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THIS MATTER IS NOT SUBJECT TO
ARBITRATION. DAMAGES
HEARING IS REQUIRED.

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DOROTHY STEWART)
5140 Cedar Avenue)
Philadelphia, PA 19143)
)
Plaintiff,)
)
vs.)
)
FAIRBANKS CAPITAL CORP.)
3815 South West Temple)
Salt Lake City, Utah 84165)
)
THE BANK OF NEW YORK, AS)
TRUSTEE FOR EQCC TRUST 2001-2)
101 South Barclay Street)
New York, New York 10286)
)
BALBOA LIFE & CASUALTY)
3349 Michelson, Suite 200)
Irvine, California 92715)
)
Defendants.)
)

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

MARCH TERM, 2003

NO. **002075**

CLASS ACTION

ATTEST
MAR 13 2003

COMPLAINT - CLASS ACTION

I. PRELIMINARY STATEMENT

1. This is a consumer class action brought by Plaintiff Dorothy Stewart on her own behalf and also on behalf of all other Pennsylvania consumers who have been victimized by the

unfair and deceptive practices of Fairbanks Capital Corp. (“Fairbanks”) in its improper and illegal mis-servicing of residential mortgages that it owns or services for another entity.

Fairbanks routinely seeks to collect and does collect “late charges,” “inspection fees,” “recoverable borrower fees,” “corporate advances,” unnecessary hazard insurance premiums and other fees and charges that are not legally due under the contract or Pennsylvania law concerning collection of fees, costs and charges. The fees, costs and charges are demanded and collected in the context of reinstatement agreements and in other contexts, such as reinstatement demands, foreclosure and loan payoffs. Fairbanks also victimizes Pennsylvania residential mortgagors with its practice of force-placing hazard insurance covering properties securing loans owned or serviced by Fairbanks and charging its consumer customers unnecessary and excessive insurance premiums. The improper charging of insurance often results in placing the consumers in default of the terms of their mortgages, resulting in further improper and unauthorized fees and charges to their escrow accounts, which are controlled by Fairbanks.

Fairbanks’ charging of and collecting such fees, costs and charges are prohibited by the uniform mortgage loan documents that govern the transactions between Fairbanks and its consumer customers as well as the Pennsylvania Fair Credit Extension Uniformity Act, 73 P.S. § 2270.1, *et seq.* (“FCEUA”), constituting unfair and deceptive acts and practices under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (“CPL”). These laws prohibit creditors and debt collectors from engaging in abusive, deceptive, and unfair collection practices.

Plaintiff and the class she seeks to represent also seek relief for breach of contract, unjust enrichment, breach of fiduciary duty and that an independent accounting be made of Plaintiff’s and the Class members’ escrow and mortgage accounts controlled by Fairbanks.

II. PARTIES

2. Plaintiff Dorothy Stewart ("Plaintiff" or "Stewart") is an individual over the age of 18 years old residing at 5140 Cedar Avenue, Philadelphia, Pennsylvania 19143. She is a citizen of the Commonwealth of Pennsylvania and a mortgagor whose mortgage was, at all relevant times, serviced by Fairbanks and owned by defendant BONY.

3. Defendant Fairbanks is a Utah based corporation, with a principal place of business at 3815 South West Temple Street, Salt Lake City, Utah, 84115.

4. Defendant The Bank of New York, as Trustee for EQCC Trust 2001-2 ("BONY") is and at all relevant times was trustee for several pools of mortgage backed securities and in that capacity is the current holder of the Plaintiff's and class member's loans. BONY has a principal place of business at 101 South Barclay Street, New York, New York 10286.

5. Defendant Balboa Life & Casualty ("Balboa") is an insurance company with headquarters at 3349 Michelson, Suite 200, Irvine, California 92715-1606. Balboa does business in this county and the Commonwealth of Pennsylvania.

III. FACTUAL ALLEGATIONS

6. On or about November 10, 2000, Plaintiff and an entity known as Equicredit Corporation of PA ("Equicredit") entered into a loan transaction in which Plaintiff signed a note in the amount of \$32,161.78. A true and correct copy of said note is attached hereto and labeled Exhibit A.

7. Said note was secured by a mortgage on Plaintiff's residential real estate. *See* Exhibit A, ¶ 5. A true and correct copy of the mortgage is attached hereto as Exhibit B.

8. Both the note and the mortgage are uniform instruments identical in their form written language to thousands of instruments for Pennsylvania mortgage loans for which

Fairbanks obtained servicing rights from companies such as Equicredit. The uniformity of these instruments is necessary so that the mortgages can be securitized, held by trustees such as defendant BONY and sold to investors.

9. The form note provides for late charges for payments not received by the end of 15 calendar days after the due date in the amount of 5% of the overdue payment, and provides that payment of the late charge is due only once on any late payment. *See* Exhibit A, ¶ 4(B).

10. The form note provides for payment of the note holder's costs and expenses only to the extent permitted by Pennsylvania law. *See* Exhibit A, ¶ 10.

11. The standard form note and mortgage authorize the charging of the mortgage borrower for fees and charges only in limited circumstances such as the borrower's default. *See* Exhibit B, ¶ 21.

12. The note signed by Plaintiff Stewart provided for interest at a yearly rate of 12.640% and for 180 consecutive monthly payments with the first payment in the amount of \$516.14, the next 178 monthly payments in the amount of \$346.75 and a final "balloon" payment in the amount of \$28,271.26. *See* Exhibit A, ¶¶ 2-3.

13. Fairbanks acquired the servicing rights for Plaintiff's loan from Equicredit on or about April 1, 2002.

14. Fairbanks has collected and attempted to collect from Plaintiff charges, fees and expenses not permitted by the note or by Pennsylvania law, including but not limited to, "corporate advances," "late charges" in excess of the amount permitted by the note, "recoverable borrower fees," inspection fees, hazard insurance premiums and other charges, fees and costs.

15. At all times relevant, Fairbanks was collecting and attempting to collect from Plaintiff on behalf of BONY.

16. The facts surrounding Fairbanks's force placement of insurance in connection with the Plaintiff's mortgage are typical of other class members' experiences and illustrate how Fairbanks exploits the opportunity to force place insurance to increase its profits at consumers' expense.

