

FIRST FINANCIAL CORP /TX/
Form SC 13D/A
December 11, 2006

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**SCHEDULE 13D/A
Under the Securities Exchange Act of 1934
(Amendment No. 5)***

First Financial Corporation
(Name of Issuer)

Common Stock, no par value

(Title of Class of Securities)

320222 10 2
(CUSIP Number)

David W. Mann
800 Washington Avenue
Waco, Texas 76701
(254) 757-2424

(Names, Addresses and Telephone Numbers of Persons
Authorized to Receive Notices and Communications)

December 1, 2006
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box .

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

CUSIP No. 320222 10 2

1. Name of Reporting Persons. I.R.S. Identification Nos. of above persons (entity only).
David W. Mann
2. Check the Appropriate Box if a Member of a Group (See Instructions)
 - (a)
 - (b)
3. SEC Use Only
4. Source of Funds (See Instructions) N/A
5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)
6. Citizenship or Place of Organization United States

| | | | |
|-----------|-----|--------------------------|---------|
| Number of | 7. | Sole Voting Power | 298,530 |
| | 8. | Shared Voting Power | 102,898 |
| Shares | 9. | Sole Dispositive Power | 298,530 |
| | 10. | Shared Dispositive Power | 102,898 |

Beneficially

Owned by

Each Reporting

Person with

 11. Aggregate Amount Beneficially Owned by Each Reporting Person 401,428
 12. Check if the Aggregate Amount in Row (11) Excludes Shares (See Instructions)
 13. Percent of Class Represented by Amount in Row (11) 85.0%*
 14. Type of Person Reporting (See Instructions) IN

* Based on 173,528 shares of Common Stock of the Issuer outstanding as of December 1, 2006, plus (i) up to 228,530 shares that may be acquired upon the conversion of a convertible promissory note held indirectly by the Reporting Person and (ii) an option held indirectly by the Reporting Person to acquire up to 70,000 shares.

Introductory Statement

This Amendment No. 5 to the Schedule 13D of David W. Mann supplements and amends Items 4 and 7 of Amendment No. 4 to the Schedule 13D to report to the sale by First Preference Mortgage Corp., a wholly owned subsidiary of the Issuer, of substantially all of its furniture, fixtures and equipment and its loan production operations, to an entity ultimately owned and controlled by Mr. Mann and his affiliates.

Item 4. Purpose of Transaction.

Item 4 of the Schedule 13D is hereby amended and supplemented by the following:

On December 1, 2006 Citizens Mortgage Corp. ("CMC") and First Preference Mortgage Corp. ("FPMC"), a wholly owned subsidiary of the Issuer, executed an agreement entitled Memorandum of Asset Purchase (the "Agreement") under which FPMC sold to CMC substantially all of its furniture, fixtures and equipment and its retail and wholesale loan production operations and going concern value for a purchase price of \$333,873, of which \$78,873 was paid in cash on the date of execution and the \$255,000 balance was paid in the form of CMC's promissory note. The promissory note is unsecured, bears interest at 0.75% below the prime rate published in the Wall Street Journal (initially, 7.50%), and is repayable in 12 quarterly installments of principal and accrued interest starting March 15, 2007. The effective date provided in the Agreement was May 1, 2006. Under the Agreement CMC assumed no liabilities, obligations or commitments of FPMC, other than certain equipment lease agreements. In connection with the discontinuance by FPMC of its loan production operations CMC employed certain of FPMC's former employees and took over the processing of loan applications that had been received by FPMC.

CMC is a wholly owned subsidiary of Citizens State Bank of Woodville, Texas, the president and chief executive officer of which is David W. Mann and the parent company of which is majority-owned by Mr. Mann and his affiliates. Mr. Mann is also the chief executive officer and a director of both FPMC and the Issuer. Mr. Mann and his affiliates own a controlling beneficial ownership of the Issuer and the parent company of CMC. The purchase price and terms provided in the Agreement were negotiated on behalf of FPMC by the independent directors of the Issuer and by legal counsel selected by them. The purchase price was based on an evaluation provided by an independent expert.

Other than as set forth above, Mr. Mann currently has no intention to proceed with any further plan or proposal that would result in (a) the acquisition or disposition of securities of the Issuer; (b) an extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the Issuer or any of its subsidiaries; (c) a sale or transfer of a material amount of assets of the Issuer or any of its subsidiaries; (d) any change in the present board of directors or management of the Issuer; (e) any material change in the present capitalization or dividend policy of the Issuer; (f) any other material change in the Issuer's business or corporate structure; (g) changes in the Issuer's articles of incorporation, by-laws, or other instruments corresponding thereto or other actions that may impede the acquisition of control of the Issuer by any person; (h) causing any change in the trading market of any class of securities of the Issuer; (i) a class of equity securities of the Issuer becoming eligible for termination of registration under the Securities Exchange Act of 1934; or (j) any action similar to any of the matters enumerated above.

As a person who may be deemed to have beneficial ownership of shares of Common Stock, however, Mr. Mann intends to review continuously his investment, and the investment by entities with which he is affiliated, in the Common Stock; the Issuer's business, board of directors, management, operations, financial results and condition and prospects; conditions in the securities markets generally; and general economic and industry conditions. Mr. Mann may, in light of his continuing review of these factors, change his intention with respect to any or all of the matters referred to in this Item 4 and may formulate a plan or proposal relating to one or more of such matters. In addition, in his capacity as an officer and a director of the Issuer and its subsidiaries, Mr. Mann may discuss one or more of the matters enumerated above with the other officers and directors of the Issuer, and may formulate and effectuate a plan or proposal relating to one or more of the matters enumerated above. Effectuation of most or all such plans or proposals would require action by the Issuer's board of directors.

Item 7. Material to be Filed as Exhibits.

A. Memorandum of Asset Purchase by and between Citizens Mortgage Corp. and First Preference Mortgage Corp. executed December 1, 2006 and Promissory Note of Citizens Mortgage Corp. dated December 1, 2006.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

December 8, 2006

Date

/s/David W. Mann

David W. Mann

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the filing person), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement: provided, however, that a power of attorney for this purpose which is already on file with the Commission may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations (See 18 U.S.C. 1001)

Exhibit A

**MEMORANDUM OF
ASSET PURCHASE**

This Memorandum of Asset Purchase (the "Agreement") is executed on December 1, 2006, by and between (i) **Citizens Mortgage Corp.**, a Texas corporation, and (ii) **First Preference Mortgage Corp.**, a Texas corporation.

WITNESSETH:

In consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby memorialize the terms and conditions pursuant to which Purchaser acquired certain assets from Seller:

Section 1. Definitions. As used in this Agreement, each of the following terms shall have the indicated meaning:

"*Acquired Assets*" shall the following items: (i) the furniture, fixtures, equipment, supplies, computer hardware, computer software, cell phones, printers, and fax machines identified on **Exhibit A**; (ii) the retail and wholesale loan production operations and going concern value of Seller; provided, however, Buyer is not assuming any obligation to make any loan or fulfill any commitment made by Seller.

"*Effective Date*" shall mean May 1, 2006.

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*Purchaser*" shall mean Citizens Mortgage Corp.

"*Retained Liabilities*" shall have the meaning assigned to it in **Section 4** of this Agreement.

"*Seller*" shall mean First Preference Mortgage Corp.

Section 2. Sale and Purchase of Assets.

(a) Seller hereby sells, conveys, transfers, assigns and delivers to Purchaser and Purchaser purchases from Seller the Acquired Assets. The sale, transfer, conveyance, assignment and delivery of the Acquired Assets shall be free and clear of any lien, security interest, pledge, encumbrance or claim of any kind whatsoever.

(b) At any time and from time to time after the date hereof, at Purchaser's request and without further consideration, the Seller will execute and deliver such other instruments of sale, transfer, assignment, confirmation, and conveyance and take such action as Purchaser may reasonably deem necessary or desirable in order to effectively transfer, convey and assign to Purchaser, and to affirm Purchaser's title to, the Acquired Assets, to put Purchaser in actual possession and operating control of the Acquired Assets, and to assist Purchaser in exercising all rights with respect thereto.

Section 3. Purchase Price.

(a) The purchase price for the Acquired Assets shall be \$333,873, payable as follows: (i) \$78,873 in immediately available funds on the date hereof and (ii) the balance of \$255,000 to be evidenced by a promissory note dated of even date herewith, payable in one installment of \$35,000 due on March 15, 2007 and equal quarterly principal installments of \$20,000 each, plus accrued interest, beginning on June 15, 2007 and continuing quarterly thereafter until and including December 15, 2009 thereafter.

(b) Purchaser shall agree upon an allocation of the purchase price (and all other capitalized costs) among the Acquired Assets in accordance with Code §1060 and the Treasury regulations thereunder (and any similar provision of state, local or foreign law, as appropriate). Neither Purchaser nor Seller shall take any position (whether in audits, tax returns or otherwise) that is inconsistent with such allocation unless required to do so by applicable law.

Section 4. Assumption of Certain Liabilities and Contractual Agreements.

Purchaser is not assuming or agreeing to pay, perform or discharge any debts, liabilities, commitments or obligations of Seller or the Acquired Assets, direct or indirect, fixed, contingent or otherwise, which exist at or as of the Effective Date hereunder or which arise after the Effective Date but which are based upon or arise from any act, transaction, circumstance, state of facts or other condition which occurred or existed on or before the Effective Date, whether or not then known, due or payable (the "Retained Liabilities"). Seller shall retain, and be solely responsible for paying or otherwise discharging or satisfying, all such Retained Liabilities. Seller shall indemnify, defend and hold Purchaser harmless from and against the Retained Liabilities and from any loss, cost or expense (including attorneys' fees) which Purchaser might suffer or incur in connection therewith.

Section 5. Representations and Warranties of Seller. Seller represents and warrants to Purchaser as follows:

(a) **Organization, Standing and Qualification.** Seller (i) is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation, (ii) has full power and authority to enter into this Agreement and the related agreements referred to herein and to carry out the transactions contemplated by this Agreement and the related agreements referred to herein and to carry on its business as now being conducted and to own, lease or operate its properties, (iii) is duly qualified and licensed to do business and is in good standing in each jurisdiction where the character of its business or the nature of its properties makes such qualification or licensing necessary; and (iv) holds all necessary licenses and other authorizations to conduct its business as presently conducted.

(b) **No Conflict Without Other Instruments.** Neither the execution, delivery nor performance of this Agreement by Seller will, with or without the giving of notice or the passage of time, or both, conflict with, result in a default, right to accelerate or loss of rights under, or result in the creation of any lien, charge or encumbrance pursuant to, any material franchise, mortgage, deed of trust, lease, license, agreement, understanding, law, rule or regulation or any order, judgment or decree to which Seller is a party or by which Seller may be bound or affected. Seller is not required to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement.

(c) **Execution, Delivery and Performance of Agreement; Authority.** Seller has the full power and authority to enter into this Agreement and the documents to be executed pursuant hereto and to carry out the transactions contemplated hereby. All proceedings required to be taken by Seller to authorize the execution and delivery of this Agreement and the agreements relating hereto and the consummation of the transactions contemplated hereby have been properly taken, and this Agreement and the documents to be executed pursuant hereto constitute or will upon execution constitute the valid and binding obligations of Seller enforceable against Seller in accordance with their terms.

(d) **Taxes.** All taxes, including, without limitation, income, property, sales, use, franchise, added value, premium, employees' income withholding taxes, social security and unemployment taxes, imposed by the United States or by any foreign country or by any state, municipality, subdivision or instrumentality of the United States or of any foreign country, or by any other taxing authority, which are due, payable or owed by Seller, and all interest and penalties thereon, whether disputed or not, have been paid in full, all tax returns required to be filed in connection therewith have been accurately prepared and duly and timely filed and all deposits required by law to be made by Seller with respect to employees' withholding taxes have been duly made. Seller has not been delinquent in the payment of any foreign or domestic tax, assessment or governmental charge or deposit and Seller does not have any tax deficiency or claim outstanding, proposed or assessed against it, and there is no basis for any such deficiency or claim.

(e) **Compliance with Laws and Other Instruments.** Seller has complied with, and is in compliance with, all laws, rules, regulations, ordinances, orders, judgments and decrees now or heretofore applicable to its business, properties or operations as presently or heretofore conducted. Seller is not in default under the terms of any material outstanding contract, agreement, lease, license or other commitment, nor has any event occurred which, with or without the passage of time, may be or become an event of default, and neither the ownership nor use of the properties of Seller, nor the conduct of the business of Seller conflicts with the rights of any other person, firm or corporation or violates, with or without the giving of notice or the passage of time, or both, will violate, conflict with or result in a default, right to accelerate or loss of rights under, any terms or provisions of any material lien, encumbrance, mortgage, deed of trust, lease, license, agreement, understanding, law, ordinance, rule or regulation, or any order, judgment or decree to which any Seller is a party or by which any of them may be bound or affected.

(f) **Title to and Condition of Properties.** Seller has good and marketable title to all the properties and assets that such Seller owns or uses in its business or purports to own, including, without limitation, the Acquired Assets. None of such Acquired Assets are subject to any mortgage, pledge, lien, charge, security interest, encumbrance, restriction, lease, license, easement, liability or adverse claim of any nature whatsoever, direct or indirect, whether accrued, absolute, contingent or otherwise, except (i) those imperfections of title and encumbrances, if any, which (A) are not substantial in character, amount or extent and do not materially detract from the value of the properties subject thereto, (B) do not interfere with either the present and continued use of such property or the conduct of the normal operations of Seller and (C) have arisen only in the ordinary course of business. All of the Acquired Assets are in good operating condition and repair, is suitable for the purposes used, is adequate and sufficient for all current operations of such Seller and is directly related to the business of the Seller.

(g) **Brokerage Fees.** Seller has not retained any financial advisor, broker, agent, or finder or paid or agreed to pay any financial advisor, broker, agent or finder on account of this Agreement or the transactions contemplated hereby.

Section 6. Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to the Seller that:

(a) **Organization.** Purchaser (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, (ii) has full corporate power and authority to enter into this Agreement and the related agreements referred to herein and to carry out the transactions contemplated by this Agreement and the related agreements referred to herein and to carry on its business as now being conducted and to own, lease or operate its properties, (iii) is duly qualified or licensed to do business and is in good standing in each jurisdiction where the character of its business or the nature of its properties makes such qualification or licensing necessary; and (iv) holds all necessary licenses and other authorizations to conduct its business as presently conducted.

(b) **Approvals; Authority.** The Board of Directors of Purchaser has approved this Agreement and the transactions contemplated herein, and no further corporate proceedings of Purchaser are needed to execute and deliver this Agreement and consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Purchaser and is a duly authorized, valid, legally binding agreement of Purchaser enforceable against Purchaser in accordance with its terms.

(c) **No Conflict Without Other Instruments.** Neither the execution, delivery nor performance of this Agreement by Purchaser will, with or without the giving of notice or the passage of time, or both, conflict with, result in a default, right to accelerate or loss of rights under, or result in the creation of any lien, charge or encumbrance pursuant to, any provision of the articles of incorporation or bylaws of Purchaser, or any material franchise, mortgage, deed of trust, lease, license, agreement, understanding, law, rule or regulation or any order, judgment or decree to which it is a party or by which it may be bound or affected.

Section 7. Additional Agreements.

(a) **Proration.** The following items shall be prorated as of the Effective Date with Seller being responsible for and receiving the benefit of such items to the extent they relate to a period prior to the Effective Date and Purchaser being responsible for and receiving the benefit of such items to the extent they relate to periods after the Effective Date: (i) personal property taxes with respect to the Acquired Assets applicable to the 2006 tax year which shall be prorated on the basis of a 365-day year based on the most recent personal property tax bills received by Seller; (ii) water charges, sewer, rents, electricity, steam, gas and telephone and other like utility charges which shall be prorated based on the number of days before and after the Effective Date covered by the bills paid; and (iii) periodic governmental or quasi-governmental fees for licenses or permits relating to the Acquired Assets which are transferable and which are properly transferred to Purchaser in respect to the Acquired Assets.

Section 8. Obligations Following Effective Date. Following the Effective Date:

- (a) Seller shall execute and deliver such documents, and take such other action as shall be reasonably requested by Purchaser to carry out the transactions contemplated by this Agreement.
- (b) Seller shall make available to Purchaser the books and record of Seller with respect to the Acquired Assets.

Section 9. Indemnification.

(a) Seller hereby indemnifies and agrees to hold Purchaser harmless from, against and in respect of (and shall on demand reimburse Purchaser for):

(i) any and all loss, liability or damage suffered or incurred by Purchaser by reason of any untrue representation, breach of warranty or nonfulfillment of any covenant by Seller contained herein or in any certificate, document or instrument delivered to Purchaser pursuant hereto or in connection herewith;

(ii) the Retained Liabilities; and

(iii) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including, without limitation, legal fees and expenses, incident to any of the foregoing or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing this indemnity.

(b) Purchaser hereby indemnifies and agrees to hold Seller harmless from, against and in respect of (and shall on demand reimburse Seller for):

(i) any and all loss, liability or damage suffered or incurred by Seller by reason of any untrue representation, breach of warranty or nonfulfillment of any covenant by Purchaser contained herein or in any certificate, document or instrument delivered to Seller pursuant hereto or in connection herewith;

(ii) any and all debts, liabilities or obligations of Purchaser (other than Retained Liabilities), direct or indirect, fixed, contingent or otherwise, which arise after the Effective Date and which are based upon or arise from any act, transaction, circumstance, state of facts or other condition which arise after the Effective Date; and

(iii) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including, without limitation, legal fees and expenses, incident to any of the foregoing or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing this indemnity.

- (c) The following procedures shall be used in connection with a claim for indemnification with respect to third party claims:
- (i) Promptly after receipt by an indemnified party of notice of the commencement of any action covered under subsections (a) or (b) above, such indemnified party shall give notice to the indemnifying party of the commencement of such action. However, the failure to so notify the indemnifying party shall not relieve it of any liability that it may have to any indemnified party, except to the extent the indemnifying party demonstrates that the defense of such action is prejudiced by any delay or failure to give such notice.
- (ii) The indemnifying party shall be entitled to participate in any action for which indemnity is sought and may assume the defense of the action with counsel satisfactory to such indemnified party. If the indemnifying party elects to assume the defense of such action, the indemnified party shall have the right to employ separate counsel at its own expense and to participate in the defense thereof.
- (iii) If the indemnifying party elects not to assume (or fails to assume) the defense of such action, the indemnified party shall be entitled to assume the defense of such action with counsel of its own choice, at the expense of the indemnifying party.
- (iv) If the action is asserted against both the indemnifying party and the indemnified party and there is a conflict of interest which renders it inappropriate for the same counsel to represent both the indemnifying party and indemnified party, the indemnifying party shall be responsible for paying for separate counsel for the indemnified party. However, if there is more than one indemnified party, the indemnifying party shall not be responsible for paying for more than one separate firm of attorneys to represent the indemnified parties, regardless of the number of indemnified parties.
- (v) If the indemnifying party elects to assume the defense of such action, (a) no compromise or settlement thereof may be effected by the indemnifying party without the indemnified party's written consent (which shall not be unreasonably withheld) unless the sole relief provided is monetary damages that are paid in full by the indemnifying party, and (b) the indemnifying party shall have no liability with respect to any compromise or settlement thereof effected without its written consent (which shall not be unreasonably withheld).
- (d) No claim for indemnification under this **Section 9** may be made after four (4) years from the Effective Date, except that claims for indemnification from the Seller may be made by the Purchaser at any time after the Effective Date and prior to the expiration of the applicable statute of limitations for breach of any of the representations and warranties of the Sellers (and indemnification therefor) contained in **Section 5(d)** and **Section 5(f)**.

Section 10. Miscellaneous.

- (a) **Amendment.** This Agreement may be amended, modified or supplemented only by an instrument in writing executed by the party against which enforcement of the amendment, modification or supplement is sought.

(b) **Assignment.** Neither this Agreement nor any right created hereby shall be assignable by either party hereto without the prior written consent of the other party; provided however, Purchaser may assign this Agreement in whole or in part to a wholly owned subsidiary without any consent from Seller.

(c) **Notice.** Any and all notices, requests, instructions and other communications required or permitted to be given under this Agreement after the date hereof by any party hereto to any other party may be delivered personally or by nationally recognized overnight courier service or sent by mail or by telex or facsimile transmission, at the respective addresses or transmission numbers set forth below and shall be effective (a) in the case of personal delivery, telex or facsimile transmission, when received; (b) in the case of mail, upon the earlier of actual receipt or three (3) business days after deposit in the United States Postal Service, first class certified or registered mail, postage prepaid, return receipt requested; and (c) in the case of nationally-recognized overnight courier service, one (1) business day after delivery to such courier service together with all appropriate fees or charges and instructions for such overnight delivery. The parties may change their respective addresses and transmission numbers by written notice to all other parties, sent as provided in this **Section 10**. All communications must be in writing and addressed as follows:

IF TO PURCHASER:

Citizens Mortgage Corp.

102 W. Bluff

P. O. Box 109

Woodville, Texas 75979

Attention: Bud LaCombe

Telecopy: 409/283-7834

IF TO SELLER:

First Preference Mortgage Corp

800 Washington Avenue

Waco, Texas 76701

Attention: David W. Mann

Telecopy: 254/757-0306

Any party may change its address by written notice given to the other parties.

(d) **Entire Agreement.** This Agreement and the exhibits hereto supersede all prior agreements and understandings relating to the subject matter hereof, except that the obligations of any party under any agreement executed pursuant to this Agreement shall not be affected by this Section.

(e) **Costs, Expenses and Legal Fees.** The Parties shall each pay their or its own expenses (including, without limitation, legal and accounting fees and expenses) incident to the preparation and carrying out of this Agreement and the consummation of the transactions contemplated herein.

- (f) **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- (g) **Survival of Representations, Warranties and Covenants.** The consummation of the transactions described herein shall by virtue of such consummation alone constitute a restatement of the representations and warranties contained herein or in any document delivered pursuant hereto, and further shall constitute a representation and warranty at the time of said delivery that Seller have fully complied with the terms, provisions and covenants contained herein applicable to Seller and that Purchaser has fully complied with the terms, provisions and covenants herein applicable to Purchaser. The representations, warranties and covenants contained herein shall survive the closing of this transaction and all statements contained in any certificate, exhibit or other instrument delivered by or on behalf of Seller or Purchaser pursuant to this Agreement shall be deemed to have been representations and warranties by Seller or Purchaser, as the case may be, and shall survive the closing and any investigation made by any party hereto or on its behalf.
- (h) **Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be governed, construed and enforced in accordance with the laws of the State of Texas. The parties agree that any litigation relating directly or indirectly to this Agreement must be brought before and determined by a court of competent jurisdiction within McLennan County, Texas.
- (i) **Captions.** The captions in this Agreement are for convenience of reference only and shall not limit or otherwise affect any of the terms or provisions hereof.
- (j) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
- (k) **Dispute Resolution.** Seller and the Purchaser agree that if any claim, action, dispute or controversy of any kind arises out of or relates to this Agreement, prior to seeking any other remedies, including litigation, the aggrieved party shall give written notice to the other parties hereto describing the disputed issue. Within ten (10) days after the receipt of such a notice the parties shall mutually appoint a single mediator to assist in the resolution of the dispute. If the parties cannot agree upon a mediator, any party shall have the right to apply to the American Arbitration Association ("AAA") for a single mediator to be appointed to mediate the dispute in accordance with the rules applicable to AAA sponsored proceedings and, upon the appointment of such a mediator by AAA, such mediator shall be deemed to be accepted by the Seller and Purchaser. Within twenty (20) days after the appointment of a mediator, either by the parties or, if necessary, by AAA, the parties shall meet one or more times with such mediator in an effort to resolve the matters in dispute. If after such meeting or meetings any aspect of the dispute remains unresolved for a period of an additional ten (10) days, the parties shall be entitled to pursue whatever other remedies may be available to them, subject to the terms of this Agreement. The costs and expenses of the mediator shall be borne equally by the parties to the dispute.

