

COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY JW  
DEPUTY

NO. 36611-8-II

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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Ross D. Greer,

Appellant,  
v.

Citibank Federal Savings Bank,

Respondent.

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RESPONDENT CITIBANK FEDERAL SAVINGS BANK'S BRIEF

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APPEAL FROM THURSTON COUNTY SUPERIOR COURT  
Honorable Richard D. Hicks

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## **I. RESTATEMENT OF THE ISSUES**

1. Whether a lien priority can be determined after a foreclosure sale, where the statute provides that the foreclosure trustee makes no representations or warranties regarding title or other encumbrances, and a specific procedure exists by which claims to surplus funds are determined after the sale.
2. Whether Citibank was junior to the Foreclosing Lienholder, and therefore entitled to the excess funds, when all of the advances made under the Citibank deed of trust were optional, and subsequent to the date the Foreclosing Lienholder's deed of trust.
3. Whether Citibank was junior to the foreclosing lienholder, and therefore entitled to the excess funds, when it subordinated its deed of trust to the foreclosing lienholder's deed of trust.
4. Whether Citibank was junior to the Foreclosing Lienholder, under equitable subrogation, when the Foreclosing Lienholder loan refinanced an existing, first position, deed of trust.

## **II. RESTATEMENT OF THE CASE**

### **A. Factual Statement**

Ross D. Greer owned the real property located at 8645 Johnson Pt Rd NE Olympia, WA 98516. In 1999, Mr. Greer granted a Deed of Trust on his property to Source One Mortgage Corporation ("Source One"), to a secure a loan in the principal amount of \$72,000. Appendix B (CP at \_\_\_). The Source

One Deed of Trust was recorded on December 27, 1999. Appendix B (CP at \_\_\_\_). This deed of trust was in first position on the property.

In 2002, the Respondent, Citibank Federal Savings Bank (“Citibank”) provided Mr. Greer with a secured line of credit in the amount of \$25,000. CP at 54. The loan was secured with a second position deed of trust, recorded on August 23, 2002. CP at 54.

In 2003, CitiMortgage, Inc. (“Foreclosing Lienholder”) refinanced the existing, first position Source One Deed of Trust, and provided a loan to Mr. Greer in the amount of \$70,031.00. CP at 64. The Foreclosing Lienholder intended its deed of trust to be a first position deed of trust. Appendix B (CP at \_\_\_\_). Citibank also intended that its deed of trust remain in second position. Appendix B (CP at \_\_\_\_). The Foreclosing Lienholder’s deed of trust was recorded on October 2, 2003, and was eventually foreclosed when Mr. Greer failed to make his payments. CP at 64.

On July 29, 2004, Citibank agreed to increase the 2002 line of credit loan. Mr. Greer signed a Mortgage Modification Agreement, and the line of credit was increased from \$25,000 to \$75,000. CP at 81. The credit line increase was optional on Citibank’s part, and was made after the 2003 loan. Appendix B (CP at \_\_\_\_). At the time of the hearing to disburse surplus funds in the superior court court, Mr. Greer owed Citibank \$81,531.48. CP 51, 102. All of the funds owed were advanced after July 29, 2004, the date the modification agreement was signed. Appendix B (CP at \_\_\_\_).

On December 27, 2006, Citibank executed a subordination agreement, subordinating its deed of trust to the Foreclosing Lienholder’s deed of trust.

The subordination agreement memorialized Citibank's agreement and understanding regarding the relative priorities between the two lienholders: The Foreclosing Lienholder's Deed of Trust was in first position; Citibank's deed of trust was in second position. CP at 86; Appendix B (CP at \_\_\_).

The subordination agreement was recorded in the Thurston County Auditor's Office on January 2, 2007. CP at 86; Appendix B (CP at \_\_\_). It placed the relative priorities of the two deeds of trust of record before the trustee's sale so that no bidders were misled. The Foreclosing Lienholder's trustee's sale was held on January 5, 2007. Appellant's Brief App. 10-13. The sale of Mr. Greer's property resulted in excess funds in the amount of \$65,015.40, which were deposited in the court registry. CP at 3-4.

**CHRONOLOGY**

1999	Source One Mortgage Corporation Deed of Trust - \$72,000
2002	Citibank Line Of Credit Deed of Trust - \$25,000
2003	Foreclosing Lienholder's (Citimortgage) Deed of Trust - \$70,031.00
2004	Mortgage Modification Agreement Increasing CitiBank's Line of Credit to \$75,000
2006	Subordination Agreement executed – Citibank Subordinated to Foreclosing Lienholder's Deed of Trust

**B. Procedural History**

On January 25, 2007, surplus proceeds totaling \$65,015.40 were deposited into the court registry. CP at 3-4. Due to the fact that Citibank's deed of trust was junior to the Foreclosing Lienholder's deed of trust, Citibank's security interest attached to the surplus funds.

After seeing that the sale of Mr. Greer's property resulted in \$65,015.40 in surplus funds, it appears that "Foreclosure Advocates LLC" contacted Mr. Greer. Foreclosure Advocates had Mr. Greer execute a power of attorney and "Acquisition Agreement" whereby Foreclosure Advocates would be paid 33% of any funds to which Mr. Greer might be entitled from the foreclosure of his property. CP at 32-35.

On April 9, 2007, a Motion for Disbursement of Funds was filed by Foreclosure Advocates. CP at 27-29. Foreclosure Advocates failed to give notice of the motion to Citibank. CP at 30-31. A hearing occurred on May 4, 2007, and without hearing from Citibank, the superior court disbursed \$35,015.40 of the surplus funds to Mr. Greer. Appendix A (CP at \_\_\_); CP at 117. The superior court ordered that \$30,000.00 of the surplus funds would remain in the registry until further order of the Court. Appendix A (CP at \_\_\_); CP at 117.

Citibank filed a Motion for Reconsideration. CP at 45. In its Motion, Citibank pointed out that Mr. Greer owed Citibank \$81,531.48, and that it was entitled to all of the excess funds due to the fact its deed of trust attached to the surplus funds. CP at 47, 102. After considering the briefs and argument of the parties, the superior court determined that Citibank was entitled to all of the surplus funds in the court registry. CP at 117-118. Accordingly, the funds in the registry were used to pay the majority of the loan Mr. Greer owed Citibank. This appeal by Foreclosure Advocates follows.

### III. STANDARD OF REVIEW

A trial court's interpretation of a statute is a question of law that is reviewed de novo. *W. Telepage, Inc. v. City of Tacoma Dep't of Fin.*, 140 Wn.2d 599, 607, 998 P.2d 884 (2000). In this case, the distribution of surplus funds is controlled by RCW 61.24.080(3). Accordingly, the proper standard of review is a de novo standard.

