

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CHERIE FOUNTAINE, *et al.*,

plaintiffs,

v.

U.S. BANK NATIONAL ASSOCIATION,  
as indenture trustee for TOWD Point  
Mortgage Trust 2019-4,

defendant.

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Case 4:23-cv-801

**U.S. BANK'S REMOVAL NOTICE**

U.S. Bank National Association, as indenture trustee for TOWD Point Mortgage Trust 2019-4 (**U.S. Bank**), removes Cherie Fountaine, Hailey King and JJP Capital Group, LLC's (collectively **plaintiffs**) state court action to this court pursuant to 28 USC §§ 1332 and 1441.

**I. STATEMENT OF THE CASE**

1. On January 27, 2023, plaintiffs sued U.S. Bank in the case styled *Cherie Fountaine, et al. v. U.S. Bank National Association, as indenture trustee for TOWD Point Mortgage Trust 2019-4* and assigned case 202305569 in the 129th District Court of Harris County, Texas. (orig. pet., **ex. 1.**) Plaintiffs sued to enjoin a February 7, 2023 foreclosure sale of the property located at 26814 Glenfield Hollow Lane, Cypress, Texas 77433. (*Id.* at ¶¶ 7, 11 & prayer, **ex. 1.**)

2. Ms. Fountaine and Ms. King allege they purchased the property in December 2021. (*Id.* at ¶ 7 & ex. A, **ex. 1.**) Their purchase was financed by JJP Capital. (*Id.*) In connection with the purchase, plaintiffs claim a title company requested the current payoff for U.S. Bank's deed of trust. (*Id.* at ¶ 9, **ex. 1.**) Plaintiffs allege U.S. Bank's servicer, Select Portfolio Servicing, provided the title company a December 15, 2021 payoff statement good through December 31, 2021, and the title company tendered the amount on December 16, 2021. (*Id.* at ¶ 9 & exs. B-C, **ex. 1.**)

Plaintiffs complain the deed of trust has not been released and U.S. Bank contends it was still owed \$55,680.07 in December 2022. (*Id.* at ¶¶ 10 & 11, **ex. 1.**)

3. Plaintiffs sue to enjoin the sale of the property, for a judgment declaring U.S. Bank's deed of trust is satisfied and is no longer an encumbrance on the property and to recover attorneys' fees and court costs. (*Id.* at prayer, **ex. 1.**)

## II. BASIS FOR DIVERSITY JURISDICTION

4. The court may exercise diversity jurisdiction pursuant to 28 USC § 1332(a) because the parties are completely diverse and the amount in controversy exceeds \$75,000.

### A. The parties are citizens of different states.

5. Diversity jurisdiction exists if there is "complete diversity between all named plaintiffs and all named defendants, and no defendant is a citizen of the forum state." *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 84 (2005).

6. Cherie Fountaine and Hailey King are citizens of California because that is where they reside. *Preston v. Tenet Healthsystem Mem'l Med. Ctr.*, 485 F.3d 793, 797-98 (5th Cir. 2007).

7. JJP Capital is a citizen of Texas. The citizenship of a limited liability company is determined by the citizenship of each of its members. *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). JJP Capital's sole member is Jonathan J. Paull, a Texas citizen.

8. U.S. Bank is a citizen of Ohio. U.S. Bank is sued in its capacity as trustee for TOWD Point Mortgage Trust 2019-4. When a trustee is sued in its capacity as trustee of a trust, the trustee's citizenship controls so long as it is an active trustee whose control over the assets held in its name is real and substantial. *Bynane v. Bank of New York Mellon*, 866 F.3d 351, 357 (5th Cir. 2017) (citing *Navarro v. Sav. Ass'n v. Lee*, 446 U.S. 458, 464-465 (1980); *Americold Realty Tr. v. Conagra Foods, Inc.*, 577 U.S. 378, 283-238 (2016)). U.S. Bank's citizenship controls

because it holds legal title to, and broad authority over, the trust assets on behalf of the trust. As a national bank, U.S. Bank "is a citizen of the State in which its main office, as set forth in its articles of association, is located." *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 307 (2006). U.S. Bank's main office designated in its articles of association is located in Cincinnati, Ohio.

**B. The amount in controversy exceeds \$75,000.**

9. When a defendant removes on the basis of diversity jurisdiction, the amount in controversy may be established by the specific "good faith" sum demanded by the plaintiff in its state court petition. 28 USC § 1446(c)(2). If the plaintiff does not state the amount of damages it seeks, the burden falls on the defendant to prove the value of the plaintiff's claims. *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998). In those instances, the removing defendant must "establish by a preponderance of the evidence that the amount in controversy exceeds \$75,000." *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002). This requirement can be satisfied if "(1) it is apparent from the face of the petition that the claims are likely to exceed \$75,000, or, alternatively, (2) the defendant sets forth 'summary judgment type evidence' of facts in controversy that support a finding of the requisite amount." *Id.* (citing *Simon v. Wal-Mart Stores, Inc.*, 193 F.3d 848, 850 (5th Cir. 1999); *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995)).

10. "In actions seeking declaratory or injunctive relief the amount in controversy is measured by the value of the object of the litigation." *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983); *Farkas v. GMAC Mortg., LLC*, 737 F.3d 338, 341 (5th Cir. 2013) (per curiam); see also *Nationstar Mortg., LLC v. Knox*, 351 Fed. App'x 844, 848 (5th Cir. 2009) ("[w]hen ... a right to property is called into question in its entirety, the value of the property controls the amount in controversy") (quoting *Waller v. Prof'l Ins. Corp.*, 296 F.2d 545, 547-48 (5th Cir. 1961)).

11. The object of this litigation—26814 Glenfield Hollow Lane, Cypress, Texas 77433—is valued at \$449,640 by the Harris Central Appraisal District. (appraisal dist. report, **ex. 10.**) See e.g., *Anderson v. Wells Fargo Bank, N.A.*, No. 4:12-cv-764, 2013 WL 1196535, at \*3 (E.D. Tex. Feb. 22, 2013) ("The property at issue in this lawsuit has a current fair market value of \$114,000, according to the Denton County Central Appraisal District. Therefore, Defendant has met its burden of establishing that the amount in controversy exceeds \$75,000.") The amount in controversy exceeds \$75,000, and the court may exercise diversity jurisdiction over this action.

### **III. PROCEDURAL REQUIREMENTS SATISFIED**

12. Removal is timely under 28 USC § 1446(b) because it is filed within thirty days of U.S. Bank's receipt of the petition and citation through service of process, if at all. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999) (requiring formal service of process to trigger removal deadline). Venue is proper in this court because the United States District Court for the Southern District of Texas, Houston Division, embraces the place in which the state court action was pending. 28 USC § 1441(a). Notice has been sent to the state court regarding this removal. Pursuant to 28 USC § 1446(a), a true and correct copy of all of the process, pleadings, and orders on file in the state court action are attached as **exhibits 1-6**.

### **IV. CONCLUSION**

The parties are completely diverse and the amount in controversy exceeds \$75,000. This court may exercise diversity jurisdiction.

Date: March 3, 2023

Respectfully submitted,

/s/ Michael J. McKleroy

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Telephone: 945-229-6380  
Facsimile: 312-704-3001

**ATTORNEYS FOR U.S. BANK**

**CERTIFICATE OF SERVICE**

A true and correct copy of this document was served on March 3, 2023 as follows:

Michael E. Keller  
The Keller Firm  
5540 Harvest Hill Road, Suite 233  
Dallas, Texas 75230  
**VIA CERTIFIED MAIL RECEIPT**  
**NO. 702201670000153772015**  
**AND VIA CM/ECF SYSTEM**

/s/ Michael J. McKleroy, Jr.

Michael J. McKleroy, Jr.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CHERIE FOUNTAINE, *et al.*,

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U.S. BANK NATIONAL ASSOCIATION,  
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Case 4:23-cv-801

**REMOVAL EXHIBIT INDEX**

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# **Exhibit 1**

CAUSE NO.

CHERIE FOUNTAINE,  
HAILEY KING, and  
JJP CAPITAL GROUP, LLC

*Plaintiffs*

v.

U.S. BANK NATIONAL ASSOCIATION, AS  
INDENTURE TRUSTEE FOR TOWD POINT  
MORTGAGE TRUST 2019-4,

*Defendants*

IN THE DISTRICT COURT

\_\_\_\_\_ JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

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PLAINTIFFS' PETITION FOR TEMPORARY INJUNCTION  
AND TEMPORARY RESTRAINING ORDER

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TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs Cherie Fountaine, Hailey King, and JJP Capital Group, LLC file this Petition for



Temporary Restraining Order and Temporary Injunction complaining of U.S. Bank National Association as Indenture Trustee for Defendant Towd Point Mortgage Trust 2019-4, and in support respectfully show:

### **DISCOVERY LEVEL**

1. This case is appropriate for discovery under Level 2 of Texas Rule of Civil Procedure 190.3.

### **PARTIES**

2. Plaintiffs Cherie Fountaine and Hailey King are individuals. Plaintiff JJP Capital Group, LLC is a Texas limited liability company. Service on Plaintiffs may be made through their attorney of record in this case.

3. Defendant U.S. Bank National Association, as Indenture Trustee for Defendant Towd Point Mortgage Trust 2019-4, is a foreign corporation duly authorized to do business in Texas, which may be served through its agent of record, CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, Texas 75201.

### **JURISDICTION AND VENUE**

5. Jurisdiction is proper in this Court as the amount in controversy is within the jurisdictional limits of this Court and the events giving rise to the cause of action asserted occurred in Harris County, Texas.

6. Venue is mandatory in this Court under Texas Civil Practice and Remedies Code §15.011 because this lawsuit involves an action regarding an interest in real property. In the alternative, venue is proper in this Court under Texas Civil Practice and Remedies Code §15.002 because all or a substantial part of the events giving rise to Plaintiffs' claims occurred in Harris County.

### STATEMENT OF FACTS

7. This is a suit to enjoin and restrain a foreclosure sale posted pursuant to a power of sale contained within a certain deed of trust recorded as Document No. 20060001008 in the Real Property Records of Harris County, Texas ("DOT"). A true and correct copy of said DOT is attached as **Exhibit-A**. The DOT encumbered certain real property commonly known as 26814 Glenfield Hollow Lane, Cypress, Texas 77433 ("Property"). Plaintiffs Cherie Fountaine and Hailey King are the record owners of the Property. Plaintiff JJP Capital Group, LLC is the lender for Plaintiffs Cherie Fountaine and Hailey King and the first lienholder on the Property.

8. On or about August 24, 2006, Cherie Fountaine's and Hailey King's predecessors in interest, Efrehem Del Rosario and Maricris Del Rosario, executed and delivered the DOT to Defendant's predecessor in interest. Subsequently, Efrehem Del Rosario and Maricris Del Rosario entered into an agreement to sell the Property to Cherie Fountaine and Hailey King.

9. In connection with closing that transaction, the title company sent a request for the current payoff for the lien held by Defendant. In response to that request, the title company received a payoff statement dated November 22, 2021, which was good until December 22, 2021 ("First Payoff Statement"). A true and correct the First Payoff Statement is attached as **Exhibit-B**. The stated payoff was \$188,201.42. On December 15, 2021, the title company received an updated

payoff, which was good until December 31, 2021 (“Second Payoff Statement”). A true and correct the Second Payoff Statement is attached as **Exhibit-C**. The stated payoff in the Second Payoff Statement was \$189,859.46. On December 15, 2021, the transaction closed. The transaction was funded the following day on December 16, 2021. On that date, the title company wired \$189,859.46 to Defendant’s loan servicer pursuant to the Second Payoff Statement.

10. In December of 2022, Plaintiffs learned that Defendant contends it is still owed \$55,680.07 on its lien on the Property despite the fact that it had received the full amount of the Second Payoff Statement. Plaintiffs have attempted to communicate with Defendant through its loan servicer as well as Defendant’s attorneys regarding the apparent confusion on the part of Defendant. Unfortunately, however, Plaintiffs have not received any substantive response from either Defendant or its counsel.

11. Defendant threatens to and, unless restrained, will sell or cause Cherie Fountaine’s and Hailey King’s property to be sold. Plaintiffs will suffer irreparable injury unless the foreclosure sale is restrained and enjoined. The foreclosure sale will deprive Plaintiffs of the use and enjoyment of the Property. Additionally, Plaintiffs will lose the right to sell or mortgage the Property to a potential buyer at some future date and will not obtain full benefit for the appreciated value of the Property. Moreover, Plaintiff JJP Capital Group, LLC is at risk of losing its security interest in the Property.

12. There is no remedy at law that is adequate to protect Plaintiffs’ property interest against this wrongful foreclosure by Defendant. Plaintiffs request injunctive relief so that justice may be done, not merely for delay. Plaintiffs have performed all conditions precedent and are ready, willing, and able to perform any equitable acts as the Court deems necessary.

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiffs respectfully pray that:

1. A temporary restraining order be issued without notice to Defendant, restraining Defendant, their agents, servants, and employees, from directly or indirectly selling or attempting to sell the Property on February 7, 2023, under the power of sale contained in DOT described above.
2. Defendant be cited to appear and show cause, and that on hearing, a temporary injunction be issued enjoining Defendant, its agents, servants, and employees, from directly or indirectly selling or attempting to sell the Property under the power of sale contained in the DOT described above.
3. The Court declare that that deed of trust recorded as Document No. 20060001008 in the Real Property Records of Harris County, Texas is fully satisfied and is no longer an encumbrance on the Property.
4. Plaintiffs recover costs of suit.
5. Plaintiffs be awarded any other relief to which they are justly entitled.

Respectfully submitted,

**THE KELLER FIRM**



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Michael E. Keller  
State Bar No. 24087837  
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Dallas, Texas 75230  
Phone: (214) 775-0817  
Email: [mike@kellerfirm.com](mailto:mike@kellerfirm.com)

**ATTORNEY FOR PLAINTIFFS**

**VERIFICATION**

My name is Michael Keller. My date of birth is 5/26/1987, and my address is 5440 Harvest Hill Road, Suite 233, Dallas, Texas 75230. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, Texas on January 26, 2023.



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Michael E. Keller



After recording please return to:  
P&P Services, Inc. ✓✓

[Company Name]  
Attn: Fulfillment Services

20060001008  
08/28/2006 RP1 \$88.00

[Name of Natural Person]  
4400 Alpha Road

[Street Address]  
Dallas, TX 75244

FILED BY  
ALAMO TITLE COMPANY

40507764

[City, State Zip Code]

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### DEED OF TRUST

#### DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated August 24, 2006, together with all Riders to this document.

(B) "Borrower" is EFREHEM DEL ROSARIO and MARICRIS B. DEL ROSARIO, husband and wife

Borrower is the grantor under this Security Instrument.

(C) "Lender" is Texas Home Funding, Inc.

lee

Lender is a corporation organized and existing under the laws of Texas. Lender's address is 800 North Watters, Suite 120, Allen, TX 75013. Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is G. Tommy Bastian

tr

. Trustee's address is 15000 Surveyor Blvd.,

Suite 100, Addison, TX 75001

(E) "Note" means the promissory note signed by Borrower and dated August 24, 2006. The Note states that Borrower owes Lender two hundred thousand and NO/100ths Dollars (U.S. \$ 200,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than September 1, 2036.

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

Loan No: 124239836



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

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

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

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

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

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

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

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

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

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

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

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

Loan No: 124239836



11-20-2023

**TRANSFER OF RIGHTS IN THE PROPERTY**

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of Harris :  
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]  
LOT SIX (6), IN BLOCK ONE (1), OF CYPRESS CREEK LAKES, SEC. 4, A SUBDIVISION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN FILM CODE NO. 567077 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS.



which currently has the address of 26814 GLENFIELD HOLLOW LANE  
[Street]  
Cypress, Texas 77433 ("Property Address"):  
[City] [Zip Code]

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

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

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

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied

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funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

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

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

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

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such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

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

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

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

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

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

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

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

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

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

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

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent

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gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

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

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

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

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

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

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements.

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These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

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

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

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

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

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

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

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

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

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

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Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

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

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

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

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

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

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

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute

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

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

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

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

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

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

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

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

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale

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might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

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

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

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

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specified in the notice will result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence. For the purposes of this Section 22, the term "Lender" includes any holder of the Note who is entitled to receive payments under the Note.

If Lender invokes the power of sale, Lender or Trustee shall give notice of the time, place and terms of sale by posting and filing the notice at least 21 days prior to sale as provided by Applicable Law. Lender shall mail a copy of the notice to Borrower in the manner prescribed by Applicable Law. Sale shall be made at public venue. The sale must begin at the time stated in the notice of sale or not later than three hours after that time and between the hours of 10 a.m. and 4 p.m. on the first Tuesday of the month. Borrower authorizes Trustee to sell the Property to the highest bidder for cash in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying indefeasible title to the Property with covenants of general warranty from Borrower. Borrower covenants and agrees to defend generally the purchaser's title to the Property against all claims and demands. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Property is sold pursuant to this Section 22, Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at that sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession or other court proceeding.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall provide a release of this Security Instrument to Borrower or Borrower's designated agent in accordance with Applicable Law. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee; Trustee Liability. All rights, remedies and duties of Trustee under this Security Instrument may be exercised or performed by one or more trustees acting alone or together. Lender, at its option and with or without cause, may from time to time, by power of attorney or otherwise, remove or substitute any trustee, add one or more trustees, or appoint a successor trustee to any Trustee without the necessity of any formality other than a designation by Lender in writing. Without any further act or conveyance of the Property the substitute, additional or successor trustee shall become vested with the title, rights, remedies, powers and duties conferred upon Trustee herein and by Applicable Law.

