

INDEX NUMBERS  
Saratoga County Clerk

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SARATOGA

---

**MORTGAGE FORECLOSURE  
COMPLAINT**

Wells Fargo Bank, N.A.,

Plaintiff,

Index No. \_\_\_\_\_

-against-

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

Emily Califano a/k/a Emily Jane Califano; The United States of America acting through The Secretary of Housing and Urban Development, "JOHN DOE", said name being fictitious, it being the intention of Plaintiff to designate any and all occupants of premises being foreclosed herein, and any parties, corporations or entities, if any, having or claiming an interest or lien upon the mortgaged premises,  
Defendants.

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The Plaintiff herein, by its Attorneys, Shapiro, DiCaro & Barak, LLC, complains of the defendants above named, and for its cause of action, alleges that:

First: The Plaintiff herein, at all times hereinafter mentioned was and still is a duly authorized National Association and having an office c/o 3476 Stateview Blvd, MAC# X7801-013, Fort Mill, South Carolina 29715.

**PLAINTIFF FURTHER ALLEGES  
UPON INFORMATION AND BELIEF**

Second: The defendants set forth in Schedule "A" reside or have a place of business at the address set forth therein and are made defendants in this action in the capacities therein alleged and for the purpose of foreclosing and extinguishing any other right, title or interest said defendants may have in the subject premises.

Third: The United States of America, The People of the State of New York, The State Tax Commission of the State of New York, the Industrial Commissioner of the State of New York and all other agencies or instrumentalities of the Federal, State or local government (by whatever name designated) if made parties to this action and if appearing in Schedule "B", are made parties solely by reason of the interest set forth in Schedule "B" and for no other reason.

Fourth: Heretofore, the defendant(s), Emily Jane Califano, for the purpose of securing to Wells Fargo Bank, N.A., its successors and assigns, duly made a certain adjustable or fixed rate note (Home Equity Conversion instrument), wherein and whereby they bound themselves, their heirs, executors, administrators and assigns, and each and every one of them, jointly and severally, in the amount of said sum of money, all as more fully appears together with the terms of repayment of said sum or rights of Wells Fargo Bank, N.A., its successors and assigns, in said bond, note or other instrument, a copy of which is attached hereto and made a part hereof.

Fifth: As security for the payment of said indebtedness, a Home Equity Conversion Mortgage was executed in the sum of \$243,000.00, acknowledged and delivered to Wells Fargo Bank, N.A. recorded in the Saratoga County Clerk's Office on February 22, 2007, in Instrument Number: 2007007401, wherein and whereby the mortgagor(s) named therein mortgaged, bargained, granted an interest in and/or sold to the mortgagee, its successors and assigns, the premises more particularly described therein, hereinafter called "mortgaged premises", under certain conditions with rights, duties and privileges between or among them as more fully appears in said mortgage, a copy of which is attached hereto and made a part hereof.

Sixth: Heretofore, the defendant(s), Emily Jane Califano, also executed a Home Equity Conversion Loan Agreement, more commonly known as a "Reverse Mortgage Agreement", which required the lender to pay the sums secured by the Home Equity Conversion Mortgage on a periodic basis, instead of in one lump sum at the time the loan documents were executed. The Home Equity Conversion Mortgage and Agreement provided that the Lender may require immediate payment in full of all sums secured if Emily Jane Califano ceases to occupy the subject premises as her principal residence. In this case the 30 Day Repayment Demand for Non-Occupancy was dated and mailed August 26, 2014.

Seventh: The Plaintiff is the current owner and holder of the subject Home Equity Conversion Mortgage and Note and therefore has the authority to institute a mortgage foreclosure action.

Eighth: The Home Equity Conversion Mortgage was duly recorded and the mortgage tax due thereon was duly paid on the recorded instrument in the proper County Clerk's Office at the place and time which appears thereon.

Ninth: Although Plaintiff advanced the monies required pursuant to the Home Equity Conversion Loan Mortgage and Agreement, Emily Jane Califano has/have failed and neglected to comply with the conditions of the Home Equity Conversion Mortgage, Agreement and note by omitting and failing to comply with the terms and provisions of the said instruments to either occupy the subject premises or to pay the balance due upon expiration period of notice of default for non-occupancy. The default has continued beyond the applicable grace period set forth in the Note, Home Equity Conversion Mortgage and Agreement and by reason thereof, Plaintiff has elected and hereby elects to declare immediately due and payable the entire unpaid balance.

Tenth: By reason of the foregoing, there is now due and owing to the plaintiff upon said Note, Home Equity Conversion Mortgage and Agreement, the unpaid principal balance set forth in Schedule C, and such other fees, costs, late charges, and interest, the amount of which will be determined by the Court.

Eleventh: The Home Equity Conversion Mortgage provides that, in the case of foreclosure, the mortgaged premises may be sold in one parcel.

Twelfth: The Plaintiff shall not be deemed to have waived, altered, released or changed the election hereinbefore made by reason of the payment or performance, after the date of the commencement of this action, of any or all of the defaults mentioned herein; and such election shall continue and remain effective until the costs and disbursements of this action, and all present and future defaults under the Note and Home Equity Conversion Mortgage and Agreement and occurring prior to the discontinuance of this action are fully paid and cured.

Thirteenth: Pursuant to the Fair Debt Collection Practices Act, this action may be deemed to be an attempt to collect a debt, on behalf of Plaintiff. Any information obtained as a result of this action will be used for that purpose.

Fourteenth: If the subject Note and Home Equity Conversion Mortgage fall within the prescribed definition of a subprime home loan or high-cost home loan as identified under section six-l or six-m of the New York State Banking Law, then Plaintiff has complied with all the provisions of section five-hundred ninety-five of the New York State Banking Law and any rules and regulations promulgated thereunder, section six-l or six-m of the New York State Banking Law and section thirteen hundred four of New York State Real Property Actions and Proceedings Law (RPAPL).

Fifteenth: Upon information and belief, Plaintiff has complied with the provisions of RPAPL § 1306, if applicable.

**WHEREFORE**, plaintiff demands judgment:

- (a) Adjudging and decreeing the amounts due the plaintiff for principal, interest, costs, and reasonable attorney's fees, if and as provided for in the said mortgage;
- (b) That the defendants and all persons claiming by, through or under them, or either or any of them, subsequent to the commencement of this action and every other person or corporation whose right, title conveyance or encumbrance is subsequent to or subsequently recorded, may be barred and forever foreclosed of all right, claim, lien, or interest, or equity of redemption in and to said mortgaged premises;
- (c) That the said mortgaged premises, or such part thereof as may be necessary to raise the amounts then due for principal, interest, costs, reasonable attorney's fees, allowances and disbursements, together with any monies advanced and paid, may be decreed to be sold according to law;
- (d) That out of the monies arising from the sale thereof, the plaintiff may be paid the amounts then due on said bond/note and Home Equity Conversion Mortgage and agreement and any sum which may have been paid by the plaintiff to protect the lien of plaintiff's mortgage as herein set forth, with interest upon said amounts from the dates of the respective payments and advances thereof, the costs and expenses of this action, additional allowance, if any, and reasonable attorney's fees, if and as provided for in the mortgage, rider or other agreement, so far as the amount of such money properly applicable thereto will pay the same;

(e) That either or any of the parties to this action may become a purchaser upon such sale;

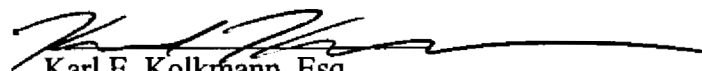
(f) That this Court forthwith appoint a Receiver of the rents and profits of said premises with the usual powers and duties;

(g) That the United States of America shall have the right of redemption, if applicable;

(h) That the plaintiff may have such other or further relief, or both, in the premises as may be just and equitable.

Plaintiff specifically reserves its right to share in any surplus monies arising from the sale of subject premises by virtue of its position as a judgment or other lien creditor excluding the mortgage being foreclosed herein.

Dated: December 31, 2014



Karl E. Kolkmann, Esq.  
Associate Attorney  
SHAPIRO, DICARO & BARAK, LLC  
Attorneys for Plaintiff  
175 Mile Crossing Boulevard  
Rochester, NY 14624  
(585) 247-9000  
Our File No. 14-038653

**SCHEDULE A – DEFENDANTS**

**DEFENDANTS**

**CAPACITY**

Emily Califano a/k/a Emily Jane Califano  
712 Swaggertown Road  
Scotia, NY 12302

Owner of record and original obligor under the  
Note secured by the Mortgage recorded on  
February 22, 2007, in Instrument Number:  
2007007401, being foreclosed herein.

“JOHN DOE”

Said name being fictitious, it being the  
intention of Plaintiff to designate any and all  
occupants, tenants, persons or corporations, if  
any, having or claiming an interest in or lien  
upon the premises being foreclosed herein.

**SCHEDULE B – DEFENDANTS**

**DEFENDANTS**

**CAPACITY**

The United States of America acting  
through The Secretary of Housing and  
Urban Development  
451 Seventh Street SW  
Washington, DC 20410

Subordinate mortgagee by virtue of a Mortgage  
recorded on February 22, 2007 in Instrument  
Number 2007007402 of Mortgages.



SCHEDULE CMORTGAGE INFORMATION

- |   |               |
|---|---------------|
| 1. Original Amount of Bond/Note/<br>Home Equity Conversion Loan Agreement | \$243,000.00  |
| 2. Default date   | July 10, 2014 |

AMOUNT DUE

- |   |                              |
|---|------------------------------|
| 3. Principal balance owing                    | \$110,026.00                 |
| 4. Interest pursuant to the terms of the Note | To Be Calculated at Judgment |
| 5. Interest Rate at time of Default Date      | 1.59%                        |
| 6. Advanced by Plaintiff                      | To Be Calculated at Judgment |

*\* Interest will continue to accrue pursuant to the terms of the note and Home Equity Conversion Agreement contract rate, until a Judgment of Foreclosure and Sale has been entered in the proper County Clerk's Office, at which time the interest rate will be calculated at the legal rate of 9.00%.*

(14-038653)

14-038653

**SCHEDULE D**

NONE

(14-038653)

14-038653

FORM S 361 NY DEED - EXECUTORS

95-4998

NATIONAL LEGAL SUPPLY, INC.  
176 SHERIDAN AVENUE, ALBANY NY 12210

# This Indenture

Made the 26<sup>th</sup> day of January, Nineteen Hundred and Ninety-three  
Between FREDA B. BRYANT,

as Executrix of the estate of MICHAEL A. CALIFANO, by virtue of  
the last Will and Testament of MICHAEL A. CALIFANO, late of  
Franklin County in the State of Ohio, party of the first part, and  
deceased, party of the first part, and

EMILY JANE CALIFANO, residing at 712 Swaggertown Road, Scotia, New York 12302,  
individually and as the surviving spouse of LIBERATO ARTHUR CALIFANO,  
party of the second part:

Witnesseth, That the party of the first part, by virtue of the power and  
authority to her given in and by the said last Will and Testament,  
and in consideration of

ONE AND NO/100-----Dollars,

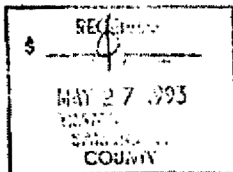
(\$ 1.00-----) lawful money of the United States, and other good and  
valuable consideration paid by the party of the second part,  
do es hereby grant and release unto the party of the second part, her heirs,  
and assigns forever, all

THAT TRACT PIECE OR PARCEL OF LAND, with the building and improvements  
thereon, situate, lying and being in the Town of Charlton, County of Saratoga,  
and State of New York, being more particularly bounded and described as  
follows: COMMENCING at a point on the Easterly line of Swaggertown Road,  
which point is distant 260.0 feet southerly from the place where the southerly  
margin of the lands now or formerly of Joseph W. Rush adjoins the northerly  
margin of the lands now or formerly of Sarah M. Knapp, thence running S. 81°  
57' E. 451.3 feet to a point; thence S. 9° 7' W. 157.4 feet to a point in the  
northerly boundary of the lands now or formerly of Voelmle; thence N. 82° 51'  
W. along the northerly boundary line of the lands now or formerly of Voelmle  
451.3 feet to a point on the easterly line of Swaggertown Road; thence along  
the easterly line of Swaggertown Road, N. 9° 34' E., for a distance of 157.4  
feet to the point or place of beginning being the aforesaid dimensions more or  
less.

BEING the same premises conveyed by John T. Geertsen and Lillian  
R. Geertsen, his wife, to Michael A. Califano by deed dated October 19, 1979  
and recorded October 21, 1979 in Book 1001 of Deeds at Page 45.

This conveyance is made subject to all valid and enforceable  
covenants, conditions, easements, restrictions and zoning ordinances affecting  
the premises.

The said Michael A. Califano died on July 20, 1989, a resident of  
Franklin County in the State of Ohio.



1358 Page 630

This conveyance is made and accepted subject to an indebtedness secured by a mortgage upon said premises held by NORTHEAST SAVINGS, F.A., successor to SCHENECTADY SAVINGS BANK, which mortgage was recorded in the Saratoga County Clerk's Office, on the 23rd day of October, 1979, in Book 734 of Mortgages at page 286, on which there is an unpaid principal of EIGHTEEN THOUSAND FIVE HUNDRED FORTY AND 84/100 Dollars, (\$18,540.84--), with interest from March 1, 1993, at the rate of ten percent per annum, which said mortgage debt the parties of the second part hereby assume and agree to pay, as part of the purchase price of the above described premises, and the parties of the second part hereby execute and acknowledge this Instrument for the purpose of complying with the provisions of the General Obligations Law, Section 5-705.

Together with the appurtenances, and also all the estate which the said Testator had at the time of his decease, in said premises, And also the estate therein, which the party of the first part has or has power to convey or dispose of, whether individually, or by virtue of said Will or otherwise. To have and to hold the premises herein granted unto the party of the second part, her heirs and assigns forever.

SUBJECT to the Trust Fund provisions of Section Thirteen of the Lien Law.

And the party of the first part covenant that she has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

In Witness Whereof, the party of the first part has hereunto set hand and seal the day and year of first above written.

