC") filed a Memorandum in Response to Plaintiff's Motion for Reconsideration [Doc. 58] on December 7, 2011. In its filing opposing the Motion for Reconsideration, PNC states that "[p]laintiff's [m]otion does not present any new

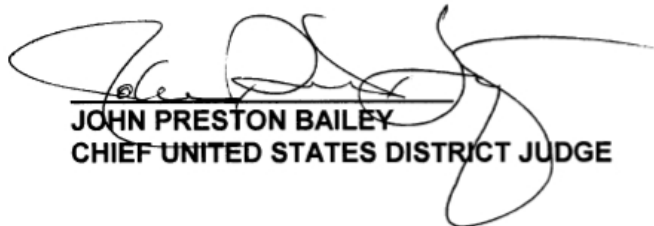
facts or arguments that would permit the Court to avoid the necessary outcome of dismissal for lack of subject matter jurisdiction” [*Id.* at 1]. As of the date of this Order, Mr. Van Wagner had not filed a reply to the responses in opposition filed by the defendants.

For the reasons stated in this Court’s November 17, 2011, Order Dismissing Case for Lack of Subject Matter Jurisdiction [Doc. 51] and defendants’ responses in opposition to the plaintiff’s motion [Docs. 57 and 58], Appellant’s Motion for Reconsideration of Order Dismissing Case [**Doc. 53**] is **DENIED**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein and to the *pro se* plaintiff.

DATED: December 15, 2011.



JOHN PRESTON BAILEY
CHIEF UNITED STATES DISTRICT JUDGE

Exhibit Z

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-2393

GEORGE VAN WAGNER,

Plaintiff - Appellant,

v.

RESIDENTIAL FUNDING COMPANY, LLC; NATIONAL CITY MORTGAGE; GOLDEN & AMOS, PLLC, Tim Amos, Counsel for National City Mortgage; TIM AMOS; GMAC MORTGAGE; PETER T. DEMASTERS; FLAHERTY, SENSABAUGH & BONASSO, PLLC, Susan Romain and Peter T. Demasters, Counsel for PNC, a/k/a Flaherty, Sensabaugh, Bonasso, PLLC; SUSAN ROMAIN; PNC BANK, NATIONAL ASSOCIATION, Successor to City National; SENECA TRUSTEES, INC.; JASON E. MANNING; TROUTMAN SANDERS LLP, Jason Manning, Counsel for GMAC,

Defendants - Appellees.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. John Preston Bailey, Chief District Judge. (3:11-cv-00066-JPB-DJJ)

Submitted: March 29, 2012

Decided: April 2, 2012

Before WILKINSON, KING, and KEENAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

George Van Wagner, Appellant Pro Se. Jason E. Manning, TROUTMAN SANDERS, LLP, Virginia Beach, Virginia; Heather Hovermale, William Joseph Powell, JACKSON KELLY, PLLC, Martinsburg, West

Virginia; Braun A. Hamstead, HAMSTEAD & ASSOCIATES, LC, Charles Town, West Virginia; Christopher Robert Arthur, SAMUEL I. WHITE, PC, Charleston, West Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

George Van Wagner appeals the district court's order dismissing his civil action for lack of jurisdiction. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. Van Wagner v. Residential Funding Co., No. 3:11-cv-00066-JPB-DJJ (N.D.W. Va. Nov. 17, 2011). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED