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Our File No. N-1746-001.A

VIA U.S. MAIL

January 11, 2016

Clerk of the Court
Supreme Court of Washington
Temple of Justice
P.O. Box 40929
Olympia, Washington 98504-0929

Received
Washington State Supreme Court

JAN 13 2016

Ronald R. Carpenter
Clerk

Re: Laura Zamora v. Nationstar Mortgage, LLC
Supreme Court No. 92081-8

Greetings:

I am enclosing for filing with the Court, an original and one copy of the exhibits attached to the Declaration of Clay Gatens in Support of Plaintiff's Response to the Briefs of Amici Curiae that was filed by email on January 7, 2016.

Thank you for your attention.

Very truly yours,

TERRELL MARSHALL LAW GROUP PLLC



Bradford Kinsey

Enclosures

Received
Washington State Supreme Court

JAN 13 2016

Ronald R. Carpenter
Clerk

SUPREME COURT
OF THE STATE OF WASHINGTON

1
2
3 LAURA ZAMORA JORDAN, as her) NO. 92081-8
4 separate estate, and on behalf of others)
5 similarly situated,) DECLARATION OF CLAY M. GATENS
6 Plaintiffs,) IN SUPPORT OF PLAINTIFF'S
7 vs.) RESPONSE TO THE BRIEFS OF AMICI
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CLAY M. GATENS, pursuant to RCW 9A.72.085, declares:

1. I am one of the attorneys for the Plaintiff in the above matter and I base this declaration upon my own personal knowledge and am competent to testify to the matters asserted herein.

2. Attached hereto as Exhibit 1 is a true and correct copy of Raymond A. Jensen, *Mortgage Standardization: History of Interactions of Economic, Consumerism and Governmental Pressure*, 7 Real Prop. Prob. & Tr. J. 397 (1972).

DECLARATION OF CLAY M. GATENS
IN SUPPORT OF PLAINTIFF'S RESPONSE
TO THE BRIEFS OF AMICI CURIAE

Page 1 of 4
495287

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.
Attorneys at Law
(509) 662-3685 / FAX (509) 662-2452
2600 Chester Kimm Road / P.O. Box 1688
Wenatchee, WA 98807-1688

1 3. Attached hereto as Exhibit 2 is a true and correct copy of the petition filed
2 in *In Re the Real Property Located at: 1314 E. Joseph Ave., Spokane, WA 99207*, No. 15-2-
3 03492-2.

4 4. Attached hereto as Exhibit 3 is a true and correct copy of the Deed of
5 Trust and associated documents for the Real Property Located at 1314 E. Joseph Ave.,
6 Spokane WA 99207.

7 5. Attached hereto as Exhibit 4 is a true and correct copy of the petition filed
8 in *In Re the Real Property Located at: 5018 N. Belt St., Spokane, WA 99205*, No. 15-2-
9 03848-1.

10 6. Attached hereto as Exhibit 5 is a true and correct copy of the Deed of
11 Trust and associated documents for the Real Property Located at 5018 N. Belt Street,
12 Spokane, WA 99205.

13 7. Attached hereto as Exhibit 6 is a true and correct copy of the November
14 19, 2015 Washington State Attorney General's Office Consumer Protection Division's
15 Memorandum to Law Enforcement regarding Foreclosure-Related Property Disputes.

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

18
19

s/Clay M. Gatens
CLAY M. GATENS, WSBA #34102

21 Date: January 7, 2016
Place of Signing Wenatchee, WA

22 DECLARATION OF CLAY M. GATENS
IN SUPPORT OF AMICUS BRIEF OF NORTHWEST
CONSUMER LAW CENTER

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1 CERTIFICATE OF SERVICE

2 I, Beth E. Terrell, certify that on January 7, 2016, I caused true and correct copies
3 of the foregoing to be sent by electronic means to the counsel listed below:

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22 DECLARATION OF CLAY M. GATENS
IN SUPPORT OF AMICUS BRIEF OF NORTHWEST
CONSUMER LAW CENTER

Page 3 of 4
495287

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Attorneys for Amicus Northwest Consumer Law Center

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

DATED this 7th day of January, 2016.

TERRELL MARSHALL LAW
GROUP PLLC

By: /s/Beth E. Terrell, WSBA #26759
Beth E. Terrell, WSBA #26759
936 North 34th Street, Suite 300
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Attorneys for Plaintiff

DECLARATION OF CLAY M. GATENS
IN SUPPORT OF AMICUS BRIEF OF NORTHWEST
CONSUMER LAW CENTER

Page 4 of 4
495287

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Exhibit 1

MORTGAGE STANDARDIZATION: HISTORY OF INTERACTION OF ECONOMICS, CONSUMERISM AND GOVERNMENTAL PRESSURE

BY RAYMOND A. JENSEN*
Chicago, Illinois

I. INTRODUCTION

That the law follows the path taken by society's economic needs is a truism, albeit everyone recognizes that the speed with which the law follows in the wake of economic developments varies greatly. Of all common law legal categories none has until recently been quite so resistant to change as the law of real property. Suddenly, at least in terms of legal time, we are being confronted with changes in this area of the law that would not even have been considered possible until recently. Examples of this include the quick spread of the condominium concept, the splintering of ownership in a parcel of real estate into more layers than once thought possible, the development of the concept of air rights and the public syndication of real estate.

A segment of real estate law which until now has been peculiarly resistant to innovation has been the law of mortgages. Within the last two years, however, under the combined pressure of economic need and governmental fiat, with a strong assist from consumerism, mortgage law has begun its ascent (?) into the modern world. Thus far it has been a traumatic experience for some practitioners in this branch of the law, and even though the cultural shock has not yet worn off there seem to be still other changes waiting in the wings. To put into perspective the specific developments in the field of the standardization of documentation which is the burden of this paper, it is necessary to sketch very briefly the institutional background.

II. NATIONAL MORTGAGE MARKET: EARLY EFFORTS

Except for the mortgages insured by the Federal Housing Administration or guaranteed by the Veterans Administration there has, until recently, never been what could be properly called a national mortgage market. Even the FHA and VA mortgage market has been a series of local submarkets loosely tied together. The conventional mortgage market for residential

*Member of the Illinois Bar, Senior Vice President and Counsel, Dovenmuehle, Inc., Chicago, Illinois.

The author declares that neither his employer, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, nor any of their respective officers, is responsible for any of the opinions expressed herein. None of the consumer advocates are to be considered the source of any personal views the author may have expressed. Since biases should always be clearly stated in articles even though the primary intent is expository, the author acknowledges his predilection in favor of the private market economy while simultaneously not disclaiming his sympathy with a few of the astringent criticisms of the consumer advocates, even if not with their rhetoric.

Editor's Note: At the Section's annual meeting in San Francisco on August 16th, 1972, Mr. Jensen participated in a discussion of the subject of this paper, together with Arthur W. Leibold, Jr., and James E. Murray. See pages 435 and 441 herein.

loans has characteristically been a local one, mainly dominated by the savings and loan and mutual savings bank industries, with varying support from the commercial banks, even though insurance companies did at one time invest in conventional home loans. Naturally the income property loan market was even more fragmented since these loans were even less fungible than the one to four family house loans.

The reasons for this situation are not difficult to enumerate since in the main they arise because of the legal framework surrounding real property. A primary cause of this situation in turn has been the local nature of real estate law in the United States. The emphasis on local practice in the real estate field continues, to a not insignificant extent, to inhibit the development of standardization. The modernizing tendencies found in other areas of the law, *e.g.*, civil procedure, have never touched real estate except in a piecemeal manner and then only in response to a very specific problem. There is probably no area of the law in which even the specialists are as bound to traditional concepts and, perhaps even more importantly, traditional procedures, as in real property law. All this is by way of explaining the phenomenon that mortgage forms remained essentially unchanged during the slow emergence, without help from the real property bar in general, of a fragmented but still national market for mortgages.

The creation by Congress in 1935 of the Federal Housing Administration marks the beginning of the national mortgage market.¹ Since our concern is only with the mortgage documents themselves, we need not elaborate on the important innovations of the FHA, namely, the amortizing mortgage and the requirement of monthly deposits for taxes and insurance. Nor need we discuss the insurance feature of this program which made it acceptable to institutional investors and restored their confidence in the viability of residential lending after the disaster of the early depression period. Eventually the conventional lenders, principally the savings and loan associations, the mutual savings banks and the commercial banks, followed the FHA lead and began making amortizing mortgages with required tax deposits. Aside from these major provisions the FHA mortgage forms were standardized to the extent it was thought possible to do so bearing in mind the diversity of laws governing real estate in the several states. This, however, was not really an attempt to modernize or even to standardize the legal documents except within each state. There was, however, standardization in the areas which were of greater concern to institutional investors, that is, the underwriting criteria, appraisal practices and all the nonlegal documentation supporting the loan. Thus, the precedent of some type of standardization was established.

This led to what can best be described as institutional standardization. For example, various trade associations began to suggest to their members standard forms, and eventually the United States Savings and Loan League prepared model forms for its members which were widely used. Additionally many of the larger insurance companies active in the conventional home market developed mortgage forms for use in each state in which they did a volume business. However, this was what can justly only be called a very

¹National Housing Act, 12 U.S.C. 1701 (1934).

parochial type of standardization simply because it was never intended by any of these institutions that their mortgages were to be made saleable by the use of the standardized forms. They were only developed for the convenience of the institution and not in response to any drive to create a fungible product, at least as far as the form of mortgage was concerned. Furthermore, rarely did the forms developed by the various institutions or trade associations attempt any radical revision of either language or substantive provisions.²

III. FNMA AND FHLMC: A NEW BEGINNING

On July 24, 1970 the President signed an act³ which authorized the Federal National Mortgage Association⁴ (commonly referred to as Fannie Mae) and a newly created corporation, the Federal Home Loan Mortgage Corporation⁵ (already commonly referred to as Freddie Mac), which is under the jurisdiction of the Federal Home Loan Bank Board, to establish a secondary market for conventional mortgages, primarily single family homes. This was an entirely new departure for the Congress and arose in some sense in response to the disenchantment of different groups with the action of the residential mortgage market which had seen a substantial narrowing of the types of institutions investing in home loans. Each corporation was authorized to purchase and sell conventional mortgages subject to certain restrictions.⁶ In order to effectuate the purposes of this statute, which, among other things, contemplates each of the corporations selling the loans purchased from the originators so as not to remain the permanent repository for all such mortgages, the policy decision was made by the two corporations that the first order of business must be the development of a standard mortgage form.

A. Forms: Drafting Problems

This necessitated a decision as to an approach to the question of how uniform can a "uniform" mortgage be. To the credit of the two corporations they decided to start with the assumption that a truly uniform form of mortgage or trust deed and note was possible. Without this assumption there

²The writer must confess that as counsel for a mortgage banker he has developed a standardized set of mortgage forms for both residential and income property lending which have been approved by more than 30 institutional investors, but it is not a job he would ever again undertake since it involved almost three years of constant work in collaboration with outside counsel and the legal departments of each of the investors. Again it was a matter of convenience to an institution rather than thinking in terms of making the product saleable in a secondary market. Furthermore, the end product, like all legal documents that emerge from compromises, contains pet clauses of some investors which proved to be nonnegotiable. However, even such limited standardization is valuable for it leads to critical examination of the boiler plate clauses and at least some revision of these provisions.

³Emergency Home Finance Act of 1970, 12 U.S.C. 1715 (1970).

⁴*Id.* 1717.

⁵*Id.* 1715.

⁶No mortgage is to be purchased if the outstanding principal balance exceeds 75 per cent of the value of the property unless (a) the seller retains a participation of not less than 10 per cent, or (b) the seller agrees to repurchase the mortgage in event of default, or (c) the amount of the loan in excess of 75 per cent of value is insured by a private mortgage insurer. The latter condition is really the only method which a seller to FNMA will choose because both of the alternatives are too onerous from an originating lender's point of view.

would be no advance beyond the FHA and VA forms. FNMA formed a task force composed mainly of attorneys but also including a number of representatives of the lending institutions who were not attorneys. The advice sought from the task force consisted mainly of an analysis of substantive mortgage clauses which would be essential to make the mortgage saleable to investors. It is interesting to note that a number of clauses which almost all task force members originally agreed were absolutely essential for this purpose were subsequently substantially modified.⁷

During the course of the various meetings of the task force in the fall of 1970 there were naturally many different views expressed, both as to policy matters and language problems. These two were sometimes hopelessly entwined. It was hard for many of the lawyers, particularly, to think of giving up clauses that had customarily been contained in almost every mortgage form ever drawn. An example of the foregoing is the difficulty the task force had in deciding upon what the personal property clause of the mortgage should cover. Many of the members felt that it should enumerate as many different kinds of items as possible whereas others were of the opinion that a general clause was desirable. Others felt that the distinction between fixtures and chattels that were not affixed ought to be clarified, and a few others felt that the recitation of the types of personal property to be covered by the mortgage was not necessary at all and that it would be adequate in a home loan to include only a general reference to fixtures. This type of issue kept recurring during the meetings and was but one of many problems of a similar type discussed during the various task force meetings.

One of the most far reaching decisions which was not taken at this time but which was ultimately made was to divide the mortgage and trust deed forms into two parts. One part was labeled "uniform covenants." Into this group were to be put as many clauses as possible that would be applicable in every state. The balance of the form would be composed of nonuniform covenants designed to fit the requirements and procedure in each of the states. Ultimately it was possible to make even the nonuniform covenants fairly uniform. Sixteen uniform covenants were ultimately devised that were usable in both the mortgage and trust deed forms. In addition, there were six or seven nonuniform covenants primarily related to acceleration, reinstatement, foreclosure procedure and future advances. The uniform covenants are in and of themselves a great advance and were worth the travail that was necessary in order to draft them and have them agreed to by all parties.

⁷The writer was a member of the task force and much of the material in this paper is derived from this experience. All recollection is fallible, and this caveat should be taken to heart by the reader. It should be noted that the FNMA and FHLMC attorneys were in general more liberal than the majority of the task force members, many of whom expressed a lawyer-like horror of any change. The subsequent attack by consumer oriented groups on FNMA and FHLMC personnel was completely unjustified in this respect. Obviously the two corporations were responsible for the end product, but it seemed to escape the attention of the consumer groups that the legislation required the corporations to confine their secondary market operations to mortgages of such [Q]uality, type and class as to meet, generally, the purchase standards imposed by private institutional mortgage investors." Emergency Home Finance Act of 1970, 12 U.S.C. 1719 (1970). In point of fact at this time it is still unknown if the mortgage forms which are now in use will meet the test of market acceptance when FNMA and FHLMC begin to sell them to private institutional investors.

It would seem to be of some interest to discuss the various drafts which were ultimately promulgated by FNMA and FHLMC and to compare the changes that took place. The first so-called exposure draft was dated November 18, 1970 and was circulated very widely both in and out of the lending community. Many comments were received both in writing and orally, and in due course a so-called second exposure draft dated February 3, 1971 was circulated. Although we will later compare the various drafts in some detail it will probably be worthwhile to mention at this point the major changes between the two drafts, leaving to the later discussion the further evolution of the forms. The changes between the first and second exposure drafts were basically semantic rather than substantive except for the following matters:

1. *Fixtures.* The problem raised by the question of whether the personal property should be enumerated in some detail versus the strictly limited type of clause has been discussed above. Suffice it to say that the original clause in the mortgage enumerated "all plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dish washers, washers, driers, awnings, screens, blinds, shades, storm windows, storm doors, antennas, attached floor coverings, trees and plants." The second draft omitted this entire list and confined itself to using only the word "fixtures."

2. *Assumption.* An entirely new provision with respect to assumptions was contained in the February 1971 draft. It provided that if the lender consents in writing to a sale of the property and if the borrower's successor assumes the obligation of the borrower the lender is obligated to release the borrower from all liability.

3. *Acceleration.* The acceleration clause originally provided for six separate events which would cause acceleration of the mortgage without notice. These were (1) default in payment, (2) default in payment of any other sums secured by the mortgage, (3) default in the performance of any other covenant or agreement of the mortgage, (4) the filing of bankruptcy or insolvency proceedings of any kind, (5) the sale or transfer of the property without the lender's consent and (6) the enactment of any law imposing taxation that would affect the mortgagee. The February 1971 exposure draft provided for notice to the borrower and reduced the events of acceleration to three, namely, the failure to make any payment, the breach by the borrower of any other covenant of the mortgage and the continuation of the breach for 30 days after notice, and, lastly, the sale or transfer of any interest in the property without the lender's prior written consent but excluding from the ambit of this provision the creation of a second mortgage, a transfer by devise or descent and the grant of a lease for three years or less which did not contain an option to purchase. In other words, the so-called Brundage clause and the filing of bankruptcy proceedings were completely eliminated as causes of acceleration. In addition, the event of a sale of an interest in the property, certain transactions were excluded from the definition of sale while at the same time the creation of subordinate encumbrances was expressly allowed without triggering the acceleration clause.

4. *Uniform Covenants.* Finally and perhaps most importantly some of

the covenants in the first draft that were denominated uniform covenants were changed in the second draft to nonuniform covenants. The major ones so treated were the clauses with respect to remedies, releases, assignments of rents, appointment of receiver and lender in possession, waiver of homestead, curtesy, dower and appraisal rights.

It should be noted at once that although it might be said that the modifications do not seem to be substantial many of the counsel for lenders were none too pleased with the changes. Additionally renewed skepticism was expressed with respect to the question of whether the entire project was technically possible, particularly the adoption of the uniform covenants.

B. Policy Problems: Consumer Dissatisfaction

However, any unhappiness of some of the lenders was but a quick spring shower compared to the torrent of displeasure which was forthcoming from the groups claiming to represent the consumers, that is, the borrowers. A number of senators and congressmen also voiced extreme dissatisfaction with the proposed forms.⁸ As a consequence of these attacks on the forms, which were unexpected by most of those concerned with their drafting, FNMA and FHLMC were confronted with a political problem of some importance. The issue was most sharply raised by Senator Proxmire's demand for public hearings and by Ralph Nader's explicit demands that (a) the forms be published in the Federal Register, (b) a public hearing be held 30 days after such publication and (c) the final promulgation of the forms be postponed until after notice and hearings had been held under the Administrative Procedure Act.⁹ Since FNMA is now a private corporation, although it has links to HUD, it was thought improper to hold public hearings on the forms. The pressure to do so, however, was sufficient so that FNMA and FHLMC both decided to publish them in the Federal Register¹⁰ and to sponsor a public "meeting" on the forms which was presided over by former Congressman Albert Rains.¹¹

At the two-day meeting held on April 5-6, 1971, 40 witnesses testified and numerous others submitted statements for the record. Roughly speaking, it could be said that the witnesses divided into two groups, one representing primarily lenders and the other representing primarily borrowers, and senators and congressmen who took the same position as the borrowers in general. There were also a number of academic people who testified, one of whom had a very salutary effect as to one very hotly contested point.¹² It would be well to attempt to summarize the attacks made by the consumer

⁸Letter from Senator William Proxmire to George W. Romney, Secretary of Department of Housing and Urban Development, January 26, 1971, in *American Banker*, January 28, 1971.

⁹Letter from Ralph Nader and John A. Spanogle to A. Oakley Hunter, President, Federal National Association, January 26, 1971.

¹⁰36 Fed. Reg. 48 (1971).

¹¹Senate Committee on Banking, Housing and Urban Affairs, Federal National Mortgage Association Public Meeting on Conventional Mortgage Forms, S. Doc. No. 92-21, 92d Cong., 1st Sess. (1971) [hereinafter cited as 1971 Meeting]. Although the proceedings were not a "hearing," Senator John Sparkman, Chairman of the Senate Committee on Banking, Housing and Urban Affairs, obtained the consent of the Senate to publish the testimony in full as a permanent reference work.

¹²See note 33, at 27.

oriented groups on the forms.¹³ Mr. Nader made the point very vividly that the mortgage form should not be premised on the fact that the house which is the security for the lender's loan is the property of the lender and that the fact that it is security for a loan entitles the lender only to "(1) A right to take the house if the consumer fails to make the agreed-upon payments; and (2) A right that the consumer maintain the value of his home above the outstanding balance of the mortgage. Any powers given to the lender in excess of those needed to maintain these two rights are not necessary and should be eliminated in the final version of the form."¹⁴ Mr. Nader also spoke to the arguments offered by industry representatives, namely, that the form had to be acceptable to lenders or the secondary market could not be created. Mr. Nader's answer to this argument was that if FNMA and FHLMC decided that a form must be anti-consumer to be marketable, "[T]hen the concept of a standardized form must be reexamined to determine whether its price to the consumer is too high."¹⁵

C. Specific Consumer Objections

To explain the specific objections of the consumer groups, those posed by Professor John A. Spanogle, Jr., who was the chief technical spokesman for the borrowers, are of the most interest to attorneys and to mortgagees.¹⁶ A summary of these points follows, with only the briefest commentary on some of the more interesting or important ones.

1. *Elimination of the Negotiability of the Note.* He made the point that the borrower's defenses, once the note was in the hands of a third party holder in due course, are cut off and that this was important both in the case of usury and in the event of any interlocking relationships between the builder and lender. He stated that a number of states have abolished the use of negotiable notes in consumer transactions and that this trend would spread in the next ten years. He also asserted that the use of two separate pieces of paper creates the possibility that they might be separated and sold separately to different transferees. His solution was that the promissory note should be abolished and that the promise to pay should be put into the mortgage itself which would be transferable by assignment. In the alternative he recommended that the words of negotiability in the note be deleted.

2. *Notice Prior to Acceleration.* Since the acceleration clause in the note did not provide for notice before acceleration, he recommended that the acceleration clause be deleted in its entirety.

3. *Late Charges.* The late charge provision in the note was objectionable in Mr. Spanogle's eyes. He recommended that if such a change be imposed, it not exceed 1 per cent of the installment and not be imposed until payment is 15 days late. In addition he wanted a provision that would limit late charges to actual costs. What such "actual costs" might mean was not discussed.

¹³1971 Meeting, *supra* note 11, at 100-108 for position of Ralph Nader.

¹⁴*Id.* 102.

¹⁵*Id.* 103.

¹⁶*Id.* 108-124. Since Professor Spanogle's numbering system has been followed, reference to the specific pages where his testimony appears will be noted only in the case of actual quotations.

4. *Prepayment Clause.* The objection to the prepayment penalty clause was very firm. The argument was made that it penalizes those who can least afford it, namely "[m]ilitary personnel, the unemployed and widows."¹⁷ Mr. Spanogle stated that unless the clause is needed to cover any actual uncollected costs of origination, it establishes a private penalty and "[T]he common law of contracts has made private penalty clauses unenforceable."¹⁸ He indicated that any lender who makes use of this clause after charging the borrower for its origination costs would almost certainly be involved in a lawsuit regarding the clause.

5. *Application of Prepayments.* An objection was made to the requirement of the note that the prepayments apply to the last maturing installments, and it was suggested that if the borrower wishes to have his prepayments apply to the next maturing installments, there was no reason to prohibit it.

6. *Waiver of Notice.* The note requires the borrower to waive the rights of presentment, notice of dishonor and protest. These are protections to a borrower which, according to Mr. Spanogle, have been enacted into law by all states. The unspoken premise was that their waiver by the maker of the note was not possible.

7. *Monthly Deposits.* Objection was made to the requirement in the mortgage (Uniform Covenant 2) providing for monthly deposits to pay taxes, assessments, ground rents, hazard insurance premiums and mortgage insurance premiums. It was suggested that the form should provide for an option to allow the lender and borrower to agree as to which items would require monthly deposits, if any.

8. *Interest on Deposits.* An attack was made on the provision of the form (Uniform Covenant 2) which prohibited payment of any interest on escrow deposits for taxes or insurance. It was stated that this prohibition on the payment of interest "[i]s probably unconscionable within the technical definition of the term: A nonbargained unilaterally set term which protects no legitimate interest of lender and contravenes the public policy against unjust enrichment."¹⁹ An alternative form which was inserted into the record by Mr. Spanogle and Mr. Nader provided for payment of interest. The exact language of the proposed form reads as follows: "Earnings or interest shall be payable to Borrower on the Funds, at a rate at least as great as that paid by commercial banks on savings deposits. However, no assignee of this Mortgage shall be liable to Borrower for any such earnings or interest, unless he undertakes to collect the Funds from Borrower. Lender shall have the right to hold the Funds in any manner Lender selects and may commingle the Funds with monies held by Lender."²⁰

9. *Lenders' Estimates as to Deposits.* An additional objection to the tax deposit provision of the mortgage (Uniform Covenant 2) was expressed because the form allowed the lender "[t]o set the total amount of the funds at any amount he 'deems necessary' ".²¹ Mr. Spanogle went on to say that

¹⁷1971 Meeting, *supra* note 11, at 109.

¹⁸*Id.* 110.

¹⁹*Id.* 111.

²⁰*Id.* 105.

²¹*Id.* 111.

some lenders abuse the standard by requiring that one year's taxes be prepaid in addition to the monthly installments. He recommended that monthly deposits (which he persisted in calling prepayments throughout his testimony) should be limited to the pro rata amount necessary to pay taxes as they fall due. Mr. Spanogle's reading of the tax and insurance deposit provision seems to be somewhat careless since the clause in the February 3, 1971 draft, which was the one under discussion, provided for deposits of one-twelfth of the yearly taxes and premiums for hazard insurance, "[a]ll as estimated initially and from time to time"²² by the lender. The language with respect to "deems necessary" appears only in the subsequent paragraph of the tax deposit clause which provides that if the funds held by the lender exceed "[t]he amount deemed necessary by Lender"²³ for the payment of taxes, the excess is to be promptly repaid to the borrower or credited to the borrower on the monthly installments payable over the subsequent twelve months as the lender may determine.

10. *Deficiencies or Surpluses of Monthly Deposits.* Mr. Spanogle also objected that the tax and insurance deposit clause (Uniform Covenant 2) requires the borrower to pay any deficit in the amount necessary to pay taxes immediately but allows the lender to retain any surplus over a 12-month period without interest. Again, it should be pointed out that the February exposure draft did provide that the lender had an option to either repay the excess to the borrower immediately or credit it on the monthly installments due over the next 12 months, but it also provided for notice to the borrower if there was a deficiency.

11. *Private Mortgage Insurance.* The next objection related to the requirement of mortgage insurance for properties on which the mortgage exceeded 75 per cent of the value. Congress in enacting the statute allowing FNMA and FHLMC to deal in conventional loans required private mortgage insurance above this loan to value ratio. Mr. Spanogle recognized that private insurance was required by Congress, but he recommended that the borrower be given the right in the mortgage itself to terminate his mortgage insurance whenever the principal balance was less than 75 per cent of the value of the property, with value defined as the value of the property at the time the mortgage was made, since the statute does not require such insurance if the unpaid balance is less than 75 per cent of value.

12. *Other Charges or Liens.* The mortgage form (Uniform Covenant 4) required the borrower to discharge any lien having priority over the mortgage unless an alternative acceptable to the lender was worked out. Mr. Spanogle made the point that this might compel the borrower to pay for shoddy work rather than permitting the borrower to allow a lien to remain outstanding. He complained that the borrower would have to bring suit to have the lien discharged rather than waiting for the lien claimant to sue, which would then allow the borrower to defend on the grounds that the work performed was inadequate. Again Mr. Spanogle's reading of the clause seems dubious since the language clearly allows the lien to remain outstanding and only requires the borrower to contest any proceedings necessary to prevent enforcement or forfeiture.

²²1971 Meeting, *supra* note 11, at 16.

²³*Id.*

13. *Choice of Insurance Carrier.* The objection was made that the form (Uniform Covenant 5) required the insurance carrier to be satisfactory to the lender. The point was made that the lender might find only one company satisfactory and that there could possibly be an interlocking relationship between the lender and the insurance carrier. It was suggested that the borrower should always be permitted to choose from a group of insurance companies. Mr. Spanogle suggested either that HUD could establish an approved list of companies or that the carriers rated AAA by Best could be presumptively satisfactory.

14. *Use of Insurance Proceeds.* The insurance clause (Uniform Covenant 5) also provided that the lender could apply insurance loss proceeds to reduce the mortgage principal rather than making them available for the repair of the property. Mr. Spanogle felt the lender might exercise its right to apply the proceeds to the debt during tight money periods in order to force the borrower to refinance at higher rates. It was recommended that the borrower have the right to decide how the proceeds were to be used unless the use of these proceeds would "[i]mpair lender's security"²⁴ or unless the property had been abandoned.

15. *Postponement of Payments.* The next objection to the insurance clause (Uniform Covenant 5) was that if the loss proceeds were used to reduce the principal of the loan, monthly payments would not be postponed. "[T]his grants lender a forced acceleration whenever borrower's home is damaged."²⁵

16. *Preservation and Maintenance of Property.* Objection was made to the provision (Uniform Covenant 6) of the mortgage prohibiting waste and requiring the property to be maintained in good repair on the basis that it contained a number of vague, undefined events which could give a lender the right to put the borrower in default with the result that a lender could abuse the clause by accelerating the debt for minor variances not affecting the value of the security. It should be made to apply, according to Mr. Spanogle, only if the value of the security interest is threatened.

17. *Protection of Lender's Security.* The provision (Uniform Covenant 7) allowing the lender to disburse funds for purposes of litigation or for the repair of the premises was objected to on the ground that if the failure by the borrower to perform a covenant was insignificant or if the lawsuit affecting the property was not serious, the value of his security was not threatened. Mr. Spanogle indicated that literally if the borrower died and the house was part of the estate in a probate proceeding, the lender could accelerate and foreclose. "Thus, in tight money, the widow is denied protection when most needed."²⁶ There is nothing in Uniform Covenant 7 that warrants the sweeping interpretation given to it by Mr. Spanogle. The clause merely allows the lender, on notice to the borrower, to appear in court proceedings such as eminent domain, insolvency, code enforcement, bankruptcy or a decedent's estate affecting the property. The clause provides that any amounts disbursed by the lender with respect to these actions

²⁴1971 Meeting, *supra* note 11, at 113.

²⁵*Id.*

²⁶*Id.*

become additional indebtedness secured by the mortgage. Mr. Spanogle's recommendations were that the covenant should apply only if the value of the security is threatened and that all matters involving a decedent's estate should be deleted.

18. *Amount of Funds to be Expended.* Mr. Spanogle also objected to this provision (Uniform Covenant 7) on the ground that the borrower's funds could be expended to protect the property without prior notice. It was recommended that an objective standard be used to judge expenditures which would allow reimbursement only for "reasonable" amounts and which would also require 30 days' prior written notice be given before the lender might expend any funds. Actually the second exposure draft did provide for notice to the borrower if the lender entered its appearance in any legal action or if the borrower failed to perform any agreements or covenants contained in the mortgage. Obviously, however, it would be impractical to give the borrower 30 days in which to supply funds if the lender is required to enter an appearance in a lawsuit immediately or to take other action to protect the property. Without the right to take immediate action and to add the cost of such action to the indebtedness the lender is at the mercy of the recalcitrant borrower. However, the clause also provided that the borrower had a right to prepay at any time in whole or in part any amounts expended by the lender, which would seem to give the borrower sufficient protection against the rapacious lender who only wants to collect interest on the additional funds.

19. *Negligence of Lender.* Additionally, Mr. Spanogle objected to this provision (Uniform Covenant 7) because he said that it placed on the borrower the loss from defaults caused by lender's negligence, for example, failure to use the required monthly deposits to pay taxes or insurance premiums or a problem of "[t]itle failure when lender has selected the title company."²⁷ It was recommended that any threats to the lender's security caused by the lender's negligence or the negligence of a party selected by lender would be an exception to the coverage of this covenant.

20. *Inspection.* Mr. Spanogle's next objection (Uniform Covenant 8) needs to be quoted so that its full flavor may be clearly apparent: "Covenant 8 of the FNMA form states lender may invade borrower's home without reason, and without prior notice."²⁸ Uniform Covenant 8 in both the exposure drafts of November 18, 1971 and February 3, 1971 reads in full as follows: "Upon notice to Borrower, Lender may make or cause to be made reasonable entries upon and inspections of the Property." Mr. Spanogle preferred that the clause be deleted.

21. *Condemnation.* The objection to the condemnation clause (Uniform Covenant 9) is essentially the same as that made previously to the insurance clause, namely, that the lender has the right at its option to determine whether the condemnation award will be used to repair the property or to reduce the balance of the mortgage. The point is made that this could leave the borrower with a damaged property and no funds to repair it.

22. *Release of Original Borrower.* One of the mortgage provisions

²⁷1971 Meeting, *supra* note 11, at 114.

²⁸*Id.*

(Uniform Covenant 10) provided that the original mortgagor was not to be released if there were any extension of time for payment granted by the lender to any successor in interest to the borrower and further provided that the lender was not obligated to commence proceedings against the successor or to refuse to extend time for payment or otherwise modify amortization by reason of any demand made by the original borrower. Mr. Spanogle suggested that the entire covenant be deleted because this provision destroyed the protections given to a surety by the common law. This is one of the numerous areas in which Mr. Spanogle overlooks or is unaware of the practicalities of the home loan lending field. The mobile nature of our population militates against any serious attempt to pursue an original borrower for payment of a delinquent loan. To freeze the terms of all mortgages because the lender needs the permission of the original borrower for any modifications necessitated by new circumstances seems an unnecessary restriction on the security of lenders who do from time to time, because of peculiar circumstances, wish to hold an original borrower liable.

23. *Forbearance and Cumulative Remedies.* Uniform Covenants 11 and 12, which provide, respectively, that forbearance by the lender is not a waiver of any other rights under the mortgage and that the lender's remedies are cumulative, were attacked on the basis that after default by the borrower the lender might fail to accelerate, continue to receive monthly installments and even late charges, receive payments for action taken under Uniform Covenant 7 governing the litigation and repair rights of the lender and then "[h]aving milked borrower dry, accelerate and foreclose."²⁰ Mr. Spanogle wished both covenants to be deleted, and to allow the common law on estoppel to apply or, as an alternative, estoppel principles should be written in to preclude the lender from foreclosing after the cure of the breach or after the borrower's reliance on the lender's promise not to foreclose.

24. *Waiver Effective after Certain Period.* An additional objection to Uniform Covenant 11 was that it allowed indefinite delay by the lender in exercising his rights. The borrower should be able to rely on a stated time period or a "reasonableness" standard with respect to a lender's waiver according to Mr. Spanogle.

25. *Notice.* Mr. Spanogle objected to the notice provision (Uniform Covenant 14) only because the clause made the notice to the borrower effective on mailing and notice to the lender effective upon receipt. He recommended that no notice should be effective until received.