*[Signature]*  
FREDA B. BRYANT

As Executor(s) under the Last Will and Testament of  
MICHAEL A. CALIFANO, Deceased

State of OHIO ss. On this 20th day of January, 1993, before me, the subscriber, personally appeared

FREDA B. BRYANT,

the Executor of the last Will and Testament of MICHAEL A. CALIFANO,

to me personally known and known to me to be the same person described in and who executed the within instrument, and she duly acknowledged to me that she executed the same as such Executor as aforesaid for the purposes therein mentioned.



*[Signature]*  
Notary Public

JACQUELINE S. GUISENER  
Notary Public, State of Ohio  
My Commission Expires 9-28-94

Deed

FREDA B. BRYANT

TO

EMILY JANE CALIFANO

Dated, January 19, 1993

STATE OF NEW YORK  
SARATOGA COUNTY CLERK'S OFFICE  
RECORDED ON THE 27th DAY  
OF May 1993 at 10:01  
GIVEN IN BOOK 1358  
OF Deeds  
AT PAGE 690  
COUNTY CLERK

LIBER 1358 PAGE 691

RAC

Pentikowald, Pastors & Freeborn  
2 Crestmont Drive  
Clifton Park NY 12065

ATTORNEY'S CERTIFICATION  
Pursuant to Section 2105 of the New York  
Civil Practice Law and Rules, I, an attorney  
admitted to practice in the courts of the  
State, hereby certify that this copy has been  
compared by me with the original and is a  
true and complete copy thereof.

*Elizabeth C. Clarke*  
ATTORNEY

**ADJUSTABLE RATE NOTE  
(HOME EQUITY CONVERSION)**

FHA Case No. [REDACTED]

FEBRUARY 02, 2007  
712 SWAGGERTOWN ROAD  
SCOTIA, NY 12302

[Property Address]

**1. DEFINITIONS**

"Borrower" means each person signing at the end of this Note. "Lender" means  
WELLS FARGO BANK, N.A.

and its successors and assigns. "Secretary" means the Secretary of Housing and  
Urban Development or his or her authorized representatives.

**2. BORROWER'S PROMISE TO PAY; INTEREST**

In return for amounts to be advanced by Lender to or for the benefit of Borrower under the  
terms of a Home Equity Conversion Loan Agreement dated 02/02/07 ("Loan  
Agreement"), Borrower promises to pay to the order of Lender a principal amount equal to the sum  
of all Loan Advances made under the Loan Agreement with interest. All amounts advanced by  
Lender, plus interest, if not paid earlier, are due and payable on AUGUST 15TH, 2076.  
Interest will be charged on unpaid principal at the rate of SIX AND 600/1000  
percent ( 6.600 %) per year until the full amount of  
principal has been paid. The interest rate may change in accordance with Paragraph 5 of this Note.  
Accrued interest shall be added to the principal balance as a Loan Advance at the end of each  
month.

**3. PROMISE TO PAY SECURED**

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument  
that is dated the same date as this Note and called the "Security Instrument." That Security  
Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

**4. MANNER OF PAYMENT**

**(A) Time**

Borrower shall pay all outstanding principal and accrued interest to Lender upon receipt of a  
notice by Lender requiring immediate payment in full, as provided in Paragraph 7 of this Note.

**(B) Place**

Payment shall be made at WELLS FARGO BANK, N.A.

3480 STATEVIEW BLVD. MAC X7802-038

PORT MILL, SC 29715-7203

800-472-3209

, or any such other

place as Lender may designate in writing by notice to Borrower.

**(C) Limitation of Liability**

Borrower shall have no personal liability for payment of the debt. Lender shall enforce the  
debt only through sale of the Property covered by the Security Instrument ("Property"). If this  
Note is assigned to the Secretary, the Borrower shall not be liable for any difference between  
the mortgage insurance benefits paid to Lender and the outstanding indebtedness, including  
accrued interest, owed by Borrower at the time of the assignment.

**5. INTEREST RATE CHANGES**

**(A) Change Date**

The interest rate may change on the first day of MAY 2007, and on  that  
day of each succeeding year  the first day of each succeeding month. "Change Date"  
means each date on which the interest rate could change.

**(B) The Index**

Beginning with the first Change Date, the interest rate will be based on an Index. "Index"  
means the weekly average yield on United States Treasury Securities adjusted to a constant  
maturity of one year, as made available by the Federal Reserve Board. "Current Index" means  
the most recent Index figure available 30 days before the Change Date. If the Index (as defined  
above) is no longer available, Lender will use as a new Index any index prescribed by the  
Secretary. Lender will give Borrower notice of the new Index.

**(C) Calculation of Interest Rate Changes**

Before each Change Date, Lender will calculate a new interest rate by adding a margin of  
ONE AND ONE-HALF percentage points ( 1.500 %) to the Current Index. Subject to the limits stated in Paragraph 5(D) of this Note, this amount will  
be the new interest rate until the next Change Date.

**(D) Limits on Interest Rate Changes**

The interest rate will never increase or decrease by more than two percentage points  
(2.0%) on any single Change Date. The interest rate will never be more than five percentage  
points (5.0%) higher or lower than the initial interest rate stated in Paragraph 2 of this Note.

The interest rate will never increase above SIXTEEN AND 600/1000  
percent ( 16.600 %).

**(E) Notice of Changes**

Lender will give notice to Borrower of any change in the interest rate. The notice must be  
given at least 25 days before the new interest rate takes effect, and must set forth (i) the date of  
the notice, (ii) the Change Date, (iii) the old interest rate, (iv) the new interest rate, (v) the  
Current Index and the date it was published, (vi) the method of calculating the adjusted interest  
rate, and (vii) any other information which may be required by law from time to time.

**(F) Effective Date of Changes**

A new interest rate calculated in accordance with paragraphs 5(C) and 5(D) of this Note will become effective on the Change Date, unless the Change Date occurs less than 25 days after Lender has given the required notice. If the interest rate calculated in accordance with Paragraphs 5(C) and 5(D) of this Note decreased, but Lender failed to give timely notice of the decrease and applied a higher rate than the rate which should have been stated in a timely notice, then Lender shall recalculate the principal balance owed under this Note so it does not reflect any excessive interest.

**6. BORROWER'S RIGHT TO PREPAY**

A Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty. Any amount of debt prepaid will first be applied to reduce the principal balance of the Second Note described in Paragraph 11 of this Note and then to reduce the principal balance of this Note.

All prepayments of the principal balance shall be applied by Lender as follows:

- First**, to that portion of the principal balance representing aggregate payments for mortgage insurance premiums;
- Second**, to that portion of the principal balance representing aggregate payments for servicing fees;
- Third**, to that portion of the principal balance representing accrued interest due under the Note; and
- Fourth**, to the remaining portion of the principal balance. A Borrower may specify whether a prepayment is to be credited to that portion of the principal balance representing monthly payments or the line of credit. If Borrower does not designate which portion of the principal balance is to be prepaid, Lender shall apply any partial prepayments to an existing line of credit or create a new line of credit.