17. The November 10, 2000 mortgage executed by Plaintiff, at paragraph 5, required Plaintiff to maintain hazard insurance on the property "in the amounts and for the periods that Lender requires." Exhibit B, ¶ 5.

18. The mortgage also provided that if Plaintiff did not keep her agreements under the mortgage, such as maintaining hazard insurance, the lender could do and pay for whatever was necessary to protect the lender's rights in the property. Exhibit B, ¶¶ 5, 7.

19. At the time she entered into the mortgage in November 2000, Plaintiff obtained hazard insurance for the property with the Fair Plan by paying an annual premium of \$98 for coverage in the amount of \$35,000. Plaintiff provided proof of such insurance to the lender at the closing of the mortgage transaction on November 10, 2000.

20. In May 2002, without notifying Plaintiff as required by the mortgage instrument, Fairbanks placed "forced insurance" coverage on Plaintiff's property with Defendant Balboa in the amount of \$30,000, at an annual premium of \$309. The policy included a deductible of \$250. The "coverage" was only for fire and hazard damage to the property, and provided no coverage against liability or for Plaintiff's household goods and furnishings, and essentially just duplicated the coverage that Plaintiff already had.

21. Plaintiff first learned about the force-placed insurance policy in the summer of 2002, when Fairbanks increased her monthly mortgage payments from \$346.75 to more than \$397.

22. Plaintiff promptly provided Fairbanks with proof of her already existing policy with the Fair Plan.

23. Plaintiff refused to pay the insurance premiums for the period prior to the date she was belatedly advised of the force-placing of the policy. Instead, each month she tendered to Fairbanks in negotiable checks the amounts otherwise due under the mortgage.

24. Fairbanks applied some of Plaintiff's monthly payments to improper and excessive charges and fees, including but not limited to the force-placed insurance premium. Eventually, Fairbanks refused to accept Plaintiff's tendered mortgage payments. Because of the improper charge for insurance and Fairbanks' application of Plaintiff's monthly payments to those charges and to other improper fees and charges, Fairbanks caused Plaintiff to be in default.

25. In December, 2002, Fairbanks notified Plaintiff that she was in default and demanded the sum of \$1,241.14 to cure the default, together with any mortgage payments and late charges which became due. Plaintiff has attempted to pay all sums legally due and owing under the contract, but Fairbanks has rejected that payment and has commenced a foreclosure action against Plaintiff and her home.

26. Throughout the time relevant hereto, Fairbanks has engaged in a uniform scheme and course of conduct to inflate its corporate profits by force-placing hazard insurance on properties which are subject to mortgages that it services or owns. Standard mortgage instruments provide, *inter alia*, that the mortgagee can do whatever is necessary to protect the mortgagee's rights in the property. *See* Mortgage, Ex. B at ¶¶ 5, 7. Fairbanks interprets these provisions to allow the mortgagee to procure, or "force-place," hazard insurance to protect its lien interests in the property should the mortgagor fail to purchase or maintain such insurance. Pursuant to the mortgage provisions, Fairbanks may pass on to the borrower and add to the

mortgage balance amounts it spends to purchase insurance to protect the lien interests. *See* Mortgage, Ex. B at ¶ 5.

27. Fairbanks invokes these provisions to obtain insurance coverage from, among others, Defendant Balboa. In procuring this "coverage," however, Fairbanks routinely obtains coverage in amounts which far exceed the mortgagor's obligation to maintain coverage to protect the lender's lien interest as provided by the commitment letter, note or mortgage instrument. In this respect, Fairbanks is not authorized to purchase such excessive coverage under the mortgage instruments. Moreover, Fairbanks routinely bills and attempts to collect from the borrowers alleged "premium disbursements" for the force-placed insurance that far exceed the ordinary charges for the former or existing policies for the same properties.

28. Fairbanks engages in this plan, scheme and course of conduct because of and pursuant to various agreements Fairbanks has with force-placed insurance companies such as Balboa. Under those agreements, Fairbanks receives a kickback or profit-sharing in the coverage it allows to be force-placed on properties covered by Fairbanks mortgages. By proceeding in this manner, Fairbanks unreasonably and unconscionably inflates its purported "disbursements" to purchase the insurance and, rather than just protecting its lien interest, actually profits from the force-placement and inflates the borrower's mortgage loan balance and interest charges as a result.

29. Fairbanks places the insurance at these excessive levels even though it knows, both from its familiarity with insurance markets, as well as from its own solicitations and advertisements disseminated to mortgagors attempting to sell them insurance coverage, that suitable policies are available at far lower costs, and even though it is fully familiar with the

former or existing policies on the mortgaged properties, including but not limited to the applicable premiums and the identity of the insurer and procuring broker or agency.

30. In many instances, the insurance force-placed by or at the direction of Fairbanks is merely part of an general coverage agreement between Fairbanks and the insurer, in which Fairbanks and the insurer agree to divide the profits from alleged "premium" charges periodically based on actual loss experience in the general, force-placed portfolio. Under these agreements, a mortgage property identified as having a policy lapse by Fairbanks or its insurer, in this case Balboa, is simply added to the general coverage agreement without an actual, individual policy being issued to cover the specific property. Thus, to boost its own profits, instead of merely protecting its legitimate interests, Fairbanks by-passes known lower cost insurance which in fact it sells to its borrowers, and other suitable insurance at reduced rates, to generate higher commissions and profits by force-placing the insurance pursuant to kickback and profit-sharing agreements it has with insurers such as Balboa.

31. Upon information and belief, the force-placed insurance scheme described herein is also monitored, participated in by and/or directed by Balboa, which maintains agents or employees working closely with Fairbanks or at Fairbanks offices to oversee the force placement of insurance on the property of Fairbanks customers. Upon information and belief, Fairbanks provides Balboa with information concerning and/or access to customers' escrow accounts, and Balboa directs or participates in the actions necessary to remove money from such customer escrow accounts to pay the force-placed insurance premiums.

32. By proceeding as outlined above, Fairbanks obtains commissions at higher percentages and, because of the inflated premiums, at far higher levels, in return for placing with defendant Balboa and other insurers these overpriced and improper coverages. Fairbanks also

receives substantial other consideration in the form of services from Balboa and other insurers and their agents, which services are funded out of the proceeds of the force-placed insurance charges. The cost of these increased commissions and services is borne entirely by Plaintiff and the members of the Class who are overcharged for purported "disbursements" when, in fact, Fairbanks is really "disbursing" at least a portion of each borrower's insurance escrow to itself. These overcharges also result in dramatic increases to each borrower's overall monthly mortgage payments and in increased interest revenues to Fairbanks. These actions are undertaken pursuant to corporate-wide policies on standardized computer-generated correspondence.

33. In this case, Fairbanks force-placed insurance on the Plaintiff's property, and routinely force-places insurance on Class members' property, through a contractual arrangement it has with Balboa and other insurers. Balboa markets credit insurance products to consumer financial institutions, using various incentives to entice the financial institutions to utilize Balboa. For example, the consumer financial institutions, including Fairbanks, receive expense reimbursements and commissions from Balboa as compensation for allowing force-placement of the insurance on consumer loans. The "clients" of Balboa are the consumer financial institutions, not the consumer borrowers. Typically, these institutions, including Fairbanks, have agreements with Balboa providing Fairbanks with a share in the profitability of the insurance placed on the consumer loans. As a result of these agreements, Fairbanks is incentivized to allow placement of the most excessive and expensive coverage possible on the loans it owns or services, because it gets to share in the profits generated by the charges it passes-on to and imposes on consumers.

34. A number of the contracts Balboa has with clients such as Fairbanks also enable the "clients" to participate in the underwriting profits of coverage placed by clients such as Fairbanks. Some such contracts link Fairbanks's overall commission to the claims experience on

coverage placed by Fairbanks on the consumer loans that Fairbanks services. So, for those coverages with low loss ratios, Fairbanks receives an even higher commission from Balboa. In this way, the contracts financially encourage consumer lenders such as Fairbanks to force-place insurance coverages on loans, such as the Plaintiff's here, where there is an already existing policy in force, or for coverage periods in which Balboa and Fairbanks know no claims have been or can be made.

35. Another form of profit-sharing between Balboa and consumer financial institutions like Fairbanks is a premium participation, in which the lender or servicer receives up to 50% of the profits generated by the insurance coverages it has placed on consumer loans. In some instances, insurers such as Balboa even cede premiums generated by certain mortgage servicers to the servicer's captive insurance company or to reinsurance subsidiaries in which the servicer holds an equity interest. In either case, the consumer financial institution, such as Fairbanks in this case, is financially encouraged to place the insurance at the highest possible charge and coverage so it can obtain even higher profits from Balboa.

36. With regard to the forced placed insurance here, Fairbanks received, and continues to receive from property insurance coverage placed on members of the Class, not only commissions but also various financial incentives from Balboa that are not disclosed by Fairbanks to the borrowers on whom Fairbanks has force-placed the insurance. These commissions and profits explain in large part why the coverage charges Fairbanks imposes are double, triple or quadruple the charges available from other hazard insurance providers.

37. To the extent Fairbanks or its affiliates receive from Balboa profits, commissions or premium participation profits, Fairbanks has not, in fact, "disbursed" those amounts as specified by its form agreements, but instead has received kickbacks from Balboa while it has

simultaneously and falsely charged its borrowers for higher "disbursements" with interest thereon.

38. Fairbanks concealed from the Plaintiff and the Class and did not disclose the fact that Fairbanks was charging for insurance coverages different from, and in addition to, the property insurance authorized by the form agreement. In addition, Fairbanks failed to disclose that it was charging as a "disbursement" amounts which were, in fact, not "disbursed" because Fairbanks or its affiliate was and would be receiving kickbacks and/or other services, profit-sharing, underwriting commissions or other benefits from Balboa.

39. Fairbanks's practices described herein provided it the opportunity to increase its finance and interest charges at the expense of its consumer borrowers by restructuring their loans to increase their indebtedness and pay to Fairbanks amounts for purported insurance charges and interest attributable to such insurance.

40. The practices described above are part of a past and ongoing course of conduct by Fairbanks, and are consistent with its business practices related to all customers similarly situated to the Plaintiff.

41. Fairbanks and its co-conspirator, Balboa and others, have engaged in, and will continue to engage in, some or all of the following unfair, deceptive, unlawful, unconscionable activities and practices when consumers allegedly fail to purchase or maintain hazard insurance coverage:

(a) Fairbanks and Balboa charge, collect, and attempt to collect from consumers amounts in excess of the true cost of the insurance coverages for which the consumer is contractually obligated to pay;

(b) Fairbanks misrepresents the amount it truly “disbursed” or “spent” for force-placed coverage, the nature of the charges for which the consumer is being billed, the customer’s obligation to pay those charges, and the “premium” charges associated therewith;

(c) Fairbanks and Balboa fail to give consumers notice before obtaining insurance on their properties, and regularly refuse to provide customers with copies of the insurance policies Fairbanks buys for itself and do not fully inform customers of the terms of such policies;

(d) Fairbanks and Balboa place insurance in excess of the contractual amount permitted, at inflated “costs,” and in amounts and terms greater than, or unrelated to, the insurance necessary to protect the mortgagee’s interest in the property; and

(e) Fairbanks places insurance without requiring insurers to underwrite the property that is to be insured, thus inflating the cost of insurance to consumer borrowers as well as Fairbanks’s profits.

IV. CLASS ACTION ALLEGATIONS

42. Plaintiff brings this action on her own behalf and on behalf of the following Class: all Pennsylvania consumers with residential mortgage loans serviced and/or owned by Defendants, as to whom, during the two (2) years prior to the filing of the Complaint in this action, Fairbanks assessed, or sent written communications which included a claim for, amounts not authorized by the uniform note and mortgage loan documents in an attempt to collect a debt incurred for personal, family, or household purposes. Plaintiff also brings this action on behalf of the following Subclass: all Class members who own or owned non-commercial real property in the Commonwealth of Pennsylvania who were charged by Defendants for force-placed hazard insurance.

43. The Class is so numerous as to make it impracticable to bring all members before the Court. The exact number of members is unknown but can be determined from records maintained by the Defendants. In many instances, such persons are unaware that claims exist on their behalf. If the Class members have knowledge of their claims, their damages are in such amounts that when taken individually are too small to justify the expense of a separate lawsuit. However, on a class-wide basis, the total damages are in an amount that makes litigation financially feasible. While the exact number and identities of Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes that there are thousands of other borrowers who have suffered similar injuries inflicted by Fairbanks and the other Defendants.