(1) **Waiver of Jury Trial**

THE SELLER AND PURCHASER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. THE SELLER AND PURCHASER REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(Signature page to follow.)

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

PURCHASER

CITIZENS MORTGAGE CORP.

By: _____

Name: _____

Title: _____

SELLER

FIRST PREFERENCE MORTGAGE CORP.

By: _____

Name: _____

Title: _____

First Preference Mortgage Corp.**Asset List****By Location**

| <u>Location</u> | <u>Qty</u> | <u>FF&E</u> | <u>Exhibit A</u> |
|-----------------|------------|-------------------------------------|------------------|
| Corp | All | Closed racks | - |
| Corp | All | Open racks | |
| Corp | All | 3 Com Switchs | |
| Corp | All | Board Room Table and chairs | |
| Corp | All | Bookshelves | |
| Corp | All | Cafeteria folding tables | |
| Corp | All | Calculators | |
| Corp | All | Chairs | |
| Corp | All | Cisco Routers | |
| Corp | All | Credenza | |
| Corp | All | Cubicles (Short) | |
| Corp | All | Desks, Tables, Credenzas and Chairs | |
| Corp | All | Desktop Computers | |
| Corp | All | End Tables | |
| Corp | All | Epson Printers | |
| Corp | All | Fax Machines | |
| Corp | All | Lamps | |
| Corp | All | Laptop Computers | |
| Corp | All | File Cabinets | |
| Corp | All | Phone system | |
| Corp | All | Pictures | |
| Corp | All | Plants | |
| Corp | All | Printers | |
| Corp | All | Servers | |
| Corp | All | Shelves in computer area | |
| Corp | All | UPS | |
| OK | All | Cisco Firewall | |
| OK | All | Cisco Switch | |
| OK | All | Desks, Tables, Credenzas and Chairs | |
| OK | All | Desktop Computers | |
| OK | All | Fax Machines | |
| OK | All | Laptop Computers | |
| OK | All | Printers | |
| OK | All | Servers | |
| OK | All | UPS | |

First Preference Mortgage Corp.**Asset List****By Location**

| <u>Location</u> | <u>Qty</u> | <u>FF&E</u> | <u>Exhibit A</u> |
|-----------------|------------|-------------------------------------|------------------|
| Tyler | All | Cisco Firewall | - |
| Tyler | All | Cisco Switch | |
| Tyler | All | Desks, Tables, Credenzas and Chairs | |
| Tyler | All | Desktop Computers | |
| Tyler | All | Fax Machines | |
| Tyler | All | Laptop Computers | |
| Tyler | All | Printers | |
| Tyler | All | Servers | |
| Tyler | All | UPS | |
| Victoria | All | Cisco Firewall | |
| Victoria | All | Cisco Switch | |
| Victoria | All | Desks, Tables, Credenzas and Chairs | |
| Victoria | All | Desktop Computers | |
| Victoria | All | Fax Machines | |
| Victoria | All | Laptop Computers | |
| Victoria | All | Printers | |
| Victoria | All | Servers | |
| Victoria | All | UPS | |
| Waco | All | Cisco Firewall | |
| Waco | All | Cisco Switch | |
| Waco | All | Desks, Tables, Credenzas and Chairs | |
| Waco | All | Desktop Computers | |
| Waco | All | Fax Machines | |
| Waco | All | Laptop Computers | |
| Waco | All | Printers | |
| Waco | All | Servers | |
| Waco | All | UPS | |
| All | All | Software | |
| All | All | Microsoft Office 2003 Prof | |
| All | All | Microsoft Exchange | |
| All | All | Windows Server 2003 | |
| All | All | Sql 2000 | |
| All | All | Symantec Anti-virus | |
| All | All | Win XP Pro | |
| All | All | Terminal Server | |
| All | All | Microsoft Office XP with Front Page | |
| All | All | Adobe Professional | |

PROMISSORY NOTE

\$255,000.00 December 1, 2006

For value received, the undersigned **Citizens Mortgage Corp.**, a Texas corporation (the "Maker") whose address is 102 W. Bluff, P.O. Box 109, Woodville, Texas, 75979, hereby promises to pay to the order of **First Preference Mortgage Corp.**, a Texas corporation (together with his successors and assignees and any subsequent holders of this Promissory Note, the "Lender"), at 800 Washington, Waco, Texas, 76701, the principal sum of TWO HUNDRED FIFTY FIVE THOUSAND AND 00/100 (\$255,000.00), together with interest thereon at the rate herein set out.