**7. IMMEDIATE PAYMENT IN FULL****(A) Death or Sale**

Lender may require immediate payment in full of all outstanding principal and accrued interest if:

- (i) A Borrower dies and the Property is not the principal residence of at least one surviving Borrower, or
- (ii) All of a Borrower's title in the Property (or his or her beneficial interest in a trust owning all or part of the Property) is sold or otherwise transferred and no other Borrower retains title to the Property in fee simple or retains a leasehold under a lease for less than 99 years which is renewable or a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest Borrower or retains a life estate (or retaining a beneficial interest in a trust with such an interest in the Property).

**(B) Other Grounds**

Lender may require immediate payment in full of all outstanding principal and accrued interest, upon approval by an authorized representative of the Secretary, if:

- (i) The Property ceases to be the principal residence of a Borrower for reasons other than death and the Property is not the principal residence of at least one other Borrower;
- (ii) For a period of longer than 12 consecutive months, a Borrower fails to physically occupy the Property because of physical or mental illness and the Property is not the principal residence of at least one other Borrower; or
- (iii) An obligation of the Borrower under the Security Instrument is not performed.

**(C) Payment of Costs and Expenses**

If Lender has required immediate payment in full as described above, the debt enforced through sale of the Property may include costs and expenses, including reasonable and customary attorneys' fees, associated with enforcement of this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

**(D) Trusts**

Conveyance of a Borrower's interest in the Property to a trust which meets the requirements of the Secretary, or conveyance of a trust's interests in the Property to a Borrower, shall not be considered a conveyance for purposes of this Paragraph. A trust shall not be considered an occupant or be considered as having a principal residence for purposes of this Paragraph.

**8. WAIVERS**

Borrower waives the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

**9. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the Property Address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

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

If more than one person signs this Note, each person is fully obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note only through sale of the Property.

**11. RELATIONSHIP TO SECOND NOTE****(A) Second Note**

Because Borrower will be required to repay amounts which the Secretary may make to or on behalf of Borrower pursuant to Section 255(i)(1)(A) of the National Housing Act and the Loan Agreement, the Secretary has required Borrower to grant a Second Note to the Secretary.

**(B) Relationship of Secretary Payments to this Note**

Payments made by the Secretary shall not be included in the debt due under this Note unless:

- (i) This Note is assigned to the Secretary; or
- (ii) The Secretary accepts reimbursements by the Lender for all payments made by the Secretary.

If the circumstances described in (i) or (ii) occur, then all payments by the Secretary, including interest on the payments, shall be included in the debt.

NOT A VALID DOCUMENT IN THIS STATE

(C) Effect on Borrower

Where there is no assignment or reimbursement as described in (B)(i) or (ii), and the Secretary makes payments to Borrower, then Borrower shall not:

- (i) Be required to pay amounts owed under this Note until the Secretary has required payment in full of all outstanding principal and accrued interest under the Second Note held by the Secretary, notwithstanding anything to the contrary in Paragraph 7 of this Note; or
- (ii) Be obligated to pay interest or shared appreciation under this Note at any time, whether accrued before or after the payments by the Secretary, and whether or not accrued interest has been included in the principal balance of this Note, notwithstanding anything to the contrary in Paragraphs 2 or 5 of this Note or any Allonge to this Note.

12. SHARED APPRECIATION

If Borrower has executed a Shared Appreciation Allonge, the covenants of the Allonge shall be incorporated into and supplement the covenants of this Note as if the Allonge were a part of this Note.

13. GOVERNING LAW

All interest, fees and other amounts charged or accruing in connection with this Note which are considered "interest" within the meaning of Section 86 of the National Bank Act (12 USC § 86; 12 CFR 7.4001(a)) shall be governed by and interpreted under South Dakota law. In all other respects, this Note and all related documents, as well as the rights, remedies, and duties of the Bank and the borrower(s), shall be governed and interpreted by federal law with respect to national banks and, to the extent not preempted by federal law, the consumer protection laws of the state in which the real estate is located, except that Texas Finance Code Chapter 346 (which regulates certain revolving credit accounts) does not apply to this Note.

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

Emily Jane Califano (Seal)  
EMILY JANE CALIFANO -Borrower

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

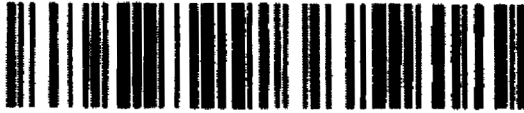
\_\_\_\_\_  
(Seal)  
-Borrower

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

WITHOUT RECOURSE  
PAY TO THE ORDER OF

WELLS FARGO BANK, N.A.  
BY: Joan M. Mills  
Joan M. Mills, Vice President

Saratoga County - State of New York  
Kathleen A. Marchione - SARATOGA COUNTY CLERK  
COUNTY CLERKS RECORDING PAGE  
THIS PAGE IS PART OF THE INSTRUMENT



RECEIPT NO. : 2007211216797

Instr #: 2007007401  
Rec Date: 02/22/2007 10:46:16 AM  
Doc Grp: X  
Descrip: MORTGAGE  
Num Pgs: 17

Party1: CALIFANO EMILY JANE  
Party2: WELLS FARGO BANK  
Town: CHARLTON

Recording:

Pages	48.00
Cover Sheet Fee	10.00
Recording Fee	5.00
Education Fee	20.00
Names	0.00
255 Affidavit	5.00
Basic Tax Amount	0.00
SONYMA Tax Amount	0.00
CDTA Tax Amount	0.00

Total: 88.00  
\*\*\*\* NOTICE: THIS IS NOT A BILL \*\*\*\*

\*\*\*\*\* Mortgage Tax \*\*\*\*\*

Serial #: CX-13243  
Calc Method: Exempt  
Mtg Amt: 243000.00

Basic	0.00
SONYMA	0.00
CDTA	0.00
Total:	<u>0.00</u>

Record and Return To:

KAPITAL TITLE AND ABSTRACT SERVICES INC  
952 ROUTE 146  
CLIFTON PARK, NY 12065



*Rsk*

Capital Title & Abstract Services, Inc.  
152 Route 146, Clifton Park, NY 12065  
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2007007401  
2/22/2007 10:46:16 AM  
MORTGAGE

Kathleen A Marchione Saratoga Co Clk

FILED

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State of New York

FHA Case No. [REDACTED]

**ADJUSTABLE RATE  
HOME EQUITY CONVERSION MORTGAGE**

THIS MORTGAGE ("Security Instrument") is given on 02/02/07 . The  
mortgagor is EMILY JANE CALIPANO, A SINGLE PERSON

whose address is 712 SWAGGERTOWN ROAD, SCOTIA, NY 12302

("Borrower"). This

Security Instrument is given to WELLS FARGO BANK, N.A.

which is organized and existing under the laws of THE UNITED STATES  
and whose address is  
P.O. BOX 11701  
NEWARK, NJ 071014701

("Lender"). Borrower

has agreed to repay to Lender amounts which Lender is obligated to advance, including future advances, under the terms of a Home Equity Conversion Loan Agreement dated the same date as this Security Instrument ("Loan Agreement"). The agreement to repay is evidenced by Borrower's Note dated the same date as this Security Instrument ("Note"). This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest at a rate subject to adjustment, and all renewals, extensions and modifications of the Note, up to a maximum principal amount of TWO HUNDRED FORTY THREE THOUSAND AND 00/100

(U.S. \$ \*\*\*\*\*243,000.00 ); (b) the payment of all other sums, with interest, advanced under Paragraph 5 to protect the security of this Security Instrument or otherwise due under the terms of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. The full debt, including amounts described in (a), (b), and (c) above, if not paid earlier, is due and payable on AUGUST 15TH, 2076 . For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in SARATOGA County, New York:

see attached

which has the address of 712 SWAGGERTOWN ROAD  
(Street)

SCOTIA, NY 12302

(City, State, Zip)

("Property Address");

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered. 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 and Interest.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note.