Trustee shall not be liable if acting upon any notice, request, consent, demand, statement or other document believed by Trustee to be correct. Trustee shall not be liable for any act or omission unless such act or omission is willful.

25. Subrogation. Any of the proceeds of the Note used to take up outstanding liens against all or any part of the Property have been advanced by Lender at Borrower's request and upon Borrower's representation that such amounts are due and are secured by valid liens against the Property. Lender shall be subrogated to any and all rights, superior titles, liens and equities owned or claimed by any owner or holder of any outstanding liens and debts, regardless of whether said liens or debts are acquired by Lender by assignment or are released by the holder thereof upon payment.

Loan No: 124239836

Texas Deed of Trust-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

—THE COMPLIANCE SOURCE, INC.—

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26. **Partial Invalidity.** In the event any portion of the sums intended to be secured by this Security Instrument cannot be lawfully secured hereby, payments in reduction of such sums shall be applied first to those portions not secured hereby.

27. **Purchase Money; Owelty of Partition; Renewal and Extension of Liens Against Homestead Property; Acknowledgment of Cash Advanced Against Non-Homestead Property. Check box as applicable:**

**Purchase Money.**

The funds advanced to Borrower under the Note were used to pay all or part of the purchase price of the Property. The Note also is primarily secured by the vendor's lien retained in the deed of even date with this Security Instrument conveying the Property to Borrower, which vendor's lien has been assigned to Lender, this Security Instrument being additional security for such vendor's lien.

**Owelty of Partition.**

The Note represents funds advanced by Lender at the special instance and request of Borrower for the purpose of acquiring the entire fee simple title to the Property and the existence of an owelty of partition imposed against the entirety of the Property by a court order or by a written agreement of the parties to the partition to secure the payment of the Note is expressly acknowledged, confessed and granted.

**Renewal and Extension of Liens Against Homestead Property.**

The Note is in renewal and extension, but not in extinguishment, of the indebtedness described on the attached Renewal and Extension Exhibit which is incorporated by reference. Lender is expressly subrogated to all rights, liens and remedies securing the original holder of a note evidencing Borrower's indebtedness and the original liens securing the indebtedness are renewed and extended to the date of maturity of the Note in renewal and extension of the indebtedness.

**Acknowledgment of Cash Advanced Against Non-Homestead Property.**

The Note represents funds advanced to Borrower on this day at Borrower's request and Borrower acknowledges receipt of such funds. Borrower states that Borrower does not now and does not intend ever to reside on, use in any manner, or claim the Property secured by this Security Instrument as a business or residential homestead. Borrower disclaims all homestead rights, interests and exemptions related to the Property.

28. **Loan Not a Home Equity Loan.** The Loan evidenced by the Note is not an extension of credit as defined by Section 50(a)(6) or Section 50(a)(7), Article XVI, of the Texas Constitution. If the Property is used as Borrower's residence, then Borrower agrees that Borrower will receive no cash from the Loan evidenced by the Note and that any advances not necessary to purchase the Property, extinguish an owelty lien, complete construction, or renew and extend a prior lien against the Property, will be used to reduce the balance evidenced by the Note or such Loan will be modified to evidence the correct Loan balance, at Lender's option. Borrower agrees to execute any documentation necessary to comply with this Section 28.

\_\_\_\_\_  
[Signatures on Following Page]

Loan No: 124239836

Texas Deed of Trust-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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2023-03-03 14:22:22

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

Witnesses:

\_\_\_\_\_ *Efrehem Del Rosario* (Seal)  
 EFREHEM DEL ROSARIO -Borrower  
 [Printed Name]

Printed Name: \_\_\_\_\_ [Please Complete]

\_\_\_\_\_ *Maricris B. Del Rosario* (Seal)  
 MARICRIS B. DEL ROSARIO -Borrower  
 [Printed Name]

Printed Name: \_\_\_\_\_ [Please Complete]

\_\_\_\_\_ (Seal)  
 -Borrower  
 [Printed Name]

\_\_\_\_\_ (Seal)  
 -Borrower  
 [Printed Name]

\_\_\_\_\_ [Acknowledgment on Following Page] \_\_\_\_\_

Loan No: 124239836

Texas Deed of Trust-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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HP 02670-2123

*21*

State of Texas

County of

Harris

§  
§  
§  
§  
§

Before me, Roxanne Steffek, a Notary Public,  
on this day personally appeared EFREHEM DEL ROSARIO and MARICRIS B. DEL ROSARIO

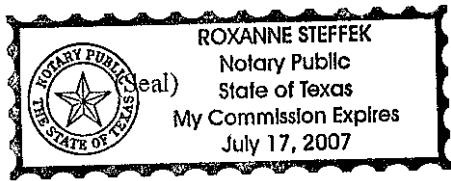
known to me (or proved to me on the oath of title or through  
in DL's [description of identity card or other document])  
to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the  
same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 24 day of August, A.D., 2006

Roxanne Steffek

Signature of Officer [Printed Name]

Title of Officer  
My Commission Expires:



Loan No: 124239836

Texas Deed of Trust-Single Family-Fannie Mac/Freddie Mac UNIFORM INSTRUMENT

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026-78-2124

## PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 24th day of August, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to Texas Home Funding, Inc.

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

26814 GLENFIELD HOLLOW LANE, Cypress, TX 77433

*[Property Address]*

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in Declaration of Covenants, Conditions, and Restrictions (the "Declaration"). The Property is a part of a planned unit development known as:

### CYPRESS CREEK LAKES

*[Name of Planned Unit Development]*

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

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

**A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire,

Loan No: 124239836

Multistate PUD Rider — Single Family — Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

—THE COMPLIANCE SOURCE, INC.—

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2025-10-27 10:28:11 AM

hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then:

(i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

**C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

**F. Remedies.** If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the 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.

\_\_\_\_\_  
[Signatures on Following Page]

Loan No: 124239836

Multistate PUD Rider — Single Family — Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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2023-03-03 10:24:23 AM

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

*Herhem Del Rosario* (Seal)  
HERHEM DEL ROSARIO -Borrower

*Maricris B. Del Rosario* (Seal)  
MARICRIS B. DEL ROSARIO -Borrower

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

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

[Sign Original Only]

RP 026-78-2127

Loan No: 124239836

Multistate PUD Rider — Single Family — Fannie Mac/Freddie Mac UNIFORM INSTRUMENT  
—THE COMPLIANCE SOURCE, INC.—  
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14501MU 08/00 Rev. 11/04  
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**RECORDER'S MEMORANDUM:**  
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts additions and changes were present at the time the instrument was filed and recorded.

COUNTY CLERK  
HARRIS COUNTY, TEXAS

*Bonny A. Thompson*

06 AUG 28 AM 11: 24

FILED

RP 026-78-2128

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW  
THE STATE OF TEXAS }  
COUNTY OF HARRIS }

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

AUG 28, 2006



*Beverly B. Kaufman*  
COUNTY CLERK  
HARRIS COUNTY TEXAS





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### PAYOFF STATEMENT

Date: November 22, 2021  
Requested By:

Account Number: 0027289313  
Payment Due Date: November 01, 2021

**This Statement expires on:  
December 22, 2021**

EFREHEM DEL ROSARIO  
17515 SPRING CYPRESS RD SUITE  
CYPRESS, TX 77429

---

Customer Name/Property Address:  
EFREHEM DEL ROSARIO

26814 GLENFIELD H  
CYPRESS, TX 77433

---

**THE FOLLOWING AMOUNTS ARE SUBJECT TO FINAL VERIFICATION  
BASED ON THE RECEIPT OF FUNDS**

<b>ITEMIZATION</b>		
Unpaid Principal Balance	\$	184,360.07
Interest Calculated to December 22, 2021	\$	2,495.48
Escrow/Impound Advance Balance	\$	2,705.06
Loan Level Advance Balance	\$	131.00
Interest on Advances	\$	2.69
Recording Fee	\$	14.00
<b>CREDITS DEDUCTED</b>		
Unapplied Funds	\$	-1,506.88
<b>Total Amounts Due Under your Note and Mortgage</b>	<b>\$</b>	<b>188,201.42</b>
Per Diem Daily Interest		\$ 30.47
<b>TOTAL AMOUNT DUE</b>	<b>\$</b>	<b>188,201.42</b>

### ESTIMATED ESCROW DISBURSEMENTS

County/City/Sanitation Tax Next Due 12/2021	\$	2,674.30
Hazard Insurance Next Due 11/2021	\$	447.51

The above escrow disbursements are scheduled to occur during the period covered by this Payoff Quote. These amounts are **not** included in the above Total Amount Due as they have not been made as of the date of this statement. If SPS disburses these funds, you are responsible to reimburse SPS for these disbursements, either through available escrow account funds or an additional amount due. The disbursement of these funds may impact the required payoff amount. Please contact SPS if you have any questions or for an updated Payoff Quote if the payoff will occur after the disbursement dates.



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**IMPORTANT INFORMATION REGARDING THE ACCOUNT PAYOFF:**

- 1) **Clearance of Funds:** The Payoff Statement assumes that payments made on your account have cleared your financial institution. If a payment you made is returned, you are still responsible to pay that amount, even though we accept the amount of your payoff. Payments received within thirty (30) days of the payoff application are subject to clearance by your financial Institution.
- 2) **Final Verification:** The amounts set forth in this Payoff Statement are subject to final verification.
- 3) **Expiration:** This Payoff Statement expires and is void after December 22, 2021. You must obtain an updated WRITTEN statement from us if you want to pay off your account after the expiration date. Please allow up to five (5) business days for us to provide you with an updated Payoff Statement (unless state law requires a shorter timeframe).
- 4) **Prepayment Penalty:** If your mortgage documents indicate a prepayment fee on your account, it is included as part of the total amounts due for payoff. If the prepayment fee should be waived, supporting documentation (e.g., final HUD1, grant deed, warranty deed, prepayment rider) must be faxed to (801) 269-4269 prior to the receipt of your payoff funds. Upon receipt, the documents will be reviewed for final determination of waiving the prepayment fee. If you have any questions about the prepayment fee, please contact us at (800) 258-8602.
- 5) **Foreclosure / Bankruptcy:** If the account is currently subject to a pending foreclosure or bankruptcy action, the attorney fees and costs for services rendered that have been incurred with respect to this pending action have been included in the outstanding amounts due. Legal actions may continue after the date of this letter, and if so, will result in additional attorney fees and costs. An estimate of those amounts to be incurred between the date of this quote and the good through date are included. In the event that upon completion of the related legal work the actual legal fees and costs charged by the attorney to SPS are less than the estimates provided by the attorney in this quote, SPS will apply such overage to any other amounts due and owing. If there are no amounts due, SPS will refund such overage directly to the customer.
- 6) **Non-Sufficient Funds:** If the amounts received are not sufficient to pay the account in full, we will return the payoff funds. Interest will continue to accrue at the daily (per diem) amount shown on the Payoff Statement and late charges may be incurred until sufficient funds are received to pay the account in full. To avoid non-sufficient funds, please confirm the actual payoff amount by calling (800) 258-8602. A satisfaction/release of mortgage will not be recorded until all amounts due under your mortgage documents are received, unless applicable law requires otherwise.
- 7) **Scheduled Payments:** Do not cancel or stop payment on any of your regularly scheduled monthly payments. **Issuance of this Payoff Statement does not suspend your obligation to make your monthly payments under your mortgage documents.** You must continue to make your monthly



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payments, when due, up until the time your account is paid in full. If the last regular monthly payment you sent to us is returned for insufficient funds, is dishonored due to a stop payment order, or payment is not made for any other reason, the amount required to payoff your account may be higher than shown in this Payoff Statement.

- 8) **Remittance of Funds:** Payoff amounts must be remitted in U.S. Dollars by money wire, certified or cashier's check, title company check or an attorney's trustee check. No personal or unofficial checks will be accepted. A copy of the Payoff Statement must accompany your payoff check. No deliveries should be made on Saturday, Sunday or legal holidays. Payoff funds received after 12 p.m. Noon Eastern Time will be processed the following business day.

**PLEASE REMIT FUNDS TO THE FOLLOWING:**

Wiring Instructions	Mailing Instructions
Select Portfolio Servicing, Inc. Salt Lake City, Utah Attn: PAYOFF DEPARTMENT Routing/ABA # 021000021 Account # 900900308 Wire Retaining For Credit to: 0027289313 Name: EFREHEM ROSARIO	Select Portfolio Servicing, Inc. Attn: PAYOFF DEPARTMENT PO BOX 65450 Salt Lake City, UT 84165  Overnight Address: 3217 S. Decker Lake Dr. Salt Lake City, UT 84119

- 9) **Regularly Scheduled Payments:** If you fail to make your regularly scheduled monthly mortgage payments within the timeframe stated on your monthly statement, the late charge disclosed on your monthly statement will be added to the payoff total. If your monthly payment is received, but is returned unpaid by your bank, a fee will be added to the payoff total to the extent permitted by applicable law.
- 10) **Automated Payments:** If your monthly payments are automatically deducted from your banking account, these payments will continue to be withdrawn until the account is paid in full, or unless we receive verbal or written cancellation instructions in our office no later than three (3) business days prior to the payment due date.
- 11) **Per Diem Daily Interest:** The Per Diem Daily Interest is the daily interest that will accrue after the effective date of this Payoff Statement, with the assumption that monthly payments are made as anticipated under the Note and Security Instrument. If payments are not made as anticipated under the Note and Security Instrument, the Per Diem Daily Interest may change, and may be higher or lower than stated above. If you have any questions regarding the outstanding amounts or the Per Diem Daily Interest outstanding, please contact Select Portfolio Servicing, Inc. for an updated amount.
- 12) **Escrow Account:** If you have an escrow account with us, issuance of this Payoff Statement does not alter our responsibility to pay taxes and insurance from the escrow account. If a bill for these items is received prior to the receipt of payoff funds, we will pay them from the escrow account. Select



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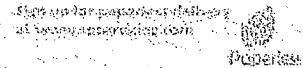
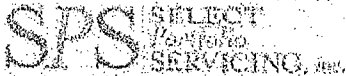
Portfolio Servicing, Inc. is not responsible for private agreements between the mortgagor and a third party with regard to the disbursement of escrow funds. If funds have accumulated in the escrow account, and if we have been required to pay interest on such funds as provided by state law, interest will be paid to the date the escrow closes. Any deficiencies in the escrow account will be collected at payoff. Any excess funds in the escrow account will be refunded approximately fourteen (14) business days after the payoff is complete. If lender placed insurance has been charged to the escrow account prior to payoff, the full amount will be required to pay off the account. If appropriate evidence of insurance is received, the applicable refund will be issued to the mortgagee of record within four to six weeks. Any escrow balance will be refunded after payoff, provided the last payment applied to the account has cleared the institution on which it was drawn.

- 13) **Forwarding Address:** Please provide the proper forwarding address to ensure receipt of applicable escrow refunds, cancelled documents, and annual tax/interest statements. If a forwarding address is not provided, all correspondence will be mailed to the customer's last known address.
- 14) **Release/Satisfaction of Mortgage:** Upon receipt of the timely payment of the required payoff amount, SPS will prepare and send for recording a lien release in full satisfaction of the mortgage on the above referenced property in accordance with timelines established by state law, foregoing all rights to personal liability or deficiency judgment.
- 15) **Questions?** If you have any questions, please contact our Customer Service Department. Our toll-free number is (800) 258-8602, and representatives are available Monday through Thursday between the hours of 8 a.m. and 11 p.m., Friday from 8 a.m. to 9 p.m., and Saturday from 8 a.m. to 2 p.m., Eastern Time.

**Esta carta contiene información importante concerniente a sus derechos. Por favor, traduzca esta carta. Nuestros representantes bilingües están a su disposición para contestar cualquier pregunta. Llámenos al número (800) 831-0118 y seleccione/marque la opción 2.**

**This communication from a debt collector is an attempt to collect a debt and any information obtained will be used for that purpose.**

**New York City – Collection Agency License #1170514**



**PAYOFF STATEMENT**

Date: December 15, 2021

Requested By:

Account Number: 0027289313

Payment Due Date: December 01, 2021

This Statement expires  
on: December 31, 2021

EFREHEM DEL ROSARIO  
17515 SPRING CYPRESS RD-SUITE  
CYPRESS, TX 77429

Customer Name/Property Address:

EFREHEM DEL ROSARIO

26814 GLENFIELD H  
CYPRESS, TX 77433

THE FOLLOWING AMOUNTS ARE SUBJECT TO FINAL VERIFICATION  
BASED ON THE RECEIPT OF FUNDS

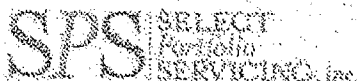
ITEMIZATION		
Unpaid Principal Balance	\$	184,229.78
Interest Calculated to December 31, 2021	\$	2,678.52
Escrow/Impound Advance Balance	\$	2,923.56
Loan Level Advance Balance	\$	131.00
Interest on Advances	\$	3.48
Recording Fee	\$	14.00
<b>CREDITS DEDUCTED</b>		
Unapplied Funds	\$	-1,506.88
<b>Total Amounts Due Under your Note and Mortgage</b>	<b>\$</b>	<b>189,859.46</b>
Per Diem Daily Interest		\$ 30.47
<b>TOTAL AMOUNT DUE</b>	<b>\$</b>	<b>189,859.46</b>

**ESTIMATED ESCROW DISBURSEMENTS**

County/City/Sanitation Tax Next Due 12/2021	\$	2,674.30
Hazard Insurance Next Due 12/2021	\$	447.51

The above escrow disbursements are scheduled to occur during the period covered by this Payoff Quote. These amounts are not included in the above Total Amount Due as they have not been made as of the date of this statement. If SPS disburses these funds, you are responsible to reimburse SPS for these disbursements, either through available escrow account funds or an additional amount due. The disbursement of these funds may impact the required payoff amount. Please contact SPS if you have any questions or for an updated Payoff Quote if the payoff will occur after the disbursement dates.