### IV. SUMMARY OF THE ARGUMENT

There is complete agreement between the two lienholders regarding the priority of their respective deeds of trust. The Foreclosing Lienholder's deed of trust was a first position lien, and Citibank's deed of trust was in second position. RCW 61.24.080(3) allows that priority to be determined by the superior court after the foreclosure sale. Citibank's deed of trust was junior for three reasons: 1) All advances made under Citibank's loan were optional and subsequent to the Foreclosing Lienholder's deed of trust, resulting in subordination of Citibank's deed of trust; 2) Citibank specifically subordinated its deed of trust to the Foreclosing Lienholder's deed of trust; and 3) the Foreclosing Lienholder's loan refinanced a first position deed of trust resulting in its priority under equitable subrogation. Citibank now finds itself in the unusual position of defending why it never *improperly* asserted that its deed of trust was a senior lien on the property.

## V. ARGUMENT

### 1. Lien Priorities Are Established After A Nonjudicial Foreclosure Sale

The three goals of the Washington Deed of Trust Act are: (1) that the nonjudicial foreclosure process should be efficient and inexpensive, (2) that the process should result in interested parties having an adequate opportunity to prevent wrongful foreclosure, and (3) that the process should promote stability of land titles. *Cox v. Helenius*, 103 Wn.2d 383, 387, 693 P.2d 683 (1985); *Country Express Stores, Inc. v. Sims*, 87 Wn. App. 741, 747-48, 943 P.2d 374 (1997). The trustee in a nonjudicial foreclosure has specific duties that are set forth under the statute. RCW 61.24. The nonjudicial foreclosure does not determine priorities between lienholders. In fact, the trustee specifically states that it does not warrant or represent the condition of title or encumbrances on the property that is sold. This is set forth in the statutory form Notice of Trustee's Sale, as well as was set forth in the specific Notice of Trustee's Sale in this case. RCW 61.24.040(1)(f)(Section V); Appellant's Brief at Appendix 12. Priority of liens is determined in the proceedings following the sale. The suggestion by Foreclosure Advocates that either the foreclosure trustee or the nonjudicial process somehow adjudicates claims relating to priority is incorrect.

RCW 61.24.080 outlines the procedures to be followed after a foreclosure sale occurs. Contrary to Foreclosure Advocates assertion, "this

statutory scheme” does not set all lien priorities as of the date the Notice of Trustee’s Sale is recorded.<sup>1</sup> See Appellant’s Brief at 10. Instead, RCW 61.24.080 provides a procedure by which a superior court can determine lien priorities once a foreclosure sale has occurred.

A foreclosure sale eliminates the security of a junior lienholder in the property. RCW 61.24.080. A junior lienholder’s interest then attaches to any surplus funds from the sale in the same order it attached to the property. *Id.* Following a foreclosure sale, the trustee has a duty to disburse funds first to satisfy the expenses of the foreclosure sale. RCW 61.24.080(1). Once the sale expenses are satisfied, the trustee must apply all remaining funds to satisfy the obligation secured by the foreclosing deed of trust. RCW 61.24.080(2).

After the foreclosing deed of trust is paid off, the trustee must give notice of any remaining surplus funds to other parties with potential interests in the funds. RCW 61.24.080(3). A lien against the property eliminated by the sale attaches to the surplus in the order of priority that it attached to the property. *Id.* A foreclosure sale eliminates the security of a junior lien holder, but does not affect the debts and obligations owed to that junior lien holder. *Beal Bank, SSB v. Sarich*, 161 Wn.2d 544, 548, 167 P.3d 555 (2007).

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<sup>1</sup> Part of Foreclosure Advocates’ argument seems to be that there is some recorded notice that sets forth who the junior lienholders are whose interests are junior and/or sought to be extinguished. However, Foreclosure Advocates’ cite points to a recitation of who receives the Notice of Default pursuant to RCW 61.24.030. See Appellant’s Brief at Appendix 10-13. The Notice of Default is not mailed to any lienholders and, in fact, here there is no recorded notice or affidavit of mailing of who received the Notice of Trustee’s Sale.

This is made clear by the fact that RCW 61.24.080(3) provides a specific procedure by which lien priorities can be determined after the sale occurs: “A party seeking disbursement of the surplus funds shall file a motion requesting disbursement in the superior court. . . The clerk shall not disburse such surplus except upon order of the superior court of such county.” RCW 61.24.080(3).

For the reasons discussed below, Citibank’s Deed of Trust was junior to the Foreclosing Lienholder’s Deed of Trust. The non-judicial foreclosure sale eliminated Citibank’s deed of trust. The trial court correctly determined the priorities and disbursed the surplus funds to Citibank.

**2. Citibank Is The Junior Lienholder Because All Advances Made Under The Citibank Line Of Credit Were Optional, and Subsequent To The Date of The Foreclosing Lienholder’s Deed Of Trust**

Even if Citibank’s Deed of Trust was at one point in time a first position lien after the refinance of the first lien, Citibank lost any priority it had when it increased its credit line from \$25,000 to \$75,000 and modified the terms of its line of credit. The priority of liens is altered if the amount of the loan increases and the advances are optional. *National Bank of Washington et al. v. Equity Investors*, 83 Wn.2d 435, 442, 518 P.2d 1072 (1974). An advance is optional if it is discretionary on the part of the lender. *Id.* A lien that was once senior loses that seniority if an optional advance is made after an intervening lien attaches.

Citibank's Deed of Trust was recorded on August 23, 2002. CP at 54. The Foreclosing Lienholder's Deed of Trust was recorded on October 2, 2003. CP at 64. Citibank's line of credit increased to \$75,000 in 2004. All of Citibank's advances were made after the Foreclosing Lienholder's Deed of Trust. The advances were optional under the Modification Agreement: "We at Our option may make Future Loan Advances to You or Borrower." CP at 81. (Emphasis added).

Furthermore, when a mortgage is modified to the extent it prejudices other lienholders, it loses priority to junior liens when the modification occurs subsequent to those liens. *Hu Hyun Kim v. Stanley Lee, et al.*, 145 Wn.2d 79, 90, 31 P.3d 665 (2001). This prevents a senior lienholder from taking existing equity in property to the detriment of junior lienholders. While Foreclosure Advocates argues that the Modification Agreement signed by Mr. Greer indicates that nothing in it would affect priority, this Agreement was not executed by the Foreclosing Lienholder. It was not executed by the Foreclosing Lienholder because Citibank agreed that its lien would remain in second position. In any event, Citibank's Deed of Trust was junior due to its optional advances because the increase in the credit line would prejudice the Foreclosing Lienholder. Citibank's Deed of Trust lost its priority when it increased Mr. Greer's line of credit from \$25,000 to \$75,000. CP at 81. The Foreclosing Lienholder's Deed of Trust was the senior lien interest in the Greer property long before the trustee's sale.

This argument was asserted in the trial court and never challenged by Foreclosure Advocates. *See* VRP. Foreclosure Advocates has also failed to

challenge it herein. Under RAP 10.3, a party must indicate each error a party contends was made by the trial court. Because Foreclosure Advocates has not assigned error to this, this Court can affirm the trial court's decision on this basis alone.

### **3. Citibank Is The Junior Lienholder By Operation Of The Subordination Agreement**

A subordination agreement is a contract between two lienholders which determines the relative priority of each of their respective liens. *National Bank of Washington et al. v. Equity Investors*, 81 Wn.2d 886, 908-909, 506 P.2d 20 (1973). In this case, the subordination agreement was an agreement between Citibank and the Foreclosing Lienholder regarding their secured interests in Mr. Greer's property. Neither Mr. Greer nor Foreclosure Advocates was a party to the subordination agreement. A person not subject to the terms of a contract has no right to challenge it. *W. Wash. Laborers-Employers Health & Sec. Trust Fund v. Merlino*, 29 Wn. App. 251, 255, 627 P.2d 1346 (1981) citing *Collins v. Northwest Casualty Co.*, 180 Wn. 347, 355-56, 39 P.2d 986 (1935). Foreclosure Advocates cannot attack the validity of an agreement that was entered between two other parties, both of whom assert that the agreement is valid. The subordination agreement was a valid and binding agreement, and therefore this Court should affirm the superior court's finding that Citibank was the priority lienholder.

Without citing any authority, Foreclosure Advocates asserts that the subordination agreement is invalid because it was not executed by CitiMortgage. Appellant's Brief at 2. However, contracts do not lose their

validity simply because they are unsigned. *Fed. Nat'l Mort. Corp. v. Carrington*, 60 Wn.2d 410, 416, 374 P.2d 153 (1962). A contract signed by one party and accepted by the other need not bear the signature of the accepting party. *Hunter v. Byron*, 92 Wn. 469, 471, 159 P. 703 (1916). Here, the subordination agreement was signed by Citibank, the party who was subordinating its lien interest. This, alone, makes the contract valid and binding.

Foreclosure Advocates argues that the subordination agreement was a scam. Appellant's Brief at 8-9. Contrary to Foreclosure Advocates' assertion, the subordination agreement was recorded on January 2, 2007, prior to the sale, to clear title. Appendix B (CP at \_\_\_). It would have possibly chilled bidding to let the public record remain unclear as to the relative priorities prior to the trustee's sale. Clearing the record is not a scam, and it actually worked to Mr. Greer, the borrower's, benefit, as his property sold at foreclosure and yielded sufficient funds to pay off more of his debt than had it sold for the opening bid amount to the Foreclosing Lienholder.

Foreclosure Advocates claim that the subordination agreement was invalid because the modification agreement indicated that the priority of the Citibank loan would not change. Appellant's Brief at 1. However, there was never an agreement between Citibank and Mr. Greer that Citibank would obtain a first lien position. Citibank was always a second position lienholder. The Modification Agreement did not change the relative priority between the lienholders. Citibank's Deed of Trust was in second position, because that was Citibank's agreement with the Foreclosing Lienholder. Citibank never

agreed with Mr. Greer that it would obtain a first position lien, and, even if it had, such agreement would not have resulted in the same without consent and subordination from the Foreclosing Lienholder.

The subordination agreement was recorded before the trustee's sale. Appendix B (CP at \_\_\_). Foreclosure Advocates suggests that it should have been filed before the Notice of Trustee's Sale was sent out and recorded. Appellant's Brief at 8. There is no such requirement under any statute or case law, nor is there any reason to record such an agreement prior to the recording of the Notice of the Trustee's Sale. Clearing title between lienholders prior to the non-judicial foreclosure sale does not constitute a scam. Nor is it a "sham for the purposes of unlawfully acquiring funds belonging to Mr. Greer." Appellant' Brief at 9. First, at the time of the subordination agreement, the sale had not been held, and the funds did not exist, so it was not done for the purpose of unlawfully acquiring the funds. Second, the subordination agreement laid out the priorities of the lien interests clearly for all potential bidders at the sale, and avoided a potential clouding of the title which would have resulted in chilled bidding at the sale. This was to Mr. Greer's benefit.

Foreclosure Advocates claims there was no consideration supporting the subordination agreement. Appellant's Brief at 9. Its argument is based on the fact that there was a delay between the Foreclosing Lienholder's Deed of Trust and the recorded subordination agreement. *Id.* Even if a non-party to a contract could challenge the sufficiency of consideration, consideration can be any act, forbearance, creation, modification or destruction of legal

relationship or return promise given in exchange. *King v. Riveland*, 125 Wn.2d 500, 506, 886 P.2d 160 (1994). In fact, any act or forbearance which has been bargained for is sufficient consideration. *Adams v. University of Washington*, 106 Wn.2d 312, 722 P.2d 74 (1986). A promise for a promise is sufficient consideration in Washington to support the existence of a contract. *King*, 125 Wn.2d at 505-506. In this case, the consideration is set forth in the agreement:

In consideration of benefits to “subordinator” from “lender,” receipt and sufficiency of which is hereby acknowledged, and to induce “lender” to advance funds under its mortgage and all agreements in connection therewith, the “subordinator” does hereby unconditionally subordinate the lien of his mortgage identified in Paragraph 1 above [*i.e. Citibank Deed of Trust*] to the lien of “lender’s” mortgage, identified in Paragraph 2 above [*i.e. Foreclosing Lienholder’s Deed of Trust*], and all advances or charges made or accruing there under, including any extension or renewal thereof.

CP at 86 (Bracketed material supplied). The consideration in the agreement, as indicated, was the specific benefits given to Citibank from the Foreclosing Lienholder. CP at 86. This is adequate consideration which is sufficient under Washington law to support this contract. The subordination agreement memorialized the parties’ original intent.

Citibank subordinated its Deed of Trust to the Foreclosing Lienholder. The agreement was valid. Mr. Greer cannot challenge an agreement to which he was not party. On the basis of the subordination agreement alone, this

Court should affirm the trial court's order disbursing the surplus funds to Citibank.

#### **4. Citibank Is The Junior Lienholder Under Equitable Subrogation**

In 1999, Mr. Greer granted Source One a first position Deed of Trust. Four years later, in 2002, Mr. Greer granted Citibank a second position Deed of Trust. The next year, in 2003, the Foreclosing Lienholder refinanced the existing, first position lien. Equitable subrogation seeks to maintain the proper order of priorities by keeping the first mortgage first and the second mortgage second. *Bank of America, N.A. v. Prestance Corp.*, 160 Wn.2d 560, 564-65, 160 P.3d 17 (2007). The doctrine works to substitute a later recorded security interest for an earlier recorded security interest:

For example, suppose A, a homeowner, has two mortgages: one recorded first by bank B and one recorded second by bank C. Our recording act says B has a higher priority because it recorded first, putting the world on notice as to its interest in A's land. RCW 65.08.070. If D fully discharges B's debt, then equitable subrogation substitutes D for B, so D has a higher priority than C, even though D recorded after.

*Id.* "Subrogation is the substitution of one person in place of another . . . so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or securities." *Id.* quoting *Jackson Co. v. Boylston Mut. Ins. Co.*, 139 Mass. 508, 510, 2 N.E. 103, 104 (1885).

In *Bank of America*, Washington Mutual held a first priority lien that was recorded on the property owner's personal residence in 1994. *Bank of America, N.A.*, 160 Wn.2d at 561. Bank of America held a second priority

lien that was recorded on the property owner's personal residence in 1999. *Id.* In 2001, the home owner secured a loan from Wells Fargo, again using the personal residence as security. *Id.* The Wells Fargo loan paid off the first position Washington Mutual loan, and was held to be equitably subrogated into the position of the Washington Mutual loan. *Id.* at 582.

In the present case, Citibank had a second position Deed of Trust. Appendix B (CP at \_\_). In 2003, the Foreclosing Lienholder refinanced that pre-existing, first position Deed of Trust. Appendix B (CP at \_\_). Equitable subrogation prevents Citibank from leapfrogging into first position. Citibank always had a second lien position on Mr. Greer's property, and that did not change by virtue of the Foreclosing Lienholder refinance. By virtue of equitable subrogation, Citibank could never have asserted a first position lien. Therefore, the Citibank Deed of Trust was junior to the Foreclosing Lienholder's Deed of Trust.

Foreclosure Advocates apparently concedes that the theory of equitable subrogation places the Foreclosing Lienholder's deed of trust in first position, and Citibank in second position. Foreclosure Advocates makes no substantive challenge to the doctrine, or its application to the facts of this case. Rather, Foreclosure Advocates makes a technical or procedural objection, without support of legal authority, that the only party who could assert equitable subrogation is that lienholder who seeks to establish the senior lien position. Appellant's Brief at 10, VRP at 8. Such a rule would certainly be convenient for Foreclosure Advocates, but even it admits that the Foreclosing Lienholder "had no need to do that." VRP at 8. The Foreclosing

Lienholder had no need to do that because Citibank always acknowledged its Deed of Trust was in a junior position. Had Citibank asserted a senior lien position, it would have failed due to equitable subrogation.

While Foreclosure Advocates would benefit from a rule that only a disinterested, non party, senior lienholder can assert equitable subrogation here, it is neither the law nor is there is reason to establish such a law. The senior lienholder in this case has no reason to bring such an action. Equitable subrogation establishes the priorities in this case. Citibank's deed of trust was junior to the Foreclosing Lienholder's deed of trust, and therefore Citibank was entitled to all of the surplus proceeds resulting from the non-judicial foreclosure sale. Under the basis of equitable subrogation, Citibank's Deed of Trust was junior, and this Court should affirm the trial court's ruling disbursing the surplus funds to Citibank.

## **VI. CONCLUSION**

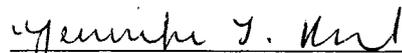
The superior court correctly applied RCW 61.24.080(3) to determine Citibank's lien priority after the Foreclosing Lienholder's non-judicial foreclosure sale. Citibank's Deed of Trust was a junior lien for three reasons. First, Citibank's loan was a line of credit, and the credit line was increased from \$25,000 to \$75,000, after the Foreclosing Lienholder's Deed of Trust was recorded. This increase and optional advances made under that increase, resulted in Citibank's Deed of Trust being a junior lien. Second, Citibank subordinated its Deed of Trust to the Foreclosing Lienholder's Deed of Trust at the time the first position lien was refinanced. The agreement was memorialized prior to the trustee's sale. The subordination induced the

Foreclosing Lienholder to refinance the first position lien, and is a valid agreement. Third, the Foreclosing Lienholder's Deed of Trust is a first position lien, because it refinanced an existing first position lien.

As it happened, the relative priorities were settled in Mr. Greer's favor prior to the foreclosure sale. Bidding was not chilled, and the foreclosure sale resulted in excess funds in the amount of \$65,015.40. Citibank was entitled to all of the surplus funds. This was also beneficial to Mr. Greer, as those surplus funds were used to pay the majority of the \$81,531.48 debt he owed to Citibank, as opposed to the sale of his property resulting in no surplus funds, or Foreclosure Advocates taking one third of the funds for itself.

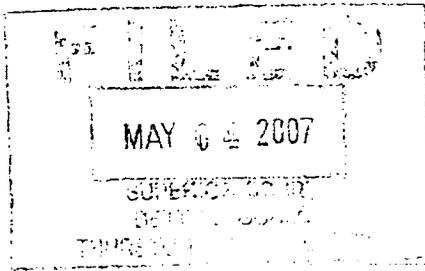
Accordingly, Citibank respectfully requests this Court affirm the finding of the Superior Court which disbursed the entirety of the surplus funds to Citibank, the priority lienholder.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of December, 2007.



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# APPENDIX A



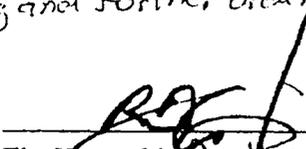
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THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

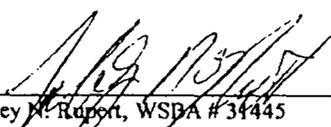
IN RE THE TRUSTEES SALE OF THE REAL	Case No.: 07-2-00161-9
PROPERTY OF:	(Proposed)
ROSS D. GREER	ORDER TO DISBURSE FUNDS
	(Clerks Action Required)

The Court having reviewed and considered the pleadings on the Petitioner's Motion to Disburse Funds, the Court hereby \_\_\_ Grants, <sup>IN PART</sup> ~~Denies~~, the Petitioner's Motion. The Clerk of the Court is hereby ordered to immediately, forthwith, issue a check, immediately forthwith, to the Petitioner in the name of the Jeffrey N. Rupert, Attorney at Law, on behalf of Foreclosure Advocates, LLC in the amount of \$35,015.40. ~~(Thirty-Five Thousand and Fifteen dollars and forty cents)~~ <sup>(Thirty Thousand and Fifteen dollars and forty cents)</sup> of \$65,015.40, which reflects the amount put into the Registry of the Court Trustee, minus the \$10.00 required by the clerk for entry of monies into the Registry. <sup>Thirty Thousand shall remain in the registry until a new hearing and further orders of the court.</sup>

DATED this 4<sup>th</sup> Day of May, 2007.

  
 The Honorable Richard D. Hicks

Presented by:

By:   
 Jeffrey N. Rupert, WSBA # 31445  
 Attorney for Foreclosure Advocates, LLC

ORDER TO DISBURSE FUNDS - I

Jeffrey N. Rupert, Attorney at Law  
 410 SW 153<sup>rd</sup> ST, Burien, WA 98166  
 PH: (206) 246-7879 Fax (206) 246-5860

## APPENDIX B

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<input checked="" type="checkbox"/> EXPEDITE (if filing within 5 court days of hearing) <input checked="" type="checkbox"/> Hearing is set: Date: <u>6-8-07</u> Time: <u>9 am</u> Judge/Calendar: <u>HICKS</u>
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY

In Re the Trustee's Sale of Real  
Property of:  
  
ROSS D. GREER, as his separate  
estate,

CASE NO. 07-2-00161-9  
  
CITIBANK'S REPLY TO  
MR. GREER'S RESPONSE TO  
MOTION FOR  
RECONSIDERATION OF MAY  
4, 2007, ORDER TO DISBURSE  
FUNDS

Citibank Federal Savings Bank (Citibank), through their attorneys of record, Bishop, White & Marshall, P.S., submits the following Reply to Mr. Greer's Response to Citibank's Motion for Reconsideration of the Order to Disburse Funds entered on May 4, 2007.

CITIBANK'S REPLY TO MR. GREER'S  
RESPONSE TO CITIBANK'S MOTION FOR  
RECONSIDERATION - 1

BISHOP, WHITE & MARSHALL, P.S.  
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206-622-5306 Fax: 206-622-0354

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**I. INTRODUCTION AND FACTS**

Citimortgage foreclosed its senior position deed of trust. The Citibank deed of trust was junior to that deed of trust, for at least three separate reasons: 1) equitable subrogation (the Citimortgage deed of trust refinanced an existing senior lien); 2) a modification and optional advances were made under the Citibank line of credit after the Citimortgage deed of trust (the Citibank line of credit was increased from \$25,000 to \$75,000 after the Citimortgage deed of trust, and all current amounts due were advanced after the Citimortgage deed of trust); and 3) by agreement between the two creditors as evidenced by a recorded subordination agreement.

Prior to the trustee's sale, the relative priority between the lienholders was made clear by agreement that was recorded prior to the trustee's sale. Had priority not been made clear, it actually would have resulted in chilled bidding at the trustee's sale. No one would have bid thinking that the foreclosure sale was subject to a senior deed of trust, taking the property with a possible deed of trust in excess of \$70,000. As it happened, the relative priorities were settled, *in Mr. Greer's favor*, bidding was not chilled, and the foreclosure sale resulted in excess funds in the amount of \$65,015.40.

Apparently, after seeing the sum that was deposited with the court registry as a result of this sale, "Foreclosure Advocates LLC" contacted Mr. Greer and had him execute a power of attorney and "Acquisition Agreement" whereby Foreclosure Advocates would retain 33% of the proceeds from the court registry, or \$21,454.95, if they prevail. Undoubtedly, Foreclosure

CITIBANK'S REPLY TO MR. GREER'S  
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RECONSIDERATION - 2

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1 Advocates LLC hoped that it would obtain this sum for the work of presenting  
2 a single motion in this case, without providing any notice of the motion to  
3 Citibank. Meanwhile, Mr. Greer owes Citibank the sum of \$81,531.48,  
4 *regardless of the relative priority of the two Deeds of Trust at issue.* One  
5 wonders if Mr. Greer has been made aware of the potential or actual conflict  
6 of interest presented by these circumstances. His attorneys are arguing that  
7 Mr. Greer's creditor receive nothing, while *they* receive in excess of \$20,000  
8 from the foreclosure sale, with the balance going to Mr. Greer. Should  
9 Citibank prevail in its motion, all funds would be paid to a debt that Mr. Greer  
10 owes one way or another, rather than a portion being paid to Foreclosure  
11 Advocates LLC. The purpose of a foreclosure sale that yields excess funds is  
12 to pay existing creditors, not provide a windfall to third parties who had no  
13 interest in the property, nor a debt that would be satisfied by such funds.  
14 Rather, Foreclosure Advocates LLC accuses Citibank of engaging in a scam  
15 and fraud to obtain the excess funds. In any event, it is clear that Citibank's  
16 Deed of Trust was junior, and it is entitled to all the excess funds to be applied  
17 to Mr. Greer's outstanding line of credit.

19 Mr. Greer granted two Deeds of Trust on the subject real property  
20 located at 8645 Johnson Pt Rd NE Olympia, WA 98516. Declaration of  
21 Jennifer T. Karol (previously filed herein), Exhibits A and B. Loan One is the  
22 secured line of credit made by Citibank in 2002. The Deed of Trust securing  
23 Loan Two provided by Citimortgage, the 2003 Deed of Trust, was foreclosed.  
24 Regardless of whether the Deed of Trust securing the Loan One line of credit  
25

CITIBANK'S REPLY TO MR. GREER'S  
RESPONSE TO CITIBANK'S MOTION FOR  
RECONSIDERATION - 3

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S C A N N E D

1 was senior or junior to the foreclosed Deed of Trust, Mr. Greer owes Citibank  
2 the sum of \$81,531.48 at this time.

3         The Loan One line of credit was made by Citibank in 2002, and it was a  
4 secured by a second position Deed of Trust. There was already an existing,  
5 first position Deed of Trust at that time. In 2003, CitiMortgage, Inc.  
6 refinanced the existing first position Deed of Trust. CitiMortgage intended  
7 this loan to take priority over the 2002 line of credit. Declaration of Scott  
8 Scheiner at ¶ 4. The 2003 Deed of Trust was a refinance of a pre-existing  
9 deed of trust that was senior to the July 31, 2002, Deed of Trust. *Id.* at ¶ 2.  
10 *See also* Declaration of Jennifer T. Karol, attachments. After the CitiMortgage  
11 Deed of Trust, on July 29, 2004, Citibank agreed to increase the 2002 line of  
12 credit. *Id.* at ¶ 5. Mr. Greer signed a Mortgage Modification Agreement  
13 increasing the line from \$25,000 to \$75,000. *Id.* This credit line increase was  
14 optional on Citibank's part and was made after the 2003 loan. *Id.* The current  
15 balance of the line of credit is for amounts that were all advanced after July  
16 29, 2004, pursuant to the Modification Agreement. *Id.*

17  
18         On December 27, 2006, Citibank executed a subordination agreement  
19 that established the priority that was always intended and was the case. *Id.* at ¶  
20 6. The subordination agreement was recorded on January 2, 2007, under  
21 Thurston County recording number 3892279. *Id.* The subordination  
22 agreement was executed to make priority clear before the trustee's sale. *Id.*

23         A non judicial foreclosure sale occurred on January 5, 2007, the  
24 property was sold. *Id.* at ¶ 7. The current balance on the 2002 line of credit is  
25

CITIBANK'S REPLY TO MR. GREER'S  
RESPONSE TO CITIBANK'S MOTION FOR  
RECONSIDERATION - 4

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S C A N N E D

1 \$81,531.48. *Id.* at ¶ 8. \$65,015.40 in surplus funds were collected from the  
2 third party bidder at the non-judicial foreclosure sale. All \$65,015.40 of the  
3 surplus funds should be disbursed to Citibank, to satisfy the lien interest on  
4 the line of credit.

## 6 II. REPLY

7 Under RCW 61.24.080(3), surplus funds are only to be disbursed on the  
8 basis of lien priority. In this case, the January 5, 2007, non-judicial  
9 foreclosure sale eliminated Citibank's lien priority interest in the 2002 line of  
10 credit. This elimination occurred because the 2002 line of credit Deed of  
11 Trust was junior to the 2003 Deed of Trust.

### 12 1. The 2003 Deed of Trust Was Prior To The 2002 Line Of 13 Credit Due To The Modification And Optional Advances

14 Loans involving optional advances under a line of credit are not prior  
15 when advances are given after an intervening lien. *National Bank of*  
16 *Washington et al. v. Equity Investors*, 83 Wn.2d 435, 442, 518 P.2d 1072  
17 (1974); *Cedar v. W.E. Roche Fruit Co.*, 16 Wn.2d 652, 666, 134 P.2d 437  
18 (1943); *Elmendorf-Anthony Co. v. Dunn et al.*, 10 Wn.2d 29, 40-42, 116 P.2d  
19 253 (1941). Furthermore, when a mortgage is modified it ordinarily loses  
20 priority to junior liens. *Hu Hyun Kim v. Stanley Lee, et al.*, 145 Wn.2d 79, 31  
21 P.3d 665 (2001).

22 The 2002 Deed of Trust was recorded on August 23, 2002. Declaration  
23 of Jennifer T. Karol, Exhibit A. The 2003 Deed of Trust was recorded on  
24 October 2, 2003. *Id.* at Exhibit B. All advancements made on the 2002 line  
25

CITIBANK'S REPLY TO MR. GREER'S  
RESPONSE TO CITIBANK'S MOTION FOR  
RECONSIDERATION - 5

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S C A N N E D

1 of credit after October 2, 2003, lost priority by virtue of the fact that the  
2 advancements were optional under the Modification Agreement. See  
3 Declaration of Jennifer T. Karol at Exhibit A ¶ 16: "We at Our option may  
4 make Future Loan Advances to You or Borrower." (Emphasis added). The  
5 line of credit also lost its priority when the July 29, 2004, Mortgage  
6 Modification Agreement was signed which increased the line of credit from  
7 \$25,000 to \$75,000. *Id.* at Exhibit C. For these reasons, well before the non-  
8 judicial foreclosure sale in January 2007, the 2003 Deed of Trust became the  
9 senior lien interest in the Greer property.  
10

11 **2. The 2003 Deed of Trust Also Had A Priority Interest By**  
12 **Operation Of The Subordination Agreement and Equitable**  
13 **Subrogation**

14 The subordination agreement was an agreement between two  
15 lienholders regarding their relative priority of their secured interests in Mr.  
16 Greer's property. A person not subject to the terms of a contract has no right  
17 to challenge it. *W. Wash. Laborers-Employers Health & Sec. Trust Fund v.*  
18 *Merlino*, 29 Wn. App. 251, 255, 627 P.2d 1346 (1981) citing *Collins v.*  
19 *Northwest Casualty Co.*, 180 Wn. 347, 355-56, 39 P.2d 986 (1935). Mr.  
20 Greer cannot attack the validity of an agreement that was entered between two  
21 other parties, both of whom assert that the agreement is valid.

22 Citibank's Deed of Trust is also junior due to equitable subrogation.  
23 When Citibank provided the 2002 line of credit, it was junior to another deed  
24 of trust. Declaration of Scott Scheiner at ¶ 3-4. CitiMortgage refinanced that  
25

CITIBANK'S REPLY TO MR. GREER'S  
RESPONSE TO CITIBANK'S MOTION FOR  
RECONSIDERATION - 6

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S C A N N E D

1 pre-existing deed of trust. *Id.* at ¶ 2; *see also* attachments to Declaration of  
2 Jennifer T. Karol. Therefore, the line of credit was junior to the 2003 Deed of  
3 Trust since it paid off a pre-existing senior Deed of Trust. *Bank of America,*  
4 *N.A., v. Prestance Corp.*, No. 77038-7, slip op. at 1-2 (Wash. June 7, 2007).  
5

6 Mr. Greer argues that the subordination agreement was invalid and  
7 characterizes it as a scam. Response at 3. The subordination agreement was  
8 recorded on January 2, 2007, prior to the sale. Declaration of Scott Scheiner  
9 at ¶ 6. Recording a document makes the relative priorities between lienholders  
10 public knowledge, and one cannot “plead ignorance of a public record to  
11 which he has access and which affords him all means of information  
12 necessary to obtain positive knowledge of the fact.” *Sumpter v. Burnham*, 51  
13 Wn. 599, 600, 99 P.752 (1909); *Dowgialla v. Knevage*, 48 Wn.2d 326, 294  
14 P.2d 393 (1956).

15 Mr. Greer argues that the subordination agreement should have been  
16 filed before notice of the non-judicial foreclosure sale. Response at 4. There  
17 is no such requirement under any statute or case law. Clearing title between  
18 lienholders prior to the non-judicial foreclosure sale does not constitute a  
19 scam. Nor is it a “sham for the purposes of unlawfully acquiring funds  
20 belonging to Mr. Greer.” *See* Response at 4. On the contrary, the  
21 Subordination Agreement laid out the priorities of the lien interests clearly for  
22 all potential bidders at the sale, and avoided a potential clouding of the title  
23 which would result in chilled bidding at the sale. In fact, the subordination  
24 agreement made the property marketable at the sale. Had priority not been  
25

CITIBANK'S REPLY TO MR. GREER'S  
RESPONSE TO CITIBANK'S MOTION FOR  
RECONSIDERATION - 7

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S C A N N E D

1 cleared up, it could have appeared the foreclosure was subject to a sizeable  
2 lien, and would have chilled bidding, resulting in no excess funds from the  
3 sale.

4 Mr. Greer appears to argue that the subordination agreement is invalid  
5 because there was no consideration present. Response at 3. Consideration  
6 can be any act, forbearance, creation, modification or destruction of legal  
7 relationship or return promise given in exchange. *King v. Riveland*, 125  
8 Wn.2d 500, 506, 886 P.2d 160 (1994). In this case, the consideration in the  
9 agreement is the subordination given in exchange for the refinance of the  
10 original, senior deed of trust.

11  
12 **3. Mr. Greer Has No Valid Interest In The Surplus Funds**

13 RCW 61.24.080(3) allows surplus funds to be distributed only on the  
14 basis of lien priority. The statute does not allow disbursement of funds to the  
15 first party to make a claim for them. Instead, the statute outlines a specific  
16 procedure whereby those entities with a perfected lien interest may recover a  
17 portion of any surplus funds to satisfy their liens. It is inequitable to allow a  
18 borrower to race to the courthouse to collect funds to which he is not entitled.  
19 Only after all liens are satisfied does the borrower have the opportunity to  
20 collect surplus funds. In this matter, Mr. Greer has no claim to any of the  
21 surplus funds because Citibank currently holds a Deed of Trust with a priority  
22 interest over Mr. Greer. Nor does Mr. Greer have any claim to attorney fees  
23 as he requests in his Response. Attorney fees are not provided for by statute  
24 in these types of actions.

25  
CITIBANK'S REPLY TO MR. GREER'S  
RESPONSE TO CITIBANK'S MOTION FOR  
RECONSIDERATION - 8

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**4. Mr. Greer Was Required To Send Notice To Citibank**

Mr. Greer failed to give notice to Citibank of his Motion for Disburse Surplus Funds. RCW 61.24.080(3) specifically requires that a motion to disburse surplus funds should be served on all parties to whom the trustee mailed notice of the deposit of surplus funds. While Mr. Greer argues that he need not give notice to Citibank, because the foreclosure trustee really was not required to do so when the deposit was made, the fact is the statute requires that any moving party give notice to all parties who received notice of the deposit. It is not Mr. Greer's right or place to undermine the trustee's rationale when it gave notice to a lienholder who it knew had the right to the excess funds. Mr. Greer's failure to serve Citibank, as required by statute, is a fatal error that invalidates his Motion.

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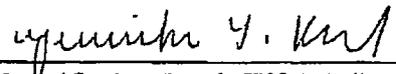
**IV. CONCLUSION**

Based on the foregoing, Citibank requests that this Court reconsider and vacate its Order to Disburse Funds, and issue a new order disbursing all funds in the court registry to Citibank.

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Dated this 7<sup>th</sup> day of June, 2007

BISHOP, WHITE & MARSHALL, P.S.

  
Jennifer T. Karol, WSBA #31540  
Attorney for Citibank Federal Savings Bank

CITIBANK'S REPLY TO MR. GREER'S  
RESPONSE TO CITIBANK'S MOTION FOR  
RECONSIDERATION - 9

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY

In Re the Trustee's Sale of Real  
Property of:  
ROSS D. GREER, as his separate  
estate

CASE NO. 07-2-00161-9  
DECLARATION OF  
JENNIFER T. KAROL

Jennifer T. Karol declares under penalty of perjury under the laws of the State of Washington that the following is true and correct:

- I am an attorney for Citibank Federal Savings Bank, and am competent to testify to matters herein.
- Attached hereto are true and correct copies of the following documents: December 21, 1999 Deed of Trust and September 12, 2003 Deed of Reconveyance.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 7<sup>th</sup> day of May, 2007, at Seattle, Washington.

Jennifer T. Karol  
Jennifer T. Karol

DECLARATION OF  
JENNIFER T. KAROL - 1

BISHOP, WHITE & MARSHALL, P.S.  
720 Olive Way, Suite 1301  
Seattle, WA 98101-1801  
206-622-5306 Fax: 206-622-0354

Return To:

SOURCE ONE MORTGAGE CORPORATION  
27555 FARMINGTON RD STE 300  
FARMINGTN HLS, MI 48334-3357  
FINAL DOCUMENTS

Assessor's Parcel or Account Number: 11904330303

Abbreviated Legal Description: Lot 3, SS-0932 Vol 9 pg 693

Full legal description located on page \_\_\_\_\_ [Include lot, block and plat or section, township and range]  
\_\_\_\_\_ [Space Above This Line For Recording Data] \_\_\_\_\_ 70275628-6

**TRANSACTION TITLE DEED OF TRUST**

3004773

THIS DEED OF TRUST ("Security Instrument") is made on DECEMBER 21ST 1998 .  
The grantor is

ROSS D. GREER , as his separate estate

("Borrower"). The trustee is GEORGE C. REINMILLER, TRUSTEE, INC  
521 SW CLAY ST STE 200, PORTLAND, OR 97201-5407

("Trustee"). The beneficiary is SOURCE ONE MORTGAGE CORPORATION

which is organized and existing under the laws of DELAWARE , and whose  
address is 27555 FARMINGTON RD STE 300  
FARMINGTN HLS, MI 48334-3357 ("Lender"). Borrower owes Lender the principal sum of

SEVENTY-TWO THOUSAND AND NO/100

Dollars (U.S. \$ 72,000.00 ). This debt is evidenced by Borrower's note dated the same

WASHINGTON-Single Family- FNMA/FHLMC UNIFORM INSTRUMENT

Form 3048 8/90

Amended 12/93

Page 1 of 8

Initials: A:1

VMP MORTGAGE FORMS - (800)521-7291

02082 70275628-6

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Thurston Co, WA

Description: Thurston, WA Document-DocID 3271807 Page: 1 of 8  
Order: 2 Comment:

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date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on JANUARY 1ST, 2030. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in THURSTON County, Washington:

PARCEL 3 OF SHORT SUBDIVISION NO. SS-0932, AS RECORDED NOVEMBER 28, 1978 IN VOLUME 9 OF SHORT SUBDIVISIONS, PAGES 589 THROUGH INCLUSIVE, UNDER RECORDING NO. 1059600; SITUATE IN THE COUNTY OF THURSTON, STATE OF WASHINGTON.

which has the address of 8645 JOHNSON POINT RD NE, OLYMPIA [Street, City], Washington 98516-8558 (Zip Code) ("Property Address");

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 seised 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 and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, insurmentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home

Initials: *Robert*  
Form 3048 8/90

9819-6H(WA) (9701)

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Thurston Co. WA

Description: Thurston, WA Document-DocID 3271807 Page: 2 of 8  
Order: 2 Comment:

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Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

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

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

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. Hazard or Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this

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Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

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

**6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**7. Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

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

**8. Mortgage Insurance.** If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) provided by an insurer approved by

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Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

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

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

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the 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 condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

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

11. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

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

13. **Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

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

15. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

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

17. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

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 delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay those 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.

18. **Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note 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; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

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

20. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other

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remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

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

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

**21. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property at public auction at a date not less than 120 days in the future. The notice shall further inform Borrower of the right to reinstate after acceleration, 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, and any other matters required to be included in the notice by applicable law. 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 paragraph 21, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as applicable law may require. After the time required by applicable law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property for a period or periods permitted by applicable law by public announcement at the time and place fixed in the notice of sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's 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 or to the clerk of the superior court of the county in which the sale took place.

**22. Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under applicable law.

**23. Substitute Trustee.** In accordance with applicable law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

**24. Use of Property.** The Property is not used principally for agricultural or farming purposes.



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

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

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

Witnesses:

_____	<u>Ross D. Greer</u> (Seal)
	ROSS D. GREER -Borrower
_____	_____ (Seal)
	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower

STATE OF WASHINGTON }  
 County of THURSTON } ss:  
 On this day personally appeared before me  
 ROSS D. GREER

to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 21ST day of DECEMBER, 1988



Kimberly M. Eastman  
 Notary Public in and for the State of Washington, residing at  
 Olympia  
 My Appointment Expires on 03/08/89.



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EXPEDITE (if filing within 5 court days of hearing)  
 Hearing is set:  
 Date: 10-8-07  
 Time: 9am  
 Judge/Calendar: HICKS

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY

In Re the Trustee's Sale of Real  
Property of:  
ROSS D. GREER, as his separate  
estate

CASE NO. 07-2-00161-9

DECLARATION OF  
SCOTT SCHEINER

Scott Scheiner declares as follows:

1. I am an A. Vice President for Citibank Federal Savings Bank, and am competent to testify to matters herein. As A. Vice President I am a records custodian for records and files kept in the ordinary course of business on loans made by Citibank. This declaration is based upon my review of those records.
2. On July 31, 2002, Citibank Federal Savings Bank granted a \$25,000 line of credit to Mr. Greer. This loan was a home equity line of credit, and was a second position Deed of Trust.