2. **Payment of Property Charges.** Borrower shall pay all property charges consisting of taxes, ground rents, flood and hazard insurance premiums, and special assessments in a timely manner, and shall provide evidence of payment to Lender, unless Lender pays property charges by withholding funds from monthly payments due to the Borrower or by charging such payments to a line of credit as provided for in the Loan Agreement.

3. **Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire. This insurance shall be maintained in the amounts, to the extent and for the periods required by Lender or the Secretary of Housing and Urban Development ("Secretary"). Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss to Lender instead of to Borrower and to Lender jointly. Insurance proceeds shall be applied to restoration or repair of the damaged Property, 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 first to the reduction of any indebtedness under a Second Note and Second Security Instrument held by the Secretary on the Property and then to the reduction of the indebtedness under the Note and this Security Instrument. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

**4. 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 after the execution of this Security Instrument, and Borrower (or at least one Borrower, if initially more than one person are Borrowers) shall continue to occupy the Property as Borrower's principal residence for the term of the Security Instrument. "Principal residence" shall have the same meaning as in the Loan Agreement.

Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Borrower shall also 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 the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

**5. Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in Paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments. Borrower shall promptly discharge any lien which has priority over this Security Instrument in the manner provided in Paragraph 12(c).

If Borrower fails to make these payments or the property charges required by Paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in Paragraph 2.

To protect Lender's security in the Property, Lender shall advance and charge to Borrower all amounts due to the Secretary for the Mortgage Insurance Premium as defined in the Loan Agreement as well as all sums due to the loan servicer for servicing activities as defined in the Loan Agreement. Any amounts disbursed by Lender under this Paragraph shall become an additional debt of Borrower as provided for in the Loan Agreement and shall be secured by this Security Instrument.

**6. Inspection.** Lender or its agent may enter on, inspect or make appraisals of the Property in a reasonable manner and at reasonable times provided that Lender shall give the Borrower notice prior to any inspection or appraisal specifying a purpose for the inspection or appraisal which must be related to Lender's interest in the Property. If the property is vacant or abandoned or the loan is in default, Lender may take reasonable action to protect and preserve such vacant or abandoned Property without notice to the Borrower.

**7. 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 place of condemnation shall be paid to Lender. The proceeds shall be applied first to the reduction of any indebtedness under a Second Note and Second Security Instrument held by the Secretary on the Property, and then to the reduction of the indebtedness under the Note and this Security Instrument. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

**8. Fees.** Lender may collect fees and charges authorized by the Secretary.

**9. Grounds for Acceleration of Debt.**

**(a) Due and Payable.** Lender may require immediate payment in full of all sums secured by this Security Instrument if:

- (i) A Borrower dies and the Property is not the principal residence of at least one surviving Borrower; or
- (ii) All of a Borrower's title in the Property (or his or her beneficial interest in a trust owning all or part of the Property) is sold or otherwise transferred and no other Borrower retains title to the Property in fee simple or retains a leasehold under a lease for less than 99 years which is renewable or a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest Borrower or retains a life estate (or retaining a beneficial interest in a trust with such an interest in the Property).

**(b) Due and Payable with Secretary Approval.** Lender may require immediate payment in full of all sums secured by this Security Instrument, upon approval of the Secretary, if:

- (i) The Property ceases to be the principal residence of a Borrower for reasons other than death and the Property is not the principal residence of at least one other Borrower; or
- (ii) For a period of longer than twelve (12) consecutive months, a Borrower fails to occupy the Property because of physical or mental illness and the Property is not the principal residence of at least one other Borrower; or
- (iii) An obligation of the Borrower under this Security Instrument is not performed.

**(c) Notice to Lender.** Borrower shall notify Lender whenever any of the events listed in this Paragraph (a) (i) or (b) occur.

**(d) Notice to Secretary and Borrower.** Lender shall notify the Secretary and Borrower whenever the loan becomes due and payable under Paragraph 9 (a) (i) or (b). Lender shall not have the right to commence foreclosure until Borrower has had thirty (30) days after notice to either:

- (i) Correct the matter which resulted in the Security Instrument coming due and payable; or
- (ii) Pay the balance in full; or
- (iii) Sell the Property for the lesser of the balance or 95% of the appraised value and apply the net proceeds of the sale toward the balance; or
- (iv) Provide the Lender with a deed in lieu of foreclosure.

**(e) Trusts.** Conveyance of a Borrower's interest in the Property to a trust which meets the requirements of the Secretary, or conveyance of a trust's interests in the Property to a Borrower, shall not be considered a conveyance for purposes of this Paragraph 9. A trust shall not be considered an occupant or be considered as having a principal residence for purposes of this Paragraph 9.

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

**10. No Deficiency Judgments.** Borrower shall have no personal liability for payment of the debt secured by this Security Instrument. Lender may enforce the debt only through sale of the Property. Lender shall not be permitted to obtain a deficiency judgment against Borrower if the Security Instrument is foreclosed. If this Security Instrument is assigned to the Secretary upon demand by the Secretary, Borrower shall not be liable for any difference between the mortgage insurance benefits paid to Lender and the outstanding indebtedness, including accrued interest, owed by Borrower at the time of the assignment.

**11. Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full. This right applies even after foreclosure proceedings are instituted. To reinstate this Security Instrument, Borrower shall correct the condition which resulted in the requirement for immediate payment in full. Foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure

proceeding shall be added to the principal balance. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the Security Instrument.

#### 12. Lien Status.

(a) **Modification.** Borrower agrees to extend this Security Instrument in accordance with this Paragraph 12(a). If Lender determines that the original lien status of the Security Instrument is jeopardized under state law (including but not limited to situations where the amount secured by the Security Instrument equals or exceeds the maximum principal amount stated or the maximum period under which loan advances retain the same lien priority initially granted to loan advances has expired) and state law permits the original lien status to be maintained for future loan advances through the execution and recordation of one or more documents, then Lender shall obtain title evidence at Borrower's expense. If the title evidence indicates that the Property is not encumbered by any liens (except this Security Instrument, the Second Security Instrument described in Paragraph 13(a) and any subordinate liens that the Lender determines will also be subordinate to any future loan advances), Lender shall request the Borrower to execute any documents necessary to protect the lien status of future loan advances. Borrower agrees to execute such documents. If state law does not permit the original lien status to be extended to future loan advances, Borrower will be deemed to have failed to have performed an obligation under this Security Instrument.

(b) **Tax Deferral Programs.** Borrower shall not participate in a real estate tax deferral program, if any liens created by the tax deferral are not subordinate to this Security Instrument.

(c) **Prior Liens.** 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 all amounts secured by 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.