XP111

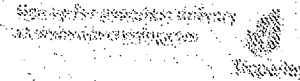
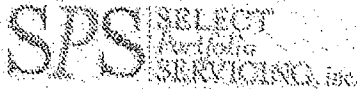


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at [www.servicing.com](http://www.servicing.com)



#### IMPORTANT INFORMATION REGARDING THE ACCOUNT PAYOFF:

- 1) **Clearance of Funds:** The Payoff Statement assumes that payments made on your account have cleared your financial institution. If a payment you made is returned, you are still responsible to pay that amount, even though we accept the amount of your payoff. Payments received within thirty (30) days of the payoff application are subject to clearance by your financial institution.
- 2) **Final Verification:** The amounts set forth in this Payoff Statement are subject to final verification.
- 3) **Expiration:** This Payoff Statement expires and is void after January 14, 2022. You must obtain an updated WRITTEN statement from us if you want to pay-off your account after the expiration date. Please allow up to five (5) business days for us to provide you with an updated Payoff Statement (unless state law requires a shorter timeframe).
- 4) **Prepayment Penalty:** If your mortgage documents indicate a prepayment fee on your account, it is included as part of the total amounts due for payoff. If the prepayment fee should be waived, supporting documentation (e.g., final HUD-1, grant deed, warranty deed, prepayment rider) must be faxed to (801) 258-4269 prior to the receipt of your payoff funds. Upon receipt, the documents will be reviewed for final determination of waiving the prepayment fee. If you have any questions about the prepayment fee, please contact us at (800) 258-8602.
- 5) **Foreclosure or Bankruptcy:** If the account is currently subject to a pending foreclosure or bankruptcy action, the attorney fees and costs for services rendered that have been incurred with respect to this pending action have been included in the outstanding amounts due. Legal actions may continue after the date of this letter, and if so, will result in additional attorney fees and costs. An estimate of those amounts to be incurred between the date of this quote and the good-through date are included. In the event that upon completion of the related legal work the actual legal fees and costs charged by the attorney to SPS are less than the estimates provided by the attorney in this quote, SPS will apply such overage to any other amounts due and owing. If there are no amounts due, SPS will refund such overage directly to the customer.
- 6) **Non-Sufficient Funds:** If the amounts received are not sufficient to pay the account in full, we will return the payoff funds. Interest will continue to accrue at the daily (per diem) amount shown on the Payoff Statement and late charges may be incurred until sufficient funds are received to pay the account in full. To avoid non-sufficient funds, please confirm the actual payoff amount by calling (800) 258-8602. A satisfaction/release of mortgage will not be recorded until all amounts due under your mortgage documents are received, unless applicable law requires otherwise.
- 7) **Scheduled Payments:** Do not cancel or stop payment on any of your regularly scheduled monthly payments. Issuance of this Payoff Statement does not suspend your obligation to make your monthly payments under your mortgage documents. You must continue to make your monthly



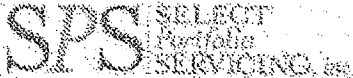
payments, when due, up until the time your account is paid in full. If the last regular monthly payment you sent to us is returned for insufficient funds, is dishonored due to a stop payment order, or payment is not made for any other reason, the amount required to payoff your account may be higher than shown in this Payoff Statement.

- 8) **Remittance of Funds:** Payoff amounts must be remitted in U.S. Dollars by money wire, certified or cashier's check, life company check or an attorney's trustee check. No personal or unofficial checks will be accepted. A copy of the Payoff Statement must accompany your payoff check. No deliveries should be made on Saturday, Sunday or legal holidays. Payoff funds received after 12 p.m. Noon Eastern Time will be processed the following business day.

**PLEASE REMIT FUNDS TO THE FOLLOWING:**

Wiring Instructions	Mailing Instructions
Select Portfolio Servicing, Inc. Salt Lake City, Utah Attn: PAYOFF DEPARTMENT Routing/ABA # 021000021 Account # 900900308 Wire Retaining For Credit to: 0027286813 Name: EFREHEM ROSARIO	Select Portfolio Servicing, Inc. Attn: PAYOFF DEPARTMENT PO BOX 65450 Salt Lake City, UT 84165  Overnight Address: 3217 S. Decker Lake Dr. Salt Lake City, UT 84119

- 9) **Regularly Scheduled Payments:** If you fail to make your regularly scheduled monthly mortgage payments within the timeframe stated on your monthly statement, the late charge disclosed on your monthly statement will be added to the payoff total. If your monthly payment is received, but is returned unpaid by your bank, a fee will be added to the payoff total to the extent permitted by applicable law.
- 10) **Automated Payments:** If your monthly payments are automatically deducted from your banking account, these payments will continue to be withdrawn until the account is paid in full, or unless we receive verbal or written cancellation instructions in our office no later than three (3) business days prior to the payment due date.
- 11) **Per Diem Daily Interest:** The Per Diem Daily Interest is the daily interest that will accrue after the effective date of this Payoff Statement, with the assumption that monthly payments are made as anticipated under the Note and Security Instrument. If payments are not made as anticipated under the Note and Security Instrument, the Per Diem Daily Interest may change, and may be higher or lower than stated above. If you have any questions regarding the outstanding amount or the Per Diem Daily Interest outstanding, please contact Select Portfolio Servicing, Inc. for an updated amount.
- 12) **Escrow Account:** If you have an escrow account with us, issuance of this Payoff Statement does not alter our responsibility to pay taxes and insurance from the escrow account. If a bill for these items is received prior to the receipt of payoff funds, we will pay them from the escrow account. Select



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and receive important notices.



Portfolio Servicing, Inc. is not responsible for private agreements between the mortgagor and a third party with regard to the disbursement of escrow funds. If funds have accumulated in the escrow account, and if we have been required to pay interest on such funds as provided by state law, interest will be paid to the date the escrow closes. Any deficiencies in the escrow account will be collected at payoff. Any excess funds in the escrow account will be refunded approximately fourteen (14) business days after the payoff is complete. If lender placed insurance has been charged to the escrow account prior to payoff, the full amount will be required to pay off the account. If appropriate evidence of insurance is received, the applicable refund will be issued to the mortgagee of record within four to six weeks. Any escrow balance will be refunded after payoff, provided the last payment applied to the account has cleared the institution on which it was drawn.

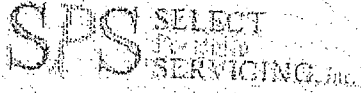
- 13) **Forwarding Address:** Please provide the proper forwarding address to ensure receipt of applicable escrow refunds, cancelled documents, and annual tax/interest statements. If a forwarding address is not provided, all correspondence will be mailed to the customer's last known address.
- 14) **Release/Satisfaction of Mortgage:** Upon receipt of the timely payment of the required payoff amount, SPS will prepare and send for recording a lien release in full satisfaction of the mortgage on the above referenced property in accordance with timelines established by state law, foregoing all rights to personal liability or deficiency judgment.
- 15) **Questions?** If you have any questions, please contact our Customer Service Department. Our toll-free number is (800) 256-6602, and representatives are available Monday through Thursday between the hours of 8 a.m. and 11 p.m., Friday from 8 a.m. to 9 p.m., and Saturday from 8 a.m. to 2 p.m., Eastern Time.

Esta carta contiene información importante concerniente a sus derechos. Por favor, traduzca esta carta. Nuestros representantes bilingües están a su disposición para contestar cualquier pregunta. Llámenos al número (800) 831-0118 y seleccione/marque la opción 2.

This communication from a debt collector is an attempt to collect a debt and any information obtained will be used for that purpose.

New York City - Collection Agency License #1170514





To: TEXAS TITLE  
Company:  
Fax: 8322244325  
Phone:

Select Portfolio Servicing, Inc  
From: 8012707833  
Fax: 8012707833  
Phone:


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NOTES:

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Date and time of transmission: Wednesday, December 15, 2021  
Number of pages including this cover sheet: 07

SPS SELECT  
SERVICING

 EFREHEM DEL ROSARIO  
17515 SPRING CYPRESS RD SUITE  
CYPRESS, TX 77429



# **Exhibit 2**

**FILED**

Marilyn Burgess  
District Clerk

FEB 3 2023

Time: \_\_\_\_\_  
Harris County, Texas  
By: *[Signature]*  
Deputy

CAUSE NO. 202305569

CHERIE FOUNTAINE,  
HAILEY KING, and  
JJP CAPITAL GROUP, LLC

*Plaintiffs*

v.