26. *Uniformity of Governing Law.* Uniform Covenant 15, which basically covered the problem of the uniformity with which the form should be interpreted, was objected to only in the sense that one of the clauses provided that in the event any part of the payment provided for in the mortgage violated any usury law and the borrower was entitled to the benefit of that law, the payment would be reduced to the extent necessary to eliminate the violation. Mr. Spanogle's attitude toward this clause is most convincingly expressed by this sentence from his testimony: "A lender who knowingly violates a state usury law should not receive protection from the

²⁰1971 Meeting, *supra* note 11, at 114-5.

federal government."⁸⁰ He therefore insisted that the entire clause relating to usury be deleted.

27. *Assumption.* Uniform Covenant 16 in the February 1971 form was new, not having appeared in the November 1970 draft. It provided that when a lender consents to a sale of the mortgaged property and when the borrower's successor assumes all the obligations of the borrower, the lender is obligated to release the original mortgagor from any obligations under the mortgage and note, notwithstanding the provision of Uniform Covenant 10 which, as previously pointed out, stated that the original borrower was not released by extension of the time for payment or any modification of the amortization requirements. Mr. Spanogle attacked this new covenant on the basis that it allowed the lender to reject a proposed assumption for no reason. He insisted that the covenant be amended to prohibit unreasonable withholding of consent. This objection seems to be inappropriate since the covenant only deals with the factual situation in which the lender has already consented to an assumption and gives the original borrower the right to an absolute release of his obligations.

28. *Acceleration for Failure to Pay.* Uniform Covenant 17 lists the events of default triggering the right of the lender to accelerate. First Mr. Spanogle objected to the language of the covenant which he said allows the lender to accelerate "[w]ithout giving notice before the acceleration."⁸¹ It was his position that, although notice is required to the borrower by this clause, it need be given only at the time of the acceleration. This position follows apparently from the language of the covenant which requires notice but only a notice that all sums secured by the mortgage are due and payable. Actually Uniform Covenant 17(a) provides that one of the events of default is failure by the borrower to pay when due any sums secured by the mortgage and the continuation of such failure for 30 days. Apparently Mr. Spanogle would require that after the 30 days, the lender would be required to give a notice of acceleration which could not take effect for another 30 days. He uses the example, as he frequently does, of the widow who in her grief forgets to pay the mortgage for 31 days. He takes the position that she can then lose her house.

29. *Acceleration for Other Breaches.* The next objection was to Uniform Covenant 17(b) which stated that a breach by the borrower of any covenant other than the covenant to pay and the continuation of this breach for 30 days after notice from lender to borrower triggered the right of the lender to accelerate. Mr. Spanogle made the point that some breaches may require more than 30 days to cure; therefore, the covenant should be amended to preclude acceleration as long as the borrower is proceeding promptly to complete the required action to cure the breach.

30. *Acceleration by Virtue of Sale.* Uniform Covenant 17(c) provided that without the lender's prior written consent the sale or transfer of the property was an event of default, excluding, however, from the definition of sale or transfer, the creation of any encumbrance subordinate to the mortgage, a transfer by virtue of death or a lease for three years or less

⁸⁰1971 Meeting, *supra* note 11, at 115.

⁸¹*Id.*

which does not contain an option to purchase. Mr. Spanogle indicated that this subsection should be entirely deleted since some lenders have refused to allow transfers and have also refused to make new loans. His position was that this would effectively prohibit the home owner from selling his house during periods of tight money.

31. *Lender's Remedies*: Mr. Spanogle proposed a uniform covenant that would place a minimum floor on the lender's remedies during foreclosure. In essence it would give to the borrower the power to redeem until the property had been sold to a third party. He also indicated that this covenant should say that any state law which extends the redemption period even further would supersede this covenant. He also proposed a covenant granting the courts the power "[t]o examine the facts of the individual case before applying the harsh contract terms on lender's remedies."⁸²

32. *Misrepresentation by Lender*. Mr. Spanogle proposed a new covenant under which the lender would promise to the borrower that he had not misrepresented the terms of the mortgage or note and which would establish remedies for breach of this covenant by the lender.

33. *Information to Borrower*. Mr. Spanogle also proposed a uniform covenant that would grant the borrower the right to obtain any information with respect to the mortgage such as the outstanding balance and whether or not the lender considers the borrower to be in default.

In response to criticism expressed by the various groups at the public meetings, FNMA and FHLMC developed an alternative set of mortgage forms which were apparently not very widely distributed since these forms were for internal consideration of the two corporations. Clearly there was still a strong attempt on the part of the two corporations to develop a common form. As will be discussed subsequently, this proved abortive.

D. *Final Result: The Consumer Oriented Uniform Mortgage**

Without going into too extensive detail as to the specific provisions, it may now be of interest to try to point out a few of the major areas in which modifications actually occurred. The following is an attempt to indicate changes, generally from the original draft of November 1970 through the final forms as published in January of 1972. Since the consumer objections have been detailed at length, no specific references will be made as to whether the consumer point of view was victorious since it will be self-evident.

1. *Note: (a) Prepayment provisions*. A major issue from the beginning until the final form emerged continued to be the prepayment privilege. The original November 1970 exposure draft provided for a prepayment penalty if the prepayment exceeded 20 per cent. Both the specific percentage of the penalty and the number of years that this prepayment premium was to be in effect were left blank under the theory that it was to be a negotiated part of the transaction between borrower and lender. The February 1971 exposure draft made no substantive change in this provision. After the public meetings of April 1971 it was clear to the outsider that an internal argument arose. The result seemed to be a recommendation for a wide open

⁸²1971 Meeting, *supra* note 11, at 116.

*See Appendices for selected forms.

prepayment privilege unless the borrower prepaid with money borrowed, from another lender, in which event if the prepayment exceeded 20 per cent in the first three years, there would be a penalty of an undetermined amount. In the 4th and 5th years there would be a different percentage applied to the prepayment if it exceeded 20 per cent of the original amount of the loan. The form which was finally adopted and published in January 1972 by FNMA completely eliminated the requirement of any penalty under any circumstances. The FHLMC mortgage form on the other hand has the five-year provision outlined above. Clearly the differences between the two corporations was resolved by an agreement to disagree in this matter.

(b) *Notice of default.* Another issue of importance relating to the note also showed a certain development from the exposure draft of November 1970 to the ultimate form. The original exposure draft provided that if a default in the payment of the monthly installment was not cured prior to the due date of the next monthly installment, the entire balance was to become due and payable without notice at the option of the holder. The exposure draft of February 1971 modified this so that, although the entire amount would become due and payable without notice, the acceleration would take place only if the monthly installment was not paid within 30 days after its due date. Admittedly this seems a distinction without a difference. The final version in the January 1972 form now requires that a certified mail notice be sent by the lender which specifies a date not less than 30 days from the date the notice is mailed by which the past due monthly installment is to be paid. If this is not done by the specified date, the entire amount becomes due and payable without further notice. This provision is identical in the FNMA and FHLMC forms except for a provision in the FNMA form that the address to which notice is to be sent is the property address or any address designated by the borrower to the mortgagee by certified mail. The latter proviso is not found in the FHLMC form.

2. *Mortgage.* (a) *Fixtures.* The change discussed above from the enumeration of the items to the use of the general term "fixtures" was retained in both the final forms of FNMA and FHLMC.

(b) *Warranty of title.* Between the first exposure draft and the ultimate form a change took place with respect to the exception of the warranties to good title by the borrower. The original exposure drafts of November 1970 and February 1971 both provided that the borrower would warrant and defend the title to the property against all claims and demands subject only to easements and restrictions of record. This in and of itself was somewhat of a compromise. The form which finally emerged, however, added after "[S]ubject to easements and restrictions of record" the words "[L]isted in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property." The borrower's warranty is thereby somewhat more restrictive than the former language standing alone.

(c) *Tax and insurance deposit clause.* The 1972 FNMA form provides the funds are to be held in a federally or state insured account while the FHLMC form provides that the deposits are to be held in an institution, including the lender, the accounts of which are insured or guaranteed by a federal or state agency. Borrower and lender may agree that interest will be paid on the deposit, but no charge may be made by the lender for holding

the funds. The prior forms provided that funds could be comingled and no interest was to be paid.

The 1972 final form provides if the deposited funds plus future monthly installments exceed the amount necessary to pay taxes and insurance the excess, at the borrower's option, is to be repaid to the borrower or credited to his monthly installments. The prior drafts provided basically that any such excess was to be credited to the borrower as the lender might determine.

The published form provides that if the amount in the account is insufficient to pay insurance or taxes as they come due the borrower is to pay any deficiency within 30 days after notice from the lender requesting payment. The 1971 form provided that the borrower was to pay any deficit upon notice from the lender of the deficiency while the earliest form required payment of the deficit 30 days prior to the date when the next tax or insurance deposit was due.

(d) *Hazard insurance.* The evolution of this provision from the original exposure draft to the final product is a good example of compromise and legal changes resulting from the pressure of various parties. The original draft required the hazard insurance to be issued by a carrier satisfactory to the lender and in such amounts and for such periods as the lender might require. This clause was continued in the February 1971 draft, but the final form qualified these requirements to the extent that the lender may not require the amount of coverage to exceed that necessary to pay the sums secured by the mortgage.

The original exposure draft provided that the insurance carriers were to be satisfactory to lender. This provision was continued in the February 1971 draft, but it was modified in the final form to provide that the insurance carrier is to be chosen by the borrower subject to the approval of the lender but that such approval shall not be unreasonably withheld.

The earliest draft provided that the insurance carrier was authorized and directed to make payment for loss directly to lender instead of to the borrower and lender jointly. This provision did not appear in the February 1971 draft nor in the final form.

With respect to the application of the insurance proceeds, the November 1970 draft provided for the lender to adjust and compromise the loss and to apply the proceeds or any part thereof at its option to the restoration of the damaged property or to reducing the loan. This provision remained unchanged in the February 1971 draft, but it was very substantially modified in the final draft to provide that unless the lender and the borrower otherwise agree in writing the insurance proceeds must be applied to repair the property provided the repair proves to be "economically feasible."²⁸ It then goes on to provide that if borrower and lender cannot agree as to whether it would be economically feasible, that determination is to be made by an independent appraiser at the lender's expense. The clause further provides that the insurance proceeds will be applied to the debt with any excess paid to the borrower if the repairs are not economically

²⁸This formulation was the very useful personal contribution of Professor Allison Dunham of the University of Chicago Law School in his testimony at the hearing, 1971 Meeting, *supra* note 12, at 92-4.

feasible. In the event the property is abandoned by the borrower, or if the borrower does not respond to a 30-day notice from the lender that the insurance carrier is offering to settle the claim, the lender is then authorized to collect and apply the proceeds at its option either to restoration or to the debt.

The original form made no provision as to the monthly payments if the loss proceeds were applied to principal. The February 1971 form provided that the application of the proceeds to the debt would not postpone the due date of the monthly installments or change the amounts of such installments. The same provision was continued in the final form with the proviso that the borrower and lender could agree in writing to change this provision.

(e) *Preservation and maintenance of property.* The original draft of this provision, among other things, provided that the borrower would not remove, demolish or alter any improvement either existing on the property or erected subsequent to the mortgage unless the lender consented. It further provided that the borrower would comply with all laws, ordinances, regulations and requirements of any governmental body. These provisions were continued in the February 1971 draft, but both the provisions with respect to altering and demolishing the improvements and those respecting compliance with governmental regulations were deleted from the final draft. The final draft also contained a requirement that the borrower perform all of the borrower's obligations under a declaration of condominium or a master deed and other by-laws or regulations of a condominium project. This had not been in the original clause.

(f) *Inspection.* The original inspection clause merely provided that upon notice the lender might make reasonable inspections of the property. The final mortgage document continued this clause with the proviso that the lender must give the borrower notice specifying reasonable cause related to the lender's interest in the property.

(g) *Condemnation.* The condemnation clause was substantially altered between the first and the final forms. The November 1970 provision was that the lender might apply any condemnation award to restoration of the property or to payment of the debt. The formula established by the final form was that in the event of a partial taking, unless the borrower and the lender otherwise agree, the portion of the proceeds to be applied to the debt would be equal to that proportion which the amount of the debt immediately prior to the date of the taking bears to the value of the property immediately prior to the date of taking, with the balance of the proceeds to be paid to the borrower; if, however, the parties are unable to agree as to the value of the property prior to the date of the taking, the value is to be established by independent appraisal at the lender's expense. A similar provision to that found in the insurance clause is contained in this paragraph to the effect that if the property is abandoned or if there is no response in 30 days to lender's notice that the condemnor offers an award or a settlement the lender is authorized to collect and apply the proceeds at its option either to restoration or to the debt. Similarly, a clause with respect to not disturbing the due date of the monthly installments is inserted unless again the borrower and the lender agree otherwise.

(h) *Forbearance by lender not a waiver.* The long provision in both the November 1970 and February 1971 forms spelling out what kinds of actions by the lender would not be a waiver of any of its rights under the mortgage was drastically pruned to a two-sentence clause merely stating that forbearance would not be a waiver nor preclude the exercise of any right or remedy.

(i) *Notice.* The November 1970 form provided a simple provision with respect to notice: notices were to be mailed to the lender at its address stated in the mortgage and to the borrower at the property address or at such place as each might designate to the other in writing. The February 1971 form complicated this matter by providing that the notice by lender was deemed given by lender and received by borrower when mailed by certified mail to the borrower at the property address or at any other address the borrower may have designated to the lender by certified mail which had actually been received by the lender. A further transformation took place between the latter form and the final form. The final form merely provided that notice from the lender to the borrower was to be mailed by certified mail to the property address or at such other address as the borrower might designate to the lender by certified mail. The language as to when notice was to be deemed to have been given was removed.

(j) *Law governing uniform mortgage.* The section of this covenant which provided that, in the event any payment under the mortgage contravened a state usury statute, the payment was to be reduced to the extent necessary to eliminate the violation was completely deleted in the final draft. This provision had appeared in one guise or another in both the first and second drafts.

(k) *Borrower's copy.* A new uniform covenant not present in either of the other drafts was added, providing for the furnishing to the borrower of a conformed copy at the time of execution or after recordation.

(l) *Acceleration.* The change between the first and second drafts with respect to acceleration has been previously discussed. In the final draft the acceleration clause is among the nonuniform covenants. Since this covenant is still fairly standard in spite of its place in the nonuniform covenants, it is worth considering the differences between it and the second draft. The February 1971 draft had provided three separate events of default and had provided for notice to the borrower that one or the other had occurred and therefore the note was immediately due and payable. The new acceleration clause does not specify any event of default, but merely provides that upon breach of any covenant, including those requiring the payment of any sums secured by the mortgage, the lender must prior to acceleration notify the borrower specifying (a) the breach, (b) the action required to cure such breach, (c) a date not less than 30 days from the date the notice is mailed to borrower by which such breach must be cured and (d) that failure to cure such breach on or before the date specified in the notice may result in acceleration and sale of the property. The clause then goes on to provide that if the breach is not cured on or before the date specified, the lender, at its option, may declare the debt to be immediately due and payable without further demand and may foreclose the mortgage.

(m) *Borrower's right to reinstate.* A new nonuniform covenant in the final form which had not been contained in any of the prior drafts provides that any proceedings begun by a lender to enforce the mortgage must be discontinued prior to entry of a judgment if (a) the borrower pays all sums which would be due if no acceleration had occurred, (b) the borrower cures all breaches of any other covenants, (c) the borrower pays all reasonable expenses incurred by lender and (d) the borrower takes such action as lender may reasonably require to assure that the lien of the mortgage and the borrower's obligation to pay will continue unimpaired.

(n) *Future advances.* The nonuniform covenant covering future advances generally provides, subject to local rules, that at the request of the borrower the lender may make future advances which shall be secured by the mortgage when evidenced by notes stating that the notes are secured by the mortgage. The principal amount of the indebtedness is not to exceed the original amount plus a figure to be inserted by the mortgagee.

IV. FNMA AND FHLMC: CROSS PURPOSES

It is of substantial significance that it proved impossible for FHLMC and FNMA to end up in agreement on the forms. This is really a quite unfortunate circumstance; and if no other method of agreement can be worked out, it seems that Congress ought to tell the two institutions that agreement is necessary in order to establish and maintain a viable secondary mortgage market. The differences between the forms are not so substantial as to preclude compromise. The differences between the forms may be summarized as follows:

A. Differences in Forms

1. *Note: (a) Notice.* Both the FHLMC and FNMA forms provide that the notice to the borrower of any unpaid installment must be sent by certified mail to the borrower at the property address shown on the note. In addition, the FHLMC form provides that the address may also be such as has been designated by the borrower by a certified mail notice to the lender.

(b) *Late charge.* The FNMA form provides for a late charge of 4 per cent of any monthly installment which is not paid by the 15th day after the installment is due while the FHLMC form leaves both the percentage and the number of days to the determination of the originator of the loan.

(c) *Prepayment.* Both forms provide for the right to prepay without penalty, including partial prepayments. However, the FHLMC form additionally provides that if the borrower makes any prepayment "[w]ith money lent to the undersigned by a lender other than the holder hereof" and if his prepayment during any of the first three loan years exceeds 20 per cent of the original principal amount of the loan, he is to pay a prepayment charge of an amount to be determined by the original mortgagee. It further provides for a different undetermined, but presumably smaller, penalty during the fourth and fifth loan years. This latter provision is of some significance to institutional investors, particularly savings and loan associations, which have the problem of retaining loans during a period of easy money due to the borrowers' propensity to refinance. The lender task

force that FNMA assembled also indicated that it felt protection during the earlier periods of the loan's existence was necessary in order to induce the secondary mortgage market to accept the forms and apparently FNMA itself felt this of some significance. However, the ultimate result of the consumer and some congressional complaints against any restriction on the right of prepayment apparently registered very clearly with the Secretary of HUD.

2. *Mortgage: (a) Escrow depository.* The forms differ in the language which they use to require certain types of accounts for the monthly deposits of taxes and insurance. The FNMA form reads as follows, "Lender shall hold the Funds in an account which is insured by Federal or state agency. . . ." while the FHLMC form contains this language, "The Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution)."

Although seemingly this difference in language is merely semantic, it is possible that under the language of the FHLMC form, the deposits by the borrower need not be held in an insured account as is required by the FNMA language. All that is necessary, for example, if the lender is a federal savings and loan association is that the association hold the funds within its own institution, but that they need not be held in an insured account. In other words, the lender may be able to use the deposits as if they were its own funds.

(b) *Insurance proceeds.* Both forms provide that insurance loss proceeds are to be applied to restoration or repair provided the restoration or repair is economically feasible, but the FHLMC forms add as a further requirement to the economic feasibility test that the security of the mortgage "[I]s not to be impaired." The same difference in approach is present in the case of the proviso that if the repairs are not economically feasible, the proceeds are to be applied to the balance of the loan. In this case the FHLMC form establishes as an alternative to the feasibility test a requirement that the security of the mortgage also must not be impaired or the proceeds are to be applied to the balance of the loan. Obviously the FHLMC provision relating to the impairment of the security of the mortgage is very broad and allows the lender great leeway in a judgmental sense as to whether or not the proceeds are to be applied to repair or to the unpaid balance.

(c) *Notice.* The notice provision of the two forms differs considerably in semantics, but substantively the only difference is that the FHLMC form provides that any notice to the borrower is deemed to have been given when mailed to the proper address as required in the notice provision. The FNMA form does not have this provision and therefore the inference would be that the notice is not "given" until received by the borrower rather than when mailed.

(d) *Transfer and assumption.* The FHLMC mortgage has a section with respect to the transfer of the property that no longer appears in any form in the FNMA mortgage. Provisions similar to those contained in this clause were discussed earlier in this paper. The covenant basically provides that if any interest in the property is sold or transferred without the written

consent of the lender, excluding (i) liens subordinate to the mortgage, (ii) a transfer by devise, descent or by operation of law, including the death of a joint tenant, (iii) the grant of a leasehold interest of three years or less without an option to purchase or (iv) the creation of a purchase money security interest for household appliances, the lender may at its option declare the mortgage due and payable. All of these exceptions were in the original FNMA form of February 1971 other than the purchase money security interest for household appliances. The clause further provides that the lender may not invoke its acceleration remedy until it has given the borrower a notice which provides a minimum period of 30 days from the date the notice is mailed for the borrower to pay the mortgage in full.

The FHLMC form also has a new clause, however, which provides that the lender has waived its option to accelerate if prior to the transfer the lender and the purchaser have agreed in writing that the credit of the purchaser is satisfactory and that interest will be paid at the rate requested by the lender. The clause also provides that if the lender has waived its option under this clause and if the purchaser has executed an assumption agreement which has in turn been accepted by the lender, the lender must release the original borrower from all his obligations.

B. Commentary

The differences in the forms discussed above are, except for the questions of the prepayment privilege and the acceleration because of sale, relatively insignificant. These two clauses, however, are of great interest to lenders, particularly to savings and loan associations which have been the largest utilizers of prepayment privileges and also of the so-called due-on-sale clause in residential loans. Certainly the latter clause was never made use of to any extent by the insurance companies when they were active in the home loan field. It is not even very prevalent in insurance company income property loans. The question of prepayment is somewhat different, however, but policies with respect to this have varied considerably among the insurance companies. Some companies have felt that the prepayment clause is not as essential in the home loan situation in order to protect the investment portfolio as it is in the income property field where of course the prepayment charges or even the right to prepay at all have been an extremely important aspect, at least in recent years, of the investment policy of most institutional investors. Others took an approach that was closer to the original FNMA proposal of a small prepayment charge during the first three or five years on the theory that this was the least that could be required in order to make mortgage loans somewhat competitive with bonds which normally had long periods of protection against prepayment.

The philosophical and political arguments that obviously must have ensued between the Housing and Urban Development Department and the Federal Home Loan Bank Board ended up without resolution, and as a consequence the mortgage forms as noted above are no longer uniform. A very excellent chance for the creation of a true secondary market on a national scale in conventional mortgages was thereby lost or at least im-

paired. Perhaps the future will bring a less short-sighted view to the fore in both agencies, and they will begin to think in less fragmented terms by becoming less beholden to their particular constituencies.

V. CONCLUSION

To analyze at this early juncture the total effect of the interaction of the consumer movement, governmental pressure and economics on the creation of these forms may be somewhat premature in view of the fact that the market does not seem to have moved very fast or far as yet. It is also a fact that the other big change in the secondary mortgage market, namely, the creation of the pool of mortgages backing a security instrument which, in turn, is backed by the full faith and credit of the United States government via the Government National Mortgage Association, may make the creation of a secondary conventional market in home loans less important, if not obsolete.

At this stage there is not yet, in other words, a national secondary market in conventional loans, but it could develop relatively quickly because of the impetus that the forms themselves create, and also because there are other forces tending in this direction. One that should be mentioned as having a good effect in this area would be the development of a Uniform Land Transactions Code which is now under intensive study and work by the National Conference of Commissioners on Uniform State Laws. Another omen of the future is the tremendous development of legislation on the federal level with respect to all aspects of mortgage lending, including even the details of closing and title insurance. All of these matters are stimuli pushing in the same direction, namely, the creation of a security which has as its base land yet which will be as freely transferrable as stocks and bonds.

This rosy picture of the development of the secondary market in real estate could be tempered by the over-zealousness of some consumer advocates. The creation of a national secondary market would make money more available throughout the United States if the secondary market lenders felt that the security they were buying was fungible. It is to be hoped that, notwithstanding the field of real estate needs the discipline of an active and alert consumer group, there will be an understanding on the part of the consumer advocates of the point that as long as we maintain a market economy, investors will invest their funds in those areas that seem to be safest and to produce the highest return at the same time. If the investor is burdened with what he considers an excess amount of regulation and onerous potential liability, mortgage money will be scarce and expensive. The consequence of this can only be further governmental entry into what could and should be, with a proper legal framework, supplied privately.

APPENDIX A

ILLINOIS-FNMA
FORM NO. 1081.12

NOTE

US \$....., Illinois
City
....., 19....

FOR VALUE RECEIVED, the undersigned promise to pay
....., or order, the principal sum of
..... Dollars, with interest
on the unpaid principal balance from the date of this Note, until paid, at the rate
of percent per annum. The principal and interest shall be payable
at or such other place
as the holder hereof may designate in writing, in consecutive monthly installments
of Dollars (US \$.....),
on the day of each month beginning 19....
until the entire indebtedness evidenced hereby is fully paid, except that any remain-
ing indebtedness, if not sooner paid, shall be due and payable on the
day of

If any monthly installment under this Note is not paid when due and remains
unpaid after a date specified by a notice sent by certified mail to the undersigned
at the address stated below or at such address as the undersigned may designate to
the holder hereof by certified mail, which date shall be not less than thirty days
from the date such notice is mailed, the entire principal amount outstanding here-
under and accrued interest thereon shall at once become due and payable at the
option of the holder hereof. Failure to exercise such option shall not constitute a
waiver of the right to exercise such option if the undersigned is in default here-
under. In the event of any default in the payment of this Note and if suit is brought
hereon, the holder hereof shall be entitled to collect in such proceeding all reason-
able costs and expenses of suit, including, but not limited to, reasonable attorney's
fees.

The undersigned shall pay to the holder hereof a late charge of 4 percent of
any monthly installment not received by the holder hereof on or before the 15th
day after the installment is due.

The undersigned shall have the right to prepay the principal amount outstand-
ing in whole or in part, provided that the holder hereof may require that any partial
prepayments shall be made on the date monthly installments are due and shall be
in the amount of that part of one or more installments which would be applicable
to principal. Any partial prepayment shall be applied against the principal amount
outstanding and shall not extend or postpone the due date of any subsequent
monthly installments or change the amount of such installments, unless the holder
hereof shall otherwise agree in writing.

Presentment, notice of dishonor, and protest are hereby waived by all makers,
sureties, guarantors and endorsers hereof. This Note shall be the joint and several
obligation of all makers, sureties, guarantors and endorsers, and shall be binding
upon them and their heirs, personal representatives, successors and assigns.

The indebtedness evidenced by this Note is secured by a Mortgage, dated of
even date herewith, and reference is made thereto for rights as to acceleration of the
indebtedness evidenced by this Note.

.....
Property Address

APPENDIX B

ILLINOIS—FNMA
FORM NO. 1032.12

MORTGAGE

THIS MORTGAGE is made this day of , 19
between the Mortgagor, (herein "Borrower"),
and the Mortgagee, a corporation
organized and existing under the laws of , whose address is
. (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of
. Dollars, which indebtedness is evi-
denced by Borrower's note of even date herewith (herein "Note"), providing for
monthly installments of principal and interest, with the balance of the indebted-
ness, if not sooner paid, due and payable on ;

To SECURE to Lender (a) the repayment of the indebtedness evidenced by the
Note, with interest thereon, the payment of all other sums, with interest thereon,
advanced in accordance herewith to protect the security of this Mortgage, and the
performance of the covenants and agreements of Borrower herein contained, and
(b) the repayment of any future advances, with interest thereon, made to Borrower
by Lender pursuant to paragraph 20 hereof (herein "Future Advances"), Borrower
does hereby mortgage, grant and convey to Lender the following described property
located in the County of , State of Illinois:

[Space for description]

TOGETHER with all the improvements now or hereafter erected on the property,
and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights
and profits, water, water rights, and water stock, and all fixtures now or hereafter
attached to the property, all of which, including replacements and additions thereto,
shall be deemed to be and remain a part of the property covered by this Mortgage;
and all of the foregoing, together with said property (or the leasehold estate in the
event this Mortgage is on a leasehold) are herein referred to as the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby con-
veyed and has the right to mortgage, grant and convey the Property, that the
Property is unencumbered, and that Borrower will warrant and defend generally
the title to the Property against all claims and demands, subject to any easements
and restrictions listed in a schedule of exceptions to coverage in any title insurance
policy insuring Lender's interest in the Property.

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

1. Payment of Principal and Interest. Borrower shall promptly pay when due
the principal of and interest on the indebtedness evidenced by the Note, late
charges as provided in the Note, and the principal of and interest on any Future
Advances secured by this Mortgage.

2. Funds for Taxes and Insurance. Subject to Lender's option under para-
graphs 4 and 5 hereof, Borrower shall pay to Lender on the day monthly install-
ments of principal and interest are payable under the Note, until the Note is paid
in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assess-
ments which may attain priority over this Mortgage, and ground rents on the
Property, if any, plus one-twelfth of the yearly premium installments for hazard
insurance, plus one-twelfth of the yearly premium installments for mortgage insur-
ance, if any, all as reasonably estimated initially and from time to time by Lender
on the basis of assessments and bills and reasonable estimates thereof. Lender shall
hold the Funds in an account which is insured by a Federal or state agency and
shall apply the Funds from said account to pay said taxes, assessments, insurance

premiums and ground rents. Lender shall make no charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made, Lender shall not be required to pay Borrower any interest on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds, interest, if any, paid to Borrower on the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within 30 days after notice from Lender to Borrower requesting payment thereof.

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

If under paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note and on Future Advances, if any, and then to the principal of the Note and to the principal of Future Advances, if any.

4. Charges; Liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and ground rents, if any, at Lender's option in the manner provided under paragraph 2 hereof or by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Mortgage, provided, that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

5. Hazard 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 such other hazards as Lender may require and in such amounts and for such periods as Lender may require, provided, that Lender shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Mortgage.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid at Lender's option in the manner provided under paragraph 2 hereof or by Borrower making payment, when due, directly to the insurance carrier.

All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies and renewals

thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender, and 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, provided such restoration or repair is economically feasible. Borrower shall have the right to effect minor repairs to the Property with the insurer's approval and receive payment therefor. If Borrower and Lender are unable to agree whether such restoration or repair would be economically feasible, the determination of economic feasibility shall be made by independent appraisal at Lender's expense. If such restoration or repair is not economically feasible, the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower or if Borrower fails to respond to Lender within 30 days after notice by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

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

If under paragraph 17 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.

6. Preservation and Maintenance of Property; Leaseholds; Condominiums. Borrower shall keep the Property in good repair and shall not permit or commit waste, impairment, or deterioration of the Property and shall comply with the provisions of any lease, if this Mortgage is on a leasehold. If this Mortgage is on a condominium unit, Borrower shall perform all of Borrower's obligations under the declaration of condominium or master deed, the by-laws and regulations of the condominium project and constituent documents.

7. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible by applicable law. Nothing contained in this paragraph 7 shall require Lender to incur any expense or do any act hereunder.

8. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for any 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 Mortgage, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Mortgage such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower. If Borrower and Lender are unable to agree as to the value of the Property immediately prior to the date of taking, such value shall be established by independent appraisal at Lender's expense.

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 of the date of such notice, Lender is authorized to collect and apply the proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

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

10. Borrower Not Released. Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest.

11. Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage.

12. Remedies Cumulative. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

13. Successors and Assigns Bound; Joint and Several Liability; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

14. Notice. Any notice from Lender to Borrower provided for in this Mortgage shall be mailed by certified mail to Borrower at the Property Address stated below or at such address as Borrower may designate to Lender by certified mail to Lender's address, except for any notice given to Borrower in the manner prescribed by applicable law as provided in paragraph 17 of this Mortgage.

15. Uniform Mortgage; Governing Law; Severability. This form of mortgage combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property. This Mortgage shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable.

16. Borrower's Copy. Borrower shall be furnished a conformed copy of this Mortgage at the time of execution or after recordation hereof.

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

17. Acceleration; Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 14 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorney's fees, and costs of documentary evidence, abstracts and title reports.

18. Borrower's Rights to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Mortgage, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would be then due under this Mortgage, the Note and notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage and in enforcing Lender's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

19. Assignment of Rents; Appointment of Receiver; Lender in Possession. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, and at any time prior to the expiration of any period of redemption following judicial sale, Lender, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Mortgage. Lender and the receiver shall be liable only for those rents actually received.

20. Future Advances. Upon request of Borrower, Lender at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus US \$.....

21. Release. Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

22. Waiver of Homestead. Borrower hereby waives all right of homestead exemption in the Property.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

.....
-Borrower

.....
Property Address

[Acknowledgment]

APPENDIX C

SAMPLES OF NONUNIFORM MORTGAGE COVENANTS

1. INDIANA (FNMA)

22. Waiver of Valuation and Appraisement. Borrower hereby waives all right of valuation and appraisement.

2. WISCONSIN (FNMA)

22. Redemption. If the Property is three acres or less in size and Lender in an action to foreclose this Mortgage waives all right to a judgment for deficiency and consents to Borrower's remaining in possession of the Property (unless the Property has been abandoned), then the sale of the Property may be six months from the date the judgment is entered, as provided by Section 278.101 of the Wisconsin Statutes.

3. IOWA (FNMA)

22. Waiver of Dower, Homestead and Distributive Share. Borrower hereby relinquishes all right of dower and hereby waives all right of homestead and distributive share in and to the Property. Borrower hereby waives any right of exemption as to the Property.

4. MICHIGAN (FNMA)

17. Acceleration; Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 14 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may invoke the power of sale herein granted pursuant to applicable law, and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 17, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall mail a copy of a notice of sale to Borrower in the manner provided in paragraph 14 hereof. Lender shall publish and post the notice of sale and the Property shall be sold in the manner prescribed by applicable law. Lender or Lender's designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable attorney's fees; (b) to all sums secured by this Mortgage; and (c) the excess, if any, to the person or persons legally entitled thereto.

5. SOUTH DAKOTA (FNMA)

23. Attorney's Fees. As used herein, "reasonable attorney's fees" shall mean those attorney's fees allowed by statute.

APPENDIX D

CALIFORNIA—FNMA
FORM NO. 1031.04

NOTE

US \$., California
City
....., 19....

FOR VALUE RECEIVED, the undersigned promise to pay
....., or order, the principal sum of Dollars, with interest
on the unpaid principal balance from the date of this Note, until paid, at the rate
of percent per annum. The principal and interest shall be payable at
..... or such other place as the holder hereof may
designate in writing, in consecutive monthly installments of
Dollars (US \$.....), on the day of each month beginning
....., 19...., until the entire indebtedness evidenced hereby is
fully paid, except that any remaining indebtedness, if not sooner paid, shall be due
and payable on the day of

If any monthly installment under this Note is not paid when due and remains
unpaid after a date specified by a notice sent by certified mail to the undersigned
at the address stated below or at such address as the undersigned may designate to
the holder hereof by certified mail, which date shall be not less than thirty days
from the date such notice is mailed, the entire principal amount outstanding here-
under and accrued interest thereon shall at once become due and payable at the
option of the holder hereof. Failure to exercise such option shall not constitute a
waiver of the right to exercise such option if the undersigned is in default here-
under. In the event of any default in the payment of this Note and if suit is brought
hereon, the holder hereof shall be entitled to collect in such proceeding all reason-
able costs and expenses of suit, including, but not limited to, reasonable attorney's
fees.

The undersigned shall pay to the holder hereof a late charge of 4 percent of
any monthly installment not received by the holder hereof on or before the 15th
day after the installment is due.

The undersigned shall have the right to prepay the principal amount outstand-
ing in whole or in part, provided that the holder hereof may require that any
partial prepayments shall be made on the date monthly installments are due and
shall be in the amount of that part of one or more installments which would be
applicable to principal. Any partial prepayment shall be applied against the
principal amount outstanding and shall not extend or postpone the due date of any
subsequent monthly installments or change the amount of such installments, unless
the holder hereof shall otherwise agree in writing.

Presentment, notice of dishonor, and protest are hereby waived by all makers,
sureties, guarantors and endorsers hereof. This Note shall be the joint and several
obligation of all makers, sureties, guarantors and endorsers, and shall be binding
upon them and their heirs, personal representatives, successors and assigns.

The indebtedness evidenced by this Note is secured by a Deed of Trust, dated
of even date herewith, and reference is made thereto for rights as to acceleration of
the indebtedness evidenced by this Note.

.....
Property Address

APPENDIX E

CALIFORNIA-FNMA
FORM NO. 1080.04

DEED OF TRUST

THIS DEED OF TRUST is made this day of, 19...., among the Trustor, (herein "Borrower"), (herein "Trustee"), and the Beneficiary,, a corporation organized and existing under the laws of, whose address is (herein "Lender").

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of State of California:

[Space for description]

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate in the event this Deed of Trust is on a leasehold) are herein referred to as the "Property";

TO SECURE to Lender (a) the repayment of the indebtedness evidenced by Borrower's note of even date herewith (herein "Note"), in the principal sum of Dollars, with interest thereon, providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained; and (b) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to paragraph 20 hereof (herein "Future Advances").

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

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

[Paragraphs 1 through 16 are identical with those in Appendix B.]

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

17. Acceleration; Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 14 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the

Property. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable 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 reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 17, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, 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 such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold 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 reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

18. **Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust, the Note and notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

19. **Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this

Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

20. Future Advances. Upon request of Borrower, at Lender's option prior to full reconveyance of the Property by Trustee to Borrower, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

21. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

22. Substitute Trustee. Lender at Lender's option may from time to time remove Trustee and appoint a successor to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

23. Request for Notices. Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address which is the Property Address stated below.

24. Statement of Obligation. Lender may collect a fee not to exceed \$15 for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

.....
-Borrower

.....
Property Address

[Acknowledgment]

REQUEST FOR RECONVEYANCE

TO TRUSTEE:

The undersigned is the holder of the note or notes secured by this Deed of Trust. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Date:

APPENDIX F

SAMPLES OF NONUNIFORM ACCELERATION CLAUSES
IN TRUST DEED STATES

1. TEXAS (FNMA)

17. Acceleration Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due sums secured by this Deed of Trust, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 14 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. If the breach is not cured on or before the date specified in the notice,

Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable 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 reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 17, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall mail or cause Trustee to mail a copy of a notice of sale to Borrower as provided in paragraph 14 hereof. Trustee shall give notice of the time, place and terms of sale by posting written notice thereof for three consecutive weeks prior to the day of sale in three public places in the county in which the Property is situated, one of which shall be made at the courthouse door of said county. Such sale shall be made at public vendue between the hours of 10 o'clock a.m. and 4 o'clock p.m. of the first Tuesday in any month at the courthouse door of the county in which the Property is situated. Borrower authorizes Trustee to sell the Property to the highest bidder for cash in one or more parcels and in such order as Trustee may determine. Lender may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold in fee simple with covenants of general warranty. Borrower covenants and agrees to defend generally the purchaser's title to the Property against all claims and demands. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements contained therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's fees and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

If the Property is sold pursuant to this paragraph 17, Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at such sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession.

2. TENNESSEE (FNMA)

17. Acceleration; Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 14 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable 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 reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 17, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Trustee shall give notice of sale by public advertisement for the time and in the manner provided by applicable law, and Lender or Trustee shall mail a copy of the notice to Borrower in the manner provided in paragraph 14 hereof. Trustee, without demand on Borrower, shall sell the Property at the time and under the terms designated in the notice of sale at public auction to the highest bidder. Lender or Lender's designee may purchase the property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold 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 reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

3. MARYLAND (FNMA)

17. Acceleration; Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 14 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable 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 reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 17, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall mail or cause Trustee to mail written notice of sale to Borrower in the manner prescribed by applicable law. Trustee shall give notice of sale by public advertisement for the time and in the manner prescribed by applicable law. 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 such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender, or Lender's designee, may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold 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 costs and expenses of the sale, including, but not limited to, Trustee's fees of . . . % of the gross sale price, reasonable attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

4. CALIFORNIA (see Appendix E)

**APPENDIX G
NOTE**

ILLINOIS—FHLMC—1 to 4 family

US \$, Illinois
City
., 19

FOR VALUE RECEIVED, the undersigned promise to pay
. or order, the principal sum of
. Dollars, with interest
on the unpaid principal balance from the date of this Note, until paid, at the rate
of percent per annum. The principal and interest shall be payable at
. or such other place as the holder
hereof may designate in writing, in consecutive monthly installments of
. Dollars (US \$), on the day of each month

beginning 19...., until the entire indebtedness evidenced hereby is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable on the day of

If any monthly installment under this Note is not paid when due and remains unpaid after a date specified by a notice sent by certified mail to the undersigned at the address stated below, which date shall be not less than thirty days from the date such notice is mailed, the entire principal amount outstanding hereunder and accrued interest thereon shall at once become due and payable at the option of the holder hereof. Failure to exercise such option shall not constitute a waiver of the right to exercise such option if the undersigned is in default hereunder. In the event of any default in the payment of this Note and if suit is brought hereon, the holder hereof shall be entitled to collect in such proceeding all reasonable costs and expenses of suit, including, but not limited to, reasonable attorney's fees.

The undersigned shall pay to the holder hereof a late charge of percent of any monthly installment not received by the holder hereof within days after the installment is due.

The undersigned shall have the right to prepay the principal amount outstanding in whole or in part, provided that the holder hereof may require that any partial prepayments shall be made on the date monthly installments are due and shall be in the amount of that part of one or more installments which would be applicable to principal. Any partial prepayment shall be applied against the principal amount outstanding and shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments, unless the holder hereof shall otherwise agree in writing. If, within five years from the date of this Note, the undersigned makes any prepayments in any twelve month period beginning with the date of this Note or anniversary dates thereof ("loan year") with money lent to the undersigned by a lender other than the holder hereof, the undersigned shall pay the holder hereof (a) during each of the first three loan years percent of the amount by which the sum of prepayments made in any such loan year exceeds 20 percent of the original principal amount of this Note and (b) during the fourth and fifth loan years percent of the amount by which the sum of prepayments made in any such loan year exceeds 20 percent of the original principal amount of this Note.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof. This Note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, personal representatives, successors and assigns.

The indebtedness evidenced by this Note is secured by a Mortgage, dated of even date herewith, and reference is made thereto for rights as to acceleration of the indebtedness evidenced by this Note.

.....
Property Address

APPENDIX H MORTGAGE

ILLINOIS-FHLMC-1 to 4 Family

THIS MORTGAGE is made this day of, 19...., between the Mortgagor, (herein "Borrower"), and the Mortgagee, a corporation organized and existing under the laws of, whose address is (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of Dollars, which indebtedness is evidenced by Borrower's note of even date herewith (herein "Note"), providing for monthly

installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on

To SECURE to LENDER (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Borrower herein contained, and (b) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to paragraph 21 hereof (herein "Future Advances"), Borrower does hereby mortgage, grant and convey to Lender the following described property located in the County of, State of Illinois:

[Space for description]

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate in the event this Mortgage is on a leasehold) are herein referred to as the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

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

[Paragraphs 1 through 16 are identical with those in Appendix B.]

17. Transfer of the Property; Assumption. If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Lender and that the interest payable on the sums secured by this Mortgage shall be at such rate as Lender shall request. If Lender has waived the option to accelerate provided in this paragraph 17 and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Mortgage and the Note.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 14 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 18 hereof.

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

18. Acceleration; Remedies. Except as provided in paragraph 17 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 14

hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorney's fees, and costs of documentary evidence, abstracts and title reports.

[Paragraphs 19 through 25 are identical with paragraphs 18 through 22 of Appendix B.]

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

.....
-Borrower

.....
Property Address

[Acknowledgment]

Exhibit 2

COPY
Original Filed
AUG 27 2015
Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

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SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

In Re the Real Property Located at:

1314 E. JOSEPH AVE., SPOKANE, WA
99207

No. 152034 92-2

VERIFIED PETITION TO APPOINT
CUSTODIAL RECEIVER

THE CITY OF SPOKANE, Petitioner, alleges and moves as follows:

1. Relief Requested.

The City of Spokane ("City") requests the Court appoint a custodial receiver over the real property located at 1314 E. Joseph Ave., Spokane, Washington 99207 ("Property").

2. Grounds and Basis.

The City's request is based upon RCW 7.60, which permits the Court to appoint a custodial receiver to take limited charge of specific property as necessary to provide an adequate remedy to the parties. In this instance, a receiver is necessary because abandoned property is being inhabited by trespassers and no owner exists who can authorize the City to abate the nuisance and destruction occurring at the Property. As such, the City cannot comply with its own ordinances requiring the execution of a "DO NOT OCCUPY" order at the Property.

The City is a municipality in Spokane County organized pursuant to the laws of Washington State. The Office of Neighborhood Services & Code Enforcement ("Code

COPY

1 Enforcement") is a department within the City, and the Property is located within Spokane's city
2 limits. Venue and jurisdiction are proper in Spokane County pursuant to RCW 7.60.

3 **3. Facts.**

4 3.1 The Property is owned by Bud W. Brown. Mr. Brown died intestate and without
5 heirs in January, 2013. The Property has been abandoned since his death. Attached hereto and
6 incorporated herein by this reference as "Exhibit A" is a true and accurate copy of a Parcel
7 Information Search performed in the public records on August 14, 2015.

8 3.2 CitiMortgage, Inc. ("Citi") claims to hold the primary deed of trust on the
9 Property. On March 3, 2015, Citi obtained a Default Judgment against the Estate of Bud W.
10 Brown and "all other persons . . . claiming any right, title, interest, lien or estate in the" Property
11 in the amount of \$61,652.33. Subsequent to entry of that judgment, Citi has obtained two orders
12 of sale commanding it to sell the Property within 60 days. The first Order of Sale was entered
13 May 22 and the Second Order of Sale was entered July 23. On August 10, Citi obtained an
14 "Attachment of Real Estate" whereby the Spokane County Sheriff levied upon the Property for
15 the benefit of Citi. Attached hereto and incorporated herein by this reference as "Exhibit B" are
16 true and accurate copies of the aforementioned Default Judgment, Orders of Sale, and
17 Attachment of Real Estate.
18

19 3.3 The Property has been a problem for Code Enforcement for several years. Most
20 recently, between May 13 and August 13, fifteen incidents requiring police presence have
21 occurred at the Property; more than one every week. Those incidents range from neighbors'
22 request to remove trespassers to shots fired at the Property.
23
24

1 3.4 Code Enforcement has been in contact with Citi regarding the Property since
2 June, 2013. Most recently, on March 31 and August 14, 2015, Code Enforcement requested that
3 Citi secure the Property. Both requests were made by email to Citi's Code Violations contact
4 Melissa Hillery. Both requests were refused by Citi. Attached hereto and incorporated herein by
5 this reference as "Exhibit C" are true and accurate copies of the aforementioned emails.

6 3.5 On July 30, 2015, Code Enforcement Deputy Building Official Dan Skindzier
7 conducted a Summary Hearing relating to the Property. On August 14, Mr. Skindzier entered his
8 "Notice of Summary Hearing" finding seven categories of violations of the Spokane Municipal
9 Code relating to the Property including dilapidation of structures, unsanitary conditions,
10 defective and inoperable plumbing, lack of water or power, defects increasing hazards of fire and
11 other accidents, and transient and/or squatter activity at the Property. Mr. Skindzier ordered that
12 the City take emergency action to execute a "DO NOT OCCUPY" order to remove all tenants
13 and board the Property securely. Mr. Skindzier's Notice containing his findings and order were
14 attached to the email sent to Citi on August 14. Attached hereto and incorporated herein by this
15 reference as "Exhibit D" is a true and accurate copy of the aforementioned Notice of Summary
16 Hearing.

17
18 3.6 Currently, there are one or more individuals squatting at the Property. These
19 individuals are not the Property's owners and are living in the Property without water, power, or
20 sewer services. Code Enforcement's physical investigations conducted between March and July,
21 2015 have uncovered significant health and safety hazards at the Property which present a danger
22 to the Property's occupants and neighboring properties.
23
24

1 3.7 Code Enforcement is unable to execute the DO NOT OCCUPY order because the
2 Spokane Police Department cannot and will not enter the Property and remove trespassers
3 without a police report being made or confirmed by the undisputed owner of the Property. That
4 report cannot be obtained as the owner, Mr. Brown, is deceased.

5 3.8 Further, despite having legal authority to do so since at least May 22, Citi has not
6 foreclosed on the Property nor has it responded to Code Enforcement's requests to secure the
7 property from further trespass, depletion, hazard, and waste.

8
9 **4. Argument.**

10 **4.1 Appointment of a custodial receiver.**

11 Washington's receivership statute, RCW 7.60, permits the Court to appoint a custodial
12 receiver over abandoned real property in the present circumstances. That statute creates two
13 kinds of receiver, general and custodial. See RCW 7.60.015. A receiver is a custodial receiver if
14 the receiver "is appointed to take charge of limited or specific property of a person or is not
15 given authority to liquidate property." Id.

16 RCW 7.60.025(1)(g) provides the general and specific grounds for appointing a receiver
17 applicable here:

18 A receiver may be appointed by the superior court of this state in the following
19 instances, but . . . a receiver shall be appointed only if the court additionally
20 determines that the appointment of a receiver is reasonably necessary and that
other available remedies are not available or are inadequate:

21 . . .
(g) Upon an attachment of real . . . property when the property attached is . . . in
22 danger of waste, impairment, or destruction, or where the abandoned property's
owner has absconded with, secreted, or abandoned the property, and it is
23 necessary to collect, conserve, manage, control, or protect it, or to dispose of it
promptly, or when the court determines that the nature of the property or the
24 exigency of the case otherwise provides cause for the appointment of a receiver.

1 That statute goes on to permit the appointment of a receiver "[i]n such other cases as may be
2 provided for by law, or when, in the discretion of the court, it may be necessary to secure ample
3 justice to the parties." RCW 7.60.025(1)(nn).

4 **4.2 Inability to eject non-owners and secure Property.**

5 Mr. Brown died in January, 2013. Since then, the Property has been without an owner
6 and is, in the truest sense of the word, abandoned. Code Enforcement is aware that non-owners
7 are living at the Property in the deplorable conditions outlined in this Petition. Code Enforcement
8 is also aware Citi has yet to actually foreclose its lien and take ownership of the Property.

9 However, Code Enforcement cannot execute the DO NOT OCCUPY order commanded
10 by Mr. Skindzier without police intervention. But Spokane Police will not intervene without a
11 request to do so by the Property's owner. This conundrum can only be solved by the appointment
12 of a custodial receiver imbued with the limited power of an owner to make such a report to law
13 enforcement so that Code Enforcement may do its duty.

14 **4.3 The circumstances justify appointment of a custodial receiver.**

15 The Property is in an uninhabitable condition, is dangerous, is not secure, and is a hazard
16 to occupants and neighbors. Law enforcement has been called to the property repeatedly,
17 including potentially violent situations, and the Property's neighbors are in distress.

18 No entity exists that is willing and legally able to request that law enforcement evict all
19 trespassers so that Code Enforcement may secure the premises. The City asks that this Court
20 create such an entity by appointing a custodial receiver. All of the legal requisites for doing so
21 are met.

22 As required by RCW 7.60.025(1), the appointment of a custodial receiver is "reasonably
23 necessary" so that the proper reports can be made to law enforcement, and no other remedy is
24

1 available because Citi has refused to foreclose or secure the Property itself. Also, the Property
2 has been "attached" by Citi, is in danger of waste, impairment, or destruction, is abandoned by its
3 owner, and must be secured against future trespass to avoid further waste and nuisance. As such,
4 RCW 7.60.025(1)(g) is satisfied and appropriate grounds exist to appoint a receiver. To the
5 extent additional grounds are required, the request satisfies RCW 7.60.025(1)(nn) because ample
6 justice cannot be done for Citi or Mr. Brown's estate without securing the property against
7 further trespass. Only a custodial receiver could do so at this point.

8 **4.4 The receiver's powers and duties should be very limited.**

9 RCW 7.60.060 confers a number of powers and duties upon a court-appointed receiver
10 which may be expanded or limited by order of the Court. The receiver's powers range from the
11 payment of receivership expenses to the right to assert claims against third parties, see RCW
12 7.60.060(1), and additional powers "may be conferred upon the receiver by the court". RCW
13 7.60.060(1)(j). The receiver's duties deal primarily with notification to other parties, see RCW
14 7.60.060(2), and may also be expanded by the Court. Additionally, RCW 7.60.060(3)
15 specifically permits the "various powers and duties of a receiver . . . [to] be expanded, modified,
16 or limited by order of the court for good cause shown."

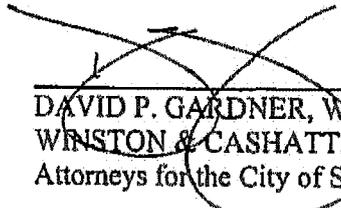
17
18 Here, the City seeks to have a custodial receiver appointed for the sole purpose of
19 verifying the Property is being occupied by a non-owner and, then, contacting law enforcement
20 to trespass the non-owner so that Code Enforcement may execute the DO NOT OCCUPY order.
21 The receiver will not take control or occupancy of the Property, insure the Property, or pursue
22 claims or rights relating to the Property, other than performing the necessary investigation to
23 verify the Property is in such a condition as to require notifying the authorities and making such
24 a report. No further action is sought or required of the receiver. As such, good cause exists to

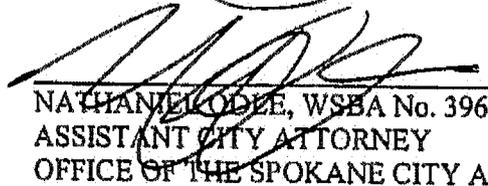
1 limit the receiver's powers and duties per RCW 7.60.060(3) in the manner proposed in the
2 Proposed Order filed herewith.

3 **5. Conclusion.**

4 The City requests the Court enter the Proposed Order submitted with this Petition
5 appointing a Custodial Receiver over the Property.

6 DATED this 07 day of August, 2015.

7
8 
9 _____
10 DAVID P. GARDNER, WSBA No. 39331
11 WINSTON & CASHATT, LAWYERS
12 Attorneys for the City of Spokane

13 
14 _____
15 NATHANIEL ODDE, WSBA No. 39602
16 ASSISTANT CITY ATTORNEY
17 OFFICE OF THE SPOKANE CITY ATTORNEY
18 Attorney for the City of Spokane

19 [Verification and Notarization to follow.]
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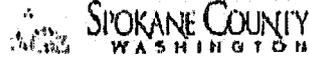
CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the 26th day of August, 2015, at Spokane, Washington, the foregoing was caused to be served on the following person(s) in the manner indicated:

Occupant 1314 E. Joseph Avenue Spokane, WA 99207	VIA REGULAR MAIL VIA CERTIFIED MAIL HAND DELIVERED BY FACSIMILE VIA FEDERAL EXPRESS VIA EMAIL	<input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Spokane County Sheriff's Office 1100 West Mallon Spokane, WA 99260	VIA REGULAR MAIL VIA CERTIFIED MAIL HAND DELIVERED BY FACSIMILE VIA FEDERAL EXPRESS VIA EMAIL	<input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Citimortgage, Inc. c/o Bishop, Marshall & Weibel, P.S. 720 Olive Way, Suite 1201 Seattle, WA 98101	VIA REGULAR MAIL VIA CERTIFIED MAIL HAND DELIVERED BY FACSIMILE VIA FEDERAL EXPRESS VIA EMAIL	<input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>


Cassandra M. Williams
Paralegal

EXHIBIT A


Search



Parcel Information Search

Spokane
County
1116 W.
Broadway
Spokane, WA
99260 [Contact Us](#)

[Home](#) > [County Index](#) > [Parcel Information Search](#) > [Parcel Summary](#)

Search by Address [Enter Address](#) Or by Parcel [Enter Parcel Number](#)

[Advanced Search](#) [Sales Search](#) [Comparable Sales](#) [Help](#)

[Summary](#) [Sketch](#) [Notices](#) [Maps](#) [Parcel Photos](#) [Set / Merge](#) [Taxes](#) [Interactive Map](#)

[Print Summary w/No Graphs](#)

All Data As Of: 08/14/2015

Parcel Number: 36321.2302



View Parcel Maps in Spokane County SCOUT



Map Type

731

SPOKANE

CONTACT INFO	OWNER INFORMATION						
Owner/Name	Address 1	Address 2	City	State	Zip	Country	Address Change
BROWN, BUD W	1314 E JOSEPH AVE		SPOKANE	WA	99207		Change Form

CONTACT INFO	TAXPAYER INFORMATION						
Taxpayer/Name	Address 1	Address 2	City	State	Zip	Country	Name/Address Change
BROWN, BUD W	1314 E JOSEPH AVE		SPOKANE	WA	99207-3482	USA	Change Form

CONTACT INFO	SITE ADDRESS INFORMATION							
Parcel Type	Site Address	City	Land Size	Size Description	Description	Tax Year	Tax Code Area	Status
Real	1314 E JOSEPH AVE	SPOKANE	6,340.00	Square Foot	11 Single Unit	2015	0010	Active

Assessor Description
LANCASTERS 2ND ALL L4; E1 5FT OF S60FT L5 B14

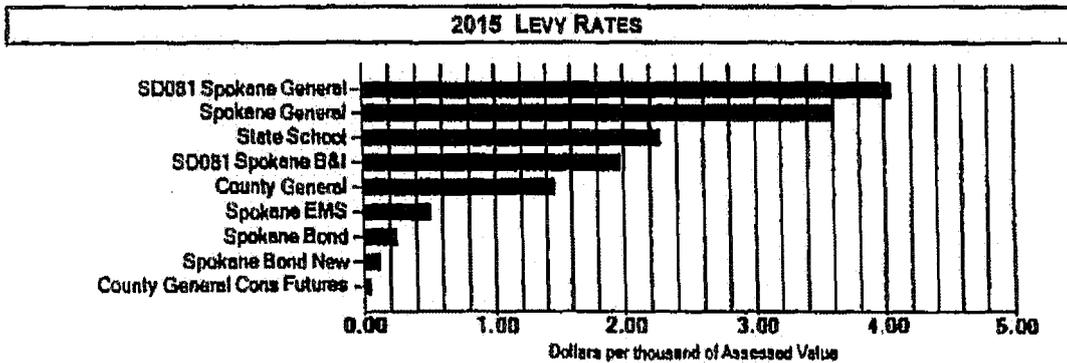
CONTACT INFO	APPRAISAL INFORMATION
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Parcel Class	Appraiser	Contact Your Appraiser	Neighborhood Code	Neighborhood Name	Neighborhood Desc	Appraiser Name	Appraiser Phone
11 Single Unit	11B	Click here to send a question to the appraiser	113814	GARRY	CITY-N1/2,SW1/4 32-28-4	Jay	477-5908

Assessed Value

Tax Year	Land	Dwelling / Structure	Current Use Land	Taxable	Personal Prop	Total Value
2015	20,000	45,500	0	65,500	0	65,500
2015	20,000	44,400	0	64,400	0	64,400
2014	23,500	48,100	0	71,600	0	71,600
2013	23,500	46,100	0	69,600	0	69,600
2012	23,500	50,800	0	74,100	0	74,100
2011	23,500	52,300	0	75,800	0	75,800

CONTACT INFO		LEVY INFORMATION			
Levy Name	Levy Rate 2014	Levy Rate 2015	Levy Type	Tax ID	
County General	1.3022	1.4665	Non-Voted	0010	
County General Cons Futures	0.0472	0.0487	Non-Voted	0010	
Spokane EMS	0.5000	0.5000	Non-Voted	0010	
Spokane General	3.0301	3.8000	Non-Voted	0010	
State School	2.3730	2.2540	Non-Voted	0010	
SD081 Spokane B&I	1.8554	1.8547	Voted	0010	
SD081 Spokane General	4.0806	4.0533	Voted	0010	
Spokane Bond	0.8008	0.2387	Voted	0010	
Spokane Bond New		0.1104	Voted	0010	
Totals:	14.1991	14.2372			



CONTACT INFO		CHARACTERISTICS									
Is there an error in the data? Click here to tell your appraisers. Click here to view the sketch.											
Dwelling/ Structure	Yr Bilt	Yr Remod	Size	Type	House Type	Roof Material	Heat	Cool	Bedrms	Half Bath	Full Bath
Dwelling	1910	1984						None	2	0	1

	See Residential Sq Ft Breakdown	41 Ranch 750-999 0	Comp sh heavy	Forced hot air			
Residential Sq Ft Breakdown				Sq Ft	Extension		
1st Floor				967	R01		
Total Sq Ft				967			
Land Number	Soil Id	Acreage	Sq Ft	Frontage	Depth	Lot(s)	
1	R1SL	0.15	6,340	0	0	1	

CONTACT INFO	SALES INFORMATION			
Sale Date	Sale Price	Sale Instrument	Easement Number	
Click here to view past sales prior to 1999.				

CONTACT INFO	PROPERTY TAXES			
---------------------	-----------------------	--	--	--

Taxes are due April 30th and October 31st
[Click here to go to the Spokane County Treasurer's website.](#)
Partial tax on public easements.
[Click here to make an online payment.](#)

Tax Year	Charge Type	Annual Charges	Remaining Charges Owning
2015	A/V Property Tax	816.07	468.44
2015	Soil Conservation Principal CNSV1	6.02	2.61
2015	Weed Control Principal WCWEED1	1.80	0.90
Sum		823.89	481.95
2014	A/V Property Tax	1,016.85	0.00
2014	Soil Conservation Principal CNSV3	5.00	0.00
Sum		1,021.85	0.00
2013	A/V Property Tax	973.07	0.00
2013	Soil Conservation Principal CNSV3	5.00	0.00
Sum		978.07	0.00
2012	A/V Property Tax	1,019.92	0.00
2012	Soil Conservation Principal CNSV3	5.00	0.00
Sum		1,024.92	0.00
Total			481.95

[Click here to make an online payment.](#)

CONTACT INFO	TAX RECEIPTS			
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Tax Year	Receipt #	Receipt Date	Receipt Amount
2015	6459859	04/24/2015	481.94
2014	6246661	10/29/2014	510.83
2014	6078148	04/25/2014	510.82
2013	5908004	10/29/2013	489.44
2013	5897979	04/26/2013	489.43

Spokane County Assessor's Office
 1116 West Broadway Avenue
 County Courthouse, 1st Floor
 Spokane, WA 99260

Spokane County Treasurer's Office
 1116 West Broadway Avenue
 County Courthouse, 2nd Floor
 Spokane, WA 99260

Assessor's Information	Treasurer's Information
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EXHIBIT B

FILED

MAR 03 2015

SPOKANE COUNTY CLERK

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

CITIMORTGAGE, INC.,

Plaintiff,

vs.

Case No. 14-2-00458-8

DEFAULT JUDGMENT AND
DECREE OF FORECLOSURE

[Proposed]

THE ESTATE OF BUD W. BROWN,
DECEASED; THE UNKNOWN HEIRS AND
DEVISEES OF BUD W. BROWN,
DECEASED; JANE DOE BROWN, SPOUSE
OF BUD W. BROWN, DECEASED;
AMERICAN GENERAL FINANCE, INC.;
DEPARTMENT OF SOCIAL AND HEALTH
SERVICES, FINANCIAL SERVICES
ADMINISTRATION, OFFICE OF
FINANCIAL RECOVERY; JOHN AND
JANE DOES, I THROUGH V, OCCUPANTS
OF THE SUBJECT REAL PROPERTY, AND
ALSO ALL OTHER PERSONS OR
PARTIES UNKNOWN, CLAIMING ANY
RIGHT, TITLE, INTEREST, LIEN OR
ESTATE IN THE PROPERTY HEREIN
DESCRIBED,

Defendants.

JUDGMENT SUMMARY

Judgment Creditor:

Citimortgage, Inc

Attorneys for Judgment Creditor:

Bishop, Marshall & Weibel, P.S.

DEFAULT JUDGMENT FOR DECREE
OF FORECLOSURE - 1

BISHOP, MARSHALL & WEIBEL, P.S.
720 Olive Way, Suite 1201
Seattle, WA 98101
(206) 622-5306 Fax: (206) 622-0354

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Judgment Debtor:	The Estate of Bud W. Brown, Deceased (In Rem)	
Principal Judgment Amount:		\$42,192.19
Interest from 1/1/13 to 1/2/15: Per diem: \$8.67		\$6,337.47
Interest from 1/3/15 to 2/24/15: Per diem: \$8.67		\$450.82
Attorney's Fees:		\$2,500.00
Costs:		\$2,602.92
	Filing Fee: \$330.00	
	Certified Copy Fee: \$10.00	
	Title Fees: \$525.60	
	Process Service: \$1,158.32	
	Recording Fee: \$79.00	
	Publication Fee: \$437.00	
	Records Search: \$63.00	
Other Recoverable Amounts:		
	Property Inspection: \$97.00	\$3,788.96
	Property Preservation: \$3,691.96	
Escrow Advances:		\$3,779.97
	Property Taxes: \$1,511.09	
	Hazard Insurance: \$2,268.88	
TOTAL JUDGMENT		\$61,652.33

Post judgment interest shall accrue at the rate of 7.50% per annum on the total Judgment.

THIS MATTER came on for consideration by Plaintiff CitiMortgage, Inc.'s, ("CitiMortgage") Motion for Default Judgment and Decree of Foreclosure against the real property below described on this date before the undersigned Judge/Court Commissioner. The Court having reviewed the Plaintiff's Motion, Affidavit in Support of Judgment and

DEFAULT JUDGMENT FOR DECREE
OF FORECLOSURE - 2

BISHOP, MARSHALL & WEIBEL, P.S.
720 Olive Way, Suite 1201
Seattle, WA 98101
(206) 622-5306 Fax: (206) 622-0354

1 Decree of Foreclosure, and Declaration of Counsel filed in support thereof, and the
2 records and pleadings on file herein, and being fully advised, hereby

3 FINDS that the allegations of the Complaint are true; that no genuine issue exists as
4 to any material fact and that Plaintiff is entitled to Judgment as a matter of law; that no
5 just reason exists for delay and that Judgment should be entered in favor of Plaintiff
6 forthwith as more particularly herein set forth. It is therefore,

7 ORDERED, ADJUDGED AND DECREED as follows:

8 1. That Plaintiff CitiMortgage, Inc. is awarded Judgment against The Estate of
9 Bud W. Brown, Deceased, (In Rem) and against the real property described below in the
10 principal sum of \$42,192.19 together with interest at 7.50% per annum from date of default
11 to date of entry of this Judgment; reasonable attorney's fees in the amount of \$2,500.00;
12 and Plaintiff's costs and disbursement herein to be taxed. Said Judgment shall bear interest
13 at 7.50% per annum until paid.

14 2. That the certain Deed of Trust (hereinafter called "security instrument")
15 executed and delivered by the Defendant Bud W. Brown, a Single Person, under date
16 September 10, 1997, in favor of Pacwest Services, Inc., the Lender; encumbering the
17 property legally described as follows:

18 LOT 4; AND THE EAST 1.5 FEET OF THE SOUTH 60 FEET OF LOT 5,
19 BLOCK 14, LANCASTER'S SECOND ADDITION, AS PER PLAT
20 RECORDED IN VOLUME "B" OF PLATS, PAGES 70 AND 71, RECORDS
OF SPOKANE COUNTY;

21 SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE, STATE OF
22 WASHINGTON.

23 commonly known as: 1314 E Joseph Ave., Spokane, WA 99207, which Deed of Trust was
24 recorded in the Official Records of Spokane County on September 16, 1997, under Auditor's

25 DEFAULT JUDGMENT FOR DECREE
OF FORECLOSURE - 3

BISHOP, MARSHALL & WEIBEL, P.S.
720 Olive Way, Suite 1201
Seattle, WA 98101
(206) 622-5306 Fax: (206) 622-0354

1 File No. 4141729, and subsequently assigned to CitiMortgage, Inc. under an Assignment
2 Deed of Trust Dated September 18, 2000, and recorded in the Official Records of Spokane
3 County, Washington, on July 9, 2002 under Auditor's Number 4747225, is hereby
4 adjudged and decreed to be a valid, subsisting, first, prior and paramount lien upon the real
5 property above-described, prior and superior to any and all right, title, interest, lien or
6 estate of the Defendants, or any of them, or of anyone claiming by, through or under them
7 in and to said real property, securing instrument by, and the same is hereby foreclosed and
8 the real property therein described is hereby ordered to be sold by the Sheriff of Spokane
9 County, Washington, in the manner provided by law for mortgage/deed of trust
10 foreclosures and in accordance with the practice of this Court; that the proceeds of such
11 sale should be applied toward the payment of the Judgment rendered herein in favor of
12 Plaintiff together with interest, any costs and increased costs or sale; any advances that
13 Plaintiff may be required to pay after the entry of Judgment herein for taxes, assessment,
14 other items constituting liens against the property, insurance and/or repairs for the
15 protection of the property;
16

17 3. That Plaintiff hereby waives its right to any deficiency judgment against
18 The Estate of Bud W. Brown, Deceased;

19 4. That the Plaintiff be and it is hereby permitted to become a bidder and
20 purchaser at such sale;

21 5. That the purchaser at such sale shall be entitled to the sole and immediate
22 possession of said real property subject only to such rights or redemption and rights of
23 possession during the redemption period as are provided by law;
24

25 **DEFAULT JUDGMENT FOR DECREE
OF FORECLOSURE - 4**

BISHOP, MARSHALL & WEIBEL, P.S.
720 Olive Way, Suite 1201
Seattle, WA 98101
(206) 622-5306 Fax: (206) 622-0354

1 6. That the Defendants, and any and all persons claiming by, through or under
2 them be, and the same are hereby, forever barred and foreclosed from any and all right,
3 title, interest, lien or estate in and to said real property, or any part thereof, save only such
4 rights or redemption as are provided by law;

5 7. That any and all persons acquiring any right, title, interest, lien or estate in
6 and to the real property above-described, or any part thereof, subsequent to September 10,
7 1997, the date of the Plaintiff's security interest which is foreclosed herein be, and they are
8 hereby foreclosed of any such right, title, interest, lien or estate as against the Plaintiff in
9 this action or any successor thereto; that all right, title and interest in and to any policy of
10 hazard insurance insuring the said premises shall pass to the purchaser at such sheriff's sale
11 at the time of such sale;

12 8. That the Property is hereby declared to be abandoned as defined under
13 RCW 61.12.093.

14 9. That the redemption period from such sheriff's sale be, and the same is
15 hereby, fixed at a zero month redemption period, and the sheriff shall issue the sheriff's
16 deed to the purchaser at such sale immediately upon the entry of an order by this Court
17 confirming such sale; and
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FILED
MAY 22 2015
Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

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

CITIMORTGAGE, INC.,
Plaintiff,
vs.
THE ESTATE OF BUD W. BROWN,
DECEASED; THE UNKNOWN HEIRS AND
DEWISEES OF BUD W. BROWN, DECEASED;
JANE DOE BROWN, SPOUSE OF BUD W.
BROWN, DECEASED; AMERICAN GENERAL
FINANCE, INC.; DEPARTMENT OF SOCIAL
AND HEALTH SERVICES, FINANCIAL
SERVICES ADMINISTRATION, OFFICE OF
FINANCIAL RECOVERY; JOHN AND JANE
DOES, I THROUGH V, OCCUPANTS OF THE
SUBJECT REAL PROPERTY, AND ALSO ALL
OTHER PERSONS OR PARTIES UNKNOWN,
CLAIMING ANY RIGHT, TITLE, INTEREST,
LIEN OR ESTATE IN THE PROPERTY HEREIN
DESCRIBED,
Defendants.

Case No. 14-2-00458-8
ORDER OF SALE

THE STATE OF WASHINGTON, to the Spokane County Sheriff:

WHEREAS, in the above-entitled Court, on the March 3, 2015, Plaintiff,
CitiMortgage, Inc., recovered a Default Judgment against The Estate of Bud W. Brown,
deceased (In Rem), and against the real property in the amount of \$61,652.33, plus interest
at the rate of 7.50% per annum from March 3, 2015; which said judgment is entered in
ORDER OF SALE -

Marshall & Weibel, P.S. f/k/a Bishop, Marshall & Weibel,
P.S. 720 Olive Way, Suite 1201
Seattle, WA 98101
(206) 622-5306 Fax: (206) 622-0354

1 Execution Docket of the Superior Court as Judgment Number 15-9-01437-4 and which
2 there is now due and owing \$61,652.33, not including post judgment interest; and whereas
3 the said judgment is a foreclosure with a zero (0) month redemption period, against the
4 Defendant herein of a deed of trust on the following described property, situated in Spokane
5 County, State of Washington, to-wit:

6 THE STATE OF WASHINGTON, to the Sheriff of Spokane County:

7 LOT 4; AND THE EAST 1.5 FEET OF THE SOUTH 60 FEET OF LOT 5,
8 BLOCK 14, LANCASTER'S SECOND ADDITION, AS PER PLAT
9 RECORDED IN VOLUME "B" OF PLATS, PAGES 70 AND 71,
10 RECORDS OF SPOKANE COUNTY;

11 SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE,
12 STATE OF WASHINGTON.

13 APN: 36321-2302

14 Commonly known as: 1314 E Joseph Ave., Spokane, WA 99207.

15 THEREFORE, in the name of the State of Washington, you are hereby commanded
16 to proceed to seize and sell forthwith, and without appraisalment, the above-described
17 property, in the manner provided by law; or so much thereof as may be necessary to satisfy
18 the judgment, interest and costs, and any advances that Plaintiff, CitiMorgage Inc., may be
19 required after the entry of judgment to make for the payment of taxes, assessments, other
20 items constituting liens on the property, insurance, and/or repairs for the protection or
21 preservation of the property; and if you fail to find said property and if the judgment herein
22 provides for deficiency and the proceeds of such sale be insufficient to satisfy said
23 judgment, costs and any accrued and increased costs, you are directed to take the money or

24
25 ORDER OF SALE - 2

Marshall & Weibel, P.S. f/k/a Bishop, Marshall & Weibel,
P.S.720 Olive Way, Suite 1201
Seattle, WA 98101
(206) 622-5306 Fax: (206) 622-0354

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

CITIMORTGAGE, INC.,

Plaintiff,

vs.

THE ESTATE OF BUD W. BROWN,
DECEASED; THE UNKNOWN HEIRS AND
DEVISEES OF BUD W. BROWN, DECEASED;
JANE DOE BROWN, SPOUSE OF BUD W.
BROWN, DECEASED; AMERICAN GENERAL
FINANCE, INC.; DEPARTMENT OF SOCIAL
AND HEALTH SERVICES, FINANCIAL
SERVICES ADMINISTRATION, OFFICE OF
FINANCIAL RECOVERY; JOHN AND JANE
DOES, I THROUGH V, OCCUPANTS OF THE
SUBJECT REAL PROPERTY, AND ALSO ALL
OTHER PERSONS OR PARTIES UNKNOWN,
CLAIMING ANY RIGHT, TITLE, INTEREST,
LIEN OR ESTATE IN THE PROPERTY HEREIN
DESCRIBED,

Defendants.

Case No. 14-2-00458-8

SECOND ORDER OF SALE

THE STATE OF WASHINGTON, to the Spokane County Sheriff:

WHEREAS, in the above-entitled Court, on the March 3, 2015, Plaintiff,
CitiMortgage, Inc., recovered a Default Judgment against The Estate of Bud W. Brown,
deceased (In Rem), and against the real property in the amount of \$61,652.33, plus interest

SECOND ORDER OF SALE - I

ORIGINAL

WEINSTEIN & RILEY, P.S.
2001 Western Avenue, Suite 400
Seattle, Washington 98121
Telephone: (206) 269-3490
Facsimile: (206) 269-3493

1 at the rate of 7.50% per annum from March 3, 2015; which said judgment is entered in
2 Execution Docket of the Superior Court as Judgment Number 15-9-01437-4 and which
3 there is now due and owing \$61,652.33, not including post judgment interest; and whereas
4 the said judgment is a foreclosure with a zero (0) month redemption period, against the
5 Defendant herein of a deed of trust on the following described property, situated in Spokane
6 County, State of Washington, to-wit:

7 THE STATE OF WASHINGTON, to the Sheriff of Spokane County:

8
9 LOT 4; AND THE EAST 1.5 FEET OF THE SOUTH 60 FEET OF LOT 5,
10 BLOCK 14, LANCASTER'S SECOND ADDITION, AS PER PLAT
11 RECORDED IN VOLUME "B" OF PLATS, PAGES 70 AND 71,
12 RECORDS OF SPOKANE COUNTY;

13
14 SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE,
15 STATE OF WASHINGTON.

16
17 APN: 36321-2302

18
19 Commonly known as: 1314 E Joseph Ave., Spokane, WA 99207.

20
21 THEREFORE, in the name of the State of Washington, you are hereby commanded
22 to proceed to seize and sell forthwith, and without appraisalment, the above-described
23 property, in the manner provided by law; or so much thereof as may be necessary to satisfy
24 the judgment, interest and costs, and any advances that Plaintiff, CitiMortgage Inc., may be
25 required after the entry of judgment to make for the payment of taxes, assessments, other
items constituting liens on the property, insurance, and/or repairs for the protection or
preservation of the property; and if you fail to find said property and if the judgment herein
provides for deficiency and the proceeds of such sale be insufficient to satisfy said

SECOND ORDER OF SALE - 2

WEINSTEIN & RILEY, P.S.
2001 Western Avenue, Suite 400
Seattle, Washington 98121
Telephone: (206) 269-3490
Facsimile: (206) 269-3493

ATTACHMENT OF REAL ESTATE

IN THE SUPERIOR COURT FOR SPOKANE COUNTY, WASHINGTON

Cause No. 14-2-00458-8

CITIMORTGAGE, INC.,
Plaintiff(s)

SHERIFF'S LEVY ON REAL ESTATE

Vs.

**THE ESTATE OF BUD W. BROWN, DECEASED; THE UNKNOWN HEIRS AND
DEVISEES OF BUD W. BROWN, DECEASED; JANE DOE BROWN, SPOUSE OF BUD W.
BROWN, DECEASED; AMERICAN GENERAL FINANCE, INC.; DEPARTMENT OF
SOCIAL AND HEALTH SERVICES, FINANCIAL SERVICES ADMINISTRATION, OFFICE
OF FINANCIAL RECOVERY; JOHN AND JANE DOES, I THROUGH V, OCCUPANTS OF
THE SUBJECT REAL PROPERTY, AND ALSO ALL OTHER PERSONS OR PARTIES
UNKNOWN, CLAIMING ANY RIGHT, TITLE, INTEREST, LIEN OR ESTATE IN THE
PROPERTY HEREIN DESCRIBED,**

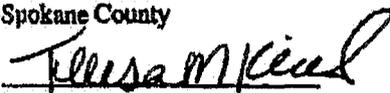
Defendant(s)

**STATE OF WASHINGTON
COUNTY OF SPOKANE**

To the Auditor of Spokane County, Washington, and to whom it may concern under and by virtue of an order of the above entitled court (a true copy of which is hereto attached) to me directed and delivered, and I do hereby levy upon the real estate therein described.

Dated this 10th day of August, 2015

OZZIE D. KNEZOVICH, Sheriff
Spokane County


Deputy

Sheriff Docket Number: 2015/08-0061

EXHIBIT C

Lok, David

From: Lok, David
Sent: Tuesday, March 31, 2015 1:08 PM
To: 'Hillery, Melissa'
Subject: RE: Nov for 1314 E Joseph

Did you not realize that the owner had died some time ago? We show him as having passed away: Dept. of Health record 01142013 02162013.

If you can forward the information to a new owner and address that would be helpful. Our county records show it simply as going to his estate.

D.Lok
City of Spokane
Code Enforcement
dlok@spokanecity.org
509-625-6806

From: Hillery, Melissa [<mailto:melissa.hillery@citi.com>]
Sent: Tuesday, March 31, 2015 12:48 PM
To: Hecker, Michelle
Cc: Lok, David
Subject: RE: Nov for 1314 E Joseph

Good afternoon,

I just called your office and was transferred to Melissa's voicemail. I had called to advise that the property is reporting occupied and we cannot abate violations at an occupied property. We do not own this property so all we can do as a lien holder is mail a copy of this notice with a letter to the owner to advise they need to resolve the outstanding code violation.

Thank you,

Melissa Hillery

Code Violations
CitiMortgage, Inc.
(836) 261-7659
melissa.hillery@citi.com



re/ power
+
WATER

Send ~~to~~ to
occupant.

From: Hecker, Michelle [<mailto:mhecker@spokanecity.org>]
Sent: Tuesday, March 10, 2015 10:31 AM
To: Hillery, Melissa [GCB-OT]
Cc: Lok, David
Subject: Nov for 1314 E Joseph

Good Morning,

Here is the NOV you requested, please let me know if you have any questions.

Sincerely,



Michelle Hecker | City of Spokane
Neighborhood Services & Code Enforcement
509.625.6083 | fax 509.625-6802
www.beautifvspokane.org

Wittstruck, Melissa

From: Hillery, Melissa [melissa.hillery@citi.com]
Sent: Tuesday, August 18, 2015 9:19 AM
To: Devin, Rebecca; Wittstruck, Melissa
Subject: RE: Building Official Summary letter 1314 E Joseph

Good morning,

Thank you for the copy of the summary of violations. I've left a voicemail for D. Skindzier (who signed the notice) to ask for clarification on the corrective action to cure the violations. Bids for repairs will be ordered, however if the property reports occupied again by our vendor, we will not be able to move forward.

Thank you,

Melissa Hillery

Code Violations
CitiMortgage, Inc.
(636) 261-7659
melissa.hillery@citi.com

Code Violation Line: 877-290-3997 option 1
Code Violation Email: code.violation@citi.com



From: Devin, Rebecca [mailto:rdevin@spokanecity.org]
Sent: Friday, August 14, 2015 6:29 PM
To: Hillery, Melissa [GCB-OT]; code.violation@citi.com
Subject: Building Official Summary letter

Attached to this email is a summary letter for 1314 E Joseph.

Thank you



Rebecca Devin | City of Spokane | Community, Housing & Human Services Department
509.625.6325 | fax 509.625.6315 | rdevin@spokanecity.org | spokanecity.org



EXHIBIT D



OFFICE OF
NEIGHBORHOOD SERVICES
CODE ENFORCEMENT
808 W. SPokane Falls Blvd.
Spokane, Washington 99201-3343
509.625.6083
FAX 509.625.6802
spokaneneighborhoods.org

August 14, 2015

**NOTICE OF SUMMARY HEARING
CERTIFIED**

MEMORANDUM
TO: [Illegible]
FROM: [Illegible]
SUBJECT: [Illegible]

**RE: BUILDING OFFICIAL'S SUMMARY HEARING OF AN ABANDONED AND SUBSTANDARD
HOUSE AND GARAGE AT 1314 E JOSEPH, SPOKANE, WASHINGTON 99207
PARCEL NO: 36321.2302
LEGAL DESCRIPTION: LANCASTERS 2ND ALL L4; E1.5FT OF S60FT L5 B14**

This letter serves as notice that a Summary Hearing was held before me on July 30, 2015, the Building Official for the City of Spokane, regarding the aforementioned property. At the Summary Hearing, Code Enforcement staff presented evidence of ownership and conditions of this property. The following are the findings of facts that resulted in referred complaints from Spokane June 19, 2015 and July 13, 2015.

FINDINGS

VIOLATION OF SMC 17F.070.400 SUBSTANDARD BUILDING

- A. Dilapidation: exterior decay, water damage. Findings: House siding dilapidated and roof shingles appear deteriorated in places. Garage roof shingles appear deteriorated in places.
- C. Unsanitary conditions: waste accumulation, health hazards. Findings: Code Enforcement photos show solid waste and debris in yard and tall dry vegetation.
- D. Defective/inoperable plumbing. Findings: Water has been off since May 30, 2015 therefore there is no water for sanitation.
- E. Inadequate weatherproofing: siding, roofing, glazing. Findings: The garage man door is open. The house has been boarded by unknown persons; boarding was removed from a west side window and is open. All this is allowing weather to penetrate the structures.
- F. No activated utility service for one year. Findings: Water has been off since May 30, 2013.
- G. Inoperable or inadequate heating system. Findings: Meter is red-tagged, therefore there is no power for the heating system.
- L. Defects increasing the hazards of fire, accident or other calamity. Findings: The house and garage appear abandoned due to noted conditions. The owner is deceased as of January 2013. Neighbors have reported transient activity and reports of a squatter to Spokane Police numerous times. There were five calls for service to Spokane Police in June of 2015. Code Enforcement has been inspecting for solid waste violations and reports of squatters March to July of 2015. Safeguard was contacted July 7, 2015 regarding the violations and reported squatter activity and was asked to secure the property in 48 hours. The property was re-inspected July 13, 2015 and found open and unsecure. Melissa Hillery with City contacted Code Enforcement by email on July 28, 2015 and asked if the property could be accessed,

she stated that CITI could not abate the property as it was reported occupied. Code responded by email that the city of Spokane had not boarded the property and that property preservation stickers are on the windows Ms Hillery was also advised that the property was being reviewed by the Building Official for emergency action. Research shows that CITI was granted an order of sale by Superior Court May 22, 2015. All these defects increase the hazards of fire, accident or other calamity

The building official or hearing examiner may determine that the building/structure is unfit for human habitation and orders demolition if any of the substandard conditions listed in SMC 17F.070.400 are found to exist to such an extent as to be dangerous or injurious to the health or safety of the buildings occupants or community

BUILDING OFFICIAL'S ORDER

Conditions on the property are substandard due to no water, no power, and other noted conditions as defined by Spokane Municipal Code SMC 17F.070.400, and are a nuisance as defined in SMC 10.08.030 due to: unsecured buildings, and may be considered abandoned under SMC 17F.070.030,

The conditions noted above warrant a "DO NOT OCCUPY" order for the safety and protection of occupants and public. By authority of SMC 17F.070.510 entitled "Emergency Action," I hereby order the occupants to vacate the house and garage and to not allow residency. Premises need to be vacated by 2:00 p.m. August 26, 2015.

By authority of SMC 17F.070.510 entitled "Emergency Action," I hereby order the City of Spokane to securely board the house and garage immediately upon executing the DO NOT OCCUPY order. The charge for boarding will be placed as a lien on the property

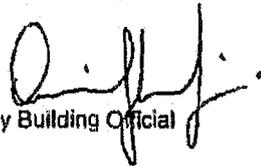
Lifting of the "DO NOT OCCUPY" order may be considered before the hearing date if violations are remedied through reconnection of utilities through legal means including permits and inspections. Call the Inspector Supervisor at 625-6108 for an inspection of the property before re-occupation.

The buildings are to be kept secure and are not to be occupied until such time as repairs are made, permits are issued, and inspections complete.

Please note: Prior to any demolition activity, contact Spokane Regional Clean Air Agency at (509) 477-4727. The inspection results are required by the Washington State Department of Labor and Industries to be maintained on file and available upon request by the Department of Labor and Industries (WAC 296-62-07721).

SO ORDERED

D Skindzier, Deputy Building Official



Enclosure: Rehabilitation plan
DS MKW mhl

PC D. Skindzier, Deputy Building Official
Safeguard Properties 7887 Safeguard Circle Valley View OH 44125
EMAIL
EMAIL code.violations@citi.com

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8 SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

9 In Re the Real Property Located at:

No. 15-2-03492-2

10 1314 E. JOSEPH AVE., SPOKANE, WA
11 99207

OATH OF CUSTODIAL RECEIVER

12 TIMOTHY R. FISCHER, the duly appointed Custodial Receiver in the above-captioned
13 matter, hereby certifies as follows:

14 1. I am the Receiver duly appointed by the Court pursuant to Order Appointing
15 Receiver dated September 4, 2015.

16 2. I have never been convicted of a felony or other crime involving moral turpitude,
17 nor am I controlled by a person who has been convicted of a felony or other crime involving
18 moral turpitude.

19 3. I am not a party to this action, nor do I have any relationship with any party-in-
20 interest, any creditor, or the Property over which the Receiver has been appointed.

21 4. I have no interest materially adverse to the interest of persons to be affected by
22 the receivership generally.

23 5. I am not a sheriff of any county.
24

///

OATH OF CUSTODIAL RECEIVER
Page 1

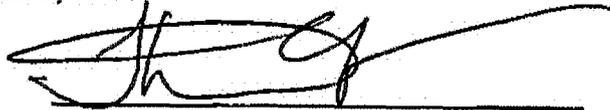
Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
1900 Bank of America Financial Center
C01 West Flors Dr
Spokane, Washington 99201
(509) 838-0131

1 6. I am an attorney in the office of Winston & Cashatt, counsel for the Petitioner in
2 this matter. However, I am not acting as counsel on this file and have no conflict of interest in
3 acting in the capacity of Receiver.

4 7. I have significant experience in receivership matters having represented receivers,
5 petitioners, and interested parties in a variety of state court receivership matters over the last
6 seven years.

7 I further certify, under penalty of perjury, that the foregoing is true and correct.

8 DATED this 4th day of September, 2015.

9
10 

11 TIMOTHY R. FISCHER

(Copy Receipt)

Clerk's Date Stamp

 SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE	JUDGE HAROLD D. CLARKE III 94
	CASE NO. 2015-02-03492-2
IN RE REAL PROPERTY	CASE ASSIGNMENT
Plaintiff(s)/Petitioner(s),	NOTICE AND ORDER (NTAS)
vs.	CASE STATUS CONFERENCE DATE:
1314 E JOSEPH AVE, SPOKANE	DECEMBER 11, 2015 AT 9:00 AM
Defendant(s)/Respondent(s).	

ORDER

YOU ARE HEREBY NOTIFIED that this case is preassigned for all further proceedings to the judge noted above. You are required to attend a Case Status Conference before your assigned judge on the date also noted above. The Joint Case Status Report must be completed and brought to the Status Conference. A Case Schedule Order, with the trial date, will be issued at the Status Conference.

Under the individual calendar system, the court will operate on a four-day trial week. Trials will commence on Monday, Tuesday, Wednesday or Thursday. Motion Calendars are held on Friday. All motions, other than ex parte motions, must be scheduled with the assigned judge. Counsel must contact the assigned court to schedule motions and working copies of all motion pleadings must be provided to the assigned court at the time of filing with the Clerk of Court. Pursuant to LCR 40 (b) (10), motions must be confirmed no later than 12:00 noon two days before the hearing by notifying the judicial assistant for the assigned judge.

Please contact the assigned court to schedule matters regarding this case. You may contact the assigned court by phone, court department e-mail or through the Spokane County Superior Court web page at <http://www.spokanecounty.org/superiorcourt>

DATED: 08/27/2015


SALVATORE F. COZZA
PRESIDING JUDGE

NOTICE: The plaintiff shall serve a copy of the Case Assignment Notice on the defendant(s).

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COPY
Original Filed

AUG 27 2015

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

In Re the Real Property Located at:

1314 E. JOSEPH AVE., SPOKANE, WA
99207

No. 5203492-2

[PROPOSED] ORDER GRANTING
MOTION TO SHORTEN TIME AND
PETITION TO APPOINT CUSTODIAL
RECEIVER

THIS MATTER came before the Court on September 4, 2015, upon the shortened notice for the Motion to Shorten Time and Petition of Appointment of Custodial Receiver ("Petition") filed by the City of Spokane ("City") pursuant to RCW 7.60.025. The City seeks appointment of a custodial receiver for the real property located at 1314 E. Joseph Ave., Spokane, WA 99207 ("Property") for the sole and limited purpose of creating an entity with the legal authority to report trespassing activity to law enforcement where none currently exists.

The Court, having considered the pleadings and argument of counsel, finding notice of this matter was properly given and good cause to grant the motion, hereby ORDERS AS

FOLLOWS:

1. The City's Petition to Appoint Custodial Receiver is GRANTED;
2. The Court hereby appoints Timothy R. Fischer as the Custodial Receiver over the Property ("Receiver");



1 3. The Receiver's powers and duties under RCW 7.60.060 shall be limited as follows:

2 a. RCW 7.60.060(1)(a) through (i) shall not apply and the Receiver's sole power
3 shall be the ability to report trespasses at the Property to law enforcement ; and

4 b. RCW 7.60.060(2)(a) shall not apply;

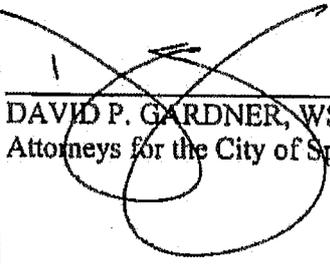
5 4. The Receiver shall not be required to post any bond pursuant to RCW 7.60.045; and

6 5. The Receiver shall move to dismiss this receivership action at such time as he deems
7 appropriate but, in no event, more than 30 days after Code Enforcement executes its DO NOT
8 OCCUPY order.

9 DONE IN OPEN COURT this _____ day of September, 2015.

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11
12 JUDGE/COURT COMMISSIONER

13 Presented by:
14 WINSTON & CASHATT, LAWYERS

15 
16 DAVID P. GARDNER, WSBA No. 39331
17 Attorneys for the City of Spokane
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COPY
Original Filed

AUG 27 2015

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

In Re the Real Property Located at:

1314 E. JOSEPH AVE., SPOKANE, WA
99207

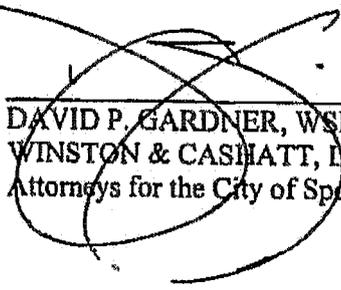
No. 15-2-03492-2

**NOTE FOR HEARING ON VERIFIED
PETITION TO APPOINT CUSTODIAL
RECEIVER**

**TO: THE CLERK OF THE COURT; AND
TO: PARTIES IN INTEREST**

PLEASE TAKE NOTICE that the City of Spokane shall bring on for hearing with oral argument Verified Petition to Appoint Custodial Receiver on Friday, September 4, 2015, at 11:00 a.m., at the Spokane County Superior Court, 1116 W. Broadway Avenue, Courtroom 405 before the Honorable Harold D. Clarke, III.

DATED this 27 day of August, 2015.



DAVID P. GARDNER, WSBA No. 39331
WINSTON & CASHATT, LAWYERS
Attorneys for the City of Spokane

NOTE FOR HEARING
Page 1

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
1900 Bank of America Financial Center
601 West Riverside
Spokane, Washington 99201
(509) 838-6131

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the 26th day of August, 2015, at Spokane, Washington, the foregoing was caused to be served on the following person(s) in the manner indicated:

Occupant
1314 E. Joseph Avenue
Spokane, WA 99207

VIA REGULAR MAIL
VIA CERTIFIED MAIL
HAND DELIVERED
BY FACSIMILE
VIA FEDERAL EXPRESS
VIA EMAIL

Spokane County Sheriff's Office
1100 West Mallon
Spokane, WA 99260

VIA REGULAR MAIL
VIA CERTIFIED MAIL
HAND DELIVERED
BY FACSIMILE
VIA FEDERAL EXPRESS
VIA EMAIL

Citimortgage, Inc.
c/o Bishop, Marshall & Weibel, P.S.
720 Olive Way, Suite 1201
Seattle, WA 98101

VIA REGULAR MAIL
VIA CERTIFIED MAIL
HAND DELIVERED
BY FACSIMILE
VIA FEDERAL EXPRESS
VIA EMAIL



Cassandra M. Williams
Paralegal

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SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

In Re the Real Property Located at:

No. 15-2-03492-2

1314 E. JOSEPH AVE., SPOKANE, WA
99207

**ORDER GRANTING MOTION TO
SHORTEN TIME AND PETITION TO
APPOINT CUSTODIAL RECEIVER**

THIS MATTER came before the Court on September 4, 2015, upon the shortened notice for the Motion to Shorten Time and Petition of Appointment of Custodial Receiver ("Petition") filed by the City of Spokane ("City") pursuant to RCW 7.60.025. The City seeks appointment of a custodial receiver for the real property located at 1314 E. Joseph Ave., Spokane, WA 99207 ("Property") for the sole and limited purpose of creating an entity with the legal authority to report trespassing activity and the condition of the property to the City and/or law enforcement where none currently exists.

The Court, having considered the pleadings and argument of counsel, finding notice of this matter was properly given and good cause to grant the motion, hereby ORDERS AS

FOLLOWS:

1. The City's Petition to Appoint Custodial Receiver is GRANTED;
2. The Court hereby appoints Timothy R. Fischer as the Custodial Receiver over the

Property ("Receiver");

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3. The Receiver's powers and duties under RCW 7.60.060 shall be limited as follows:

a. RCW 7.60.060(1)(a) through (i) shall not apply and the Receiver's sole power shall be the ability to report trespasses at the Property to law enforcement ; and

b. RCW 7.60.060(2)(a) shall not apply;

4. The Receiver shall not be required to post any bond pursuant to RCW 7.60.045;

5. The Receiver shall move to dismiss this receivership action at such time as he deems appropriate but, in no event, more than 30 days after Code Enforcement executes its DO NOT OCCUPY order; and

6. The automatic stay imposed by RCW 7.60.110(1)(a)-(c) shall not apply.

DONE IN OPEN COURT this _____ day of September, 2015.

JUDGE/COURT COMMISSIONER

Presented by:
WINSTON & CASHATT, LAWYERS

DAVID P. GARDNER, WSBA No. 39331
Attorneys for the City of Spokane

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

In Re the Real Property Located at:

1314 E. Joseph Ave., Spokane, WA 99207

Case No. 15-2-03492-2

NOTICE OF APPEARANCE

TO: Clerk of the Court

AND TO: All Counsel of Record

PLEASE TAKE NOTICE that Justin T. Jastrzebski, Katherine Christofilis and Daniel Ross of Weinstein & Riley, P.S., hereby appear in the above-entitled action as attorneys for CitiMortgage, Inc., without waiving the defenses of:

1. Lack of Jurisdiction over the Subject Matter;
2. Lack of Jurisdiction over the Person;
3. Improper Venue;
4. Insufficiency of Process;
5. Insufficiency of Service of Process;
6. Failure to State a Claim upon which Relief may be Granted; and
7. Failure to Join a Party under CR 19.

NOTICE OF APPEARANCE - 1

WEINSTEIN & RILEY, P.S.

2001 Western Avenue, Suite 400
Seattle, Washington 98121
Telephone: (206) 269-3490
Facsimile: (206) 269-3493

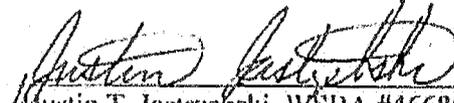
1 PLEASE ALSO TAKE NOTICE that all further papers and pleadings directed to
2 CitiMortgage, Inc., except original process, should be served upon the undersigned at the
3 address shown below:

4 Weinstein & Riley, P.S.
5 2001 Western Avenue, Suite 400
6 Seattle, WA 98121

7 DATED this 2nd day of September, 2015.

8 WEINSTEIN & RILEY, P.S.

9
10 By:


11 Justin T. Jastrzebski, WSBA #46680
12 Katherine Christofilis, WSBA #42584
13 Daniel Ross, WSBA #37424
14 Attorneys for CitiMortgage, Inc.

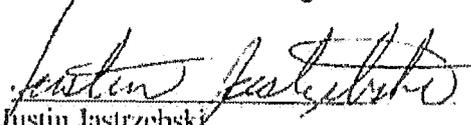
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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that,
on the 24th day of September 2015, I caused to be delivered to the following addressee a
copy of the foregoing Notice of Appearance in the manner indicated:

David P. Gardner	<input checked="" type="checkbox"/> By First Class Mail
Winston & Cashatt, P.S.	<input type="checkbox"/> By ABC Legal Messenger
1900 Bank of America Financial Center	<input checked="" type="checkbox"/> By Email:
601 West Riverside	<input type="checkbox"/> By Facsimile:
Spokane, WA 99201	
<i>Counsel for Petitioner, City of Spokane</i>	

DATED this 24th day of September, 2015, at Seattle, Washington.


Justin Jastrzebski

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FILED
OCT 15 2015
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

In Re the Real Property Located at:
1314 E. JOSEPH AVE., SPOKANE, WA
99207

No. 15-2-03492-2

**PETITION FOR DISCHARGE OF
RECEIVER**

RCW 7.60.290

THE RECEIVER moves the Court for discharge of the receiver, pursuant to RCW 7.60.290(1).

BASIS

1. The Receiver has completed all obligations with respect to estate property contemplated in the Order Granting Petition to Appoint Custodial Receiver.
2. The Receiver has complied with all obligations and duties, statutory and otherwise, in administration of the receivership as required.
3. No business remains to be done as contemplated by the Order Granting Petition to Appoint Custodial Receiver.

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4. Discharge of the Receiver is appropriate at this time.

RELIEF REQUESTED

The Receiver requests this Court enter the Proposed Order attached hereto, and discharge the Receiver.

DATED this 15th day of October, 2015.



TIMOTHY R. FISCHER, WSBA No. 40075
WINSTON & CASHATT, LAWYERS

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OCT 30 2015

SPOKANE COUNTY CLERK

6 SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

7 In Re the Real Property Located at:
8
9 1314 E. JOSEPH AVE., SPOKANE, WA
10 99207

No. 15-2-03492-2

ORDER (1) DISCHARGING RECEIVER
AND (2) TERMINATING
RECEIVERSHIP

RCW 7.60.290

11
12
13 THE COURT, having considered the Receiver's Motion and finding good cause to grant
14 the Motion,

15 HEREBY ORDERS that (1) the Receiver is discharged from his duties, and (3) this
16 receivership is terminated.

17 DATED this 30th day of October, 2015.

18 HAROLD D. CLARKE III

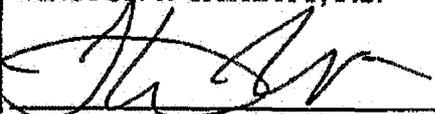
19
20 JUDGE HAROLD D. CLARKE III

21
22
23 ORDER DISCHARGING RECEIVER AND
TERMINATING RECEIVERSHIP - Page 1

24
Winston & Bashall
A PROFESSIONAL SERVICE CORPORATION
1800 Bank of America Financial Center
601 West Riverside
Spokane, Washington 99201
(509) 838-6131

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Presented by:
WINSTON & CASHATT, P.S.



Timothy R. Fischer, WSBA No. 40075

ORDER DISCHARGING RECEIVER AND
TERMINATING RECEIVERSHIP - Page 2

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
1900 Bank of America Financial Center
801 West Riverside
Spokane, Washington 99201
(509) 830-6131

Exhibit 3



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Page: 1 of 7
09/16/1997 09:04A
Spokane Co, WA

After recording return to;
PACWEST SERVICES, INC.
P.O. BOX 4405
SPOKANE, WA 99202-0405

580236
WASHINGTON

VA Form 26-8593 (Home Loan)
July 1974
Section 1810 Title 38 U.S.Code
Acceptable to Federal National
Mortgage Association.
Amended February, 1988

DEED OF TRUST

VA Loan # LH 46-6-0499511

**THIS LOAN IS NOT ASSUMABLE WITHOUT THE
APPROVAL OF THE DEPARTMENT OF VETERANS
AFFAIRS OR ITS AUTHORIZED AGENT.**

THIS DEED OF TRUST, is made this **SEPTEMBER 10, 1997** BETWEEN
BUD W. BROWN, A SINGLE PERSON
as Grantor, whose address is **1314 EAST JOSEPH AVENUE, SPOKANE, WA 99207** ,and

SPOKANE COUNTY TITLE COMPANY
as Trustee, whose address is
1010 NORTH NORMANDIE STREET, SPOKANE, WA 99201
and

PACWEST SERVICES, INC.
as Beneficiary,
whose address is **P.O. BOX 4405, SPOKANE, WASHINGTON 99202**

Grantor hereby irrevocably grants, bargains, sells and conveys to Trustee in trust, with power of sale, the following described property in **SPOKANE** County, Washington:

LOT 4; AND THE EAST 1.5 FEET OF THE SOUTH 60 FEET OF LOT 5, BLOCK 14, LANCASTER'S SECOND ADDITION, AS PER PLAT RECORDED IN VOLUME "B" OF PLATS, PAGES 70 AND 71, RECORDS OF SPOKANE COUNTY;

SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE, STATE OF WASHINGTON.

ASSESSOR'S PARCEL NO: 36321.2302

TOGETHER WITH all the tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in anywise appertaining, and the rents, issues and profits thereof; and all fixtures now or hereafter attached to or used in connection with the premises herein described; and in addition thereto the following described household appliances, which are and shall be deemed to be, fixtures and a part of the realty, and are a portion of the security for the indebtedness herein mentioned:



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Page: 2 of 7
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Spokane Co, WA

The real property conveyed by this deed of trust is not used principally for agricultural or farming purposes.

THIS DEED IS FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of Grantor herein contained and payment of the sum of

SIXTY THREE THOUSAND FOUR HUNDRED AND NO/100-----
(\$ 63,400.00)

with interest thereon according to terms of a promissory note of even date herewith, payable to the order of Beneficiary and made by Grantor; and also such further sums as may be advanced or loaned by Beneficiary to Grantor, or any of their successors or assigns, together with interest thereon at such rate as shall be agreed upon.

The Grantor covenants and agrees as follows:

1. That he will pay the indebtedness, as hereinbefore provided. Privilege is reserved to prepay at any time, without premium or fee, the entire indebtedness or any part thereof not less than the amount of one installment, or one hundred dollars (\$100.00), whichever is less. Prepayment in full shall be credited on the date received. Partial prepayment, other than on an installment due date, need not be credited until the next following installment due date or thirty days after such prepayment, whichever is earlier.

2. Grantor agrees to pay to Beneficiary together with and in addition to the monthly payment of principal and interest payable under the terms of the note secured hereby, on the first day of each month until said note is fully paid:

(a) A sum, as estimated by the Beneficiary, equal to the ground rents, if any, and the taxes and special assessments next due on the premises covered by this Deed of Trust, plus the premiums that will next become due and payable on such insurance policies as may be required under paragraph 9 hereof, satisfactory to Beneficiary, Grantor agreeing to deliver promptly to Beneficiary all bills and notices therefor, less all sums already paid therefor divided by the number of months to elapse before one (1) month prior to the date when such ground rents, premiums, taxes and assessments will become delinquent, such sums to be held by the Beneficiary in trust to pay said ground rents, premiums, taxes and special assessments.

(b) All payments mentioned in the preceding subsection of this paragraph and all payments to be made under the note secured hereby shall be added together and the aggregate amount thereof shall be paid by the Grantor each month in a single payment to be applied by Beneficiary to the following items in the order set forth:

- (I) ground rents, if any, taxes, special assessments, fire and other hazard insurance premiums;
- (II) interest on the note secured hereby; and
- (III) amortization of the principal of said note.

(c) Any deficiency in the amount of any such aggregate monthly payment shall, unless made good by the Grantor prior to the due date of the next such payment, constitute an event of default under this Deed of Trust. The arrangement provided for in paragraph 2 is solely for the added protection of the Beneficiary and entails no responsibility on the Beneficiary's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon assignment of this Deed of Trust by the Beneficiary, any funds on hand shall be turned over to the assignee and any responsibility of the assignor with respect thereto shall terminate. Each transfer of the property that is the subject of this Deed of Trust shall automatically transfer to the Grantee all rights of the Grantor with respect to any funds accumulated hereunder.

3. At Beneficiary's option Grantor will pay a "late charge" not exceeding four per centum (4%) of any installment when paid more than fifteen (15) days after the due date thereof to cover the extra expense involved in handling delinquent payments, but such late charge shall not be payable out of the proceeds of any sale made to satisfy the indebtedness secured hereby, unless such proceeds are sufficient to discharge the entire indebtedness and



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Page: 3 of 7
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Spokane Co, WA

credit balance remaining under the provisions of (a) paragraph 2. If there shall be a default under any of the provisions of this Deed of Trust and thereafter a sale of the premises in accordance with the provisions hereof, or if the Beneficiary acquires the property otherwise after default, the Beneficiary shall apply, at the time of commencement of such proceedings, or at the time the property is otherwise acquired, the balance then remaining in the funds accumulated under (a) of paragraph 2, less such sums as will become due and payable during the pendency of the proceedings, as a credit against the amount of principal then remaining unpaid under said note. 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.

5. To keep the property in good order and condition and not to commit or permit any waste thereof. To allow Beneficiary to inspect the property at any time during reasonable hours.

6. To complete or restore promptly and in good workmanlike manner any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor, and, if the loan secured hereby or any part thereof is in being obtained for the purpose of financing construction of improvements on said property, Grantor further agrees:

- (a) To commence construction promptly and in any event within thirty (30) days from the date of the commitment of the Beneficiary, and complete same in accordance with plans and specifications satisfactory to Beneficiary;
- (b) To complete all buildings or other structures being or about to be built thereon within six (6) months from date hereof;
- (c) To replace any work or materials unsatisfactory to Beneficiary, within fifteen (15) days after written notice to Grantor of such fact;
- (d) That work shall not cease on the construction of such improvements for any reason whatsoever for a period of fifteen (15) consecutive days.

The Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Grantor under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

7. Not to remove or demolish any building, improvements thereon or any fixtures or other property in or used in connection with said building or improvements.

8. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said property.

9. To keep the buildings, improvements and fixtures now existing or hereafter erected on the mortgaged property insured as may be required from time to time by the Beneficiary against loss by fire and other hazards, casualties and contingencies in such amounts and for such periods as may be required by the Beneficiary and will pay promptly, when due, any premiums on such insurance provisions for payment of which has not been made hereinbefore. All insurance shall be carried in companies approved by the Beneficiary and the policies and renewals thereof shall be held by the Beneficiary and have attached thereto loss payable clauses in favor of and in form acceptable to the Beneficiary. In event of loss Grantor will give immediate notice by mail to the Beneficiary, who may make proof of loss if not made promptly by Grantor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Grantor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by the Beneficiary at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In event of foreclosure of this Deed of Trust or other transfer of title to the subject property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Grantor in and to any insurance policies then in force shall pass to the purchaser or grantee.

10. To appear in and defend any suit, action or proceeding that might affect the value of this security instrument or the security itself or the rights or powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect also to appear in or defend any such action or proceeding the Grantor will, at all times, indemnify from, and,



SPOKANE COUNTY TITLE CO DT

\$14.00

4141729

Page: 4 of 7
09/16/1997 09:04A
Spokane Co, WA

taxes, reasonable costs, fees and expenses of this Trust; on default hereunder Beneficiary may, at its option, pay, or pay out of reserves accumulated under paragraph 2, any such sums, without waiver of any other right of Beneficiary by reason of such default of Grantor, and Beneficiary shall not be liable to Grantor for a failure to exercise any such option.

12. To repay immediately on written notice to Grantor all sums expended or advanced hereunder by or on behalf of Beneficiary or Trustee, with interest from the date of such advance or expenditure at the rate provided on the principal debt, and the repayment thereof shall be secured hereby. Failure to repay such expenditure or advance and interest thereon within ten (10) days of the mailing of such notice will, at Beneficiary's option, constitute an event of default hereunder; or, Beneficiary may, at its option, commence an action against Grantor for the recovery of such expenditure or advance and interest thereon, and in such event Grantor agrees to pay, in addition to the amount of such expenditure or advance, all costs and expenses incurred in such action, together with a reasonable attorney's fee.

13. Upon the request of the Beneficiary, the Grantor shall execute and deliver a supplemental note or notes for the sum or sums advanced by the Beneficiary for the alteration, modernization, improvement, maintenance, or repair of said premises, for taxes or assessments against the same and for any other purpose authorized hereunder. Said note or notes shall be secured hereby on a parity with and as fully as if the advance evidenced thereby were included in the note first described above. Said supplemental note or notes shall bear interest at the rate provided for in the principal indebtedness and shall be payable in approximately equal monthly payments for such period as may be agreed upon by the Grantor and Beneficiary. Failing to agree on the maturity, the whole of the sum or sums so advanced shall be due and payable thirty (30) days after demand by the Beneficiary. In no event shall the maturity extend beyond the ultimate maturity of the note first described above.

14. If the indebtedness secured hereby be guaranteed or insured under Title 38 United States Code, such Title and Regulations issued thereunder and in effect on the date hereof shall govern the rights, duties and liabilities of the parties hereto, and any provisions of this or other instruments executed in connection with said indebtedness which are inconsistent with said Title or Regulations are hereby amended to conform thereto.

IT IS MUTUALLY AGREED THAT:

15. Should Grantor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the property for such purposes, commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor including cost of evidence of title, employ counsel, and pay his reasonable fees.

16. Should the property or any part or appurtenance thereof or right or interest therein be taken or damaged by reason of any public or private improvement, condemnation proceeding, fire, earthquake, or in any other manner, Beneficiary may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any compromise or settlement, in connection with such taking or damage, and obtain all compensation, awards or other relief therefor. All such compensation, awards, damages, right of action and proceeds, including the proceeds of any policies of insurance affecting the property, are hereby assigned to Beneficiary who may, after deducting therefrom all its expenses, including attorney's fees, release any monies so received by it, or apply the same on any indebtedness secured hereby or apply the same to the restoration of the property, as it may elect. Grantor agrees to execute such further assignments of any compensation, award, damages, rights of action and proceeds as Beneficiary or Trustee may require.

17. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

18. At any time upon written request of Beneficiary, payment of its fees and presentation of this Deed and the note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Deed or the lien of charge thereof; (d) reconvey, without warranty, all or any part of the



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Page: 5 of 7
09/16/1997 09:04A
Spokane Co, WA

any violation of this undertaking, the Beneficiary may, at its option, declare the unpaid balance of the debt secured hereby immediately due and payable.

21. Upon default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable. No waiver by Beneficiary of any default on the part of Grantor shall be construed as a waiver of any subsequent default hereunder.

22. Upon default by Grantor in the payment of any indebtedness secured hereby or in the performance of any agreement contained herein, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of Beneficiary, Trustee shall sell the trust property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of sale, including a reasonable Trustee's fee and attorney's fee; (2) to the obligation secured by this Deed of Trust; (3) the surplus, if any, shall be distributed to the persons entitled thereto. Trustee shall deliver to the purchaser at the sale its deed, without warranty which shall convey to the purchaser the interest in the property which Grantor had, or had the power to convey at the time of his execution of this Deed of Trust, and such as he may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy and when not exercised, Beneficiary may foreclose this Deed of Trust as a mortgage. In the event of the death, incapacity or disability or resignation of Trustee, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

23. This Deed shall inure to and bind the heirs, legatees, devisees, administrators, executors, successors, and assigns of the parties hereto. All obligations of Grantor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. If any of the provisions hereof shall be determined to contravene or be invalid under the laws of the State of Washington, such contravention or invalidity shall not invalidate any other provisions of this agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and all rights and obligations of the parties shall be construed and enforced accordingly.

24. Any notices to be given to Grantor by Beneficiary hereunder shall be sufficient if mailed postage prepaid, to the address of the property above described; or to such other address as Grantor has requested in writing to the Beneficiary, that such notices be sent. Any time period provided in the giving of any notice hereunder, shall commence upon the date such notice is deposited in the mail.

25. The Beneficiary shall have all the rights and privileges granted to Beneficiaries by the Deed of Trust Act of the State of Washington as it now exists, or under any amendment thereto.

26. "Without affecting the liability of any other person for the payment of any obligation herein mentioned (including Grantor should he convey said real property) and without affecting the lien hereof upon any property not released, Beneficiary may, without notice, release any person so liable, extend the maturity or modify the terms of any such obligations, or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or any part of the realty described herein, take or release any other security or make compositions or other arrangements with debtors. Beneficiary may also accept additional security, either concurrently herewith or thereafter, and sell same or otherwise realize thereon, either before, concurrently with, or after sale hereunder."



4141729
Page: 7 of 7
09/16/1997 09:04A
Spokane Co. WA

VA GUARANTEED LOAN RIDER

(For use with FHMA/FHLMC UNIFORM instruments for
Veterans Administration guaranteed loans)

THIS VA GUARANTEED LOAN RIDER is made this 10TH day of SEPTEMBER, 1997, and is incorporated into and shall be deemed to amend and supplement a Mortgage, Deed of Trust or Deed to Secure Debt (herein "security instrument") dated of even date herewith, given by the undersigned (herein "Borrower") to secure Borrower's Note to Pacwest Services, Inc. (herein "Lender") and covering the Property described in the security instrument and located at

1314 EAST JOSEPH AVENUE, SPOKANE, WA 99207 (Property Address).

VA GUARANTEED LOAN COVENANT. In addition to the covenants and agreements made in the security instrument, Borrower and Lender further covenant and agree as follows:

1. If the indebtedness secured hereby be guaranteed or insured under Title 38, United States Code, such Title and Regulations issued thereunder and in effect on the date hereof shall govern the rights, duties and liabilities of Borrower and Lender. Any provisions of the security instrument or other instruments executed in connection with such indebtedness which are inconsistent with said Title or Regulations, including, but not limited to the provision for payment of any sum in connection with prepayment of the secured indebtedness and the provision that the lender may accelerate payment of the secured indebtedness pursuant to Covenant 17 of the Security instrument, are hereby amended or negated to the extent necessary to conform such instruments to said Title or Regulations.
2. This loan may be declared immediately due and payable upon transfer of the property securing such loan to any transferee, unless the acceptability of the assumption of the loan is established pursuant to section 3714 of chapter 37, title 38, United States Code.
3. Funding Fee. A fee equal to one-half of one percent of the balance of this loan as of the date of transfer of the property shall be payable at the time of transfer to the loan holder or its authorized agent, as trustee for the Department of Veterans Affairs. If the assumer fails to pay this fee at the time of transfer, the fee shall constitute an additional debt to that already secured by this instrument, shall bear interest at the rate herein provided, and, at the option of the payee of the indebtedness hereby secured or any transferee thereof, shall be immediately due and payable. This fee is automatically waived if the assumer is exempt under the provisions of 38 USC 3729 (c).
4. Processing Charge. Upon application for approval to allow assumption of this loan, a processing fee may be charged by the loan holder or its authorized agent for determining the credit worthiness of the assumer and subsequently revising the holder's ownership records when an approved transfer is completed. The amount of this charge shall not exceed the maximum established by the Department of Veterans Affairs for a loan to which section 3714 of chapter 37, title 38, United States Code applies.
5. Indemnity Liability. If this obligation is assumed, then the assumer hereby agrees to assume all the obligations of the veteran under the terms of the instruments creating and securing the loan, including the obligation of the veteran to indemnify the Department of Veterans Affairs to the extent of any claim payment arising from the guaranty of insurance of the indebtedness created by this instrument.
6. Reamortization or adjustment of Debt: The interest rate, payment terms, or balance due on the loan may be indexed, adjusted, renewed or renegotiated by the Grantors under the Deed of Trust or their successors in interest and the Beneficiary under the Deed of Trust or its successors in interest. In no event shall the interest rate be increased beyond the prevailing VA rate at the time the loan was closed. The provisions of this paragraph are hereby deemed to be incorporated within the terms of the Deed of Trust and the Deed of Trust Note secured by this



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Page: 1 of 1
09/24/1997 03:56P
Spokane Co, WA

PACWEST SERVICES, INC.
P.O. BOX 4405
SPOKANE, WA 99202

Assignment of Deed of Trust ¹⁷¹
S80236

For Value Received, the undersigned as Beneficiary, hereby grants, conveys, assigns and transfers to
SOURCE ONE MORTGAGE SERVICES CORPORATION,
whose address is 27555 FARMINGTON ROAD, FARMINGTON HILLS, MI 48334,
all beneficial interest under that certain Deed of Trust, dated **SEPTEMBER 10, 1997**, executed by **BUD W. BROWN, A SINGLE PERSON**, Grantor, to **SPOKANE COUNTY TITLE COMPANY**, Trustee, and recorded on 9-16-97 under Recording No. 4141729,
Records of Spokane County, Washington, describing land therein as:
LOT 4; AND THE EAST 1.5 FEET OF THE SOUTH 60 FEET OF LOT 5, BLOCK 14, LANCASTER'S SECOND ADDITION, AS PER PLAT RECORDED IN VOLUME "B" OF PLATS, PAGES 70 AND 71, RECORDS OF SPOKANE COUNTY;

SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE, STATE OF WASHINGTON.

PARCEL NO. 36321.2302

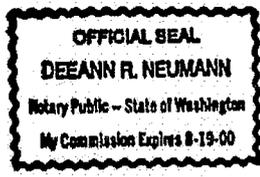
Together with note or notes therein described or referred to, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: 9-15-97
PACWEST SERVICES, INC.
BY: Melissa S. Carpenter
Melissa S. Carpenter, V.P.

State of Washington }
County of Spokane } ss.

I certify that I know or have satisfactory evidence that Melissa S. Carpenter is the person(s) who appeared before me, and said person(s) acknowledged that she is authorized to execute the instrument and acknowledged it as the Vice President of PACWEST SERVICES, INC. to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: 9-15-97
DeeAnn R. Neumann





Attn: Civil Division
Spokane County Sheriff's Office
1100 W Mallon Ave
Spokane WA 99260-0300

Document Title(s):

1. Attachment of Real Estate - Sheriff's Levy on Real Estate
2. Second Order of Sale (Spokane County Superior Court #14-2-00458-8)

Grantee(s) - (Plaintiff):

1. SPOKANE COUNTY SHERIFF
2. CITIMORTGAGE, INC.

Grantor(s) - (Defendant):

1. THE ESTATE OF BUD W. BROWN, DECEASED
2. THE UNKNOWN HEIRS AND DEVISEES OF BUD W. BROWN, DECEASED
3. JANE DOE BROWN, SPOUSE OF BUD W. BROWN, DECEASED
4. AMERICAN GENERAL FINANCE, INC.
5. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, FINANCIAL SERVICES
ADMINISTRATION, OFFICE OF FINANCIAL RECOVERY
6. JOHN AND JANE DOES, I THROUGH V, OCCUPANTS OF THE SUBJECT REAL PROPERTY
7. AND ALSO ALL OTHER PERSONS OR PARTIES UNKNOWN, CLAIMING ANY RIGHT,
TITLE, INTEREST, LIEN OR ESTATE IN THE PROPERTY HEREIN DESCRIBED

Legal Description:

LOT 4; AND THE EAST 1.5 FEET OF THE SOUTH 60 FEET OF LOT 5, BLOCK 14, LANCASTER'S
SECOND ADDITION, AS PER PLAT RECORDED IN VOLUME "B" OF PLATS, PAGES 70 AND 71,
RECORDS OF SPOKANE COUNTY;

SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE, STATE OF WASHINGTON.

Commonly known as: 1314 East Joseph Avenue, Spokane, Washington 99207-3452

Assessor's Property Tax Parcel/Account Number: 36321-2302

Auditor's File No. 4141729 and 4747225

ATTACHMENT OF REAL ESTATE

IN THE SUPERIOR COURT FOR SPOKANE COUNTY, WASHINGTON

Cause No. 14-2-00458-8

CITIMORTGAGE, INC.,
Plaintiff(s)

SHERIFF'S LEVY ON REAL ESTATE

Vs.

THE ESTATE OF BUD W. BROWN, DECEASED; THE UNKNOWN HEIRS AND DEVISEES OF BUD W. BROWN, DECEASED; JANE DOE BROWN, SPOUSE OF BUD W. BROWN, DECEASED; AMERICAN GENERAL FINANCE, INC.; DEPARTMENT OF SOCIAL AND HEALTH SERVICES, FINANCIAL SERVICES ADMINISTRATION, OFFICE OF FINANCIAL RECOVERY; JOHN AND JANE DOES, I THROUGH V, OCCUPANTS OF THE SUBJECT REAL PROPERTY, AND ALSO ALL OTHER PERSONS OR PARTIES UNKNOWN, CLAIMING ANY RIGHT, TITLE, INTEREST, LIEN OR ESTATE IN THE PROPERTY HEREIN DESCRIBED,

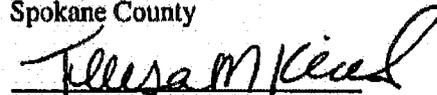
Defendant(s)

STATE OF WASHINGTON
COUNTY OF SPOKANE

To the Auditor of Spokane County, Washington, and to whom it may concern under and by virtue of an order of the above entitled court (a true copy of which is hereto attached) to me directed and delivered, and I do hereby levy upon the real estate therein described.

Dated this 10th day of August, 2015

OZZIE D. KNEZOVICH, Sheriff
Spokane County


Deputy

Sheriff Docket Number: 2015/08-0061

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507-876-5000
ALL 221-5-1103

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

CITIMORTGAGE, INC.,

Plaintiff,

vs.

THE ESTATE OF BUD W. BROWN,
DECEASED; THE UNKNOWN HEIRS AND
DEVISEES OF BUD W. BROWN, DECEASED;
JANE DOE BROWN, SPOUSE OF BUD W.
BROWN, DECEASED; AMERICAN GENERAL
FINANCE, INC.; DEPARTMENT OF SOCIAL
AND HEALTH SERVICES, FINANCIAL
SERVICES ADMINISTRATION, OFFICE OF
FINANCIAL RECOVERY; JOHN AND JANE
DOES, I THROUGH V, OCCUPANTS OF THE
SUBJECT REAL PROPERTY, AND ALSO ALL
OTHER PERSONS OR PARTIES UNKNOWN,
CLAIMING ANY RIGHT, TITLE, INTEREST,
LIEN OR ESTATE IN THE PROPERTY HEREIN
DESCRIBED,

Defendants.

Case No. 14-2-00458-8

SECOND ORDER OF SALE

THE STATE OF WASHINGTON, to the Spokane County Sheriff:

WHEREAS, in the above-entitled Court, on the March 3, 2015, Plaintiff,
CitiMortgage, Inc., recovered a Default Judgment against The Estate of Bud W. Brown,
deceased (In Rem), and against the real property in the amount of \$61,652.33, plus interest

SECOND ORDER OF SALE - I

ORIGINAL

WEINSTEIN & RILEY, P.S.
2001 Western Avenue, Suite 400
Seattle, Washington 98121
Telephone: (206) 269-3490
Facsimile: (206) 269-3493

1 at the rate of 7.50% per annum from March 3, 2015; which said judgment is entered in
2 Execution Docket of the Superior Court as Judgment Number 15-9-01437-4 and which
3 there is now due and owing \$61,652.33, not including post judgment interest; and whereas
4 the said judgment is a foreclosure with a zero (0) month redemption period, against the
5 Defendant herein of a deed of trust on the following described property, situated in Spokane
6 County, State of Washington, to-wit:

7 THE STATE OF WASHINGTON, to the Sheriff of Spokane County:

8
9 LOT 4; AND THE EAST 1.5 FEET OF THE SOUTH 60 FEET OF LOT 5,
10 BLOCK 14, LANCASTER'S SECOND ADDITION, AS PER PLAT
11 RECORDED IN VOLUME "B" OF PLATS, PAGES 70 AND 71,
12 RECORDS OF SPOKANE COUNTY;

13 SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE,
14 STATE OF WASHINGTON.

15 APN: 36321-2302

16 Commonly known as: 1314 E Joseph Ave., Spokane, WA 99207.

17 THEREFORE, in the name of the State of Washington, you are hereby commanded
18 to proceed to seize and sell forthwith, and without appraisalment, the above-described
19 property, in the manner provided by law; or so much thereof as may be necessary to satisfy
20 the judgment, interest and costs, and any advances that Plaintiff, CitiMorgage Inc., may be
21 required after the entry of judgment to make for the payment of taxes, assessments, other
22 items constituting liens on the property, insurance, and/or repairs for the protection or
23 preservation of the property; and if you fail to find said property and if the judgment herein
24 provides for deficiency and the proceeds of such sale be insufficient to satisfy said

25 SECOND ORDER OF SALE - 2

WEINSTEIN & RILEY, P.S.
2001 Western Avenue, Suite 400
Seattle, Washington 98121
Telephone: (206) 269-3490
Facsimile: (206) 269-3493

10/26/2015 01:43:52 PM
Recording Fee \$77.00 Page 1 of 5
Attachment SPOKANE COUNTY SHERIFF
Spokane County Washington

6447062



Attn: Civil Division
Spokane County Sheriff's Office
1100 W Mallon Ave
Spokane WA 99260-0300

Document Title(s):

1. Attachment of Real Estate - Sheriff's Levy on Real Estate
2. Third Order of Sale (Spokane County Superior Court #14-2-00458-8)

Grantee(s) - (Plaintiff):

1. SPOKANE COUNTY SHERIFF
2. CITIMORTGAGE, INC.

Grantor(s) - (Defendant):

1. THE ESTATE OF BUD W. BROWN, DECEASED
2. THE UNKNOWN HEIRS AND DEVISEES OF BUD W. BROWN, DECEASED
3. JANE DOE BROWN, SPOUSE OF BUD W. BROWN, DECEASED
4. AMERICAN GENERAL FINANCE, INC.
5. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, FINANCIAL SERVICES ADMINISTRATION, OFFICE OF FINANCIAL RECOVERY
6. JOHN AND JANE DOES, I THROUGH V, OCCUPANTS OF THE SUBJECT REAL PROPERTY
7. AND ALSO ALL OTHER PERSONS OR PARTIES UNKNOWN, CLAIMING ANY RIGHT, TITLE, INTEREST, LIEN OR ESTATE IN THE PROPERTY HEREIN DESCRIBED

Legal Description:

LOT 4; AND THE EAST 1.5 FEET OF THE SOUTH 60 FEET OF LOT 5, BLOCK 14, LANCASTER'S SECOND ADDITION, AS PER PLAT RECORDED IN VOLUME "B" OF PLATS, PAGES 70 AND 71, RECORDS OF SPOKANE COUNTY;

SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE, STATE OF WASHINGTON.

Commonly known as: 1314 East Joseph Avenue, Spokane, Washington 99207-3452

Assessor's Property Tax Parcel/Account Number: 36321-2302

Auditor's File No. 4141729 and 4747225

ATTACHMENT OF REAL ESTATE

IN THE SUPERIOR COURT FOR SPOKANE COUNTY, WASHINGTON

Cause No. 14-2-00458-8

**CITIMORTGAGE, INC.,
Plaintiff(s)**

SHERIFF'S LEVY ON REAL ESTATE

Vs.

**THE ESTATE OF BUD W. BROWN, DECEASED; THE UNKNOWN HEIRS AND
DEVISEES OF BUD W. BROWN, DECEASED; JANE DOE BROWN, SPOUSE OF BUD W.
BROWN, DECEASED; AMERICAN GENERAL FINANCE, INC.; DEPARTMENT OF
SOCIAL AND HEALTH SERVICES, FINANCIAL SERVICES ADMINISTRATION, OFFICE
OF FINANCIAL RECOVERY; JOHN AND JANE DOES, I THROUGH V, OCCUPANTS OF
THE SUBJECT REAL PROPERTY, AND ALSO ALL OTHER PERSONS OR PARTIES
UNKNOWN, CLAIMING ANY RIGHT, TITLE, INTEREST, LIEN OR ESTATE IN THE
PROPERTY HEREIN DESCRIBED,**

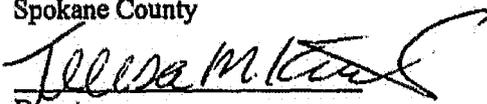
Defendant(s)

**STATE OF WASHINGTON
COUNTY OF SPOKANE**

**To the Auditor of Spokane County, Washington, and to whom it may concern under and
by virtue of an order of the above entitled court (a true copy of which is hereto attached)
to me directed and delivered, and I do hereby levy upon the real estate therein described.**

Dated this 26th day of October, 2015

**OZZIE D. KNEZOVICH, Sheriff
Spokane County**


Deputy

Sheriff Docket Number: 2015/10-0170

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

CITIMORTGAGE, INC.,

Plaintiff,

vs.

THE ESTATE OF BUD W. BROWN,
DECEASED; THE UNKNOWN HEIRS AND
DEVISEES OF BUD W. BROWN, DECEASED;
JANE DOE BROWN, SPOUSE OF BUD W.
BROWN, DECEASED; AMERICAN GENERAL
FINANCE, INC.; DEPARTMENT OF SOCIAL
AND HEALTH SERVICES, FINANCIAL
SERVICES ADMINISTRATION, OFFICE OF
FINANCIAL RECOVERY; JOHN AND JANE
DOES, I THROUGH V, OCCUPANTS OF THE
SUBJECT REAL PROPERTY, AND ALSO ALL
OTHER PERSONS OR PARTIES UNKNOWN,
CLAIMING ANY RIGHT, TITLE, INTEREST,
LIEN OR ESTATE IN THE PROPERTY HEREIN
DESCRIBED,

Defendants.

Case No. 14-2-00458-8

THIRD ORDER OF SALE

THE STATE OF WASHINGTON, to the Spokane County Sheriff:

WHEREAS, in the above-entitled Court, on the March 3, 2015, Plaintiff,
CitiMortgage, Inc., recovered a Default Judgment against The Estate of Bud W. Brown,
deceased (In Rem), and against the real property in the amount of \$61,652.33, plus interest

ORIGINAL

THIRD ORDER OF SALE - 1

WEINSTEIN & RILEY, P.S.
2001 Western Avenue, Suite 400
Seattle, Washington 98121
Telephone: (206) 269-3490
Facsimile: (206) 269-3493

1 at the rate of 7.50% per annum from March 3, 2015; which said judgment is entered in
2 Execution Docket of the Superior Court as Judgment Number 15-9-01437-4 and which
3 there is now due and owing \$61,652.33, not including post judgment interest; and whereas
4 the said judgment is a foreclosure with a zero (0) month redemption period, against the
5 Defendant herein of a deed of trust on the following described property, situated in Spokane
6 County, State of Washington, to-wit:

7 THE STATE OF WASHINGTON, to the Sheriff of Spokane County:

8
9 LOT 4; AND THE EAST 1.5 FEET OF THE SOUTH 60 FEET OF LOT 5,
10 BLOCK 14, LANCASTER'S SECOND ADDITION, AS PER PLAT
11 RECORDED IN VOLUME "B" OF PLATS, PAGES 70 AND 71,
12 RECORDS OF SPOKANE COUNTY;

13
14 SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE,
15 STATE OF WASHINGTON.

16
17 APN: 36321-2302

18
19 Commonly known as: 1314 E Joseph Ave., Spokane, WA 99207.

20
21 THEREFORE, in the name of the State of Washington, you are hereby commanded
22 to proceed to seize and sell forthwith, and without appraisalment, the above-described
23 property, in the manner provided by law; or so much thereof as may be necessary to satisfy
24 the judgment, interest and costs, and any advances that Plaintiff, CitiMortgage Inc., may be
25 required after the entry of judgment to make for the payment of taxes, assessments, other
items constituting liens on the property, insurance, and/or repairs for the protection or
preservation of the property; and if you fail to find said property and if the judgment herein
provides for deficiency and the proceeds of such sale be insufficient to satisfy said

THIRD ORDER OF SALE - 2

WEINSTEIN & RILEY, P.S.
2001 Western Avenue, Suite 400
Seattle, Washington 98121
Telephone: (206) 269-3490
Facsimile: (206) 269-3493

5867422

01/14/2010 01:38:44 PM
Recording Fee \$66.00 Page 1 of 6
Trustee Sale SPOKANE, COUNTY TITLE CO
Spokane County Washington

[RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:]

RANDE JOHNSEN
C/O Trustee Corps
30 Corporate Park
Suite 400
Irvine, CA 92606

Trustee Sale # WA0859791 Loan # 92171700564585 Title # 090756500

NOTICE OF TRUSTEE'S SALE
PURSUANT TO THE REVISED CODE OF WASHINGTON
CHAPTER 61.24 ET. SEQ. || 5162060

I.
NOTICE IS HEREBY GIVEN that the undersigned Trustee, RANDE JOHNSEN will on 04/23/2010 at 10:00AM at At the South entrance of the Spokane County Courthouse, 1116 W. Broadway Ave., Spokane, WA 99201 sell at public auction to the highest and best bidder, payable, in the form of cash, or cashier's check or certified checks from federally or State chartered banks, at the time of sale, the following described real property, situated in the County of Spokane, State of Washington, to-wit:

LOT 22, BLOCK 12, MT. PLEASANT FIRST ADDITION, AS PER PLAT RECORDED IN VOLUME "N" OF PLATS, PAGE 50, RECORDS OF SPOKANE COUNTY;

SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE, STATE OF WASHINGTON.

APN: 26364 2822
Commonly known as: 5016 N BELT, SPOKANE, WA 99205

which is subject to that certain Deed of Trust dated 02/10/2004, Recorded on 02/13/2004 as Document No. 5034924, records of Spokane County, WASHINGTON, from DEAN L. GERLING AND LINDA S. GERLING, HUSBAND AND WIFE, as Grantor(s), to PACIFIC NORTHWEST TITLE, as Trustee, to secure an obligation in favor of BENEFICIAL MORTGAGE CORPORATION, as Beneficiary, the beneficial interest of which was assigned to BENEFICIAL MORTGAGE CORPORATION, records of Spokane County, WASHINGTON.

II.
No action commenced by the Beneficiary of the Deed of Trust or the Beneficiary's successor is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust/Mortgage.

III.
The default(s) for which this foreclosure is made is/are as follows:

<u>10</u> monthly payments at: \$664.39 (03/16/2009 through 01/18/2010)	\$6,643.90
<u>10</u> monthly late charges at: \$33.22 (03/16/2009 through 01/18/2010)	\$332.20
TOTAL MONTHLY PAYMENTS AND LATE CHARGES:	\$6,976.10

IV.

The sum owing on the obligation secured by the Deed of Trust is: The principal sum of **\$90,935.97**, together with interest as provided in the Note from **02/16/2009**, and such other costs and fees as are due under the note or other instrument secured, and as are provided by statute.

V.

The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. Said sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on **04/23/2010**. The default(s) referred to in Paragraph III must be cured by **04/12/2010** (11 days before the sale date) to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time on or before **04/12/2010** (11 days before the sale date), the default(s) as set forth in Paragraph III is/are cured and the Trustee's fees and costs are paid. Payment must be in cash or with cashier's or certified checks from a State or federally chartered bank. The sale may be terminated any time after **04/12/2010** (11 days before the sale date) and before the sale, by the Borrower or Grantor or the Grantor's successor in interest or the holder of any recorded junior lien or encumbrance by paying the entire principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee and the successful bidder shall have no further recourse.

VI.