#### 13. Relationship to Second Security Instrument.

(a) **Second Security Instrument.** In order to secure payments which the Secretary may make to or on behalf of Borrower pursuant to Section 255(i)(1)(A) of the National Housing Act and the Loan Agreement, the Secretary has required Borrower to execute a Second Note and a Second Security Instrument on the Property.

(b) **Relationship of First and Second Security Instruments.** Payments made by the Secretary shall not be included in the debt under the Note unless:

- (i) This Security Instrument is assigned to the Secretary; or
- (ii) The Secretary accepts reimbursement by the Lender for all payments made by the Secretary.

If the circumstances described in (i) or (ii) occur, then all payments by the Secretary, including interest on the payments, but excluding late charges paid by the Secretary, shall be included in the debt under the Note.

(c) **Effect on Borrower.** Where there is no assignment or reimbursement as described in (b)(i) or (ii) and the Secretary makes payments to Borrower, then Borrower shall not:

- (i) Be required to pay amounts owed under the Note, or pay any rents and revenues of the Property under Paragraph 19 to Lender or a receiver of the Property, until the Secretary has required payment in full of all outstanding principal and accrued interest under the Second Note; or
- (ii) Be obligated to pay interest or shared appreciation under the Note at any time, whether accrued before or after the payments by the Secretary, and whether or not accrued interest has been included in the principal balance under the Note.

(d) **No Duty of the Secretary.** The Secretary has no duty to Lender to enforce covenants of the Second Security Instrument or to take actions to preserve the value of the Property, even though Lender may be unable to collect amounts owed under the Note because of restrictions in this Paragraph 13.

**14. Forbearance by Lender Not a Waiver.** 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.

**15. Successors and Assigns Bound; Joint and Several Liability.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender. Borrower may not assign any rights or obligations under this Security Instrument or under the Note, except to a trust that meets the requirements of the Secretary. Borrower's covenants and agreements shall be joint and several.

**16. Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address all Borrowers jointly designate. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any 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 16.

**17. 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.

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

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

**19. Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

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

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this Paragraph 19.

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

**20. Foreclosure Procedure.** If all of the conditions stated in subparagraphs (A), (B), and (C) of this Paragraph 20 are met, Lender may require Borrower to pay immediately the entire amount then remaining unpaid under the Note and under this Security Instrument. Lender may do this without making any further demand for payment ("immediate payment in full").

If Lender requires immediate payment in full, Lender may bring a lawsuit to take away all of Borrower's remaining rights in the Property and have the Property sold. At this sale, Lender or another person may acquire the Property ("foreclosure and sale"). In any lawsuit for foreclosure and sale, Lender

will have the right to collect all costs and disbursements and additional allowances allowed by law and will have the right to add all reasonable attorneys' fees to the amount Borrower owes Lender. Lender may require immediate payment in full under this Paragraph 20 only if all of the following conditions are met:

- (A) Borrower fails to keep any promise or agreement made in this Security Instrument, including the promises and agreements made in Paragraph 9 of this Security Instrument.  
 (B) Lender sends to Borrower, in the manner described in Paragraph 16 above, a notice that states: (i) the promise or agreement Borrower failed to keep; (ii) the action the Borrower must take to correct that default; and (iii) a date by which Borrower must correct the default. The date must be at least 30 days from the date on which the notice is given.  
 (C) Borrower does not correct the default stated in the notice from Lender by the date stated in that notice.

**21. Lien Priority.** The full amount secured by this Security Instrument shall have the same priority over any other liens on the Property as if the full amount had been disbursed on the date the initial disbursement was made, regardless of the actual date of any disbursement. The amount secured by this Security Instrument shall include all direct payments by Lender to Borrower and all other loan advances permitted by this Security Instrument for any purpose. This lien priority shall apply notwithstanding any State constitution, law or regulation, except that this lien priority shall not affect the priority of any liens for unpaid State or local governmental unit special assessments or taxes.

**22. Adjustable Rate Feature.** Under the Note, the initial stated interest rate of 6.600% which accrues on the unpaid principal balance ("Initial Interest Rate") is subject to change, as described below. When the interest rate changes, the new adjusted interest rate will be applied to the total outstanding principal balance. Each adjustment to the interest rate will be based upon the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board in Statistical Release H.15 (519) ("Index") plus a margin. If the Index is no longer available, Lender will use as a new Index any index prescribed by the Secretary. Lender will give Borrower notice of the new Index.

Lender will perform the calculations described below to determine the new adjusted interest rate. The interest rate may change on the first day of MAY 2007, and on  that day of each succeeding year  the first day of each succeeding month ("Change Date") until the loan is repaid in full.

The value of the Index will be determined, using the most recent Index figure available thirty (30) days before the Change Date ("Current Index"). Before each Change Date, the new interest rate will be calculated by adding a margin to the Current Index. The sum of the margin plus the Current Index will be called the "Calculated Interest Rate" for each Change Date. The Calculated Interest Rate will be compared to the interest rate in effect immediately prior to the current Change Date (the "Existing Interest Rate").

(Annually Adjusting Variable Rate Feature) The Calculated Interest Rate cannot be more than 2.0% higher or lower than the Existing Interest Rate, nor can it be more than 5.0% higher or lower than the Initial Interest Rate.

(Monthly Adjusting Variable Rate Feature) The Calculated Interest Rate will never increase above SIXTEEN AND 600/1000 percent ( 16.600 %).

The Calculated Interest Rate will be adjusted if necessary to comply with these rate limitation(s) and will be in effect until the next Change Date. At any Change Date, if the Calculated Interest Rate equals the Existing Interest Rate, the interest rate will not change.

**23. Lender's Obligation to Discharge this Security Instrument.** When Lender has been paid all amounts due under the Note and under this Security Instrument, Lender will discharge this Security Instrument by delivering a certificate stating that this Security Instrument has been satisfied. Borrower will pay all costs for the discharge. If Lender so requires, Lender may require Borrower to pay such a fee but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under applicable law.

**24. Agreements about New York Lien Law.** Borrower will receive all amounts lent by Lender subject to the trust fund provisions of Section 13 of the New York Lien Law. If, on the date this Security Instrument is recorded, construction or other work on any building or other improvement located on the Property has not been completed for at least four months, Borrower will: (A) hold all amounts which Borrower receives and which Borrower has a right to receive from Lender under the Note as a "trust fund"; and (B) use those amounts to pay for that construction or work before Borrower uses them for any other purpose. Borrower acknowledges that the fact that Borrower is holding those amounts as a "trust fund" means that for any building or other improvement located on the Property, Borrower has a special responsibility under the law to use the amount in the manner described in this Paragraph 24.

**25. Mortgage Tax Notice.** The Property is or will be principally improved by a 1 or 2 family house or dwellings only.

COMMITMENT/POLICY NO.:ST07-72002

**SCHEDULE "A" - LEGAL DESCRIPTION**

**ALL that tract, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in the Town of Charlton, County of Saratoga, and State of New York, being more particularly bounded and described as follows:**

**Commencing at a point on the Easterly line of Swaggertown Road, which point is distant 260.00 feet southerly from the place where the southerly margin of the lands now or formerly of Joseph W. Rush adjoins the northerly margin of the lands now or formerly of Sarah N. Knapp, thence running S. 81 deg. 57' E 451.3 feet to a point; thence S 9 deg. 7' W 157.4 feet to a point in the northerly boundary of the lands now or formerly of Voelmle; thence N. 82 deg. 53' W. along the northerly boundary line of the lands now or formerly of Voelmle 451.3 feet to a point on the easterly line of Swaggertown Road; thence along the easterly line of Swaggertown Road, N. 9 deg. 34' E., for a distance of 157.4 feet to the point or place of beginning being the aforesaid dimensions more or less.**

Property as described herein is located in the Town of Charlton with a mailing address of  
712 Swaggertown Road, Scotia, New York 12302

**The premises herein described are improved by a one or two family residential dwelling.**



26. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants 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).)