U.S. BANK NATIONAL ASSOCIATION, AS  
INDENTURE TRUSTEE FOR TOWD POINT  
MORTGAGE TRUST 2019-4,

*Defendants*

IN THE DISTRICT COURT

129TH JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

P-3  
TRORX  
STBNX  
CASO

**TEMPORARY RESTRAINING ORDER**

Plaintiffs in this cause, have filed a verified petition for a temporary injunction and, in

connection with that petition, have presented a request for a temporary restraining order as set forth in Plaintiffs' Petition for Temporary Injunction and Temporary Restraining Order. It appears from the facts set forth in the Plaintiffs' verified petition that unless Defendant and its agents, servants, and employees, are immediately restrained from directly or indirectly foreclosing the property of Plaintiffs located at 26814 Glenfield Hollow Lane, Cypress, Texas 77433 ("Property") and more fully described as: Lot 6, Block 1, of Cypress Creek Lakes, Sec. 4, a subdivision of Harris County, Texas, according to the map or plat thereof, recorded in film code no. 567077 of the map records of Harris County, Texas, Defendant will commit the acts described above before notice can be given and a hearing held on Plaintiffs' motion for a permanent injunction; and that if the commission of these acts are not restrained immediately, Plaintiffs will suffer irreparable injury because it will prevent Plaintiffs from being able to assert their complete legal rights to the Property and will prevent Plaintiffs from selling the Property.

*This order was issued ex parte as there is not enough time for notice and a hearing before the irreparable harm would occur.*

IT IS, THEREFORE, ORDERED that Defendant and its agents, servants, and employees in this cause, be, and hereby are, commanded forthwith to desist and refrain from directly or indirectly foreclosing or filing for foreclosure on the Property of Plaintiffs from the date of entry of this order until and to the 14 day after entry or until further order of this Court.

*This order shall expire on February 17, 2023.*

IT IS FURTHER ORDERED that Plaintiffs request for temporary injunction be heard *the 129th District Court* before *me*, on February 16, 2023 at 1:30pm. The clerk of the court is hereby directed to issue a show cause notice to Defendant to appear at the temporary injunction hearing.

The clerk of the above court shall forthwith, on the filing by Plaintiffs of the bond required by this order, and on approving the same according to the law, issue a temporary restraining order in conformity with the law and the terms of this order.

This order shall not be effective unless and until Plaintiffs execute and file with the clerk a bond, in conformity with the law, in the amount of \$ 100.00.

SIGNED this 3<sup>rd</sup> of February, 2023. @ 1:48pm.



\_\_\_\_\_  
JUDGE PRESIDING

# **Exhibit 3**



CAUSE NUMBER 2023 05569

Cherie Fountaine et al.  
PETITIONER  
  
vs.  
U.S. Bank, N.A.  
RESPONDENT

§ IN THE DISTRICT COURT OF  
§ HARRIS COUNTY, TEXAS  
§ 129th JUDICIAL DISTRICT

CLERK'S CERTIFICATE OF CASH DEPOSIT IN LIEU  
OF INJUNCTION BOND PER ORDER OF THE COURT

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

THIS DOCUMENT IS TO CERTIFY that I, the undersigned Clerk of the District Courts of Harris County, Texas have received a cash deposit, as ordered by the Court, in the amount of one hundred Dollars (\$ 100.00), to be deposited with the Registry of the Court in lieu of a Temporary Restraining Order Bond or a Temporary Injunction Bond, as required by Rule 684, T.R.C.P, in the above styled and numbered cause as provided by the order entered on the 3rd day of February, 2023.

This cash deposit is made and received in lieu of TEMPORARY RESTRAINING ORDER or TEMPORARY INJUNCTION, conditioned that the applicant will abide the decision which may be made in the cause, and that he will pay all sums of money and costs that may be adjudged against him if the restraining order or temporary injunction shall be dissolved in whole or in part, and this certificate is issued to have the force and effect of a TEMPORARY RESTRAINING ORDER BOND OR A TEMPORARY INJUNCTION BOND in accordance with the Order of the Court.

WITNESS my hand and seal of office this 3 day of February A.D., 20 23.

**FILED**  
Marilyn Burgess  
District Clerk

Marilyn Burgess, District Clerk  
Harris County, Texas  
Po Box 4651  
Houston, Texas 77210-4651

FEB 03 2023 2:20pm  
Time: Harris County, Texas  
By: [Signature]  
Deputy

By: [Signature]  
Deputy District Clerk

Principal: Michael Keller

Attorney: Michael Keller

Bar Number: 24087837

RECORDER'S MEMORANDUM  
This instrument is of poor quality  
at the time of imaging.

# **Exhibit 4**

**CAUSE NO. 202305569**

**CHERIE FOUNTAINE,  
HAILEY KING, and  
JJP CAPITAL GROUP, LLC**

*Plaintiffs*

**v.**

**U.S. BANK NATIONAL ASSOCIATION, AS  
INDENTURE TRUSTEE FOR TOWD POINT  
MORTGAGE TRUST 2019-4,**

*Defendants*

**IN THE DISTRICT COURT**

**129TH JUDICIAL DISTRICT**

**HARRIS COUNTY, TEXAS**

---

**ORDER EXTENDING TEMPORARY RESTRAINING ORDER**

---

Plaintiffs in this cause, filed a verified petition for a temporary injunction and, in connection

with that petition, presented a request for a temporary restraining order as set forth in Plaintiffs' Petition for Temporary Injunction and Temporary Restraining Order. After consideration of said Petition, the Court entered a temporary restraining order which was set to expire on February 17, 2023 with the hearing on the temporary injunction scheduled for February 16, 2023. In order to give the parties time to reach a potential resolution without further litigation, the parties seek an extension of the temporary restraining order, as modified herein. Specifically, the parties request that the temporary restraining order, as modified herein, be continued until the new hearing date for the temporary injunction. As to the hearing on the temporary injunction, the parties request that it be set the weeks of March 20 or 27, 2023 (excluding Mondays).

**IT IS, THEREFORE, ORDERED** that Defendant and its agents, servants, and employees in this cause, be, and hereby are, commanded forthwith to desist and refrain from directly or indirectly foreclosing on the Property of Plaintiffs from the date of entry of this order until the day of the temporary injunction hearing set below, except that Defendant and its agents, servants, and employees are entitled to take any steps necessary to conduct a foreclosure on the April 4, 2023 sale date or any sale date thereafter.

**IT IS FURTHER ORDERED** that Plaintiffs request for temporary injunction be heard before me, on \_\_\_\_\_ at \_\_\_\_\_.

SIGNED this \_\_\_\_\_ of \_\_\_\_\_, 2023.

\_\_\_\_\_  
JUDGE PRESIDING

Agreed:

/s/ Michael Keller

**ATTORNEY FOR PLAINTIFFS**

/s/ Fred Ramos

**ATTORNEY FOR DEFENDANT**

# **Exhibit 5**

CAUSE NO. 202305569

CHERIE FOUNTAINE,  
HAILEY KING, and  
JJP CAPITAL GROUP, LLC

*Plaintiffs*

v.

U.S. BANK NATIONAL ASSOCIATION, AS  
INDENTURE TRUSTEE FOR TOWD POINT  
MORTGAGE TRUST 2019-4,

*Defendants*

IN THE DISTRICT COURT

129TH JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

---

ORDER EXTENDING TEMPORARY RESTRAINING ORDER

---


Plaintiffs in this cause, filed a verified petition for a temporary injunction and, in connection

with that petition, presented a request for a temporary restraining order as set forth in Plaintiffs' Petition for Temporary Injunction and Temporary Restraining Order. After consideration of said Petition, the Court entered a temporary restraining order which was set to expire on February 17, 2023 with the hearing on the temporary injunction scheduled for February 16, 2023. In order to give the parties time to reach a potential resolution without further litigation, the parties seek an extension of the temporary restraining order, as modified herein. Specifically, the parties request that the temporary restraining order, as modified herein, be continued until the new hearing date for the temporary injunction. As to the hearing on the temporary injunction, the parties request that it be set the weeks of March 20 or 27, 2023 (excluding Mondays).

**IT IS, THEREFORE, ORDERED** that Defendant and its agents, servants, and employees in this cause, be, and hereby are, commanded forthwith to desist and refrain from directly or indirectly foreclosing on the Property of Plaintiffs from the date of entry of this order until the day of the temporary injunction hearing set below, except that Defendant and its agents, servants, and employees are entitled to take any steps necessary to conduct a foreclosure on the April 4, 2023 sale date or any sale date thereafter.

**IT IS FURTHER ORDERED** that Plaintiffs request for temporary injunction be heard before me, on Monday, March 27, 2023 at 9:30 A.M..

SIGNED this \_\_\_\_\_ of \_\_\_\_\_, 2023.