A written Notice of Default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor or the Grantor's successor in interest at the following address(es):

5016 N BELT
SPOKANE, WA 99205

5016 N BELT
SPOKANE, WA 99205

by both first class and certified mail on **12/15/2009** proof of which is in the possession of the Trustee; and said written Notice of Default was posted in a conspicuous place on the real property described in Paragraph I above, and the Trustee has possession of proof of such service or posting.

VII.

The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII.

The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the above-described property.

IX.

Anyone having any objections to this sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

X.

NOTICE TO OCCUPANTS OR TENANTS – The purchaser at the Trustee's Sale is entitled to possession of the property on the 20th day following the sale, as against the Grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants and tenants. After

the 20th day following the sale the purchaser has the right to evict occupants and tenants by summary proceedings under the Unlawful Detainer Act, Chapter 59.12 RCW.

Dated: 1/11/2010

MTC Financial Inc., dba Trustee Corps
By and through Rande Johnsen, as Trustee


BY: RANDE JOHNSEN

TRUSTEE CORPS
30 CORPORATE PARK, SUITE 400, IRVINE, CA 92608
FOR SALE INFORMATION CONTACT: (714) 673-1985, (714) 673-7777, (949) 252-8300
FOR REINSTATEMENT / PAY OFF REQUESTS CONTACT: (949) 252-8300

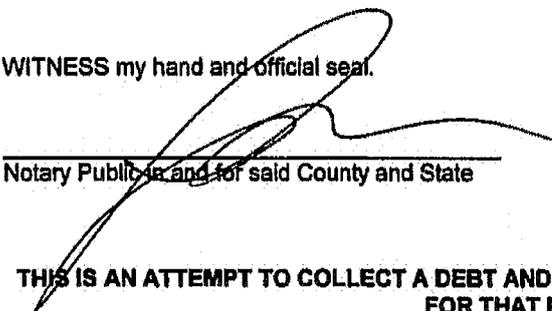
STATE OF CALIFORNIA

COUNTY OF ORANGE

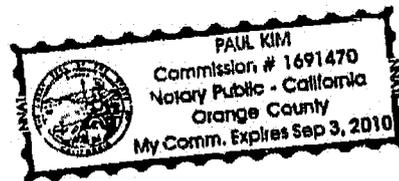
On JAN 11 2010 before me, Paul Kim, personally appeared Rande Johnsen who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public in and for said County and State



THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

NOTICE OF FORECLOSURE

Pursuant to the Revised Code of Washington,
Chapter 61.24 RCW

Trustee Sale # **WA0859791**Loan # **92171700564585**Title # **090756500**

The attached Notice of Trustee's Sale is a consequence of default(s) in the obligation to **BENEFICIAL MORTGAGE CORPORATION**, the Beneficiary of your Deed of Trust and owner of the obligation secured thereby. Unless the default(s) is/are cured, your property will be sold at auction on **04/23/2010**.

To cure the default(s), you must bring the payments current, cure any other defaults, and pay accrued late charges and other costs, advances, and attorneys' fees as set forth below by **04/12/2010** (11 days before the sale date). To date, these arrears and costs are as follows:

	Currently due to reinstate on 01/18/2010	Estimated amount that will be due to reinstate on 04/12/2010
Delinquent monthly payments from 03/16/2009 in the amount of: \$664.39	\$6,643.90	\$8637.07
Monthly late charges from 03/16/2009 in the amount of: \$33.22	\$332.20	\$431.86
Trustee's Fees	\$675.00	\$875.00
Trustee's Expenses: (Estimated Itemization)		
Title Report	\$584.00	\$584.00
Recording Fees	\$50.00	\$100.00
Service/Posting of Notices	\$50.00	\$100.00
Postage/Copying expense	\$85.00	\$170.00
Publication	\$100.00	\$1,100.00
TOTALS:	\$8,520.10	\$11,797.93

As to the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust, you must cure each such default. Listed below are the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust. Opposite each such listed default is a brief description of the action necessary to cure the default and a description of the documentation necessary to show that the default has been cured.

Description of Action Required to Cure and Documentation Necessary to Show Cure:

THE INSTALLMENT OF PRINCIPAL AND INTEREST WHICH BECAME DUE ON 03/16/2009 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL AND INTEREST, ALONG WITH LATE CHARGES, PLUS FORECLOSURE COSTS AND LEGAL FEES. PLUS ALL OF THE TERMS AND CONDITIONS AS PER THE DEED OF TRUST, PROMISSORY NOTE AND RELATED LOAN DOCUMENTS.

You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including 04/12/2010 (11 days before the sale date), by paying the amounts set forth or estimated above and by curing any other defaults described above. Of course, as time passes other payments may become due, and any further payments coming due and any additional late charges must be added to your reinstating payment. Any new defaults not involving payment of money that occur after the date of this notice must also be cured in order to effect reinstatement. In addition, because some of the charges can only be estimated at this time and because the amount necessary to reinstate may include presently unknown expenditures required to preserve the property or to comply with state or local law, it will be necessary for you to contact the Trustee before the time you tender reinstatement so that you may be advised of the exact amount you will be required to pay. Tender of payment or performance must be made to:

**Trustee Corps
30 Corporate Park, Suite 400
Irvine, CA 92606
(949) 252-8300**

AFTER 04/12/2010, YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. In such a case, you will only be able to stop the sale by paying, before the sale, the total principal balance (\$80,935.97) plus accrued interest, costs and advances, if any, made pursuant to the terms of the documents and by curing the other defaults as outlined above.

You may contest this default by initiating court action in the Superior Court of the county in which the sale is to be held. In such action, you may raise any legitimate defenses you have to this default. A copy of your Deed of Trust and documents evidencing the obligation secured thereby are enclosed. You may wish to consult a lawyer. Legal action on your part may prevent or restrain the sale, but only if you persuade the court of the merits of your defense. You may contact the Department of Financial Institutions or the statewide civil legal aid hotline for possible assistance or referrals. The court may grant a restraining order or injunction to restrain a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the trustee of the time when, place where and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. Notice and other processes may be served upon the trustee at:

**RANDE JOHNSEN, as trustee
c/o Trustee Corps
30 Corporate Park, Suite 400
Irvine, CA 92606
(949) 252-8300**

If you do not reinstate the secured obligation and your Deed of Trust in the manner set forth above, or if you do not succeed in restraining the sale by court action, your property will be sold to satisfy the obligations secured by your Deed of Trust. The effect of such sale will be to deprive you and all those who hold by, through or under you of all interest in the property.

Dated: 01/11/2010

**MTC Financial Inc., dba Trustee Corps
By and through Rande Johnsen, as Trustee**

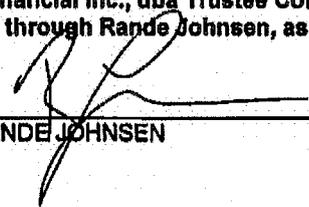

By: RANDE JOHNSEN

Exhibit 4

(Copy Receipt)

Clerk's Date Stamp

 <p>SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE</p>	<p>JUDGE MICHAEL P. PRICE 91</p>
<p>IN RE THE REAL PROPERTY</p> <p>Plaintiff(s)/Petitioner(s), vs. 5018 N. BELT ST. SPOKANE, WA</p> <p>Defendant(s)/Respondent(s).</p>	<p>CASE NO. 2015-02-03848-1</p> <p>CASE ASSIGNMENT NOTICE AND ORDER (NTAS)</p> <p>CASE STATUS CONFERENCE DATE: DECEMBER 18, 2015 AT 9:00 AM</p>

ORDER

YOU ARE HEREBY NOTIFIED that this case is preassigned for all further proceedings to the judge noted above. You are required to attend a Case Status Conference before your assigned judge on the date also noted above. The Joint Case Status Report must be completed and brought to the Status Conference. A Case Schedule Order, with the trial date, will be issued at the Status Conference.

Under the individual calendar system, the court will operate on a four-day trial week. Trials will commence on Monday, Tuesday, Wednesday or Thursday. Motion Calendars are held on Friday. All motions, other than ex parte motions, must be scheduled with the assigned judge. Counsel must contact the assigned court to schedule motions and working copies of all motion pleadings must be provided to the assigned court at the time of filing with the Clerk of Court. Pursuant to LCR 40 (b) (10), motions must be confirmed no later than 12:00 noon two days before the hearing by notifying the judicial assistant for the assigned judge.

Please contact the assigned court to schedule matters regarding this case. You may contact the assigned court by phone, court department e-mail or through the Spokane County Superior Court web page at <http://www.spokanecounty.org/superiorcourt>

DATED: 09/16/2015



SALVATORE F. COZZA
PRESIDING JUDGE

NOTICE: The plaintiff shall serve a copy of the Case Assignment Notice on the defendant(s).

COPY
ORIGINAL FILED

SEP 13 2005

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SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

In Re the Real Property Located at:
5018 N. BELT ST., SPOKANE, WA 99205

No. **192058-1**
**VERIFIED PETITION TO APPOINT
CUSTODIAL RECEIVER**

THE CITY OF SPOKANE, Petitioner, alleges and moves as follows:

1. Relief Requested.

The City of Spokane ("City") requests the Court appoint a custodial receiver over the real property located at 5018 N. Belt St., Spokane, Washington 99205 ("Property").

2. Grounds and Basis.

The City's request is based upon RCW 7.60, which permits the Court to appoint a custodial receiver to take limited charge of specific property as necessary to provide an adequate remedy to the parties. In this instance, a receiver is necessary because abandoned property is being inhabited by trespassers and the owner of the Property will not authorize the City to abate the nuisance and destruction occurring at the Property. As such, the City cannot comply with its own ordinances requiring the execution of a "DO NOT OCCUPY" order at the Property.

The City is a municipality in Spokane County organized pursuant to the laws of Washington State. The Office of Neighborhood Services & Code Enforcement ("Code

COPY

1 Enforcement") is a department within the City, and the Property is located within Spokane's city
2 limits. Venue and jurisdiction are proper in Spokane County pursuant to RCW 7.60.

3 **3. Facts.**

4 **a. Title to the Property.**

5 3.1 The Property was purchased by Linda S. and Dean L. Gerling on February 10,
6 2004. The Gerlings obtained a mortgage from Beneficial Mortgage Corp. ("Beneficial"), secured
7 by a deed of trust, on that same date. Attached hereto and incorporated herein by this reference
8 as "Exhibit A" is a true and accurate copy of a Title Report created by First American Title Co.
9 on August 27, 2015.

10 3.2 The Gerlings filed for divorce on May 4, 2009. At some point during those
11 proceedings, the Property was transferred to Linda Gerling as her sole and separate property. See
12 Ex. A, p. 6.

13 3.3 While the divorce was pending, Beneficial began the foreclosure process on the
14 Property, notifying the Gerlings of their default under the mortgage and of Beneficial's intent to
15 hold a foreclosure sale.

16 3.4 Dean Gerling filed for Chapter 13 bankruptcy in the Eastern District of
17 Washington, Case No. 10-02459, on April 22, 2010, while the couples' divorce was still pending
18 but before Beneficial had conducted its foreclosure sale.

19 3.5 After Mr. Gerling's bankruptcy filing and without obtaining relief from the
20 bankruptcy stay, Beneficial foreclosed its deed of trust on the Property on May 10, 2010.
21 Attached hereto and incorporated herein by this reference as "Exhibit B" is a true and accurate
22 copy of a Trustee's Deed on Sale.
23
24

1 3.6 Beneficial's May 2010 foreclosure sale was void as a matter of law because it
2 violated the bankruptcy stay. On November 16, 2012, this Court entered a "Judgment" voiding
3 Beneficial's Trustee's Deed and reinstating Beneficial's deed of trust. Attached hereto and
4 incorporated herein by this reference as "Exhibit C" is a true and accurate copy of the Judgment.

5 3.7 Beneficial assigned its deeds of trust to U.S. Bank on December 4, 2014.
6 Attached hereto and incorporated herein by this reference as "Exhibit D" is a true and accurate
7 copy of the Assignment of Deed of Trust.

8 **b. Condition of the Property and the City's Efforts to Contact its Owner.**

9 3.8 On June 1, June 3, and July 10, Code Enforcement conducted inspections of the
10 Property. Those inspections, as discussed below, uncovered a myriad of dangerous and
11 unhealthy conditions at the Property including a lack of water, sewer, power, or other utilities
12 and the presence of trespassers or "squatters" who refuse to leave. Additionally, those trespassers
13 have amassed a great deal of solid waste which poses its own dangers to inhabitants and
14 neighbors.

15 3.9 Because the Property is in a hazardous condition and is being occupied by
16 someone without the rights of ownership, Code Enforcement attempted to find and contact the
17 Property's true owner. In that process, Code Enforcement became aware of a company known as
18 PKMG who had been hired to perform work at the Property. Specifically, PKMG had been hired
19 by a bank to secure the Property against trespassers.

20 3.10 Code Enforcement has had telephone and email communication with PKMG
21 regarding attempts to secure the home. PKMG claims it is the vendor of the Property's owner,
22 Wells Fargo Bank. PKMG has made it clear to Code Enforcement that it cannot and will not
23
24

1 perform work to secure the Property while the Property remains occupied by a trespasser.

2 Attached hereto and incorporated herein by this reference as "Exhibit E" are true and accurate
3 copies emails from Code Enforcement to PKMG dated August 5.

4 3.11 Mrs. Gerling cannot be found and attempts by Code Enforcement to contact U.S.
5 Bank or Beneficial have been unsuccessful. There is no indication anywhere in the title history
6 that Wells Fargo is a lienholder or owner of the Property, as indicated by PKMG.

7 3.12 The Property is a common source of disturbances. Since June 2, five reports have
8 been made to police regarding potential criminal conduct at the Property.

9 **c. Do Not Occupy Determination.**

10 3.13 On July 30, Code Enforcement Deputy Building Official Dan Skindzier
11 conducted a Summary Hearing relating to the Property. On August 14, Mr. Skindzier entered his
12 "Notice of Summary Hearing" finding eight categories of violations of the Spokane Municipal
13 Code relating to the Property including dilapidation of structures, unsanitary conditions, lack of
14 water, power, and sewer, defects increasing hazards of fire and other accidents, and transient
15 and/or squatter activity at the Property. Mr. Skindzier ordered that the City take emergency
16 action to execute a "DO NOT OCCUPY" order to remove all tenants and board the Property
17 securely. Mr. Skindzier's Notice containing his findings and order were sent to the Property
18 address and Beneficial. Attached hereto and incorporated herein by this reference as "Exhibit F"
19 is a true and accurate copy of the aforementioned Notice of Summary Hearing.
20

21 3.14 Currently, there are one or more individuals squatting at the Property. These
22 individuals are not the Property's owners and are living in the Property without water, power, or
23 sewer services. Code Enforcement's physical investigations conducted in June and July, 2015
24

1 have uncovered significant health and safety hazards at the Property which present a danger to
2 the Property's occupants and neighboring properties.

3 3.15 Code Enforcement is unable to execute the DO NOT OCCUPY order because the
4 Spokane Police Department cannot and will not enter the Property and remove trespassers
5 without a police report being made or confirmed by the undisputed owner of the Property. That
6 report cannot be obtained as the owner, Beneficial, has refused to cooperate despite Code
7 Enforcement's requests it do so.

8 **4. Argument.**

9 **4.1 Appointment of a custodial receiver.**

10 Washington's receivership statute, RCW 7.60, permits the Court to appoint a custodial
11 receiver over abandoned real property in the present circumstances. That statute creates two
12 kinds of receiver, general and custodial. See RCW 7.60.015. A receiver is a custodial receiver if
13 the receiver "is appointed to take charge of limited or specific property of a person or is not
14 given authority to liquidate property." *Id.*

15 RCW 7.60.025(1)(g) provides the general and specific grounds for appointing a receiver
16 applicable here:

17 A receiver may be appointed by the superior court of this state in the following
18 instances, but . . . a receiver shall be appointed only if the court additionally
19 determines that the appointment of a receiver is reasonably necessary and that
20 other available remedies are not available or are inadequate:

21 . . .
22 (g) Upon an attachment of real . . . property when the property attached is . . . in
23 danger of waste, impairment, or destruction, or where the abandoned property's
24 owner has absconded with, secreted, or abandoned the property, and it is
necessary to collect, conserve, manage, control, or protect it, or to dispose of it
promptly, or when the court determines that the nature of the property or the
exigency of the case otherwise provides cause for the appointment of a receiver.

1 That statute goes on to permit the appointment of a receiver "[i]n such other cases as may be
2 provided for by law, or when, in the discretion of the court, it may be necessary to secure ample
3 justice to the parties." RCW 7.60.025(1)(nn).

4 **4.2 The circumstances justify appointment of a custodial receiver.**

5 **a. Inability to eject non-owners and secure Property.**

6 As an initial matter, the Property's "true owner" is an open question. Beneficial conducted
7 a foreclosure sale, but it was void as a matter of law. So it is not the owner. Mr. Gerling
8 transferred the Property to Mrs. Gerling. So he is not the owner. U.S. Bank, as assignee of
9 Beneficial's interests in the Property, is a secured creditor. But U.S. Bank has not commenced
10 foreclosure proceedings or responded to inquiries from Code Enforcement. Mrs. Gerling appears
11 to be the Property's owner, but she cannot be found.
12

13 Code Enforcement cannot execute the DO NOT OCCUPY order commanded by Mr.
14 Skindzier without police intervention. But Spokane Police will not intervene without a request to
15 do so by the Property's owner. This conundrum can only be solved by the appointment of a
16 custodial receiver imbued with the limited power of an owner to make such a report to law
17 enforcement so that Code Enforcement may do its duty.

18 **b. Property conditions and necessity of Receiver.**

19 The Property is in an uninhabitable condition, is dangerous, is not secure, and is a hazard
20 to occupants and neighbors. Law enforcement has been called to the Property on several
21 occasions and the Property's neighbors are in distress.

22 No entity exists that is willing and legally able to request that law enforcement evict all
23 trespassers so that Code Enforcement may secure the premises and execute the DO NOT
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1 OCCUPY order. The City asks that this Court create such an entity by appointing a custodial
2 receiver. All of the legal requisites for doing so are met.

3 As required by RCW 7.60.025(1), the appointment of a custodial receiver is "reasonably
4 necessary" so that the proper reports can be made to law enforcement, and no other remedy is
5 available because U.S. Bank has refused to foreclose or secure the Property itself. Also, the
6 Property has been "attached" by U.S. Bank, is in danger of waste, impairment, or destruction, is
7 abandoned by its owner, and must be secured against future trespass to avoid further waste and
8 nuisance. As such, RCW 7.60.025(1)(g) is satisfied and appropriate grounds exist to appoint a
9 receiver. To the extent additional grounds are required, the request satisfies RCW
10 7.60.025(1)(nn) because ample justice cannot be done for U.S. Bank or the Gerlings without
11 securing the Property against further trespass. Only a custodial receiver could do so at this point.

12
13 **4.3 The receiver's powers and duties should be very limited.**

14 RCW 7.60.060 confers a number of powers and duties upon a court-appointed receiver
15 which may be expanded or limited by order of the Court. The receiver's powers range from the
16 payment of receivership expenses to the right to assert claims against third parties, see RCW
17 7.60.060(1), and additional powers "may be conferred upon the receiver by the court". RCW
18 7.60.060(1)(j). The receiver's duties deal primarily with notification to other parties, see RCW
19 7.60.060(2), and may also be expanded by the Court. Additionally, RCW 7.60.060(3)
20 specifically permits the "various powers and duties of a receiver . . . [to] be expanded, modified,
21 or limited by order of the court for good cause shown."

22 Here, the City seeks to have a custodial receiver appointed for the sole purpose of
23 verifying the Property is being occupied by a non-owner and, then, contacting law enforcement
24 to trespass the non-owner so that Code Enforcement may execute the DO NOT OCCUPY order.

1 The receiver will not take control or occupancy of the Property, the receiver will not insure the
2 Property, the receiver will not pursue claims or rights relating to the Property other than
3 notifying the authorities. No further action is sought or required of the receiver. As such, good
4 cause exists to limit the receiver's powers and duties per RCW 7.60.060(3) in the manner
5 proposed in the Proposed Order filed herewith.

6 **5. Conclusion.**

7 The City requests the Court enter the Proposed Order submitted with this Petition
8 appointing Timothy Fischer as Custodial Receiver over the Property.

9 DATED this 16 day of September, 2015.

10
11
12 DAVID P. GARDNER, WSBA No. 39331
13 WINSTON & CASHATT, LAWYERS
Attorneys for the City of Spokane

14
15 NATHANIEL ODLE, WSBA No. 39602
16 ASSISTANT CITY ATTORNEY
17 OFFICE OF THE SPOKANE CITY ATTORNEY
Attorney for the City of Spokane

18 [Verification and Notarization to follow.]

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First American

First American Title Insurance Company

40 E Spokane Falls Blvd
Spokane, WA 99202

August 27, 2015

Rose Huivey
City of Spokane
808 W Spokane Falls Boulevard
Spokane, WA 99201
Phone: (509)625-6000
Fax: (509)343-5759

Title Officer: Nefty Maldonado
Phone: (509)835-8954
Fax No.: (866)596-2988
E-Mail: namaldonado@firstam.com
Order Number: 2511630

Escrow Number: 2511630

Buyer:

Owner:

Property: 5018 N Belt St
Spokane, Washington 99205

Attached please find the following item(s):

Guarantee

Thank You for your confidence and support. We at First American Title Insurance Company maintain the fundamental principle:

Customer First!





First American

Guarantee

Litigation Guarantee

ISSUED BY

First American Title Insurance Company

GUARANTEE NUMBER

5015853-2511630

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE,

First American Title Insurance Company
a Nebraska corporation, herein called the Company

GUARANTEES

the Assured named in Schedule A of this Guarantee

herein called the Assured, against loss not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurance which the Company hereby gives that, according to the public records, on the Date of Guarantee shown in Schedule A,

1. The title to the herein described land was vested in the vestee named, subject to the matters shown as exceptions herein, which exceptions are not necessarily shown in the order of their priority; AND
2. The necessary parties defendant in an action, the nature of which is referred to in Schedule A, are as herein stated.

THIS LITIGATION GUARANTEE IS FURNISHED SOLELY FOR THE PURPOSE OF FACILITATING THE FILING OF THE ACTION REFERRED TO IN SCHEDULE A. IT SHALL NOT BE USED OR RELIED UPON FOR ANY OTHER PURPOSE.

First American Title Insurance Company

Dennis J. Gilmore
President

Jeffrey S. Robinson
Secretary

This Jacket was created electronically and constitutes an original document

SCHEDULE OF EXCLUSIONS FROM COVERAGE OF THIS GUARANTEE

1. Except to the extent that specific assurances are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters against the title, whether or not shown by the public records.
 - (b) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the public records.
 - (c) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the public records.
2. Notwithstanding any specific assurances which are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the land expressly described in the description set forth in Schedule (A) of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
 - (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of the assurances provided.
 - (c) The identity of any party shown or referred to in Schedule A.
 - (d) The validity, legal effect or priority of any matter shown or referred to in this Guarantee.

GUARANTEE CONDITIONS AND STIPULATIONS

1. **Definition of Terms.**
The following terms when used in the Guarantee mean:
 - (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.
 - (b) "land": the land described or referred to in Schedule (A), and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A), nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
 - (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
 - (d) "public records": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
 - (e) "date": the effective date.
2. **Notice of Claim to be Given by Assured Claimant.**
An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.
3. **No Duty to Defend or Prosecute.**
The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.
4. **Company's Option to Defend or Prosecute Actions; Duty of Assured Claimant to Cooperate.**
Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:
 - (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
 - (b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
 - (c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.
 - (d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all

GUARANTEE CONDITIONS AND STIPULATIONS(Continued)

appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. Proof of Loss or Damage.

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. Options to Pay or Otherwise Settle Claims: Termination of Liability.

In case of a claim under this Guarantee, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.
The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is

issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4.

7. Determination and Extent of Liability.

This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the Exclusions From Coverage of This Guarantee.

The liability of the Company under this Guarantee to the Assured shall not exceed the least of:

- (a) the amount of liability stated in Schedule A;
(b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or
(c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or

GUARANTEE CONDITIONS AND STIPULATIONS(Continued)

- encumbrance assured against by this Guarantee.
- 8. Limitation of Liability.**
- (a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
 - (b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.
 - (c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.
- 9. Reduction of Liability or Termination of Liability.**
All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.
- 10. Payment of Loss.**
- (a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.
 - (b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.
- 11. Subrogation Upon Payment or Settlement.**
Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.
The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.
If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.
- 12. Arbitration.**
Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is \$1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.
The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules. A copy of the Rules may be obtained from the Company upon request.
- 13. Liability Limited to this Guarantee, Guarantee Entire Contract.**
- (a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.
 - (b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.
 - (c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.
- 14. Notices, Where Sent.**
All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at **First American Title Insurance Company, Attn: Claims National Intake Center, 1 First American Way, Santa Ana, California 92707.**



First American Title



First American

Schedule A

Litigation Guarantee

ISSUED BY

First American Title Insurance Company

GUARANTEE NUMBER

2511630

File No.: 2511630

Liability: \$40,000.00

Tax: \$29.58

Fee: \$340.00

1. Name of Assured: City of Spokane
2. Date of Guarantee: August 13, 2015
3. This Litigation Guarantee is furnished solely for the purpose of facilitating the filing of an action to foreclose lien.
4. The estate or interest in the Land which is covered by this Guarantee is: Fee Simple
5. Title to the estate or interest in the Land is vested in: Linda S. Gerling, as her separate property
6. The Land referred to in this Guarantee is described as follows:

LOT 22, BLOCK 12, MT. PLEASANT FIRST ADDITION TO SPOKANE, AS PER PLAT RECORDED IN VOLUME "N" OF PLATS, PAGE 50;

SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE, STATE OF WASHINGTON.



First American

Schedule B

Litigation Guarantee

ISSUED BY
First American Title Insurance Company

GUARANTEE NUMBER
2511630

File No.: 2511630

EXCEPTIONS

1. Delinquent General Taxes for the year 2014 .
 Tax Account No.: 26364.2822
1st Half
 Amount Billed: \$ 1,832.46
 Amount Paid: \$ 1,832.46
 Amount Due: \$ 0.00, plus interest and penalty
2nd Half
 Amount Billed: \$ 609.87
 Amount Paid: \$ 0.00
 Amount Due: \$ 609.87, plus interest and penalty

2. Delinquent General Taxes for the year 2015 . The first half becomes delinquent after April 30th.
 The second half becomes delinquent after October 31st.
 Tax Account No.: 26364.2822
1st Half
 Amount Billed: \$ 608.49
 Amount Paid: \$ 0.00
 Amount Due: \$ 608.49, plus interest and penalty
2nd Half
 Amount Billed: \$ 608.50
 Amount Paid: \$ 0.00
 Amount Due: \$ 608.50, plus interest and penalty
 Assessed Land Value: \$ 25,000.00
 Assessed Improvement Value: \$ 60,000.00

3. Easement, including terms and provisions contained therein:
 Recorded: January 20, 1944
 Recording Information: 609820A
 In Favor of: The Washington Water Power Company, a Washington Corporation
 For: To erect, construct, reconstruct and maintain an electrical distribution line and appurtenances

4. Covenants, conditions, restrictions and/or easements; but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, family status, or national origin to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes:
 Recorded: October 11, 1945
 Recording Information: 600458A

5. Deed of Trust and the terms and conditions thereof.
Grantor/Trustor: Dean L. Gerling and Linda S. Gerling, husband and wife
Grantee/Beneficiary: Beneficial Mortgage Corporation
Trustee: Pacific Northwest Title
Amount: \$84,420.37
Recorded: February 13, 2004
Recording Information: 5034924

According to the public records, the beneficial interest under the deed of trust was assigned to U.S. Bank Trust, N.A., as trustee for LSF9 Master Participation Trust by assignment recorded December 09, 2014 as 6353804 of Official Records.

A document recorded January 12, 2010 as 5866761 of Official Records provides that Rande Johnsen, Trustee Corps was substituted as trustee under the deed of trust.

6. Deed of Trust and the terms and conditions thereof.
Grantor/Trustor: Dean L. Gerling and Linda S Gerling, husband and wife
Grantee/Beneficiary: Beneficial Washington Inc.
Trustee: Pacific Northwest Title Company
Amount: \$35,000.00
Recorded: June 15, 2007
Recording Information: 5550021



First American Title

Litigation Guarantee

ISSUED BY
First American Title Insurance Company

GUARANTEE NUMBER
2511630

Schedule C

File No.: 2511630

ATTORNEY'S INFORMATION

1. Being an action to foreclose Lien.
2. Recording District in which property is located Spokane.
3. Property Address: 5018 N Belt St, Spokane, WA 99205.
4. Necessary parties to be made defendants in an action to be brought by the Assured, and as follows:
 - A. Parties in possession.
 - B. Linda S Gerling
5018 N Belt St
Spokane, WA 99205
 - C. US Bank Trust N.A.
13801 Wireless Way
Oklahoma City, OK 73134-2550
 - D. Beneficial Mortgage
961 Werger Dr.
Elmhurst, IL 60126-1058
5. The map, if one is attached hereto, may or may not be a survey of the land depicted. You should not rely upon it for any purpose other than orientation to the general location of the parcel or parcels depicted. First American Title Insurance Company expressly disclaims any liability for alleged loss or damage which may result from reliance upon this map.
6. Unless the property described in this report is located in King, Pierce or Spokane Counties no search of the records of the United States Bankruptcy Court has been made.

05/10/2010 01:57:28 PM
Recording Fee \$83.00 Page 1 of 2
Trustee Deed SPOKANE COUNTY TITLE CO
Spokane County Washington

5886719

[RECORDING REQUESTED BY:]
Trustee Corps

[WHEN RECORDED MAIL TO:]
HSBC CONSUMER LENDING
981 WEIGLE DRIVE
ELMHURST, IL 60126
Attn: John Millen

1 WASHINGTON COUNTY AND THE RECORDER SHALL BE RESPONSIBLE FOR THE RECORDING OF THIS DEED

[space above this line for recorder's use only]

Trustee Sale # WA0869781 Loan # 92171700864888 Title Order # 090766500

\$162,000

TRUSTEE'S DEED UPON SALE ¹⁰

THE GRANTOR, RANDE JOHNSEN, as present Trustee under that Deed of Trust, as hereinafter particularly described, in consideration of the premises and payment recited below, hereby grants and conveys, without warranty to: BENEFICIAL MORTGAGE CORPORATION, GRANTEE, that real property, situated in the County of Spokane, State of Washington, described as follows:

LOT 22, BLOCK 12, MT. PLEASANT FIRST ADDITION, AS PER PLAT RECORDED IN VOLUME "N" OF PLATS, PAGE 60, RECORDS OF SPOKANE COUNTY;
SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE, STATE OF WASHINGTON.
APN #: 28384 2822

TS # 5867422

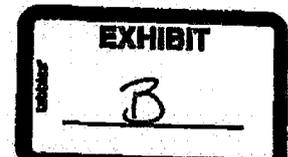
RECITALS:

1. This conveyance is made pursuant to the powers, including the power of sale, conferred upon said Trustee by that certain Deed of Trust between DEAN L. GERLING AND LINDA B. GERLING, HUSBAND AND WIFE, as Grantor, to PACIFIC NORTHWEST TITLE, as Trustee, and BENEFICIAL MORTGAGE CORPORATION, as Beneficiary, dated 02/10/2004, Recorded on 02/13/2004 as Document No. 5034924, records of Spokane, Washington.
2. Said Deed of Trust was executed to secure, together with other undertakings, the payment of one promissory note in the sum of \$84,420.57 with interest thereon, according to the terms thereof, in favor of BENEFICIAL MORTGAGE CORPORATION and to secure any other sums of money which might become due and payable under the terms of said Deed of Trust.
3. The described Deed of Trust provides that the real property conveyed therein is not used principally for agricultural or farming purposes.
4. Default having occurred in the obligations secured and/or covenants of the Grantor, as set forth in Notice of Trustee's Sale described below, which by the terms of the Deed of Trust make operative the power to sell, the thirty-day advance Notice of Default was transmitted to the Grantor, or his successor in interest, a copy of said Notice was posted or served in accordance with law.
5. BENEFICIAL MORTGAGE CORPORATION, being that the holder of the indebtedness secured by said Deed of Trust, delivered to said Trustee a written request directing said Trustee or his

5/10/2010

MCH

\$10.00 201004604



authorized agent to sell the described property in accordance with law and the terms of said Deed of Trust.

- 6. The defaults specified in the "Notice of Default" not having been cured, the Trustee, in compliance with the terms of said Deed of Trust, in the office of the Auditor of Spokane County, Washington, a "Notice of Trustee's Sale" of said property. ~~SR 7422~~
- 7. The Trustee, in its aforesaid "Notice of Trustee's Sale," fixed the place of sale as At the South entrance of the Spokane County Courthouse, 1116 W. Broadway Ave., Spokane, WA 99201, a public place, on 04/23/2010 at 10:00AM, and in accordance with law caused copies of the statutory "Notice of Trustee's Sale" to be transmitted by mail to all persons entitled thereto and either posted or served prior to 90 days before the sale; further, the Trustee caused a copy of said "Notice of Trustee's Sale" to be published once between the thirty-fifth and twenty-eighth day before the date of sale, and once between the fourteenth and seventh day before the date of sale in a legal newspaper in each county in which the property or any part thereof is situated; and further, included in this Notice, which was transmitted to or served upon the Grantor or his successor in interest, a "Notice of Foreclosure" in substantially the statutory form.
- 8. During foreclosure, no action was pending on an obligation secured by said Deed of Trust.
- 9. All legal requirements and all provisions of said Deed of Trust have been complied with, as to acts to be performed and notices to be given, as provided in Chapter 61.24 RCW.
- 10. The defaults specified in the "Notice of Trustee's Sale" not having been cured eleven days prior to the date of Trustee's Sale and said obligations secured by said Deed of Trust remaining unpaid, on 04/23/2010, the date of sale, which was not less than 180 days from the date of default in the obligation secured, the Trustee then and there sold at public auction to said Grantee, the highest therefore, the property hereinabove described, for the sum of \$90,388.50, by the satisfaction in full of the obligation then secured by said Deed of Trust, together with all fees, costs and expenses as provided by statute.