44. The claims of the representative plaintiff are typical of the claims of the Class because Plaintiff and the members of the Class sustained ascertainable loss in the form of payment of unlawful charges, fees and other damages arising from Defendants' wrongful conduct in violation of law.

45. The claims of the representative plaintiff are typical of the claims of the Subclass as the Plaintiff and all members of the Subclass have sustained economic damages arising out of Defendants' conduct in violation of the CPL and common law, as complained of herein.

46. There are common questions of law and fact which exist as to all members of the Class and which predominate over any questions affecting only individual members of the Class.

47. The questions of law and fact common to the Class include:

(a) Whether Fairbanks' has assessed the escrow accounts of members of the Class for amounts not authorized by the uniform contractual documents;

(b) Whether Fairbanks has sent collection notices seeking to collect such amounts, including but not limited to “recoverable borrower fees,” improper or excessive late charges, “corporate advances,” hazard insurance premiums or other padded charges related to default or foreclosure in violation of Pennsylvania law;

(c) Whether Fairbanks’ collection notices threaten action which is not intended to be taken or cannot legally be taken;

(d) Whether Fairbanks’ collection notices falsely represent the nature, character or amount of the debt;

(e) Whether Fairbanks has breached its fiduciary duty to Plaintiff and the Class;

(f) Whether Fairbanks has collected amounts that are not due and owing under relevant law governing contracts in the Commonwealth of Pennsylvania; and

(g) Whether the Court should order an independent professional accountant to perform an accounting of all sums charged and collected from Class members by Fairbanks.

48. The questions of law and fact common to the Subclass include:

(a) Whether Fairbanks and BONY breached the uniform mortgage contracts with the Plaintiff and Subclass members when Fairbanks obtained hazard insurance without first giving notice and added to the loan balances and escrow accounts costs that were unauthorized by the terms of the form contracts, including costs for insurance coverages that were unauthorized by the terms of the contracts;

(b) Whether Defendants engaged in the common scheme, conspiracy and course of conduct alleged herein in violation of the Pennsylvania CPL;

(c) Whether Defendants breached the mortgage loan contract and the contractual duty of good faith and fair dealing owed to the Plaintiff and to Subclass members when they charged Subclass members unauthorized costs, which benefited only Fairbanks and insurers such as Balboa;

(d) Whether Defendants violated the CPL when they, *inter alia*, added unauthorized costs to the loan balances; misrepresented to the Plaintiff and Subclass members that they were required to pay the unauthorized costs; purchased force-placed insurance at unconscionably high rates; represented that Fairbanks had "disbursed" or "spent" such amounts, when, in fact, it was sharing in the profits with Balboa; and purchased force-placed coverages that were in excess of those permitted by law;

(e) Whether Fairbanks and Balboa were unjustly enriched through the addition of unauthorized costs to the Plaintiff and to Subclass members' loan balances and the payment of excessive and unauthorized insurance premiums;

(f) Whether Balboa and Fairbanks, by virtue of their kickback agreement, tortiously interfered with the contractual relationship between Plaintiff (and other Subclass members) and the mortgage owner, BONY, and falsely caused Plaintiff (and other Subclass members) to appear in default and to be reported in default of the mortgage obligations when, in fact, she and they were not in default; and

(g) Whether the Court should order an independent professional accountant to perform an accounting of all sums charged and collected from Subclass members by Fairbanks.

49. The representative plaintiff will assure the adequate representation of all members of the Class and has no conflict with Class members in the maintenance of this class action. The plaintiff's claims are not only typical of but also coextensive with the claims of the members of the Class.

50. Plaintiff has retained counsel who are experienced in litigating class actions, have handled many class actions in state and federal courts and will adequately represent the interests of the Class.

51. A class action is a fair and efficient method of adjudicating this controversy for the following reasons:

- (a) The common questions of law or fact predominate over any question affecting only individual members of the Class;
- (b) There are no difficulties likely to be encountered in the management of the action as a class action;
- (c) The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would confront the Defendants with incompatible standards of conduct;
- (d) Adjudications with respect to individual members of the Class would as a practical matter be dispositive of the interests of other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests;
- (e) This Court is an appropriate forum for the litigation of the claims of the Class;

(f) In view of the complexities of the issues and the expenses of litigation, the separate claims of individual members of the two Class are not sufficient in amount to support separate actions;

(g) The amount which may be recovered by individual Class members will be small in relation to the expense and effort of administering the class action; and

(h) The Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final equitable or declaratory relief appropriate with respect to the Class.

V. CLAIMS FOR RELIEF

Count One - FCEUA and CPL (Plaintiff v. Fairbanks and BONY)

52. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

53. Defendants Fairbanks and BONY are “creditors” or “debt collectors” as defined by section 2270.3 of the FCEUA.

54. Plaintiff is a “debtor” as defined by section 2270.3 of the FCEUA.

55. The letters sent by defendants are "communications" relating to a "debt" as defined by section 2270.3 of the FCEUA.

56. Defendants engaged in unfair methods of competition and unfair or deceptive acts or practices, as defined by the CPL, by attempting to collect the debt in violation of the FCEUA. Defendants violated the FCEUA and CPL by engaging in the following conduct:

(a) attempting to collect improper, unauthorized and excessive amounts such as “recoverable borrower fees,” “late charges,” “corporate advances,” hazard insurance premiums or other padded charges related to default or foreclosure not permitted by law;

- (b) using unfair and unconscionable collection methods;
- (c) giving a false impression of the character, amount, or legal status of the alleged debt;
- (d) using false or deceptive collection methods;
- (e) making threats to take action which cannot legally be taken; and
- (f) otherwise using false, deceptive, misleading and unfair or unconscionable means to collect or attempt to collect a debt.

57. Defendants' acts as described above were done with intentional, willful, reckless, wanton and negligent disregard for plaintiff's rights under the law and with the purpose of coercing plaintiff to pay the debt.

58. As a result of the above violations of the FCEUA and CPL, Plaintiff has suffered ascertainable losses entitling Plaintiff to an award of statutory, actual and treble damages and attorney's fees and costs.

**Count Two - Breach of Express and Implied Contract
(Plaintiff v. Fairbanks and BONY)**

59. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

60. Fairbanks, as the apparent agent and agent in fact for BONY, and BONY, breached the terms of the mortgage contracts with the Plaintiff and the Subclass by failing to give notice prior to force placing insurance, by purchasing coverage in amounts and for coverages that were not authorized by the contracts with the Plaintiff and other Subclass members, by purchasing such insurance without requiring the insurer to underwrite the property and by adding charges, including commissions paid to Fairbanks or its affiliate, to the Plaintiff's and Subclass members' loan balances and then representing that those amounts were "spent" or

“disbursed” by Fairbanks when, in fact, Fairbanks received kickbacks, profit-sharing and/or other benefits or services back from the insurer.

61. The mortgage contracts contain an implied covenant pursuant to 13 Pa.C.S.A. § 1203 and the Restatement (Second) of Contracts § 205 that the mortgagee and its agents would deal in good faith and fairly with the mortgagors in performance of all rights and obligations. This implied covenant applies in all instances, as here, where the mortgagee and its agents have discretion to determine how to effectuate a contractual option. The implied covenant requires that the option, in this case the purchase of insurance, be effectuated with utmost good faith and in a manner that fairly deals with the mortgagor. In other words, Fairbanks may not seek to profit from its exercise of the option; it may only seek to protect its legitimate interests in the lien securing the loan.

62. Fairbanks and BONY breached the covenant of good faith and fair dealing when, instead of purchasing property insurance in amounts authorized by the contract and at reasonable rates, they acted in their own undisclosed profit-interest by purchasing insurance at exorbitant rates and terms through which they maximized their earnings and additional interest.

63. Fairbanks and BONY only financed insurance charges that they passed on at exorbitant rates. Fairbanks's conditioning of the extension of credit on the purchase of insurance that was priced well in excess of the market price for the purpose of furthering its own undisclosed profit-interest constitutes a breach of the covenant of good faith and fair dealing.

64. As a direct and proximate result of Defendants' breach of the implied and express terms of the mortgage loan contracts, Plaintiff and members of the Subclass have sustained damages.

**Count Three - Violation of Pennsylvania CPL
(Plaintiff v. Fairbanks, BONY, and Balboa)**

65. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

66. Fairbanks, BONY and Balboa have committed numerous violations of the CPL, including, but not limited to, the following:

(a) Fairbanks's addition of unauthorized costs for forced-placed insurance;

(b) Fairbanks's misrepresentations to the Plaintiff and the Subclass that they were obligated to pay the unauthorized costs added by Fairbanks to their loan balances for forced-placed insurance;

(c) Fairbanks's procurement from Balboa of forced-placed insurance at rates that grossly exceed the market rate and are unconscionably high;

(d) Fairbanks's and Balboa's failure to provide the Plaintiff and Subclass members with copies of the actual insurance policies that Fairbanks purchased for itself and Balboa provided;

(e) Fairbanks's purchase of force-placed insurance without requiring the insurer to underwrite the property to be insured and Balboa's failure to underwrite the policies in accordance with normal underwriting procedures; and

(f) Fairbanks's representation that it "disbursed" or "spent" the amounts it has charged Subclass members for force-placed insurance when, in fact, it did not actually "disburse" or "spend" such amounts, since it received secret kickbacks, profit-sharing, commissions or other benefits and, in economic reality, actually "disbursed" or "spent" far less than the amount it represented and passed-on to each class member.

67. As a direct and proximate result of Fairbanks's, BONY's and Balboa's violations of Pennsylvania law, Plaintiff and the Subclass have suffered ascertainable losses thereby entitling them to an award of treble damages and attorneys' fees pursuant to the CPL. Plaintiff and every

member of the Subclass has presumptively and justifiably relied, to their detriment, on Fairbanks's material misrepresentations and omissions, because they have either paid all or a portion of Fairbanks's coverage charges, or have had their loan balances, interest charges and credit reports increased by the allegedly owing amounts and otherwise been subjected to legal and collection proceedings as a direct result of the materially misleading statements and omissions by Fairbanks. But for Fairbanks's misleading statements and omissions, Subclass members' loan balances would not be increased, their interest charges would have been lower and their credit reports would not have reflected a delinquency and default.

**Count Four - Unjust Enrichment; Imposition of Constructive Trust; Restitution
(Plaintiff v. Fairbanks and Balboa)**

68. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

69. By purchasing, without prior notice, unauthorized insurance at unauthorized amounts and for unauthorized charges, Fairbanks and Balboa have acted extra-contractually and obtained benefits and enrichment well beyond that permitted by any agreements between Class members (the mortgagors) and the mortgage holders. In fact, there was no agreement between Plaintiff (or Class members) and Fairbanks or Plaintiff (or Class members) and Balboa which permitted either Fairbanks or Balboa to charge Plaintiff or other Class members the amounts they have for allegedly force-placed insurance. As noted in Count Two above, the mortgage loan held by BONY in this case did not authorize such charges and was, as a result, breached by BONY and its agent, Fairbanks.

70. Fairbanks and Balboa have been unjustly enriched at the expense of, and to the detriment of, the Plaintiff and each member of the Subclass by backdating insurance policies and charging excessive amounts for insurance and receiving financing charges on such excessive amounts. The Plaintiff and each member of the Subclass is therefore entitled to recover from

Fairbanks and/or Balboa, as unjust enrichment damages, all money they paid for "insurance premiums," services and finance charges, any benefits received by Fairbanks and/or Balboa as a result of "insurance" procured for customers and related late payment charges, plus interest thereon from the time of payment.

71. A constructive trust should be established over the funds created by the aforementioned payments, fees, charges, and benefits generated in connection with the force-placed insurance, illegal backdating of policies and illegal foreclosures. The funds are clearly identifiable for each Subclass member and for the Subclass as a whole. Accordingly, restitution of such amounts should be decreed.

**Count Five - Tortious Interference With Contractual Relations
(Plaintiff v. Balboa and Fairbanks)**

72. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

73. At all times relevant, Plaintiff and Defendant BONY were parties to a mortgage agreement pursuant to which each party had contractual obligations to the other. Fairbanks, at all material times hereto, acted as BONY's servicing agent with respect to the performance of BONY's obligations under the mortgage agreement.

74. Balboa and Fairbanks, by virtue of their agreement and course of conduct as described above, were aware of the contractual relationship and mortgage agreement between Plaintiff and BONY.