Signed:   
2/17/2023  
\_\_\_\_\_  
JUDGE PRESIDING



Agreed:

/s/ Michael Keller

ATTORNEY FOR PLAINTIFFS

/s/ Fred Ramos

ATTORNEY FOR DEFENDANT

# **Exhibit 6**

**CASE 2023-05569**

<b>CHERIE FOUNTAINE, et al.,</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>plaintiffs,</b>	§	
	§	
<b>v.</b>	§	
	§	<b>129th JUDICIAL DISTRICT</b>
<b>U.S. BANK NATIONAL ASSOCIATION, as indenture trustee for TOWD Point Mortgage Trust 2019-4,</b>	§	
	§	
<b>defendant.</b>	§	<b>HARRIS COUNTY, TEXAS</b>

**U.S. BANK'S ORIGINAL ANSWER**

U.S. Bank National Association, as indenture trustee for TOWD Point Mortgage Trust 2019-4 (**U.S. Bank**) answers Cherie Fountaine, Hailey King and JJP Capital Group, LLC (collectively **plaintiffs**) as follows:

**I. GENERAL DENIAL**

1. U.S. Bank generally denies each and every allegation and claim for relief asserted by plaintiffs and demands strict proof thereof by a preponderance of credible evidence.

**II. AFFIRMATIVE DEFENSES**

2. Plaintiffs' claims fail, in whole or in part, because they fail to state a claim upon which relief may be granted.

3. Plaintiffs' claims fail, in whole or in part, because they have not performed all conditions precedent to recovery and performance of those conditions have not been waived or excused, including plaintiffs' failure to tender the amount necessary to avoid foreclosure, their failure to obtain a proper payoff statement through a title company and/or their failure to provide sufficient and/or timely or proper notice of their claims and/or demands.

4. Plaintiffs' claims fail, in whole or in part, because of waiver, estoppel, ratification,

privilege and consent.

5. Plaintiffs' claims are barred, in whole or in part, because plaintiffs have not tendered or attempted to tender the amount due and owing on the loan for the subject property.

6. Plaintiffs' claims are barred, in whole or in part, because they failed to mitigate their damages, if any.

7. Plaintiffs' claims fail, in whole or in part, because they have unclean hands.

8. Plaintiffs' claims fail, in whole or in part, because their own acts and omissions, or the acts and omissions of third parties beyond the scope and control of U.S. Bank, caused or contributed to their alleged injuries. In the event the trier of fact determines plaintiffs suffered any compensable damages, U.S. Bank invokes Texas Civil Practice & Remedies Code chapter 33 and requests the trier of fact determine the proportion of responsibility for said damages by plaintiffs, U.S. Bank, any other party, and any designated responsible third-parties, and to grant judgment against U.S. Bank, if at all, for only those damages for which they are found to be proportionately responsible.

9. Plaintiffs' claims are barred, in whole or in part, because the actions complained of, if in error at all, were the result of a bona fide error.

10. In the event the lien is found unenforceable, U.S. Bank is entitled to a lien on the property through equitable and contractual subrogation for all amounts paid on behalf of the mortgagors, including but not limited to amounts paid to taxing authorities, amounts paid to insure the property against hazards and amounts paid to release other liens on the property.

### **III. ATTORNEYS' FEES**

11. U.S. Bank retained the undersigned counsel to represent it against plaintiffs' claims. U.S. Bank contends one or more of the claims asserted against it in this litigation is (1) groundless

and brought in bad faith or groundless and brought for the purpose of harassment, in violation of the Texas Rules of Civil Procedure 13, (2) presented for an improper purpose, such as to harass or to cause unnecessary delay and needless increase in the cost of litigation, in violation Texas Civil Practice & Remedies Code § 10.001(1), (3) not warranted by existing law or by a non-frivolous argument for the extension, modification or reversal of existing law or the establishment of new law, in violation of Texas Civil Practice & Remedies Code § 10.001(2), or (4) without evidentiary support or, after a reasonable opportunity for discovery, likely to have evidentiary support, in violation of Texas civil Practice & Remedies Code § 10.001(3). U.S. Bank also seeks to recover its attorneys' fees incurred in this case under any statute, common law rule or contract authorizing the same, including attorneys' fees incurred to defend against declaratory relief plaintiffs request.

#### IV. PRAYER

U.S. Bank respectfully requests a judgment that plaintiffs' take nothing on their claims and awarding U.S. Bank all further relief to which it is entitled.

Date: March 3, 2023

Respectfully submitted,

/s/ Michael J. McKleroy

Michael J. McKleroy,  
SBN: 24000095, FBN: 576095  
mmckleroy@hinshawlaw.com  
*--Attorney in Charge*  
C. Charles Townsend,  
SBN: 24028053, FBN: 1018722  
ctownsend@hinshawlaw.com  
Alfredo Ramos,  
SBN: 24110251, FBN: 3687680  
framos@hinshawlaw.com  
HINSHAW & CULBERTSON, LLP  
2001 Ross Avenue, Suite 700  
Dallas, Texas 75201  
Telephone: 945-229-6380  
Facsimile: 312-704-3001

**ATTORNEYS FOR U.S. BANK**

**CERTIFICATE OF SERVICE**

A true and correct copy of this document was served on March 3, 2023 as follows:

Michael E. Keller  
The Keller Firm  
5540 Harvest Hill Road, Suite 233  
Dallas, Texas 75230  
**VIA TEXFILE**

/s/ Michael J. McKleroy, Jr.  
Michael J. McKleroy, Jr.

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Michael McKleroy on behalf of Michael McKleroy  
 Bar No. 24000095  
 mmckleroy@hinshawlaw.com  
 Envelope ID: 73319658  
 Status as of 3/3/2023 2:18 PM CST

## Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Keller		mike@kellerfirm.com	3/3/2023 12:23:30 PM	SENT
J'aime George		jaime@kellerfirm.com	3/3/2023 12:23:30 PM	SENT
Fred Ramos		framos@hinshawlaw.com	3/3/2023 12:23:30 PM	SENT
Michael JMckleroy		mmckleroy@hinshawlaw.com	3/3/2023 12:23:30 PM	SENT
Michael McKleroy		mmckleroy@hinshawlaw.com	3/3/2023 12:23:30 PM	SENT
Alfred "Fred" Ramos		framos@hinshawlaw.com	3/3/2023 12:23:30 PM	SENT
Jennifer Richardson		jrichardson@hinshawlaw.com	3/3/2023 12:23:30 PM	SENT

# **Exhibit 7**





TRUSTEE FOR DEFENDANT TOWD (Court 129)

Print All (non-financial)  
[Chronological History](#)

- [Summary](#)
- [Appeals](#)
- [Cost Statements](#)
- [Transfers](#)
- [Post Trial Writs](#)
- [Abstracts](#)
- [Parties](#)
- [Court Costs](#)
- [Judgments/Events](#)
- [Settings](#)
- [Services/Notices](#)
- [Court Registry](#)
- [Child Support](#)
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( 0 documents )

Print List

If you are not a litigant in this case, you may visit our Customer Service departments to obtain copies of documents. Confidential or Sealed documents may not be dispensed to public customers.

If you are a litigant that is a party of this case and would like access to the restricted documents, please click [here](#).

Image No.	Type	Title	[Reset Sort]	Post Jdgm	Date	Pages	<a href="#">Add Entire Case</a>
<a href="#">106665851</a>	<b>Order</b>	ORDER EXTENDING TEMPORARY RESTRAINING ORDER SIGNED ORDER SIGNED SETTING HEARING			02/17/2023 02/17/2023	3	<a href="#">Add to Basket</a>
<a href="#">106598806</a>	Filing	Letter to Clerk			02/16/2023	2	<a href="#">Add to Basket</a>
<a href="#">106598807</a>	Filing	Proposed Order Extending Temporary Restraining Order			02/16/2023	3	<a href="#">Add to Basket</a>
<a href="#">106391705</a>	Filing	Letter to Clerk (Writ)			02/06/2023	2	<a href="#">Add to Basket</a>
<a href="#">106374020</a>	<b>Order</b>	ORDER SETTING BOND SIGNED ORDER SIGNED GRANTING TEMPORARY RESTRAINING ORDER ORDER SIGNED SETTING HEARING			02/03/2023 02/03/2023 02/03/2023	3	<a href="#">Add to Basket</a>
<a href="#">106423660</a>	Filing	Clerks Certificate of Cash Deposit in Lieu of Injunction Bond Per Order of the Court			02/03/2023	1	<a href="#">Add to Basket</a>
<a href="#">106239956</a>	Filing	Plaintiffs Petition for Temporary Injunction and Temporary Restraining Order			01/27/2023	6	<a href="#">Add to Basket</a>