Dated: 04/23/2010

RANDE JOHNSEN, as Successor Trustee

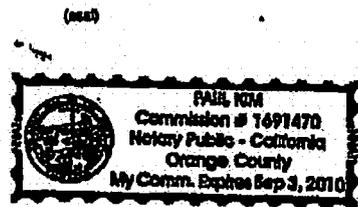
By: Rande Johnson
President CA
STATE OF CA
COUNTY OF Orange

On _____ before me, Paul Kim, personally appeared _____

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal



RETURN NAME and ADDRESS



Robinson Tait, P.S. Attn: Isabelle Evans

710 Second Ave., Suite 710

Seattle, WA 98104

Please Type or Print Neatly and Clearly All Information

Document Title(s)

Judgment

Reference Number(s) of Related Documents

5034924;

Grantor(s) (Last Name, First Name, Middle Initial)

BENEFICIAL MORTGAGE CORPORATION

Grantee(s) (Last Name, First Name, Middle Initial)

DEAN L. GERLING and LINDA S. GERLING, husband and wife; and

BENEFICIAL WASHINGTON INC.,

Legal Description (Abbreviated form is acceptable, i.e. Section/Township/Range/Qtr Section or Lot/Block/Subdivision)

OT 22, BLOCK 12, MT. PLEASANT FIRST ADDITION TO SPOKANE, AS PER PLAT RECORDED

IN VOLUME "N" OF PLATS, PAGE 50; SITUATE IN THE CITY OF SPOKANE,

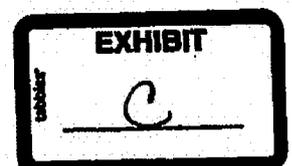
Assessor's Tax Parcel ID Number 28364.2822

The County Auditor will rely on the information provided on this form. The Staff will not read the document to verify the accuracy and completeness of the indexing information provided herein.

Sign below only if your document is Non-Standard.

I am requesting an emergency non-standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some parts of the text of the original document. Fee for non-standard processing is \$50.

Signature of Requesting Party



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FILED

NOV 19 2012

THOMAS R. FALLGUST
SPOKANE COUNTY CLERK

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

BENEFICIAL MORTGAGE CORPORATION,

Plaintiff,

v.

DEAN L. GERLING and LINDA S. GERLING,
husband and wife; and BENEFICIAL WASHINGTON INC.,

Defendants.

NO. 12-2-02770-1

JUDGMENT
(Disposed)

NO SUMMARY
NO JUDGMENT
RCW 4.64.030

X-X

THIS MATTER having come before the undersigned Judge of the above entitled court, defendant DEAN L. GERLING having stipulated to the relief sought in Plaintiff's Complaint and an Order of Dismissal having been entered against him, and defendants LINDA S. GERLING and BENEFICIAL WASHINGTON INC. having failed to appear or answer and an Order of Default having been entered against said defendants on September 21, 2012, the Court finding the statements in Plaintiff's affidavit in support of the Motion to be true and correct, that there is a basis for venue for this action to be brought in the above-entitled Court, and that none of the defendants appear to be

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incompetent, an infant, or in active military service in the United States of America, the court being fully advised,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

- 1. The Trustee's Deed recorded under Spokane County recording number 5898719 on May 10, 2010 is hereby rescinded and declared null and void and to have no further legal affect;
- 2. The Deed of Trust recorded under Spokane County recording number 5034924 is hereby reinstated and restored to its first priority lien position on the property located at 5018 N. Belt, Spokane, WA 99205 and legally described as:

LOT 22, BLOCK 12, MT. PLEASANT FIRST ADDITION TO SPOKANE, AS PER PLAT RECORDED IN VOLUME "N" OF PLATS, PAGE 50; SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE, STATE OF WASHINGTON.

The rights and obligations of the parties to the Deed of Trust and Promissory Note secured by the Deed of Trust are also hereby restored and are fully enforceable as if the Trustee's Deed had not been issued or recorded; and

- 3. All other parties holding a lien on the property located at 5018 N. Belt, Spokane, WA 99205 are hereby restored to their respective positions as if the Trustee's Deed had not been issued and recorded.

DONE this 16 day of November, 2012.

Nichelle Ren

JUDGE-Commissioner

1 Presented by:

2

3 ROBINSON TAIT, P.S.

4

5 
Rhonna Kollenkark, WSBA #35526

6 Robinson Tait, P.S.
7 710 Second Ave, Suite 710
8 Seattle, WA 98104
9 Tel: (206)676-9640
Fax: (206)676-9659
Attorneys for Plaintiff

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I certify that this document is a true and correct copy
of the original on file and of record in my office.

ATTEST

DEC 03 2012

THOMAS R. FALLQUIST, COUNTY CLERK
COUNTY OF SPOKANE, STATE OF WASHINGTON

BY  DEPUTY

Emerson
181 16 100
P.O. Box 100

12/29/2014 09:23:47 AM 6353804
Recording Fee \$18.00 Page 1 of 2
Statement of Debt of Trust to service
Soleish County Washington



Add When Recorded Mail To:
T.D. Service Company
4000 W Metropolitan Dr Ste 400
Orange, CA 92668

Space above for Recorder's use

Customer#: 6732 Service#: 4072143A51 *****
Loan#: 9603912135

ASSIGNMENT OF DEED OF TRUST

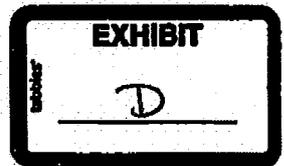
FOR VALUE RECEIVED, BENEFICIAL MORTGAGE CORPORATION, C/O CALIBER HOME LOANS, INC. 11801 WIRELESS WAY, OKLAHOMA CITY, OK 73134-1580, hereby assign and transfer to U.S. BANK TRUST, N.A., AS TRUSTEE FOR LIFE MASTER PARTICIPATION TRUST, C/O CALIBER HOME LOANS, INC. 11801 WIRELESS WAY, OKLAHOMA CITY, OK 73134-1580, all its right, title and interest in and to said Deed of Trust in the amount of \$94,429.37, recorded in the State of WASHINGTON, County of SPOKANE Official Records, dated FEBRUARY 10, 2004 recorded on FEBRUARY 13, 2004, as Instrument No. 5034724, in Book No. —, at Page No. —, Executed by: DEAN L. GERLING AND LINDA S. GERLING, HUSBAND AND WIFE (Original Mortgage).

Original Mortgage: BENEFICIAL MORTGAGE CORPORATION. Property Address: 5018 NORTH BELT, SPOKANE, WA 99205-0000.

Date: DEC 8 4 2014

BENEFICIAL MORTGAGE CORPORATION, BY CALIBER HOME LOANS, INC., AS ATTORNEY IN FACT

By: *Michelle Fenn*
Michelle Fenn, Assistant Secretary



Loan#: 9803913139 Srv#: 4072363AS1
Page 2

State of **CALIFORNIA**)
County of **ORANGE**) ss.

On DEC 8 4 2014, before me, Elia Barriga, a Notary Public, personally appeared Michelle Hese, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
Witness my hand and official seal.



(Notary Name) Elia Barriga



Recording Requested By
T.D. SERVICE COMPANY

Wittstruck, Melissa

From: Wittstruck, Melissa
Sent: Wednesday, August 05, 2015 9:58 AM
To: carmand@pkmg.net
Cc: Wittstruck, Melissa
Subject: 5018 N Belt Spokane WA 335-002002

Importance: High

Tracking: Recipient Recall
carmand@pkmg.net
Wittstruck, Melissa Failed: 8/5/2015 10:00 AM

Crystal,
I just left you a voicemail regarding this property 5018 N Belt Spokane. Please provide documentation of Wells Fargo's current property ownership to me. Confirm that the foreclosure process is complete. The City of Spokane does have an abandoned property registry for properties that are vacant and in foreclosure/foreclosed SMC 17F.070.520
<https://mv.spokanecity.org/smc/?Section=17F.070.520>.

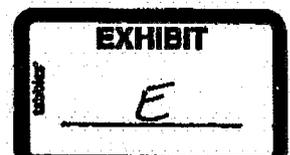
In addition, Wells Fargo has not registered 5018 N Belt Spokane WA as required by ordinance. The property is in a foreclosure process; lack of registration is out of compliance. Attached is the registration form with required information, including local contact. There also two waiver forms; SMC 17F.070.520
<https://mv.spokanecity.org/smc/?Section=17F.070.520> the authorization to trespass is mandatory. The City is currently exercising a grace period whereby the fee is not being collected, nor is the city conducting monitoring activities. Do not send a check.

Please let me know if I can be of further assistance.

Melissa Wittstruck



Melissa Wittstruck, Neighborhood & Housing Specialist | City of Spokane | Neighborhood Services & Code Enforcement
509.625.6087 | fax 509.625.6802 | mwittstruck@spokanecity.org | www.beautifyspokane.org



Wittstruck, Melissa

From: Wittstruck, Melissa
Sent: Wednesday, August 05, 2015 10:32 AM
To: carmand@pkmg.net
Co: Wittstruck, Melissa

Crystal,

Thank you for your call just now clarifying what information is needed for 5018 N Belt. As I discussed with you, the contract between your vendor, PKMG, and client Wells Fargo is between those entities. The city, however, needs documentation of who is the owner, has control of, the property and can legally authorize city staff to inspect the property or for SPD to execute the trespass.

Please provide documentation of Wells Fargo's current property ownership to me. Confirm that the foreclosure process is complete.

The City of Spokane does have an abandoned property registry for properties that are vacant and in foreclosure/foreclosed SMC 17F.070.520 <https://mv.spokanecity.org/smc/?Section=17F.070.520>.

Please let me know if I can be of further assistance.

Melissa Wittstruck



Melissa Wittstruck, Neighborhood & Housing Specialist | City of Spokane | Neighborhood Services & Code Enforcement
509.625.6087 | fax 509.625.6802 | mwittstruck@spokanecity.org | www.beautifvspokane.org



OFFICE OF
NEIGHBORHOOD SERVICES
CODE ENFORCEMENT
808 W. SPOKANE FALLS BLVD.
SPOKANE, WASHINGTON 99201-3343
509.625.6083
FAX 509.625.6802
spokaneneighborhoods.org

August 14, 2015

**NOTICE OF SUMMARY HEARING
CERTIFIED**

Occupant
5018 N Belt
Spokane WA 99205

HCSB/Beneficial Mortgage Corp
961 Weigel Dr
Elmhurst Ill 60126

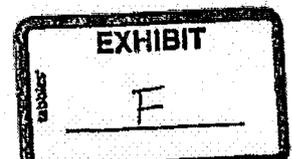
**RE: BUILDING OFFICIAL'S SUMMARY HEARING OF AN ABANDONED AND SUBSTANDARD
HOUSE AND GARAGE AT 5018 N BELT, SPOKANE, WASHINGTON 99205
PARCEL NO: 26364.2822
LEGAL DESCRIPTION: MT PLEASANT 1 L22 B12**

This letter serves as notice that a Summary Hearing was held before me on July 30, 2015, the Building Official for the City of Spokane, regarding the aforementioned property. At the Summary Hearing, Code Enforcement staff presented evidence of ownership and conditions of this property. The following are the findings of facts that resulted in a referred complaint from Council on May 20, 2015 and an inspection of the property by Code Enforcement staff on June 1 and June 3, 2015 and July 10, 2015.

FINDINGS

VIOLATION OF SMC 17F.070.400 SUBSTANDARD BUILDING

- A. Dilapidation: exterior decay, water damage. Findings: Siding is dilapidated on the addition which appears to be set on a former deck, the OSB board used for foundation skirting is warped and broken in places, and the roofing is deteriorated, with the overhang falling down over the back door. The rear porch is deteriorated and bowed; no steps are visible. The garage has peeling paint and possible dry rot where earth and wood contact exists
- B. Structural defects: foundation, wall and roof framing. Findings: The addition appears to be set on a former deck, the OSB board used for foundation skirting is warped and broken in places, and the roofing is deteriorated, with the overhang falling down over the back door. The rear porch is deteriorated and bowed; no steps are visible.
- C. Unsanitary conditions: waste accumulation, health hazards. Findings: Solid waste has accumulated on the back porch. On July 13, 2015 Field Services property preservation reported raw garbage in the house that was being cleaned out and human waste with a possible chemical toilet as well.
- D. Defective/inoperable plumbing. Findings: Water has been off since January 18, 2010 therefore there is no water for sanitation.
- E. Inadequate weatherproofing: siding, roofing, glazing. Findings: Two windows on the north side of the house are open or inadequately covered with cardboard allowing weather to penetrate



the structure.

- F. No activated utility service for one year. Findings: Water has been off since January 18, 2010
- G. Inoperable or inadequate heating system. Findings: Meter is red-tagged and there is no power for heating system.
- L. Defects increasing the hazards of fire, accident or other calamity. Findings: The house appears to be abandoned due to noted conditions. Complainant states that house has been in foreclosure for several years and should be vacant, but there is a squatter. Code Enforcement and Spokane Police report a squatter in the house. SPD has responded to the house several times for reports on the squatter. On July 13, 2015 Field Services property preservation reported that they had secured the house but a squatter had returned. All these defects increase the hazards of fire, accident or other calamity in the house and garage.

VIOLATION OF SMC 10.08.030

B(5) An abandoned or vacant building, structure, or part thereof not securely closed to entry.

The building official or hearing examiner may determine that the building/structure is unfit for human habitation and orders demolition if any of the substandard conditions listed in SMC 17F.070.400 are found to exist to such an extent as to be dangerous or injurious to the health or safety of the buildings occupants or community.

BUILDING OFFICIAL'S ORDER

Conditions on the property are substandard due to no water, no power, and other noted conditions as defined by Spokane Municipal Code SMC 17F.070.400, and are a nuisance as defined in SMC 10.08.030 due to: unsecured buildings, and may be considered abandoned under SMC 17F.070.030.

The conditions noted above warrant a "DO NOT OCCUPY" order for the safety and protection of occupants and public. By authority of SMC 17F.070.510 entitled "Emergency Action," I hereby order the occupants to vacate the house and garage and to not allow residency. Premises need to be vacated by 9:00 a.m August 26, 2015.

By authority of SMC 17F.070.510 entitled "Emergency Action," I hereby order the City of Spokane to securely board the house and garage immediately upon executing the DO NOT OCCUPY order. The charge for boarding will be placed as a lien on the property.

Lifting of the "DO NOT OCCUPY" order may be considered before the hearing date if violations are remedied through reconnection of utilities through legal means including permits and inspections. Call the Inspector Supervisor at 625-6108 for an inspection of the property before re-occupation.

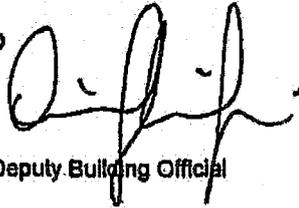
The buildings are to be kept secure and are not to be occupied until such time as repairs are made, permits are issued, and inspections complete.

The charge for boarding will be placed as a lien on the property.

An administrative hearing will be held Tuesday, September 29, 2015. A letter with hearing information will be sent prior to that date.

Please note: Prior to any demolition activity, contact Spokane Regional Clean Air Agency at (509) 477-4727. The inspection results are required by the Washington State Department of Labor and Industries to be maintained on file and available upon request by the Department of Labor and Industries (WAC 296-62-07721).

SO ORDERED



D. Skindzier, Deputy Building Official

Enclosure: Rehabilitation plan

DS:MKW:mh

PC: D. Skindzier, Deputy Building Official
Calliber Home Loans 3701 Regent Blvd. Irving, TX 75063
Linda Gerling 923 E Glass Spokane WA 99207

Certified - 9414726699042954927438
9414726699042954927544

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ORIGINAL FILED
SEP 16 2015

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

In Re the Real Property Located at: 5018 N. BELT ST., SPOKANE, WA 99205	No. 15203848-1 [PROPOSED] ORDER GRANTING PETITION TO APPOINT CUSTODIAL RECEIVER
--	---

THIS MATTER came before the Court on September __, 2015, upon the Petition for Appointment of Custodial Receiver ("Petition") filed by the City of Spokane ("City") pursuant to RCW 7.60.025. The City seeks appointment of a custodial receiver for the real property located at 5018 N. Belt St., Spokane, WA 99205 ("Property") for the sole and limited purpose of creating an entity with the legal authority to report trespassing activity and the condition of the property to the City and/or law enforcement where none currently exists.

The Court, having considered the pleadings and argument of counsel, finding notice of this matter was properly given and good cause to grant the motion, hereby ORDERS AS FOLLOWS:

1. The City's Petition to Appoint Custodial Receiver is GRANTED;
2. The Court hereby appoints Timothy R. Fischer as the Custodial Receiver over the Property ("Receiver");

COPY

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
1900 Bank of America Financial Center
601 West Riverside
Spokane, Washington 99201
(509) 830-6131

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3. The Receiver's powers and duties under RCW 7.60.060 shall be limited as follows:

a. RCW 7.60.060(1)(a) through (i) shall not apply and the Receiver's powers shall be the ability to report trespasses at the Property to law enforcement and to request the removal of solid waste located on the Property; and

b. RCW 7.60.060(2)(a) shall not apply;

4. The Receiver shall not be required to post any bond pursuant to RCW 7.60.045;

5. The Receiver shall move to dismiss this receivership action at such time as he deems appropriate but, in no event, more than 30 days after Code Enforcement executes its DO NOT OCCUPY order; and

6. The automatic stay imposed by RCW 7.60.110(1)(a)-(e) shall not apply.

DONE IN OPEN COURT this ____ day of September, 2015.

JUDGE/COURT COMMISSIONER

Presented by:
WINSTON & CASHATT, LAWYERS

DAVID F. GARDNER, WSBA No. 39331
Attorneys for the City of Spokane

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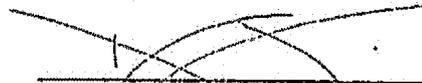
SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

In Re the Real Property Located at:	No. 15-2-03848-1
5018 N. BELT ST., SPOKANE, WA 99205	NOTE FOR HEARING ON VERIFIED PETITION TO APPOINT CUSTODIAL RECEIVER

TO: THE CLERK OF THE COURT; AND
TO: PARTIES IN INTEREST

PLEASE TAKE NOTICE that the City of Spokane shall bring on for hearing Verified Petition to Appoint Custodial Receiver on Friday, September 25, 2015, at 9:00 a.m., at the Spokane County Superior Court, 1116 W. Broadway Avenue, Courtroom 301 before Honorable Salvatore F. Cozza Presiding Judge.

DATED this 17 day of September, 2015.



 DAVID P. GARDNER, WSBA No. 39331
 WINSTON & CASIATT, LAWYERS
 Attorneys for the City of Spokane

NOTE FOR HEARING
Page 1

Handwritten: Copy

Winston & CasIatt
 A PROFESSIONAL SERVICE CORPORATION
 1800 Bank of America Financial Center
 601 West Riverside
 Spokane, Washington 99201
 (509) 670-6131

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SEP 17 2015

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

In Re the Real Property Located at:
5018 N. BELT ST., SPOKANE, WA 99205

No. 15-2-03848-1
DECLARATION OF DAVID P. GARDNER

I, David P. Gardner, hereby declare, under penalty of perjury, as follows:

- 1. I am over the age of eighteen, have personal knowledge of the facts below, and am competent to testify.
- 2. I am counsel for the City of Spokane in this matter.
- 3. I filed the Verified Petition for Appointment of Custodial Receiver with the Spokane County Superior Court Clerk's office. Upon filing, the case was assigned to Judge Price.
- 4. My office immediately contacted Judge Price's chambers to obtain a hearing date for the request to appoint a receiver. We were informed Judge Price had no availability until October 30.
- 5. Given the emergent nature of the City's request, I contacted Judge Price's clerk, Ms. Dorman, and spoke with her about our need to have a hearing in 7 days' time, as envisioned by the Receivership Act. Ms. Dorman instructed me that Judge Price authorized the City to set the hearing in Presiding, before Judge Cozza, where a timely hearing could be obtained.

DECLARATION -
Page 1

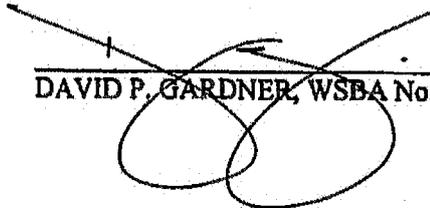
WW [Signature]
(to Court)

Winston & Bashatt
A PROFESSIONAL SERVICE CORPORATION
1900 Bank of America Financial Center
601 West Riverside
Spokane, Washington 99201
(509) 638-6131

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6. As Ms. Williams' Certificate of Service makes clear, all parties entitled to notice of the receivership under RCW 7.60.025(3) have been provided timely notice of this hearing.

Sworn under penalty of perjury, this 17th day of September, 2015.



DAVID P. GARDNER, WSBA No. 39331

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SEP 17 2015

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

In Re the Real Property Located at:	No. 15-2-03848-1
5018 N. BELT ST., SPOKANE, WA 99205	CERTIFICATE OF SERVICE

I, Cassandra M. Williams, hereby declare as follows:

1. At all times hereinafter mentioned I was a citizen of the United States and a resident of the State of Washington, over the age of eighteen (18) years, and not a party to this action.

2. The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the 17th day of September, 2015, at Spokane, Washington, the **Verified Petition to Appoint Custodial Receiver, Proposed Order, Note for Hearing, and Case Assignment Notice and Order** were caused to be served on the following person(s) in the manner indicated below:

Occupant
5018 N. Belt Street
Spokane, WA 99205

- VIA REGULAR MAIL
- VIA CERTIFIED MAIL
- HAND DELIVERED
- BY FACSIMILE
- VIA FEDERAL EXPRESS
- VIA EMAIL

CERTIFICATE OF SERVICE
Page 1
WOW/Sum (to line)

COPY

Winston & Bashatt
A PROFESSIONAL SERVICE CORPORATION
1900 Bank of America Financial Center
601 West Riverside
Spokane, Washington 99201
(509) 630-6131

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Spokane County Sheriff's Office
1100 West Mallon
Spokane, WA 99260

VIA REGULAR MAIL
VIA CERTIFIED MAIL
HAND DELIVERED
BY FACSIMILE
VIA FEDERAL EXPRESS
VIA EMAIL

Beneficial Mortgage Corporation
c/o Robinson Tait, P.S. Attn: Isabelle Evans
710 Second Ave., Suite 710
Seattle, WA 98104

VIA REGULAR MAIL
VIA CERTIFIED MAIL
HAND DELIVERED
BY FACSIMILE
VIA FEDERAL EXPRESS
VIA EMAIL

Beneficial Mortgage Corporation
961 Werger Dr.
Elmhurst, IL 60126-1058

VIA REGULAR MAIL
VIA CERTIFIED MAIL
HAND DELIVERED
BY FACSIMILE
VIA FEDERAL EXPRESS
VIA EMAIL

US Bank Trust N.A.
13801 Wireless Way
Oklahoma City, OK 73134-2550

VIA REGULAR MAIL
VIA CERTIFIED MAIL
HAND DELIVERED
BY FACSIMILE
VIA FEDERAL EXPRESS
VIA EMAIL

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

DATED this 17th day of September, 2015.


CASSANDRA M. WILLIAMS
Paralegal

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SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

In re the Real Property Located at:
5018 NORTH BELT ST., SPOKANE, WA 99205

Case No.: 15-2-03848-1

RETURN OF SERVICE

I, ROGER PAPINI, DECLARE:

I am a resident of the State of Washington, County of Spokane. I am over the age of 18 years, and I am not a party to this action. I am competent to be a witness in this action.

I posted copies of the following documents:

1. Verified Petition to Appoint Custodial Receiver;
2. [Proposed] Order Granting Motion to Shorten Time & Petition to Appoint Custodial Receiver;
3. Case Assignment Notice & Order; and
4. Note for Hearing on Verified Petition to Appoint Custodial Receiver;

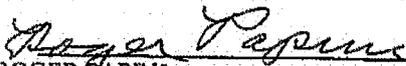
DATE: September 17, 2015 TIME: 4:10 pm Front Door - 4:15 pm Back Gate

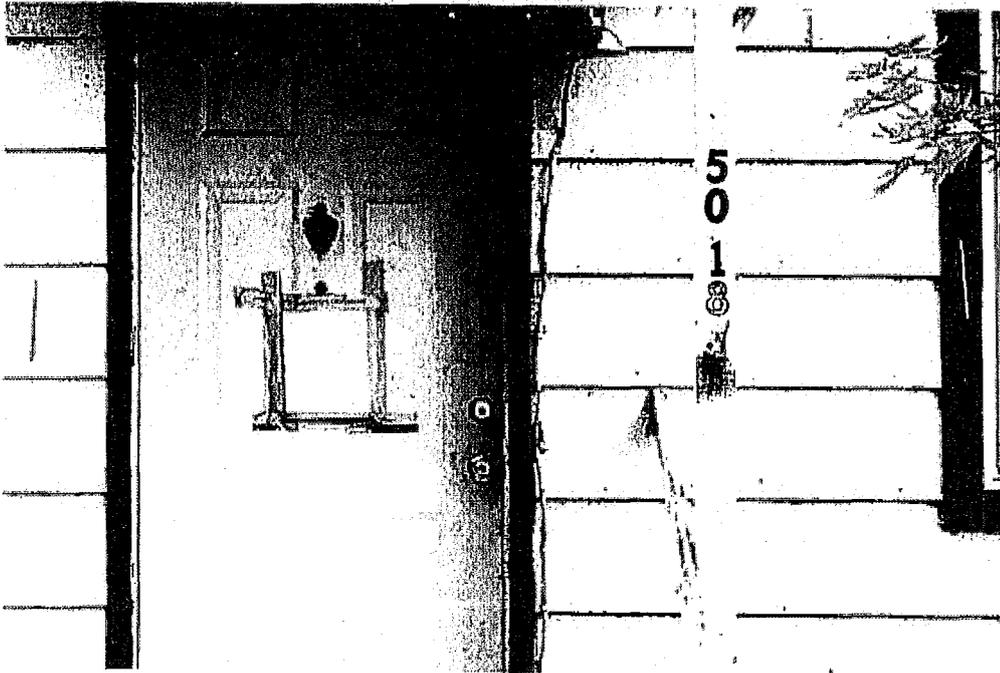
ADDRESS: 5018 N. Belt St., Spokane, WA 99207 (In front on Property on Front Door; and
On Fence Gate in the rear of property in the alley)

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

Signed at: Spokane County, WA

Date: September 18, 2015

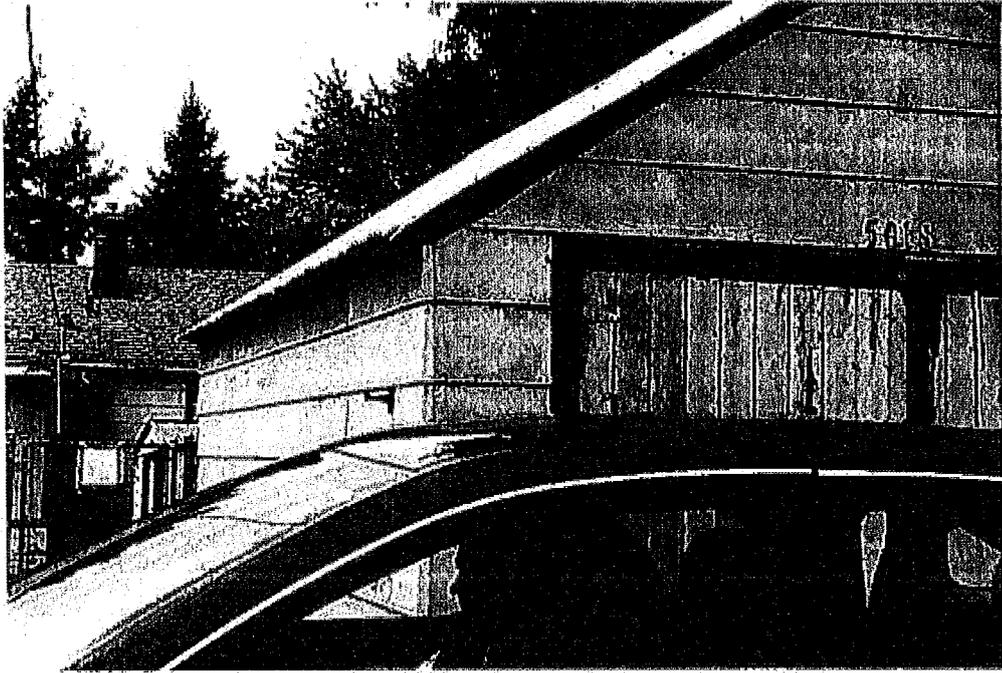

ROGER PAPINI #379 Spokane County



5018 North Belt, Spokane, WA 99207 - Posted 9/17/15 at 4:10 pm, Front Door



5018 North Belt, Spokane, WA 99207 - Posted 9/17/15 at 4:15 pm, Back Gate



5018 North Belt, Spokane, WA 99207 – Posted 9/17/15 at 4:15 pm,
Back Gate Showing Garage with address

COPY
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SEP 25 2015

SPOKANE COUNTY CLERK

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7 **SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE**

8 In Re the Real Property Located at:

No. 15-2-03848-1

9 5018 N. BELT ST., SPOKANE, WA 99205

**ORDER GRANTING PETITION TO
10 APPOINT CUSTODIAL RECEIVER**

11 THIS MATTER came before the Court on September 25, 2015, upon the Petition for
12 Appointment of Custodial Receiver ("Petition") filed by the City of Spokane ("City") pursuant to
13 RCW 7.60.025. The City seeks appointment of a custodial receiver for the real property located
14 at 5018 N. Belt St., Spokane, WA 99205 ("Property") for the sole and limited purpose of creating
15 an entity with the legal authority to report trespassing activity and the condition of the property
16 to the City and/or law enforcement where none currently exists.
17

18 The Court, having considered the pleadings and argument of counsel, finding notice of
19 this matter was properly given and good cause to grant the motion, hereby **ORDERS AS**
20 **FOLLOWS:**

- 21 1. The City's Petition to Appoint Custodial Receiver is **GRANTED**;
- 22 2. The Court hereby appoints Timothy R. Fischer as the Custodial Receiver over the
23 Property ("Receiver");
24

ORDER APPOINTING RECEIVER
Page 1

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
1900 Bank of America Financial Center
601 West Riverside
Spokane, Washington 99201
(509) 838-6131

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3. The Receiver's powers and duties under RCW 7.60.060 shall be limited as follows:

a. RCW 7.60.060(1)(a) through (i) shall not apply and the Receiver's powers shall be the ability to report trespasses at the Property to law enforcement and to request the removal of solid waste located on the Property; and

b. RCW 7.60.060(2)(a) shall not apply;

4. The Receiver shall not be required to post any bond pursuant to RCW 7.60.045;

5. The Receiver shall move to dismiss this receivership action at such time as he deems appropriate but, in no event, more than 30 days after Code Enforcement executes its DO NOT OCCUPY order; and

6. The automatic stay imposed by RCW 7.60.110(1)(a)-(e) shall not apply.

DONE IN OPEN COURT this _____ day of September, 2015.

SALVATORE F. COZZA

JUDGE/COURT COMMISSIONER

Presented by:
WINSTON & CASHATT, LAWYERS

DAVID F. GARDNER, WSBA No. 39331
Attorneys for the City of Spokane

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NOV 05 2015

SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

In Re the Real Property Located at:
5018 N. BELT ST., SPOKANE, WA 99205

No. 15-2-03848-1

**ORDER (1) DISCHARGING RECEIVER
AND (2) TERMINATING
RECEIVERSHIP**

RCW 7.60.290

THE COURT, having considered the Receiver's Motion and finding good cause to grant the Motion,

HEREBY ORDERS that (1) the Receiver is discharged from his duties, and (2) this receivership is terminated.

DATED this 6th day of November, 2015.

SALVATORE F. COZZA

JUDGE SALVATORE F. COZZA

ORDER DISCHARGING RECEIVER AND
TERMINATING RECEIVERSHIP - Page 1

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
1900 Bank of America Financial Center
601 West Riverside
Spokane, Washington 99201
(509) 838-6131

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Presented by:
WINSTON & CASHATT, P.S.



Timothy R. Fischer, WSBA No. 40075

ORDER DISCHARGING RECEIVER AND
TERMINATING RECEIVERSHIP - Page 2

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
1000 Bank of America Financial Center
601 West Riverside
Spokane, Washington 99201
(509) 838-6101

Exhibit 5



5550021
Page 1 of 8
05/15/2007 02:52P
Spokane Co. WA

RETURN ADDRESS:

Records Processing Services
377 Lamont Road
Elmhurst, IL 60126

DEED OF TRUST

921717

If this box is checked, this Deed of Trust secures future advances.

THIS DEED OF TRUST is made this 12TH day of JUNE, 20 07, among the Grantor(s),
DEAN L GERLING AND LINDA S GERLING, HUSBAND AND WIFE

(herein "Borrower"), PACIFIC NORTHWEST TITLE COMPANY

(herein "Trustee") and the Grantee/Beneficiary, BENEFICIAL WASHINGTON INC.

a corporation organized and existing under the laws of DELAWARE
whose address is 8701 N DIVISION STREET, SUITE A,
SPOKANE, WA 99218 (herein "Lender"). Witnesseth:

The following paragraph preceded by a checked box is applicable.

WHEREAS, Borrower is indebted to Lender in the principal sum of \$ _____, evidenced by Borrower's Loan Agreement dated _____ and any extensions or renewals thereof (including those pursuant to any Renegotiable Rate Agreement) (herein "Note"), providing for monthly installments of principal and interest, including any adjustments to the amount of payments or the contract rate if that rate is variable, with the balance of the indebtedness, if not sooner paid, due and payable on _____;

WHEREAS, Borrower is indebted to Lender in the principal sum of \$38,000.00, or so much thereof as may be advanced pursuant to Borrower's Revolving Loan Agreement dated JUNE 12, 2007 and extensions and renewals thereof (herein "Note"), providing for monthly installments, and interest at the rate and under the terms specified in the Note, including any adjustments in the interest rate if that rate is variable, and providing for a credit limit stated in the principal sum above and an initial advance of \$35,000.00;

TO SECURE to Lender the repayment of the indebtedness, including future advances, evidenced by the Note, with interest thereon at the applicable contract rate (including any adjustments to the amount of payment or the contract rate if that rate is variable) and other charges; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained, Borrower, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust with power of sale, the following described property located in the County of SPOKANE
State of Washington:

PARCEL ID NO.: 26364.2822

LOT 22. BLOCK 12. MT PLEASANT FIRST ADDITION TO SPOKANE,
AS PER PLAT RECORDED IN VOLUME "N" OF PLATS, PAGE 60;

SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE, STATE
OF WASHINGTON,

05-15-07 DOT



*0450A6AFCN91G0T9000AA0010110**GERLING

ORIGINAL

WA001011



5550021
Page 2 of 8
05.15.2007 02:52P
Spokane Co, WA

(Page 2 of 8)

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, and rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), all of which, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property."

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

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Deed of Trust or performing the covenants and agreements secured by this Deed of Trust.