75. Fairbanks routinely and in the regular course of business provides to Balboa and other insurers information regarding the status of property insurance on the properties securing the mortgages it owns or services.

76. Balboa and Fairbanks, under the circumstances outlined above, force-placed insurance coverage with respect to Plaintiff's property which was at a premium much higher than

the normal policies available on the market, as evidenced by the policy obtained by Plaintiff to insure the property, and provided less coverage than the Plaintiff's policy. Balboa routinely provides such insurance coverage on properties secured by mortgages owned or serviced by Fairbanks and BONY.

77. Fairbanks and Balboa lacked any reasonable justification for providing such illegal, duplicative, inflated, unnecessary and fraudulent insurance coverage and did so knowingly in order to enrich themselves at the expense of Plaintiff and the Subclass through their agreement or course of conduct.

78. By acting as set forth above, Balboa and Fairbanks tortiously interfered with the contractual relationship between Plaintiff and the Subclass on the one hand, and BONY on the other hand, causing damages to Plaintiff and the Subclass, including damages to credit ratings, damages from the illegal foreclosure proceedings, and other direct and consequential damages.

**Count Six – Breach of Fiduciary Duty
(Plaintiff v. Fairbanks and BONY)**

79. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

80. Upon information and belief, Fairbanks establishes escrow accounts for the loans it owns or services.

81. Fairbanks assesses charges to those escrow accounts and creates escrow deficits to pay the charges described herein, such as “recoverable borrower fees,” “corporate advances,” “late charges,” “inspection fees” and hazard insurance premiums.

82. As escrow agent with unfettered access to the escrow accounts, Fairbanks owes a fiduciary duty to each member of the Class whose loan it owns or services because Fairbanks is the party in which the Class members place their trust and confidence to be treated fairly and with good faith.

83. Among the duties owed by Fairbanks is the duty not to impose fees and charges not expressly authorized by the mortgage loan documents.

84. Plaintiff and every member of the Class has presumptively and justifiably relied, to their detriment, on Fairbanks's representations that the alleged amounts owed were in fact reasonable and properly charged in accordance with the uniform loan transaction documents, because they have either paid all or a portion of Fairbanks's charges, or have had their loan balances, interest charges and escrow obligations increased by the allegedly owing amounts and otherwise been subjected to legal and collection proceedings as a direct result of the actions of Fairbanks, and have been falsely reported to credit reporting agencies as "in default" when in fact they were not. But for Fairbanks's violation of its fiduciary duties, Class members' loan balances would not be increased, their interest charges and escrow requirements would have been lower and their credit reports would not have reflected a delinquency and default.

85. As a direct and proximate result of Fairbanks's breach of fiduciary duty, the Plaintiff and the Class have suffered substantial damages for which Fairbanks and BONY are liable.

Count Seven – Accounting
(Plaintiff v. Fairbanks and BONY)

86. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

87. Fairbanks' actions and omissions to act, as set forth above, have raised substantial and serious questions concerning the accuracy of the mortgage accounts of Plaintiff and the Class and the escrow accounts that Fairbanks controls. Plaintiff and the Class have a legal and equitable interest in their accounts and the right to have their accounts properly administered.

88. Plaintiff and the Class have no adequate remedy at law because Fairbanks has sole control over the accounts.

89. Plaintiff and the Class will be irreparably harmed by Fairbanks' unfettered control over the escrow accounts because they will be subjected to threats of foreclosure and the loss of their homes if they do not pay the charges and fees unilaterally imposed by Fairbanks.

90. The interests of the Plaintiff and the Class in ensuring that they are not charged improper fees or charges outweigh any prejudice to Fairbanks in permitting an accounting.

91. Plaintiff requests that an independent certified professional accountant be appointed by the Court to conduct an accounting of all residential mortgage loan and escrow accounts of Plaintiff and the Class at the sole expense of Fairbanks.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief on her own behalf and on behalf of the Class:

A. That an order be entered certifying the proposed Class under Rule 1702 of the Pennsylvania Rules of Civil Procedure and appointing Plaintiff and her counsel to represent the Class;

B. That an order be entered declaring that Defendants' actions as described above are in violation of the FCEUA and the CPL;

C. That an order be entered enjoining Defendants from continuing to communicate with, collect and attempt to collect money from Plaintiff and members of the Class in violation of the FCEUA and the CPL;

D. That an order be entered directing that an independent accounting be made of Plaintiff's and the Class members' escrow and mortgage accounts at Defendants' sole expense;

E. An order mandating and directing Defendants to correct all adverse reports, statements and information communicated to any one concerning class members or their accounts;

F. An order declaring Defendants' forced-placement practices to be in violation of the uniform mortgage contracts and enjoining Defendants' from force-placing insurance in the manner set forth herein in the future;

G. That an order be entered declaring that Defendants have breached the mortgage contracts and are responsible for any default on Plaintiff's mortgage, directing Defendants to specifically perform under the mortgage contracts, and enjoining foreclosure of the mortgage as a result;

H. That judgment be entered against Defendants for actual and treble damages pursuant to 73 P.S. § 201-9.2(a);

I. That judgment be entered against Defendants for statutory damages pursuant to 73 P.S. § 201-9.2(a);

J. That judgment be entered for punitive damages;


K. That the Court award costs and reasonable attorneys' fees, pursuant to 73 P.S. § 201-9.2(a); and

L. That the Court grant such other and further relief as may be just and proper.

DONOVAN SEARLES, LLC

Dated: March 13, 2003

By:



Michael D. Donovan
David A. Searles
1845 Walnut Street, Suite 1100
Philadelphia, PA 19103
(215) 732-6067

MILDENBERG AND STALBAUM, LLC
Brian R. Mildenberg
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Portland, OR 97204
(503) 220-1822

Attorneys for Plaintiff and the Classes

EXHIBIT A

NOTE

Loan Number: 8064055240

November 10, 2000Plymouth Meeting

, Pennsylvania

Date

City

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 32,161.78 (this amount will be called "principal"), plus interest, to the order of the Lender. The Lender is EquiCredit. 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 will be called the "Note Holder."

2. INTEREST

I will pay interest at a yearly rate of 12.640%.