Condominium Rider  Shared Appreciation Rider  Planned Unit Development Rider  
 Other (Specify)

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

Emily Jane Califano (Seal)  
-Borrower  
EMILY JANE CALIFANO

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

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

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

(Space Below This Line For Acknowledgment)

STATE OF New York , Saratoga COUNTY SS:  
On the 2nd day of February in the year 2009 , before me, the undersigned,  
a Notary Public in and for said State, personally appeared  
Emily Jane Califano

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

COLLEEN WHITE TYLL  
NOTARY PUBLIC NYS  
REGID 01TY6050348  
SARATOGA COUNTY  
MY COMMISSION EXPIRES  
11-08-2018

Colleen White Tyll  
Notary Public

My commission expires:

This Building Loan Agreement and Repair Rider affects the land at Section \_\_\_\_\_, Block \_\_\_\_\_, Lot \_\_\_\_\_ of the Tax Map of SARATOGA County, New York.

**BUILDING LOAN AGREEMENT AND REPAIR RIDER**

This Building Loan Agreement and Repair Rider (the "Building Loan Agreement") is made this 2ND day of FEBRUARY, 2007, between EMILY JANE CALIFANO, A SINGLE PERSON

712 SWAGGERTOWN ROAD, SCOTIA, NY 12302 whose address is ("Borrower") and WELLS FARGO BANK, N.A. whose address is WELLS FARGO HOME MORTGAGE, P.O. BOX 11701, NEWARK, NJ 071014701 ("Lender")

**I. General Terms**

This Building Loan Agreement and Repair Rider is the "Repair Rider" which is a part of and described in and attached as an Exhibit to a Home Keeper Mortgage Loan Agreement between Borrower and Lender. The Loan Agreement is for a Loan of \$ \*\*\*\*\*162,000.00. This Building Loan Agreement is for \$ \*\*\*\*\*1,500.00 which is that portion of the Loan which equals the Repair Set Aside, if any. The entire Loan is intended to be a Reverse Mortgage loan authorized pursuant to New York State Real Property Law Section 280. This Building Loan Agreement contains the terms and conditions only for the part of that Loan which is set aside for Required Repairs to Borrower's Property. Additional terms and conditions are contained in the Loan Agreement, the Note and the Security Instrument dated the date of this Building Loan Agreement.

If Borrower complies with the terms of this Building Loan Agreement, the Loan Agreement, the Note and the Security Instrument, then Lender will make the advances of the Required Repair Set Aside under this Building Loan Agreement. The Building Loan Advances under this Building Loan Agreement are a part of the Loan, are Loan Advances under the Loan Agreement, and are not an additional loan or additional advances to Borrower.

**II. Definitions**

A. "Building Loan Advances" means all funds either paid to Borrower or advanced to satisfy obligations of the Borrower, under conditions set forth in this Building Loan Agreement.

NEW YORK HOME KEEPER<sup>SM</sup> BUILDING LOAN AGREEMENT AND REPAIR RIDER - Single Family - Fannie Mae INSTRUMENT NMFLE #801 (LANY) Rev. 05/15/2006 (VMP) #01(NY) (9908) Form 3707.33 1/96 Page 1 of 7 Initials: EQC VMP MORTGAGE FORMS - (800)521-7291

- B. "Loan Agreement" means the Homekeeper Mortgage Loan Agreement between Borrower and Lender, dated the same date as this Building Loan Agreement.
- C. "Note" means the promissory note signed by Borrower, dated the same date as this Building Loan Agreement, and given to Lender to evidence Borrower's promise to repay Loan Advances, with interest.
- D. "Original Principal Limit" means the maximum amount of principal available to be drawn at origination under a Line of Credit Payment Plan, or which would be available if Borrower selected a Line of Credit Payment Plan instead of a Tenure Payment Plan or a Modified Tenure Payment Plan.
- E. "Property" means Borrower's "Property" as defined in the Security Instrument and described on Exhibit A attached.
- F. "Repair Set Aside" means the amount of \$\*\*\*\*\*1,500.00 which is set aside from the Original Principal Limit to be applied to the payment of any Required Repairs.
- G. "Required Repairs" means the items of work to the Property as described in Section III.A.
- H. "Security Instrument" means the mortgage, deed of trust, deed to secure debt or other Security Instrument which is signed by Borrower and dated the same date as this Building Loan Agreement and which secures the Note.

### III. Lender's Promises

- A. Lender shall set aside \$\*\*\*\*\*1,500.00 from the Original Principal Limit under the Loan Agreement to be used for the purpose of making the following Required Repairs:

REPOINTING CHIMNEY/SCRAPE & REPAINT

CHIPPING AND PEELING INTERIOR & EXTERIOR SURFACES

(WOOD SIDING, WINDOW TRIM, ROOF OVERHANG, GARAGE

- B. Lender shall pay a Building Loan Advance for Required Repairs within five (5) business days after Lender has received a written request for payment by Borrower. Lender may specify a form for Loan Advances and may establish a reasonable minimum Building Loan Advance amount. Lender shall require one or more inspections by a Lender-approved inspector during the course of the Required Repairs. Lender shall not make a Building Loan Advance for any Required Repair which is not complete and which is not approved by a Lender-approved inspector.
- C. Lender shall ensure that all mechanic's liens, materialmen's liens and any other liens are released of record prior to an advance of funds under this Building Loan Agreement. Lender may require title evidence of the Property. Lender may require Borrower to obtain acknowledgment of payment and releases of lien from all contractors, subcontractors, and

materialmen. Such acknowledgments and releases shall be in the form required by local lien laws and shall cover all work done, labor performed and materials (including equipment and fixtures) furnished for the Required Repairs at the Property.

- D. Until a Lender-approved inspector finds that all Required Repairs have been completed in a satisfactory manner, Lender shall not release funds in excess of (i) the total value of work satisfactorily completed, and (ii) the value of materials or equipment delivered to, and suitably stored at, the site but not yet incorporated in the work, less (iii) ten percent holdback, less (iv) prior advances under this Building Loan Agreement.
- E. When the Required Repairs are completed Lender shall pay for such repairs with Building Loan Advances payable to Borrower and the contractor(s) jointly. Lender shall add the Building Loan Advances for the Required Repairs to the Loan Balance under the Loan Agreement.