DECLARATION OF  
SCOTT SCHEINER - 1

BISHOP, WHITE & MARSHALL, P.S.  
720 Olive Way, Suite 1301  
Seattle, WA 98101-1801  
206-622-5306 Fax: 206-622-0354

1 3. Thereafter, on July 25, 2003, CitiMortgage, Inc. granted a  
 2 \$70,031.00 loan to Mr. Greer. This loan was a refinance of a pre-existing  
 3 Deed of Trust that was senior to the July 31, 2002, Deed of Trust.

4 4. When CitiMortgage, Inc. granted the 2003 loan, it intended that  
 5 this loan would take priority over the previous line of credit granted in 2002.

6 5. On July 29, 2004, Citibank agreed to increase the credit line. Mr.  
 7 Greer signed a Mortgage Modification Agreement. In that Modification  
 8 Agreement, the credit limit was increased from \$25,000 to \$75,000. This  
 9 credit line increase was optional on Citibank's part and was made after the  
 10 2003 loan. The current balance of the line of credit is for amounts that were  
 11 advanced after July 29, 2004, pursuant to the Modification Agreement.

12 6. On December 27, 2006, Citibank executed a subordination  
 13 agreement that established the priority that was always intended and was the  
 14 case. The subordination agreement was recorded on January 2, 2007, under  
 15 Thurston County recording number 3892279. A true and correct copy of the  
 16 recorded agreement is attached hereto as Attachment A. The subordination  
 17 agreement was executed to make priority clear before the trustee's sale.

18 7. A non judicial foreclosure sale occurred on January 5, 2007, Mr.  
 19 Greer's property was sold, and the 2003 loan was satisfied in full.

20 ///

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24 ///

25  
DECLARATION OF  
SCOTT SCHEINER - 2

BISHOP, WHITE & MARSHALL, P.S.  
720 Olive Way, Suite 1901  
Seattle, WA 98101-1801  
206-622-5306 Fax: 206-622-0354

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8. The current balance on the line of credit is \$81,531.48.

I declare under penalty of perjury under the laws of the State of Washington and Missouri that the foregoing is true and correct.

DATED this 7 day of June, 2007, at 7:35 A.m.

  
\_\_\_\_\_  
Scott Scheiner

DECLARATION OF  
SCOTT SCHEINER -3

BISHOP, WHITE & MARSHALL, P.S.  
726 Olive Way, Suite 1501  
Seattle, WA 98101-1801  
206-622-5306 Fax: 206-622-0354

WHEN RECORDED RETURN TO:

Name: NORTHWEST TRUSTEE SERVICES, INC.  
Address: 11830 SW Kerr Parkway, ste 385  
City, State, Zip: Lake Oswego, OR 97035

Reference#: 7301.23166/ Ross D. Greor  
Legal Description (abbreviated): PART OF SW ¼ SW ¼ SEC 4, TWP 19N RANGE 1 W WILLAMETTE MERIDIAN  
Full legal description on page: 2  
Assessor's Tax Parcel ID#: 11904330303

**SUBORDINATION AGREEMENT**

3079002 13  
①

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

The undersigned subordinator and owner agrees as follows:

1. CITIBANK FEDERAL SAVINGS BANK referred to herein as "subordinator", is the owner and holder of a DEED OF TRUST dated July 31, 2002, recorded under auditor's file No. 3457030, among the land records of Thurston County, subject to modifications thereof, recorded July 13, 2005, under auditor's file No. 3747920, among the land records of Thurston County.
2. CITIMORTGAGE, INC. A BANK, referred to herein as "lender" is the owner and holder of a DEED OF TRUST dated July 25, 2003, recorded under auditor's file No. 3582024, among the land records of Thurston County..
3. In consideration of benefits to "subordinator" from "lender", receipt and sufficiency of which is hereby acknowledged, and to induce "lender" to advance funds under its mortgage and all agreements in connection therewith, the "subordinator" does hereby unconditionally subordinate the lien of his mortgage identified in Paragraph 1 above to the lien of "lender's" mortgage, identified in Paragraph 2 above, and all advances or charges made or accruing thereunder, including any extension or renewal thereof.
5. "Subordinator" acknowledges that, prior to the execution hereof, he has had the opportunity to examine the terms of "lender's" mortgage, note and agreements relating thereto, consents to and approves same, and recognizes that "lender" has no obligation to "subordinator" to advance any funds under its mortgage or see to the application of "lender's" mortgage funds, and any application or use of such funds for purposes other than those provided for in such mortgage, note or agreements shall not defeat the subordination herein made in whole or in part.
6. It is understood by the parties hereto that "lender" would not make the loan secured by the mortgage in Paragraph 2 without this agreement.
7. This agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the lien or charge of the mortgage first above mentioned to the lien or charge of the mortgage in favor of "lender" above referred to and shall supersede and cancel any prior agreements as to such, or any, subordination including, but not limited to, those provisions, if any, contained in the mortgage first above mentioned, which provide for the subordination of the lien or charge thereof to a mortgage or mortgages to be thereafter executed.
8. The heirs, administrators, assigns and successors in interest of the "subordinator" shall be bound by this agreement. Where the word "mortgage" appears herein it shall be considered as "deed of trust", and gender and number of pronouns considered to conform to undersigned.

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SCANNED



COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

In Re Trustee's Sale of Real Property of

ROSS D. GREER

Case No. 36611-8-II

AFFIDAVIT OF SERVICE

COUNTY OF KING )  
STATE OF WASHINGTON ) ss

The undersigned being first duly sworn upon oath, deposes and says:

That on the 10<sup>th</sup> day of December, 2007, she caused to be delivered copies of Respondent Citibank's Brief, to the following parties in the manner indicated:

Via Email and First Class Mail

Jeffrey N. Rupert  
Attorney at Law  
410 SW 153<sup>rd</sup> Street  
Burien, WA 98116

Via Email and First Class Mail

Terrance J. Slominski  
Slominski & Associates  
7150 SW Hampton, Suite 201  
Tigard, OR 97223

Dated this 10<sup>th</sup> day of December, 2007.

Jennifer T. Karol

Jennifer T. Karol, WSBA #31540  
Bishop, White & Marshall, P.S.  
Attorneys for Citibank  
720 Olive Way, Suite 1301  
Seattle, WA 98101  
206-622-5306, Ext. 5918

SIGNED AND SWORN TO (or affirmed) before me on the 10<sup>th</sup> day of  
December, 2007.



Ana I. Todakonzie

Ana I. Todakonzie  
Notary Public in and for the  
State of Washington.  
Residing in Seattle, Washington.  
My appointment expires: 02/28/11