Interest will be charged on that part of principal which has not been paid. Interest will be charged beginning on November 16, 2000 and continuing until the full amount of principal has been paid.

Subject to applicable law, the Note Holder shall be entitled to interest at the yearly rate on any mortgage arrearage (amount past due) including, without limitation, circumstances in which a petition in bankruptcy, wage-earner, or other insolvency proceeding is filed designating me as debtor.

3. PAYMENTS

I will pay principal and interest by making 180 consecutive monthly payments with the first such installment in the amount of \$ 516.14 due on the 1st day of January, 2001 and 178 monthly payments of \$ 346.75 shall be due on the 1st day of each succeeding month, and I will make a final balloon payment of \$ 28,271.26 on December 1, 2015. I will make payments in the amounts and on the dates promised until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If on December 1, 2015, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date." Time is of the essence of this Note.

I will make my monthly payments at P.O. Box 44132, Jacksonville, Florida 32231 or at a different place if required by the Note Holder.

4. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Return Check Charge**

In the event a check used to make any payment required by this Note is returned unpaid by the payor bank for insufficient funds or credit, I agree to pay you a \$ 10.00 fee for your additional costs incurred in processing such check. This charge will be required whether or not the returned check causes my payment to be late.

(B) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any of my monthly payments 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% of my overdue payment. I will pay this late charge only once on any late payment.

(C) Default

If I do not pay the full amount of each monthly payment by the date stated in Section 3 above, I will be in default.

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.

(D) Notice From Note Holder

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, if it is not mailed, 30 days after the date on which it is delivered to me.

(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 for all of its costs and expenses to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

5. THIS NOTE SECURED BY A MORTGAGE

In addition to the protections given to the Note Holder under this Note, a Mortgage, dated November 10, 2000, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Mortgage describes how and under what conditions I may be required to make immediate payment in full of all amounts that I owe under this Note.

6. BORROWER'S PAYMENTS BEFORE THEY ARE DUE

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. A prepayment of all of the unpaid principal is known as a "full prepayment." A prepayment of only part of the unpaid principal is known as a "partial prepayment."

Unless the box below is checked, I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note.

I may make a full or partial prepayment, however, I may make a full prepayment at any time; however, the Note Holder may charge me a prepayment charge during the first 3 years of the loan equivalent to 3 months interest at the rate set forth above on the amount of the principal balance prepaid. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no delays in the due dates or changes in the amounts of my monthly payments unless the Note Holder agrees in writing to those delays or changes. I may make a full prepayment at any time. If I choose to make a partial prepayment, the Note Holder may require me to make the prepayment on the same day that one of my monthly payments is due. The Note Holder may also require that the amount of my partial prepayment be equal to the amount of principal that would have been part of my next one or more monthly payments.

7. BORROWER'S WAIVERS

I waive my rights to require the Note Holder to do certain things. Those things are: (A) to demand payment of amounts due (known as "presentment"); (B) to give notice that amounts due have not been paid (known as "notice of dishonor"); (C) to obtain an official certification of nonpayment (known as a "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else also waives these rights. These persons are known as "guarantors, sureties and endorsers."

8. GIVING OF NOTICES

Any notice that must be given to me under this Note will be given by delivering it or by mailing it by certified mail addressed to me at the Property Address in the Security Instrument. A notice will be delivered or mailed to me 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 mailing it by certified mail to the Note Holder at the address stated in Section 3 above. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

9. RESPONSIBILITY OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each of us is fully and personally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any guarantor, surety, or endorser of this Note (as described in Section 7 above) is also obligated to do these things. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. Any person who takes over my rights or obligations under this Note will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of a guarantor, surety, or endorser of this Note (as described in Section 7 above) is also obligated to keep all of the promises made in this Note.

10. LOAN CHARGES

I understand and believe that this lending transaction complies with Pennsylvania usury, lending, general obligation, and real property laws of Pennsylvania, unless preempted by Federal law, however, if any interest or other charges in connection with this lending transaction are ever determined to exceed the maximum amount permitted by law, I understand and agree that: (i) the amount of the interest or other charges payable by me pursuant to this lending transaction shall be reduced to the maximum amount permitted by law; and (ii) any excess amount previously collected from me in connection with this lending transaction which exceeded the maximum amount permitted by law, will be credited against the outstanding principal balance. If the outstanding principal balance has already been repaid, the excess amount paid will be refunded to me. All fees, charges, goods, things in action or any other sums or things of value (collectively, the "Additional Sums") paid or payable by me, whether pursuant to this Note, the Mortgage/Deed of Trust or any other document or instrument in any way pertaining to this lending transaction, or otherwise with respect to this lending transaction, which, under the laws of Pennsylvania, may be deemed to be interest with respect to this lending transaction, shall, for the purpose of any laws of Pennsylvania which may limit the maximum amount of interest to be charged with respect to this lending transaction, be payable by me as, and shall be deemed to be, additional interest, and for such purposes only, the interest rate of this lending transaction (as defined in this Note) shall be deemed to be increased by the Additional Sums.

I acknowledge that the principal includes closing costs listed on the Loan Closing Statement and/or the Itemization of Amount Financed (unless such fees are paid by me in cash or by check at closing) and deem such costs to be reasonable and specifically agree to pay them. I also acknowledge and understand that the loan origination fee, if any, and any other prepaid finance charges are fully earned at the time the loan is made and are not refundable.

11. CONFORMITY WITH LAWS

If any provision of this Note is found to be in violation of any law, rule, or regulation, that provision shall be deemed modified to comply with applicable law.

Borrower DOROTHY STEWART

Borrower

Borrower

(Sign Original Only)

EXHIBIT B

Record and return to:

EquiCredit Corp./Secondary Marketing Dept.
P.O. Box 44136/DOC. CONTROL DIV.
Jacksonville, FL 32231

(Space Above This Line For Recording Data)

Loan Number: 8064055240

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on November 10, 2000

The mortgagor is DOROTHY STEWART, UNMARRIED ("Borrower").

This Security Instrument is given to EquiCredit which is organized and existing under the laws of North Carolina, and whose address is:

525 Plymouth Road, Suite 301, Plymouth Meeting, PA 19462 (Lender).

Borrower owes Lender the principal sum of THIRTY-TWO THOUSAND ONE HUNDRED SIXTY-ONE (U.S. \$ 32,161.78).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on December 1, 2015. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender the following described property located in PHILADELPHIA County, Pennsylvania:

SEE EXHIBIT "A" HERETO ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF

which has the address of 5140 CEDAR AVENUE PHILADELPHIA, PA 19143

[Street, City, State, Zip Code] ("Property Address");

- 2 -

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to 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 and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard of property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may required for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may 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 such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may 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. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may 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, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law.