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Deed of Trust as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period





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as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Deed of Trust, as the phrase "covenant and agreement" is used in Section 7. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 7 and pay such amount and Borrower shall then be obligated under Section 7 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 12 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 35000), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this deed of trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the loan does not qualify as a "federally related mortgage loan" under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentally, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

4. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any.

5. **Hazard 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 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.

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 Deed of Trust, 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 Deed of Trust, 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 3 or change the amount of the payments. If under paragraph 19 the Property is acquired by Lender,

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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 Deed of Trust immediately prior to the acquisition.

6. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

7. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust; or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the applicable Contract Rate, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

10. 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 Deed of Trust granted by Lender to any successor in interest of Borrower and all other parties who are or who hereafter may become secondarily liable shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the right hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Deed of Trust, but does not execute the Note, (a) is co-signing this Deed of Trust only to grant and convey that Borrower's interest in the Property to Trustee under the terms of this Deed of Trust, (b) is not personally liable on the Note or under this Deed of Trust, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or the Note without that Borrower's consent and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.

12. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the address stated in the Note or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. Governing Law; Severability. The applicable law contained in the Note shall control. Where no applicable law is contained therein, the state and local laws of the jurisdiction in which the Property is located shall apply except where such laws conflict with Federal law, in which case Federal law applies. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust, if requested, at the time of execution or after recordation hereof.

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15. Rehabilitation Loan Agreement. Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

16. Transfer of the Property. If Borrower sells or transfers all or any part of the Property or an interest therein, excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) a transfer by devise, descent, or by operation of law upon the death of a joint tenant, (c) the grant of any leasehold interest of three years or less not containing an option to purchase, (d) the creation of a purchase money security interest for household appliances, (e) a transfer to a relative resulting from the death of a Borrower, (f) a transfer where the spouse or children of the Borrower become an owner of the property, (g) a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the Borrower becomes an owner of the property, (h) a transfer into an inter vivos trust in which the Borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property, or (i) any other transfer or disposition described in regulations prescribed by the Federal Home Loan Bank Board, Borrower shall cause to be submitted information required by Lender to evaluate the transferee as if a new loan were being made to the transferee. Borrower will continue to be obligated under the Note and this Deed of Trust unless Lender releases Borrower in writing.

If Lender does not agree to such sale or transfer, Lender may declare all of the sums secured by this Deed of Trust to be immediately due and payable. If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 12 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed or delivered within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 17 hereof.

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

17. Acceleration; Remedies. Except as provided in paragraph 16 hereof, or as otherwise required by law, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust 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 and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Deed of Trust to be immediately due and payable 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 reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 17, including but not limited to reasonable attorney's fees.

If lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold.

Lender or Trustee shall take such action regarding notice of sale and provide notice to Borrower and to other persons in the manner prescribed by applicable law. After the lapse of such time as may be 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 such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in 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 reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's fees and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto or to the clerk of the superior court of the county in which the sale took place.





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18. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to the earlier to occur of (i) the fifth day (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to the power of sale contained in this Deed of Trust or (ii) entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided in paragraph 17 hereof including but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 16.

19. Lender in Possession. Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender, in person, by agent or judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust.

20. Reconveyance. Upon payment of all sums secured by this Deed of Trust, if Lender is not committed to make any future refinancings or future advances, Lender shall request Trustee to convey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation and reconveyance, if any.

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

22. Subrogation. Lender shall be subrogated for further security to the lien, although released of record, of any and all encumbrances paid out of the proceeds of the loan secured by this Deed of Trust.

23. Use of the Property. The Property is not used principally for agricultural or farming purposes.

24. Waiver of Statutory Rights. To the extent permitted by law, Borrower hereby waives the benefit of all homestead, dower, or curtesy rights or exemptions the Borrower may possess with respect to the property.

25. Arbitration Rider to Note. The Arbitration Rider attached to and made a part of the Note is hereby incorporated by reference and made a part of this Deed of Trust.

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**REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEED OF TRUST**

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Deed of Trust to give Notice to Lender, at Lender's address set forth on page one of this Deed of Trust, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust,

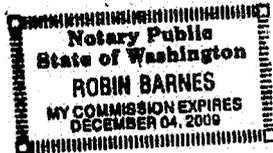
Dean L Gerling
DEAN L GERLING -Borrower
Linda S Gerling
LINDA S GERLING -Borrower

STATE OF WASHINGTON, Spokane County ss:

On this 12 day of June, 2007,
before me, Robin Barnes, a Notary Public in and for said
county and state, personally appeared Dean L Gerling and Linda S Gerling;
known or proved to me to be the person(s) who executed the foregoing instrument, and acknowledged
to me that he y executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this
certificate first above written.

Robin Barnes
Notary Public residing at: Spokane Co.

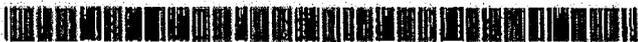


STATE OF WASHINGTON, _____ County ss:

On this _____ day of _____, 20____,
before me, _____ a Notary Public in and for said
county and state, personally appeared _____;
known or proved to me to be the person(s) who executed the foregoing instrument, and acknowledged
to me that _____ he _____ executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this
certificate first above written.

Notary Public residing at:





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Spokane Co. WA

REQUEST FOR RECONVEYANCE

TO TRUSTEE:

The undersigned is the holder of the note or notes secured by this Deed of Trust. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Dated: _____

RECORDED
STATE OF WASHINGTON
ROBIN HALL
COUNTY CLATSOP
NOV 15 2007



When Recorded Return To:

6451372 11/12/2015 08:00:14 AM

Rec Fee: \$15 00 Page 1 of 1

HSBC MORTGAGE SERVICES
C/O ALDRIDGE PITE
4375 JUTLAND DRIVE
SAN DIEGO, CA 92117

Resign & Appt Of Successor Trustee SIMPLIFILE
LC E-RECORDING
Spokane County Washington eRecorded

150244388

92171700605557Z

APPOINTMENT OF SUCCESSOR TRUSTEE

HSBC CONSUMER LENDING #:92171700605557Z "GERLING" Spokane, Washington
WHEREAS, the undersigned is the present Beneficiary under the Deed of Trust Described as follows:

Original Trustor : DEAN L GERLING AND LINDA S GERLING, HUSBAND AND WIFE
Original Beneficiary : BENEFICIAL WASHINGTON INC.
Dated: 08/12/2007 Recorded: 08/15/2007 In Book/Reel/Liber: N/A Page/Folio: N/A as Instrument No.: 5550021
In the County of Spokane State of Washington

Assessor's/Tax ID No. 26364.2822
Property Address: 5018 N BELT STREET, SPOKANE, WA 99205

AND WHEREAS, the undersigned, who is the present Beneficiary under said Deed of Trust, desires to appoint a successor Trustee under said Deed of Trust in the place and stead of present Trustee hereunder;

Now therefore, the undersigned hereby appoints CLEAR RECON CORP whose address is 8311 SE 36TH STREET, STE. 100 MERCER ISLAND, WA 98040 as Successor Trustee under said Deed of Trust, to have all the powers of said original Trustee, effective immediately.

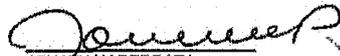
BENEFICIAL FINANCIAL I INC., SUCCESSOR BY MERGER TO BENEFICIAL WASHINGTON INC.
On November 3rd, 2015

By: 
Linda Nguyen, VP & Asst Secy, Administrative Services Division

STATE OF Florida
COUNTY OF Hillsborough

On November 3rd, 2015, before me, JONATHAN PEDRAZA, a Notary Public in and for Hillsborough in the State of Florida, personally appeared Linda Nguyen, VP & Asst Secy, Administrative Services Division, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,


JONATHAN PEDRAZA
Notary Expires: 04/16/2019 #FF221363



When Recorded Return To:
HSBC MORTGAGE SERVICES
C/O ALDRIDGE PITE
4375 JUTLAND DRIVE
SAN DIEGO, CA 92117

6451373 11/12/2015 08:00:14 AM
Rec Fee. \$74.00 Page 1 of 2
Release Of Mortgage SIMPLIFILE LC E-
RECORDING
Spokane County Washington eRecorded

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92171700605557Z

Deed of Reconveyance

HSBC CONSUMER LENDING #: 92171700605557Z *GERLING* Spokane, Washington
WHEREAS CLEAR RECON CORP is the present Trustee of record under the following described Deed of Trust:
Trustor: DEAN L GERLING AND LINDA S GERLING, HUSBAND AND WIFE
Beneficiary: BENEFICIAL FINANCIAL I INC., SUCCESSOR BY MERGER TO BENEFICIAL WASHINGTON INC.
Original Beneficiary: BENEFICIAL WASHINGTON INC.
Original Trustee: PACIFIC NORTHWEST TITLE COMPANY
Dated: 08/12/2007 Recorded: 08/15/2007 in Book/Reel/Liber: N/A Page/Folio: N/A as Instrument No.: 5550021
In the Records of the County Recorder of Spokane, State of Washington.

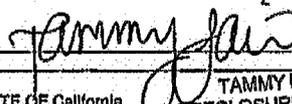
Assessor's/Tax ID No. 26304,2822
Property Address: 5018 N BELT STREET, SPOKANE, WA 99205

AND WHEREAS, the above said Deed of Trust has been paid in full;

NOW THEREFORE, the present Trustee having received from the present Beneficiary under said Deed of Trust and the obligations secured thereby a written request to reconvey by reason of the obligations secured by said Deed of Trust,
DOES HEREBY RECONVEY, without warranty, to the person or persons legally entitled thereto, the estate, title and interest now held by it under said Deed of Trust, describing the land therein as more fully described in said Deed of Trust.

By CLEAR RECON CORP as Trustee
On _____

NOV 06 2015


STATE OF California
COUNTY OF _____
TAMMY LAIRD
FORECLOSURE MANAGER

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Notary Expires: / /

(This area for notarial seal)

SEE ATTACHMENT FOR
OFFICIAL NOTARIZATION

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

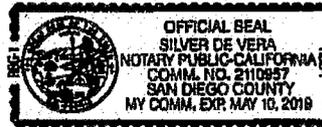
On November 06, 2015 before me, Silver De Vera, Notary Public
(Insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 
Silver De Vera



(Seal)

When Recorded Return To:

6451388 11/12/2015 08:06:47 AM

HSBC MORTGAGE SERVICES
C/O ALDRIDGE PITE
4375 JUTLAND DRIVE
SAN DIEGO, CA 92117

Rec Fee: \$15 00 Page 1 of 1
Resign & Appt Of Successor Trustee SIMPLIFILE
LC E-RECORDING
Spokane County Washington eRecorded

150244388

92171700605557Z

APPOINTMENT OF SUCCESSOR TRUSTEE

HSBC CONSUMER LENDING #: 92171700605557Z "GERLING" Spokane, Washington
WHEREAS, the undersigned is the present Beneficiary under the Deed of Trust Described as follows:

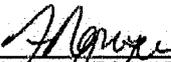
Original Trustor : DEAN L GERLING AND LINDA S GERLING, HUSBAND AND WIFE
Original Beneficiary : BENEFICIAL WASHINGTON INC.
Dated: 06/12/2007 Recorded: 06/19/2007 In Book/Reel/Liber: N/A Page/Folio: N/A as Instrument No.: 5550021
In the County of Spokane State of Washington

Assessor's/Tax ID No. 26384.2822
Property Address: 5018 N BELT STREET, SPOKANE, WA 99205

AND WHEREAS, the undersigned, who is the present Beneficiary under said Deed of Trust, desires to appoint a successor Trustee under said Deed of Trust in the place and stead of present Trustee thereunder;

Now therefore, the undersigned hereby appoints CLEAR RECON CORP whose address is 9311 SE 36TH STREET, STE. 100 MERCER ISLAND, WA 98040 as Successor Trustee under said Deed of Trust, to have all the powers of said original Trustee, effective immediately.

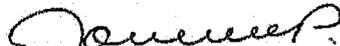
BENEFICIAL FINANCIAL I INC., SUCCESSOR BY MERGER TO BENEFICIAL WASHINGTON INC.
On November 3rd, 2018

By: 
Linda Nguyen, VP & Asst Secy, Administrative Services Division

STATE OF Florida
COUNTY OF Hillsborough

On November 3rd, 2018, before me, JONATHAN PEDRAZA, a Notary Public in and for Hillsborough in the State of Florida, personally appeared Linda Nguyen, VP & Asst Secy, Administrative Services Division, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,


JONATHAN PEDRAZA
Notary Expires: 04/18/2019 #FF221363



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

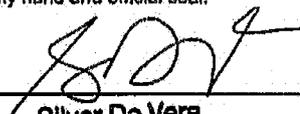
State of California
County of San Diego)

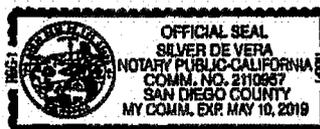
On November 06, 2015 before me, Silver De Vera , Notary Public
(insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 
Silver De Vera



(Seal)



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Spokane Co, WA

RETURN ADDRESS:

Records Processing Services
577 Lamont Road
Elmhurst, IL 60126

mt 69353

DEED OF TRUST

921717

If this box is checked, this Deed of Trust secures future advances.

THIS DEED OF TRUST is made this 10TH day of FEBRUARY 20 04, among the Grantor(s),
DEAN L. GERLING AND LINDA S GERLING, HUSBAND AND WIFE

(herein "Borrower"), PACIFIC NORTHWEST TITLE

(herein "Trustee") and the Grantee/Beneficiary, BENEFICIAL MORTGAGE CORPORATION

a corporation organized and existing under the laws of DELAWARE
whose address is 8701 N. DIVISION STREET, SPOKANE, WA 99218
(herein "Lender"). Witnesseth:

The following paragraph preceded by a checked box is applicable.

WHEREAS, Borrower is indebted to Lender in the principal sum of \$ 84,420.37, evidenced by Borrower's Loan Agreement dated FEBRUARY 10, 2004 and any extensions or renewals thereof (including those pursuant to any Renegotiable Rate Agreement) (herein "Note"), providing for monthly installments of principal and interest, including any adjustments to the amount of payments or the contract rate if that rate is variable, with the balance of the indebtedness, if not sooner paid, due and payable on FEBRUARY 10, 2034;

WHEREAS, Borrower is indebted to Lender in the principal sum of \$ _____, or so much thereof as may be advanced pursuant to Borrower's Revolving Loan Agreement dated _____ and extensions and renewals thereof (herein "Note"), providing for monthly installments, and interest at the rate and under the terms specified in the Note, including any adjustments in the interest rate if that rate is variable, and providing for a credit limit stated in the principal sum above and an initial advance of \$ _____;

TO SECURE to Lender the repayment of the indebtedness, including future advances, evidenced by the Note, with interest thereon at the applicable contract rate (including any adjustments to the amount of payment or the contract rate if that rate is variable) and other charges; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained, Borrower, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust with power of sale, the following described property located in the County of SPOKANE State of Washington:

PARCEL NO. : 26384.2822
LOT 22, BLOCK 12, MT, PLEASANT FIRST ADDITION TO SPOKANE, AS
PER PLAT RECORDED IN VOLUME "N" OF PLATS, PAGE 60;
SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE, STATE OF
WASHINGTON.





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TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, and rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), all of which, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property."

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

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

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note, including any variations resulting from changes in the Contract Rate, and late charges and as provided in the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law and only if requested in writing by Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Deed of Trust, and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimated thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust in such a holder is an institutional lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Deed of Trust that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings 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 the sums secured by this Deed of Trust.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of sums secured by this Deed of Trust, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust.

3. **Application of Payments.** Unless applicable law or the Note provide otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable at the applicable Contract Rate, and then to the principal of the Note.

4. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any.

5. **Hazard 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 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.

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.

12-10-03 00T



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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 Deed of Trust, 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 Deed of Trust, 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 19 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 Deed of Trust immediately prior to the acquisition.

6. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the bylaws and regulations of the condominium or planned unit development, and constituent documents.

7. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust; or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the applicable Contract Rate, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

10. 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 Deed of Trust granted by Lender to any successor in interest of Borrower and all other parties who are or who hereafter may become secondarily liable shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the right hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Deed of Trust, but does not execute the Note, (a) is co-signing this Deed of Trust only to grant and convey that Borrower's interest in the Property to Trustee under the terms of this Deed of Trust, (b) is not personally liable on the Note or under this Deed of Trust, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or the Note without that Borrower's consent and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.

12. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the address stated in the Note or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.





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13. Governing Law; Severability. The applicable law contained in the Note shall control. Where no applicable law is contained therein, the state and local laws of the jurisdiction in which the Property is located shall apply except where such laws conflict with Federal law, in which case Federal law applies. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust, if requested, at the time of execution or after recordation hereof.

15. Rehabilitation Loan Agreement. Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

16. Transfer of the Property. If Borrower sells or transfers all or any part of the Property or an interest therein, excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) a transfer by devise, descent, or by operation of law upon the death of a joint tenant, (c) the grant of any leasehold interest of three years or less not containing an option to purchase, (d) the creation of a purchase money security interest for household appliances, (e) a transfer to a relative resulting from the death of a Borrower, (f) a transfer where the spouse or children of the Borrower become an owner of the property, (g) a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the Borrower becomes an owner of the property, (h) a transfer into an inter vivos trust in which the Borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property, or (i) any other transfer or disposition described in regulations prescribed by the Federal Home Loan Bank Board, Borrower shall cause to be submitted information required by Lender to evaluate the transferee as if a new loan were being made to the transferee. Borrower will continue to be obligated under the Note and this Deed of Trust unless Lender releases Borrower in writing.

If Lender does not agree to such sale or transfer, Lender may declare all of the sums secured by this Deed of Trust to be immediately due and payable. If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 12 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed or delivered within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 17 hereof.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:
17. Acceleration; Remedies. Except as provided in paragraph 16 hereof, or as otherwise required by law, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust 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 and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Deed of Trust to be immediately due and payable 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 reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 17, including but not limited to reasonable attorney's fees.

If lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold.

Lender or Trustee shall take such action regarding notice of sale and provide notice to Borrower and to other persons in the manner prescribed by applicable law. After the lapse of such time as may be 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 such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.





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Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in 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 reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's fees and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto or to the clerk of the superior court of the county in which the sale took place.

18. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to the earlier to occur of (i) the fifth day (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to the power of sale contained in this Deed of Trust or (ii) entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided in paragraph 17 hereof including but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 16.

19. Lender in Possession. Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender, in person, by agent or judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust.

20. Reconveyance. Upon payment of all sums secured by this Deed of Trust, if Lender is not committed to make any future refinancings or future advances, Lender shall request Trustee to convey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation and reconveyance, if any.

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

22. Subrogation. Lender shall be subrogated for further security to the lien, although released of record, of any and all encumbrances paid out of the proceeds of the loan secured by this Deed of Trust.

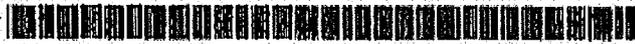
23. Use of the Property. The Property is not used principally for agricultural or farming purposes.

24. Waiver of Statutory Rights. To the extent permitted by law, Borrower hereby waives the benefit of all homestead, dower, or curtesy rights or exemptions the Borrower may possess with respect to the property.

25. Arbitration Rider to Note. The Arbitration Rider attached to and made a part of the Note is hereby incorporated by reference and made a part of this Deed of Trust.

(THIS SPACE INTENTIONALLY LEFT BLANK)

12-10-03 00T



WA007905

NR45DAGFCN90019000WA007905F**GERLING

FILE COPY



**REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEED OF TRUST**

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Deed of Trust to give Notice to Lender, at Lender's address set forth on page one of this Deed of Trust, of any default under the superior encumbrance and of any sale or other foreclosure action.

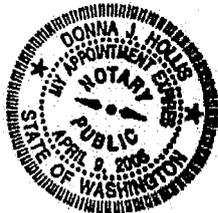
IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

Dean L. Gerling
DEAN L. GERLING -Borrower
Linda S. Gerling
LINDA S. GERLING -Borrower

STATE OF WASHINGTON, SPOKANE County ss:

On this 10TH day of FEBRUARY, 2004,
before me, DONNA J. Hollis, a Notary Public in and for said
county and state, personally appeared DEAN L. GERLING AND LINDA S. GERLING;
known or proved to me to be the person(s) who executed the foregoing instrument, and acknowledged
to me that T he Y executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this
certificate first above written.



Donna J. Hollis
Notary Public residing at:
Newport WA

STATE OF WASHINGTON, _____ County ss:

On this _____ day of _____, 20____,
before me, _____ a Notary Public in and for said
county and state, personally appeared _____;
known or proved to me to be the person(s) who executed the foregoing instrument, and acknowledged
to me that _____ he _____ executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this
certificate first above written.

Notary Public residing at:



(Page 7 of 7)



5034924
Page 7 of 7
02/13/2004 09:29
Spokane Co. 1A

REQUEST FOR RECONVEYANCE

TO TRUSTEE:

The undersigned is the holder of the note or notes secured by this Deed of Trust. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Dated: _____



12-10-03 DOT

*645DAGAFCA99001900DWA007907F**GERLING

M

FILE COPY

WA007967

WHEN RECORDED MAIL TO:

Trustee Corps
30 Corporate Park
Suite 400
Irvine, CA 92606

01/12/2010 01:25:15 PM
Recording Fee \$15.00 Page 1 of 2
Resignation & Appt Of Successor Trustee
Spokane County Washington

5866761
SPOKANE, COUNTY TITLE



Trustee Sale No. WA0859781 Loan No. 92171700564585 Title Order No. 090756500

APPOINTMENT OF SUCCESSOR TRUSTEE

KNOW ALL MEN BY THESE PRESENTS: DEAN L. GERLING AND LINDA S. GERLING, HUSBAND AND WIFE, is the grantor and PACIFIC NORTHWEST TITLE is the trustee, and BENEFICIAL MORTGAGE CORPORATION is the beneficiary or Successor in Interest under that certain trust deed dated 02/10/2004 and Recorded on 02/13/2004 as Document No. 5034824, records of Spokane County, Washington.

The undersigned, who is the present beneficiary under said trust deed desires to appoint a new trustee in the place and stead of the original trustee named above.

NOW, THEREFORE, the undersigned hereby appoints RANDE JOHNSEN, Trustee Corps, 30 Corporate Park, Suite 400, Irvine, CA 92606, as successor trustee under said trust deed, he to have all the powers of said original trustee, effective immediately.

IN WITNESS WHEREOF, the undersigned beneficiary has hereunto set his hand: if the undersigned is a corporation, it has caused its corporate name to be signed and affixed hereto by its duly authorized representative.

Dated: 12/16/09

BENEFICIARY:
BENEFICIAL MORTGAGE CORPORATION

BY: 
Wayne Hessler Attorney-in-Fact

Trustee Sale No. WA0859791 Loan No. 92171700564585 Title Order No. 090756500

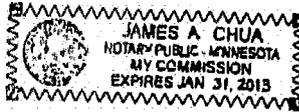
STATE OF Minnesota
Dakota
COUNTY OF _____

On 12/16/09 before me, James A. Chua, personally appeared Wayne Hessler who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said County and State



12/09/2014 09:25:47 AM
Recording Fee \$15.00 Page 1 of 2
Assignment of Deed of Trust TO SERVICE
Spokane County Washington

6353804



And When Recorded Mail To:
T.D. Service Company
4000 W Metropolitan Dr Ste 400
Orange, CA 92868

Space above for Recorder's use

Customer#: 673/2 Service#: 4072263AS1



Loan#: 9803912139

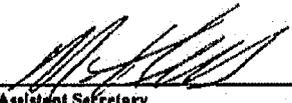
ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, BENEFICIAL MORTGAGE CORPORATION, C/O CALIBER HOME LOANS, INC. 13801 WIRELESS WAY, OKLAHOMA CITY, OK 73134-2550, hereby assign and transfer to U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST, C/O CALIBER HOME LOANS, INC. 13801 WIRELESS WAY, OKLAHOMA CITY, OK 73134-2550, all its right, title and interest in and to said Deed of Trust in the amount of \$84,420.37, recorded in the State of WASHINGTON, County of SPOKANE Official Records, dated FEBRUARY 10, 2004 recorded on FEBRUARY 13, 2004, as Instrument No. 5034924, in Book No. —, at Page No. —. Executed by: DEAN L. GERLING AND LINDA S. GERLING, HUSBAND AND WIFE (Original Mortgagor).

Original Mortgagee: BENEFICIAL MORTGAGE CORPORATION. Property Address: 5018 NORTH BELT, SPOKANE, WA 99205-0000.

DEC 04 2014

Date: **DEC 04 2014**
BENEFICIAL MORTGAGE CORPORATION, BY CALIBER HOME LOANS, INC., AS ATTORNEY
IN FACT

By: 
Michelle Hess, Assistant Secretary

RECORDING REQUESTED BY

8428705 08/24/2015 11:17:13 AM
Rec Fee \$14.00 Page 1 of 1
Resign & Appt Of Successor Trustee SIMPLIFILE
LC E-RECORDING
Spokane County Washington eRecorded

WHEN RECORDED MAIL TO:

Trustee Corps
1700 Seventh Avenue, Suite 2100
Seattle WA 98101

Trustee Sale No WA08001468-16-1
Property Address: 5018 N BELT, SPOKANE, WA 99205

Title Order No 150205791-WA-MSO

APPOINTMENT OF SUCCESSOR TRUSTEE

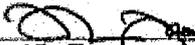
NOTICE IS HEREBY GIVEN that MTC Financial Inc. dba Trustee Corps, whose address is 1700 Seventh Avenue Suite 2100, Seattle, WA 98101, is appointed Successor Trustee under that certain Deed of Trust in which DEAN L. GERLING AND LINDA S GERLING, HUSBAND AND WIFE was the Grantor and PACIFIC NORTHWEST TITLE was the original Trustee and BENEFICIAL MORTGAGE CORPORATION was the original Beneficiary which Deed of Trust was dated February 10, 2004 and recorded on February 13, 2004 as Instrument No. 5034924 of official records in the Office of the Recorder of Spokane County, Washington, it to have all the powers of said original Trustee, effective forthwith.

IN WITNESS WHEREOF, the undersigned Beneficiary has hereunto set his hand; if the undersigned is a corporation, it has caused its corporate name to be signed and affixed hereunto by its duly authorized signor.

Dated: 8/18/2015

U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, by Calliber Home Loans, Inc., as its attorney in fact

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

By: 
Nhu Tran
Authorized Signatory

STATE OF California
COUNTY OF San Diego

On AUG 18 2015 before me, Angelika G. Garrow, Notary Public, personally appeared NHU TRAN who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal



Notary Public



Exhibit 6



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue • Suite 2000 • MS TB 14 • Seattle WA 98104-3188
(206) 464-7745

MEMORANDUM

DATE: November 19, 2015
TO: Washington Law Enforcement Officials
FROM: Washington State Attorney General's Office
Consumer Protection Division
SUBJECT: Foreclosure-Related Property Disputes

I. INTRODUCTION

When a borrower falls behind on his or her mortgage payments, disputes may arise about the lender's right to access and secure the home – both before and after foreclosure. When the lender or its agent seeks to secure the property, law enforcement officials may be called to the property by the borrower or neighbors. This memorandum is not legal advice, but is intended to provide background information and suggestions for best practices in dealing with what can be a complex situation. We hope that you will use the information in this memo – in conjunction with advice and guidance from your legal counsel – to educate your law enforcement officers who may be called to address these disputes.

These issues are vitally important to homeowners affected by foreclosure. For example, the foreclosed borrower has already lost ownership of his or her family home, and is often scrambling to find a new place to live. Purchaser self-help may exacerbate these difficulties – particularly in winter, when inclement weather makes the need for shelter most acute and the task of moving more arduous. And when personal property is seized or disposed of in the course of self-help, items of great practical and sentimental value may be lost.

II. BACKGROUND INFORMATION

A. The Foreclosure Process and Sale.

Foreclosure is an unfortunate event that often occurs when a Washington family is unable to pay its mortgage, often as the result of illness or job loss. A typical mortgage involves three parties – the borrower, the lender, and the trustee. Greatly simplified, the Deed of Trust Act (“DTA”) provides that where the borrower fails to make required monthly payments to the

lender, after a number of preliminary steps the trustee may sell the property at a public action known as a "trustee's sale" or "foreclosure sale." One preliminary step before a foreclosure can occur is the posting of a Notice of Trustee's Sale on the homeowner's property. The Notice of Trustee's Sale sets the date of the trustee's sale, but homeowner has the right to occupy the property until after the date of the trustee's sale.

Confusion sometimes arises regarding the parties' rights to occupy the property both during the foreclosure process and following the sale, and how those rights must be enforced.

B. The Lender's/Purchaser's Right to Possession.

1. Before the foreclosure sale

Many mortgages permit the lender (or its agent) to inspect the property. Generally, inspections should not involve the breaking or changing of locks, or the removal of personal property. This is not a right to possession of the property.

Where the lender determines (following inspection) that property has been abandoned by the homeowner, the mortgage documents may permit the lender (or its agent) to enter the property, secure it, and take actions such as "winterizing" the home to prevent property damage. These actions are to preserve the house's value, not to dispossess the homeowner. Thus, removal or disposal of the homeowner's personal property would generally be inappropriate at this time. Changing all locks – as opposed to the lock on a single door – would also wrongfully deny the homeowner possession of the property. However, the lender (or its agent) may make a mistake in concluding that property has been abandoned, and lock the homeowner out.

This area of law is evolving, and the Washington Supreme Court is currently deciding whether provisions in mortgages may permit the lender to enter onto and secure the mortgaged real property, or whether such terms are unenforceable. *See Jordan v. Natlonstar Mortgage, LLC*, Case No. 92081-8 (set for hearing January 19, 2016). Depending on the Court's eventual ruling, the actions described above may not be permitted.

2. After the foreclosure

The purchaser at a trustee's sale – sometimes, but not always the bank – has a statutory right to possess the property beginning 20 days after the sale occurred if the borrower was living there. RCW 61.24.060(1). If the borrower had rented the property out to a tenant, the tenant must be given 60 days' notice to vacate. RCW 61.24.146(1). These periods allow former owners and tenants a reasonable time to find alternative housing and move out. They should not be ejected before the end of those time periods.

The purchaser may contract with another company to provide "property preservation" or "property management" services – that is, secure, clean up, and prepare the property to be placed on the real estate market. These companies must comply with the statutory procedures for obtaining possession of the property, described below. They also should not remove or dispose of personal property unless absolutely certain that it has been abandoned. To prevent the wrongful destruction of personal property and premature eviction of distressed borrowers (which occurs as a practical matter when locks are changed), extreme caution should be used in determining whether the property has been abandoned – for example, the former owners or tenants may move out of foreclosed property over a period of time rather than all in one day, and may return for personal items remaining at the property.

C. Enforcing the Right to Possession.

If the borrower or tenant has not vacated the property after the applicable 20- or 60-day period, the purchaser should not resort to self-help – such as breaking and changing locks, and gathering and disposing of the borrower's or tenant's personal property – in order to gain possession. Instead, the DTA permits a purchaser to bring an unlawful detainer (eviction) action to obtain possession of the property. RCW 61.24.060(1).

Where a purchaser takes possession of property before allowed by statute or bypasses the judicial system and resorts to self-help – particularly when removing and disposing the former owner's personal property – he or she may commit one or more criminal offenses, such as trespass or burglary, RCW 9A.52, or theft. RCW 9A.56.020.

III. BEST PRACTICES

When responding to reports that a purchaser of foreclosed property is using self-help to dispossess the occupants of foreclosed property, officers may confront with a complex, tension-filled situation. Officers may wish to use the following steps:

- Prevent self-help, if it is in progress.
- Ask whether the foreclosure sale has taken place.
 - If the foreclosure sale has *not* yet occurred, ask (a) to see the document giving the lender/agent the right to secure the property, (b) for the reasons the lender/agent concluded that the property is abandoned or vacated, (c) what efforts have been made to contact the homeowner, (d) to confirm that personal property remaining in the house will not be removed or disposed of at that time, and (e) to confirm that the homeowner will still have access (i.e., not all locks will be changed).
 - If the foreclosure sale *has* taken place, ask whether the purchaser has obtained a writ of restitution under RCW 59.12.
 - If the purchaser claims the property has been abandoned and intends to dispose of personal property, ask (a) for the reasons the purchaser concluded the property is abandoned, (b) what efforts have been made to contact the former homeowner, and (c) that the purchaser provide the former homeowner with a reasonable time to return and claim his or her personal property, and (e) to confirm that the borrower will still have access (i.e., not all locks will be changed) in order to claim the personal property.
 - If the property has not been abandoned and the purchaser has *not* obtained the requisite writ of restitution, he or she should do so, and the writ must be served and executed as directed by statute. RCW 59.12.100.
 - If the property has not been abandoned and the purchaser *has* obtained a writ of restitution, ensure that it is being executed in accordance with the statute.

- o Ask if the borrower has filed a lawsuit to contest the foreclosure sale. If a lawsuit has been filed and remains unresolved, ejection of the borrower or tenant by the purchaser may be premature.

Because the situation on the ground can be complex, officers may wish to err on the side of maintaining the *status quo* – that is, to prevent the ejection of homeowners from their property (and the removal or disposal of their personal property) unless and until the purchaser has obtained and properly served a writ of restitution.

IV. RESOURCES FOR HOMEOWNERS

Officers who wish to help borrowers facing foreclosure-related problems find the resources to get help should consider the following:

- Homeowners facing foreclosure should contact a free housing counselor by calling 1-877-894-HOME(4663). Foreclosure prevention counseling is provided free of charge to Washington homeowners.
- The statewide civil legal aid hotline for legal assistance and referrals regarding foreclosure is 1-800-606-4819.
- The Economic Services Administration of the Washington State Department of Social and Health Services offers a number of programs for people in emergency situations. They are available via telephone at 1-877-501-2233.
- The Washington Information Network can provide information and referrals. Dial 211 or call 1-800-621-4636 from a pay or public phone.
- The U.S. Department of Housing and Urban Development (HUD) offers a list of shelters and emergency housing assistance programs throughout Washington, available at <http://portal.hud.gov/hudportal/HUD?src=/states/washington/homeless/shelters>. You can also contact HUD's regional office in Seattle by calling 206-220-5101 or toll-free 1-877-741-3281.

V. CONCLUSION

Requiring compliance with the law will greatly reduce the chances that foreclosed homeowners will lose personal property following foreclosure or suffer other unnecessary hardship. Compliance also promotes the peace and tranquility of our communities that self-help evictions may disrupt.

This memorandum is not an informal or formal opinion of the Washington Attorney General.