The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the PRIME RATE as published in the MONEY RATES SECTION of the WALL STREET JOURNAL (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notice to Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each DAY. Borrower understands that Lender may make loans based on other rates as well. **The Index currently is 8.25% per annum. The Interest rate to be applied prior to maturity to the unpaid principal balance of this Note will be at a rate equal to the Index, less 0.75%, resulting in an initial rate of 7.50% per annum.** NOTICE: Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law. For purposes of this Note, the "maximum rate allowed by applicable law" means the greater of (A) the maximum rate of interest permitted under federal or other law applicable to the indebtedness evidenced by this Note, or (B) the "Weekly Ceiling" as referred to in Sections 303.002 and 303.003 of the Texas Finance Code.

The principal and interest hereon shall be due and payable as follows:

(a) One (1) installment of principal in the amount of \$35,000, plus accrued and unpaid interest, to be due and payable on March 15, 2007; and thereafter

(b) Eleven (11) quarterly installments of principal in the amount of \$20,000 each, plus accrued and unpaid interest, the first such payment to be due and payable on June 15, 2007, with like successive quarterly installments due on the 15th day of each September, December, March and June thereafter until and including a final installment on December 15, 2009.

Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest, then to unpaid principal and then to unpaid collection costs. Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the annual interest rate over the number of days in a year, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding.

Notwithstanding any other provision of this note, in the event of a default, before exercising any of Lender's remedies under this note or any deed of trust securing it, Lender will first give Borrower written notice of default and Borrower will have twenty days after notice is given in which to cure the default. If the default is not cured twenty days after notice, Borrower and each surety, endorser, and guarantor waive all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.

All payments under this Note made to Lender shall be made in immediately available funds at 800 Washington, Waco, Texas, 76701 (or at such other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Maker from time to time), in lawful money of the United States of America. Payments by check or draft shall not constitute payment in immediately available funds until the required amount is actually received by Lender in full.

Borrower will pay interest on all sums due after final maturity, whether by acceleration or otherwise, at the lesser of maximum rate allowed by law or 10% per annum.

Maker reserves the right to prepay this Note in any amount at any time, without penalty. Early payments will not, unless agreed to by Lender in writing, relieve Maker of Maker's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due. Interest shall immediately cease upon any amounts of principal so prepaid.

If Maker fails or refuses to pay any part of the principal or interest on this Note when the same becomes due or upon the occurrence of a default under the terms hereof or of any of the documents, instruments or any other deeds of trust, security agreements, guaranty agreements, or other collateral documents securing indebtedness represented by this Note, then in such event Lender may, at its option, declare the entire unpaid balance of principal of, and accrued interest on, this Note to be immediately due and payable, foreclose all security interests and liens securing payment hereof or any part hereof, and set off against this Note any and all of Maker's other liabilities to Lender all money or property in Lender's possession held for or owed to Maker.

If this Note is placed in the hands of an attorney for collection, or if it is collected through any legal proceedings, Maker agrees to pay an additional reasonable amount as attorney's fees and other costs of collection, including, but not limited to, court costs of Lender.

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Except as specifically set forth herein, Maker and each surety, endorser, and guarantor, waive presentment for payment, notice of intent to accelerate, notice of acceleration, protest, and notice of protest and nonpayment, and agree that Maker's liability on this Note shall not be affected by any renewal or extension of the time of payment hereof or by any indulgences, and hereby consent to any and all renewals, extensions, indulgences, or changes, regardless of the number thereof, either before or after maturity.

The laws of the State of Texas shall govern this Note and it shall be enforceable, payable and collectible in Fort Worth, Tarrant County, Texas.

[Signature page to follow]

CITIZENS MORTGAGE CORP.

By: _____

Name: _____

Title: _____