#### IV. Borrower's Promises

- A. Borrower will complete all Required Repairs set forth in Section III.A. of this Building Loan Agreement so that the Property is in satisfactory condition as determined by Lender's inspector.
- B. Borrower shall have work on the Required Repairs begun within one month of the date of this Building Loan Agreement and have all work completed within twelve months of the date of this Building Loan Agreement. Work is to be performed with reasonable diligence. Should Borrower fail to comply with these terms, until all Required Repairs are satisfactorily completed, Borrower shall not request and Lender shall not make any further Loan Advances under the Loan Agreement or this Building Loan Agreement except for payment of Required Repairs. If the Required Repairs cannot be fully completed because there is not enough money in the Repair Set Aside, any additional funds needed to complete Required Repairs shall be made available in the form of additional Loan Advances in the manner provided under Section 3(k) of the Loan Agreement. This will cause a change in the Loan Agreement and this Building Loan Agreement. Borrower agrees to execute an amendment to this Building Loan Agreement showing this change in Loan Advances. If there is not enough money in the Loan to pay any additional funds needed to complete the Required Repairs, then Borrower will pay these additional funds directly out of Borrower's own funds.
- C. Borrower will cause all Required Repairs to be completed in a good and workmanlike manner. Borrower will cause the construction of the Required Repairs and the proposed use thereof to be in all respects in compliance with all applicable zoning, environmental protection, use and building codes, governmental requirements, laws, ordinances and regulations. Borrower has no knowledge of any notices of violations of any laws, ordinances, codes, requirements or orders of any government instrumentality having jurisdiction over the Property. All licenses, permits and approvals required by governmental authorities to complete the Required Repairs will be obtained by Borrower or Borrower's contractor.
- D. Borrower will furnish such records, contracts, bills and other documents related to the Property and improvements as Lender may require, including a receipt of payment and release of lien from all contractors, subcontractors and materialmen.

E. All materials, equipment, fixtures or any part of improvements which are a part of the Required Repairs shall be purchased by Borrower and paid for in full. Other than Borrower and Lender, nobody else will have any interest or lien on these items.

V. New York Lien Law

A. Borrower will receive all amounts lent to Borrower by Lender subject to the trust fund provisions of Section 13 of the New York Lien Law. This means that for any construction or other work on any building or other improvement located on the Property, Borrower will: (A) hold all amounts which Borrower receives and which Borrower has a right to receive from Lender under the Note and this Building Loan Agreement as a "trust fund"; and (B) use those amounts to pay for that construction or work before Borrower uses them for any other purpose. The fact that Borrower is holding those amounts as a "trust fund" means that for any building or other improvement located on the Property Borrower has a special responsibility under the law to use the amount in the manner described in this Section.

B. As required by Section 22 of the New York Lien Law, Borrower executed the Affidavit attached as Exhibit B at the end of this Building Loan Agreement.

_____ (Seal) -Borrower	<i>Emily Jane Califano</i> (Seal) <b>EMILY JANE CALIFANO</b> -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower

By: \_\_\_\_\_ (Seal)

Title: \_\_\_\_\_

STATE OF NEW YORK,

Saratoga County ss:

On the 2nd day of February, 2007 before me, the undersigned, a notary public in and for said state, personally appeared

Emily Jane Califano

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

COLLEEN WHITE TYLL  
NOTARY PUBLIC NYS  
REGISTRATION NO 01TY6050348  
SARATOGA COUNTY  
MY COMMISSION EXPIRES  
11-05-2010

*Colleen White Tyll*  
Notary Public

STATE OF NEW YORK,

County ss:

On the \_\_\_\_\_ day of \_\_\_\_\_ before me, the undersigned, a notary public in and for said state, personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

*Exhibit A.*

COMMITMENT/POLICY NO.:ST07-72002

## SCHEDULE "A" - LEGAL DESCRIPTION

ALL that tract, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in the Town of Charlton, County of Saratoga, and State of New York, being more particularly bounded and described as follows:

Commencing at a point on the Easterly line of Swaggertown Road, which point is distant 260.00 feet southerly from the place where the southerly margin of the lands now or formerly of Joseph W. Rush adjoins the northerly margin of the lands now or formerly of Sarah N. Knapp, thence running S. 81 deg. 57' E 451.3 feet to a point; thence S 9 deg. 7' W 157.4 feet to a point in the northerly boundary of the lands now or formerly of Voelmle; thence N. 82 deg. 53' W. along the northerly boundary line of the lands now or formerly of Voelmle 451.3 feet to a point on the easterly line of Swaggertown Road; thence along the easterly line of Swaggertown Road, N. 9 deg. 34' E., for a distance of 157.4 feet to the point or place of beginning being the aforesaid dimensions more or less.

Property as described herein is located in the Town of Charlton with a mailing address of  
712 Swaggertown Road, Scotia, New York 12302

The premises herein described are improved by a one or two family residential dwelling.

*ESC*  
*2/2/07*

**EXHIBIT B**

**AFFIDAVIT PURSUANT TO  
SECTION 22 OF THE LIEN LAW**

STATE OF NEW YORK )  
 )  
COUNTY OF Saratoga ) SS:  
 )

Colleen White Tyll, being duly sworn, deposes  
and says that:

- 1. **EMILY JANE CALIFANO**

712 SWAGGERTOWN ROAD, SCOTIA, NY 12302 resides at  
"Borrower" mentioned in the Building Loan Agreement and Repair Rider. and is

- 2. The amount of the Required Repair Set Aside is \$1,500.00

3. No consideration has been paid or will be paid by Borrower for the loan amount set aside for Required Repairs as described in the Building Loan Agreement and Repair Rider. No other expenses have been incurred or will be incurred in connection with such loan which will be paid from the loan proceeds set aside for Required Repairs.

- 4. The net sum available to Borrower for the Required Repairs is **ONE THOUSAND FIVE HUNDRED AND 00/100** (U.S. \$ \*\*\*\*\*1,500.00) Dollars, (i.e., the amount of the Repair Set Aside).

- 5. This Affidavit is made under Section 22 of the Lien Law of the State of New York.

- 6. The facts herein stated are true to my knowledge.

Sworn to before me this 2nd day of February 2007  
Colleen White Tyll  
Celeste A. Rossetti  
Notary Public

BD1(NY) (9/98)

Celeste A. Rossetti  
Notary Public Form 3707.33 1/96  
Qualified in Schenectady County  
01R04903299  
My Comm. Exp. 8/24 2009

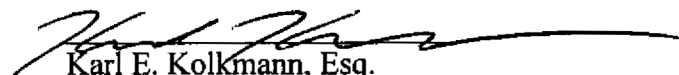


**CERTIFICATION BY ATTORNEY**

I, Karl E. Kolkmann, am an attorney duly admitted to the practice of law in the State of New York. I am an associate of Shapiro, DiCaro & Barak, LLC, the attorneys for Plaintiff, Wells Fargo Bank, N.A., in the above captioned civil action.

I HEREBY CERTIFY, pursuant to Sec. 130-1.1-a of the Rules of the Chief Administrator (22 NYCRR), to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that the presentation of the Summons and Complaint in this action, or the contentions therein, are not frivolous as defined in subsection (c) of Sec. 130-1.1 of the Rules of the Chief Administrator (22NYCRR).

Dated: December 31, 2014



Karl E. Kolkmann, Esq.  
Associate Attorney  
SHAPIRO, DICARO & BARAK, LLC  
Attorneys for Plaintiff  
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Rochester, NY 14624  
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