- 3 -

If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property ("Property Taxes") which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments. In the event Borrower fails to pay any due and payable Property Taxes, Lender may, in its sole discretion, pay such charges and add the amounts thereof to the principal amount of the loan secured by the Security Instrument on which interest shall accrue at the contract rate set forth in the Note.

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; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien or forfeiture of any part of the Property; 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 may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. Hazard or 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 floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. In the event Borrower fails to maintain hazard insurance (including any required flood insurance) in an amount sufficient to satisfy all indebtedness, fees, and charges owed Lender (in addition to payment of all liens and charges which may have priority over Lender's interest in the property), Lender may, in its sole discretion, obtain such insurance naming Lender as the sole beneficiary (single interest coverage). Lender may add any premiums paid for such insurance to the principal amount of the loan secured by this Security Instrument on which interest shall accrue at the contract rate set forth in the Note. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. 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.

- 4 -

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. 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 any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by Lender, Borrower's rights to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty 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. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. 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.

7. Protection of Lender's Rights in the Property; Mortgage Insurance. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (including without limitation a proceeding in bankruptcy, probate, condemnation or to enforce other laws and regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. In addition, Grantor (Mortgagor) covenants at all times to do all things necessary to defend the title to all of the said property, but the Beneficiary (Mortgagee) shall have the right at any time to intervene in any suit affecting such title and to employ independent counsel in connection with any suit to which it may be a party by intervention or otherwise, and upon demand Grantor (Mortgagor) agrees either (1) to pay the Beneficiary all reasonable expenses paid or incurred by it in respect to any such suit affecting title to any such property, or affecting the Beneficiary's (Mortgagee's) liens or rights hereunder, including, reasonable fees to the Beneficiary's (Mortgagee's) attorneys or (2) to permit the addition of such expenses, costs, and attorney's fees to the principal balance of the Note(s) secured by this Deed of Trust (Mortgage) on which interest shall accrue at the Note rate.

Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

- 5 -

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. Mortgage Insurance. If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect until such time as the requirement for the insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, 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 approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

9. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or 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 proceeds, at its option, either for restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

11. 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 any successor in interest of Borrower shall not operate to release the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor or interest or 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 Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower'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 may agree to extend, modify, forbear or make any other accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Loan Charges.** If the loan secured by this Security Instrument 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 under the Note.

14. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. 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. To this end the provisions of this Security Instrument and the Note are declared to be severable.

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

17. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or an interest therein is sold or transferred by Borrower (or if beneficial interest in Borrower is sold or transferred and Borrower is not a natural person or persons but is a corporation, partnership, trust or other legal entity) without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Security Instrument which does not relate to a transfer of rights of occupancy in the property, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this Security Instrument to be immediately due and payable.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 14 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 21 hereof.

Lender may consent to a sale or transfer if: (1) Borrower causes to be submitted to Lender information required by Lender to evaluate the transferee as if a new loan were being made to the transferee; (2) Lender reasonably determines that Lender's security will not be impaired and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable;

(3) interest will be payable on the sums secured by this Security Instrument at a rate acceptable to Lender; (4) changes in the terms of the Note and this Security Instrument required by Lender are made, including, for example, periodic adjustment in the interest rate, a different final payment date for the loan, and addition of unpaid interest to principal; and (5) the transferee signs 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, as modified if required by Lender. To the extent permitted by applicable law, Lender also may charge a reasonable fee as a condition to Lender's consent to any sale or transfer.

Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

18. Borrower's Right to Reinstate. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) 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 had no acceleration 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; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the 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 paragraph 17.

19. Sale of Note; Change of Loan Servicer. The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may 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 in accordance with paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. 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.

Borrower shall promptly give Lender written notice of 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. If Borrower learns, or is notified by any governmental or regulatory authority, 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.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, material containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 20, "Environmental Law" means federal laws and the laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

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

21. 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 paragraph 17 unless applicable law provides otherwise). Lender shall notify Borrower of, among other things: (a) the default; (b) the action required to cure the default; (c) when the default must be cured; and (d) that failure to cure the default as specified may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. Lender shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured as specified, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, attorney's fees and costs of title evidence to the extent permitted by applicable law.

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

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

24. Reinstatement Period. Borrower's time to reinstate provided in paragraph 18 shall extend to one hour prior to the commencement of bidding at a sheriff's sale or other sale pursuant to this Security Instrument.

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

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

27. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. (Check applicable box(es).)

- Adjustable Rate Rider
- Condominium Rider
- 1-4 Family Rider
- Graduated Payment Rider
- Planned Unit Development Rider
- Other(s) (specify)
EXHIBIT "A"
- Second Home Rider

28. Conformity With Laws. If any provision of this Mortgage (Deed of Trust) is found to be in violation of any law, rule or regulation which affects the validity and/or enforceability of the Note and/or Mortgage (Deed of Trust), that provision shall be deemed modified to comply with applicable law, rule, or regulation.

- 9 -

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

Witness _____

Borrower DOROTHY STEWART (SEAL)

Witness _____

Borrower _____ (SEAL)

Witness _____

Borrower _____ (SEAL)

I hereby certify that the precise address of the Lender (Mortgagee) is 525 Plymouth Road, Suite 301
Plymouth Meeting, PA 19462. On behalf of the Lender, _____

By: _____

Title: _____

COMMONWEALTH OF PENNSYLVANIA, PHILADELPHIA County ss: _____

On this, the 10th day of November, 2000, before me, X
the undersigned officer, personally appeared DOROTHY STEWART, UNMARRIED

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

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

(SEAL)

My Commission Expires:

Title of Officer

(Space Below This Line Reserved For Acknowledgment)

VERIFICATION

I, Dorothy Stewart, hereby state that I am the Plaintiff in this action and verify that the statements made in the foregoing are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa. C. S. § 4904 relating to unsworn falsification to authorities.


DOROTHY STEWART

Date: 3-13-02