Image No.	Type	Title	[Reset Sort]	Post Jdgm	Date	Pages	<a href="#">Add Entire Case</a> 
>  <a href="#">106239958</a>	Filing	Letter to Clerk			01/27/2023	1	<a href="#">Add to Basket</a> 
>  <a href="#">106239957</a>	Filing	Redacted Exhibits			01/27/2023	30	<a href="#">Add to Basket</a> 
 <a href="#">106239956</a>	Filing	Plaintiffs Petition for Temporary Injunction and Temporary Restraining Order			01/27/2023	6	<a href="#">Add to Basket</a> 
>  <a href="#">106239958</a>	Filing	Letter to Clerk			01/27/2023	1	<a href="#">Add to Basket</a> 
>  <a href="#">106239957</a>	Filing	Redacted Exhibits			01/27/2023	30	<a href="#">Add to Basket</a> 

# **Exhibit 8**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**CHERIE FOUNTAINE, *et al.*,**

**plaintiffs,**

**v.**

**U.S. BANK NATIONAL ASSOCIATION,  
as indenture trustee for TOWD Point  
Mortgage Trust 2019-4,**

**defendant.**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**Case 4:23-cv-801**

**U.S. BANK’S LIST OF ALL COUNSEL OF RECORD**

U.S. Bank National Association, as indenture trustee for TOWD Point Mortgage Trust 2019-4, provides the following list of attorneys involved in this removed action pursuant to Local Rule 81:

<b>attorney name, bar number, address &amp; telephone</b>	<b>party represented</b>
Michael E. Keller, SBN: 24087837 5540 Harvest Hill Road, Suite 233 Dallas, Texas 75230 Phone: 214-775-0817	plaintiffs Cherie Fountaine, Hailey King, and JJP Capital Group, LLC
Michael J. McKleroy SBN: 24000095, FBN: 576095 mmckleroy@hinshawlaw.com <i>--Attorney in Charge</i> C. Charles Townsend, SBN: 24028053, FBN: 1018722 ctownsend@hinshawlaw.com Alfredo Ramos, SBN: 24110251, FBN: 3687680 framos@hinshawlaw.com HINSHAW & CULBERTSON, LLP 2001 Ross Avenue, Suite 700 Dallas, Texas 75201 Telephone: 945-229-6380 Facsimile: 312-704-3001	defendant U.S. Bank National Association, as indenture trustee for TOWD Point Mortgage Trust 2019-4

Date: March 3, 2023

Respectfully submitted,

/s/ Michael J. McKleroy  
Michael J. McKleroy,  
SBN: 24000095, FBN: 576095  
mmckleroy@hinshawlaw.com  
*--Attorney in Charge*  
C. Charles Townsend,  
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framos@hinshawlaw.com  
HINSHAW & CULBERTSON, LLP  
2001 Ross Avenue, Suite 700  
Dallas, Texas 75201  
Telephone: 945-229-6380  
Facsimile: 312-704-3001  
  
**ATTORNEYS FOR U.S. BANK**

**CERTIFICATE OF SERVICE**

A true and correct copy of this document was served on March 3, 2023 as follows:

Michael E. Keller  
The Keller Firm  
5540 Harvest Hill Road, Suite 233  
Dallas, Texas 75230  
**VIA CERTIFIED MAIL RECEIPT**  
**NO. 702201670000153772015**  
**AND VIA CM/ECF SYSTEM**

/s/ Michael J. McKleroy, Jr.  
Michael J. McKleroy, Jr.

# **Exhibit 9**

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Cherie Fountaine, Hailey King, and JJP Capital Group, LLC

(b) County of Residence of First Listed Plaintiff California (EXCEPT IN U.S. PLAINTIFF CASES)

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

Michael E. Keller; The Keller Firm; 5540 Harvest Hill Road, Suite 233, Dallas, TX 75230; 214-775-0817

DEFENDANTS

U.S. Bank National Association, as indenture trustee for TOWD Point Mortgage Trust 2019-4

County of Residence of First Listed Defendant Ohio (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

Michael J. McKleroy, C. Charles Townsend, and Alfredo Ramos, Hinshaw & Culbertson, LLP, 2001 Ross Avenue,

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, etc.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC 1332 and 1441. Brief description of cause: Enjoin sale of property

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/01/2023 SIGNATURE OF ATTORNEY OF RECORD /s/ Alfredo Ramos

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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

## Authority For Civil Cover Sheet

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

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

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



# **Exhibit 10**

Tax Year: 2023

HARRIS CENTRAL APPRAISAL DISTRICT  
 REAL PROPERTY ACCOUNT INFORMATION  
 ACCOUNT NUMBER **1259370010006**

**Print** **E-mail**

Similar Owner Name

Nearby Addresses

Same Street Name

Related Map 4564B

**Ownership History**

Owner and Property Information

Owner Name & Mailing Address: <b>FOUNTAIN CHERIE                  KING HAILEY                  2601 HILLTOP DR # 928                  SAN PABLO CA 94806</b>	Legal Description: <b>LT 6 BLK 1                  CYPRESS CREEK LAKES SEC 4</b>  Property Address: <b>26814 GLENFIELD HOLLOW LN                  CYPRESS TX 77433</b>
---	---

State Class Code

A1 -- Real, Residential, Single-Family

Land Use Code

1001 -- Residential Improved

Land Area	Total Living Area	Neighborhood	Neighborhood Group	Market Area	Map Facet	Key Map®
9,703 SF	3,776 SF	45.1	4158	227 -- ISD 04 - Far West, South of US 290/North of FM 529	4564B	366R

Value Status Information

Value Status	Shared CAD
All Values Pending	No

Exemptions and Jurisdictions

Exemption Type	Districts	Jurisdictions	Exemption Value	ARB Status	2022 Rate	2023 Rate
<b>None</b>	004	CYPRESS-FAIRBANKS ISD	Pending	Pending	1.294800	
	040	HARRIS COUNTY	Pending	Pending	0.343730	
	041	HARRIS CO FLOOD CNTRL	Pending	Pending	0.030550	
	042	PORT OF HOUSTON AUTHY	Pending	Pending	0.007990	
	043	HARRIS CO HOSP DIST	Pending	Pending	0.148310	
	044	HARRIS CO EDUC DEPT	Pending	Pending	0.004900	
	045	LONE STAR COLLEGE SYS	Pending	Pending	0.107800	
	501	HC MUD 374	Pending	Pending	0.630000	
	633	HC EMERG SRV DIST 9	Pending	Pending	0.049984	

**Estimated taxes for this property can be found at [www.harrispropertytaxes.org](http://www.harrispropertytaxes.org).**

Texas law prohibits us from displaying residential photographs, sketches, floor plans, or information indicating the age of a property owner on our website. You can inspect this information or get a copy at **HCAD's information center at 13013 NW Freeway.**

Valuations

	Value as of January 1, 2022		Value as of January 1, 2023	
	Market	Appraised	Market	Appraised
Land	62,290			
Improvement	387,350			
<b>Total</b>	<b>449,640</b>	<b>449,640</b>	Pending	Pending

**5-Year Value History**

Land

Market Value Land

Line	Land Use	Unit Type	Units	Size Factor	Site Factor	Appr O/R Factor	Appr O/R Reason	Total Adj	Unit Price	Adj Unit Price	Value
1	1001 -- Res Improved Table Value SF1 -- Primary SF	SF	9,100	1.00	1.00	1.00	--	1.00	Pending	Pending	Pending
2	1001 -- Res Improved Table Value SF3 -- Primary SF	SF	603	1.00	0.10	1.00	--	0.10	Pending	Pending	Pending

Building

Building	Year Built	Type	Style	Quality	Impr Sq Ft	Building Details
1	2006	Residential Single Family	101 -- Residential 1 Family	Good	3,776 *	Displayed

\* All HCAD residential building measurements are done from the exterior, with individual measurements rounded to the closest foot. This measurement includes all closet space, hallways, and interior staircases. Attached garages are not included in the square footage of living area, but valued separately. Living area above *attached* garages is included in the square footage living area of the dwelling. Living area above *detached* garages is not included in the square footage living area of the dwelling but is valued separately. This method is used on all residential properties in Harris County to ensure the uniformity of square footage of living area measurements district-wide. There can be a reasonable variance between the HCAD square footage and your square footage measurement, especially if your square footage measurement was an interior measurement or an exterior measurement to the inch.

Building Details (1)

Building Data		Building Areas	
Element	Details	Description	Area
Foundation Type	Slab	BASE AREA PRI	1,995
Exterior Wall	Frame / Concrete Blk	OPEN FRAME PORCH PRI	80
Exterior Wall	Brick / Veneer	OPEN MAS PORCH PRI	50
Heating / AC	Central Heat/AC	BASE AREA UPR	1,781
Grade Adjustment	B+		
Physical Condition	Average		
Cond / Desir / Util	Average		
Element	Units		
Fireplace: Metal Prefab	1		
Room: Bedroom	5		
Room: Total	9		
Room: Rec	1		
Room: Half Bath	1		
Room: Full Bath	3		

Extra Features

Line	Description	Quality	Condition	Units	Year Built
1	Frame Detached Garage	Average	Average	572	2006