

2011

Stephanie Reynolds v. James H. Woodall, Citibank
Federal Savings Bank, Corlene Kemker Trust,
Mortgage Electronic Registration Systems, Inc., US
Bank NA, Etitle Insurance Agency, and John Does
of Unknown Number : Brief of Appellant

Utah Court of Appeals

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250424

IN THE UTAH COURT OF APPEALS

STEPHANIE REYNOLDS,

Plaintiff and Appellant,

vs.

JAMES H. WOODALL, CITIBANK
FEDERAL SAVINGS BANK, COR-
LENE KEMKER TRUST, MORTGAGE
ELECTRONIC REGISTRATION SYS-
TEMS, INC., US BANK NA, ETITLE
INSURANCE AGENCY, AND JOHN
DOES OF UNKNOWN NUMBER,

Defendants and Appellees.

Case No. 20110129-CA

REVISED BRIEF OF APPELLANT

Nature of the Proceeding: Appeal

Trial Court and Judge: Appeal from the Third District Court, Salt Lake County,
Case No. 090919624, Judge Tyrone E. Medley.

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FILED
UTAH APPELLATE COURTS

JUL 13 2011

PARTIES

STEPHANIE REYNOLDS,

Plaintiff and Appellant,

vs.

JAMES H. WOODALL, CITIBANK FEDERAL SAVINGS BANK, CORLENE
KEMKER TRUST, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
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JURISDICTIONAL STATEMENT

The Court of Appeals has jurisdiction of this matter pursuant to §§ 78A-3-102(4), 78 A-4-103(2)(j), UCA (1953).

ISSUES ON APPEAL

1. Whether the subject foreclosure proceedings were in compliance with law. Preserved: Opposition to Defendants Woodall's Motion to Dismiss, December 31, 2009, see record at 163-165; Response to Motion to Dismiss, September 27, 2010 see record at 504-506; Opposition to Motion to Dismiss, October 18, 2010, see record at 569-571; Preserved: Orders of Dismissal, January 7, 2011, see record at 599-603.

2. Whether a "substitution of trustee" under a trust deed, requires a writing executed by the party to be bound, under the Statue of Frauds, § 25-5-1, UCA (1953). Preserved: Opposition to Defendants Woodall's Motion to Dismiss, see record at 163-165; December 31, 2009, Response to Motion to Dismiss, September 27, 2010, see record at 504-506; Opposition to Motion to Dismiss, October 18, 2010, see record at 569-571; Preserved: Orders of Dismissal, January 7, 2011, see record at 599-603.

3. Whether, under § 57-21(4), UCA (1953), prior to execution of a written substitution of trustee, a person purporting to be a substitute trustee can exercise trustee powers, including the power of sale under §§ 57-1-23, 57-1-24, UCA (1953). Preserved: Opposition to Defendants Woodall's Motion to Dismiss, December 31, 2009, see record at 163-165; Response to Motion to Dismiss, September 27, 2010, see record at 504-506; Opposi-

tion to Motion to Dismiss, October 18, 2010, see record at 569-571; Preserved: Orders of Dismissal, January 7, 2011, see record at 599-603.

4. Whether a Notice of default is effective, under § 57-1-22(3)(a), UCA (1953), if recorded long prior to recordation of the substitution as trustee of the person recording the notice. Preserved: Opposition to Defendants Woodall's Motion to Dismiss, December 31, 2009, see record at 163-165; Response to Motion to Dismiss, September 27, 2010, see record at 504-506; Opposition to Motion to Dismiss, October 18, 2010, see record at 569-571; Preserved: Orders of Dismissal, January 7, 2011, see record at 599-603.

5. Whether the phrase "ratify and confirm" in § 57-1-22(1)(c) means any more than "adopt for one's own purposes," and permits a beneficiary of a trust deed, by approval after the fact, to legalize actions which were illegal when taken. Preserved: Opposition to Defendants Woodall's Motion to Dismiss, December 31, 2009, see record at 163-165; Response to Motion to Dismiss, September 27, 2010, see record at 504-506; Opposition to Motion to Dismiss, October 18, 2010, see record at 569-571; Preserved: Orders of Dismissal, January 7, 2011, see record at 599-603.

6. Whether the authority to "ratify and confirm" conferred by § 57-1-22(1)(c) applies outside the time between execution of a written substitution of trustee and recordation of the substitution. Preserved: Opposition to Defendants Woodall's Motion to Dismiss, December 31, 2009, see record at 163-165; Response to Motion to Dismiss, September 27, 2010, see record at 504-506; Opposition to Motion to Dismiss, October 18,

2010, see record at 569-571; Preserved: Orders of Dismissal, January 7, 2011, see record at 599-603.

STANDARD OF REVIEW

The issues presented raise only questions of law, reviewed for correctness, without deference to the views of the district court. *Geisdorf v. Doughty*, 972 P.2d 67, 69-70 (Utah 1998); *Robinson v. State*, 20 P.3d 396, 398 (Utah 2007). On motion to dismiss, the facts are as stated in the Amended Complaint. *Oakwood Village LLC v. Albertsons, Inc.*, 104 P. 3d 1226, 1230 (Utah 2004); *Bearneau v. Martino*, 223 P. 3d 1128, 1130 (Utah 2009). All inferences from such facts are to be drawn in favor of complainant. *Krouse v. Bower*, 20 P. 3d 895, 897 (Utah 2001).

STATEMENT OF FACTS/STATEMENT OF CASE

The facts in this matter, for purposes of the district court's ruling on motions to dismiss, are those stated in the Amended Complaint, as follows:

1. Plaintiff is the owner of the property located at 10449 Hyacinth Circle, Sandy, Utah 84094 in Salt Lake County (hereinafter "the subject property"), under a deed thereto made and recorded on October 28, 2004, Entry # 9210278, Book 9054, Page 3294 in Salt Lake County. See Record p. 21.

2. Prior to April 4, 2006, said property was subject to a first and second mortgage under trust deeds thereto made and recorded respectively on October 28, 2004 and found at Entry # 9210279, Book 9054, Page 3295 and Entry # 9210280, Book 9054, Page 3314 in the Salt Lake County Recorder's Office. See Record p. 22.

3. On or about April 4, 2006, Plaintiff refinanced her second mortgage by executing a Promissory Note (hereinafter “the second position Note”) in favor of defendant second position Lender Citibank Federal Savings Bank. On information and belief the original of said second position Note was then retained by defendant Citibank Federal Savings Bank. See Record p. 22.

4. On or about April 4, 2006, Plaintiff made and delivered the Trust Deed (hereinafter “the second position Trust Deed”), conveying the subject property in trust for the purposes recited therein to First American Title of Utah as Trustee. Defendant Trustee James H. Woodall (hereinafter “Woodall”) purports to be the successor in interest thereof. Said second position Trust Deed was recorded on April 19, 2006, and found at Entry # 9698034, Book 9282, Page 3031-3039 in the Salt Lake County Recorder’s Office. See Record p. 22.

5. Said second position Trust Deed names as Beneficiary of said Trust Deed defendant Citibank Federal Savings Bank. See Record p. 22.

6. On or about July 25, 2007, Plaintiff increased her credit limit on her second mortgage with defendant Citibank Federal Savings Bank by executing a Note and Modification Agreement in favor of Citibank. Said Note and Modification Agreement was recorded on October 12, 2007, and found at Entry # 10248288, Book 9525, Page 4978-4982 in the Salt Lake County Recorder’s Office. See Record p. 22.

7. On or about February 11, 2008, Defendant Citibank Federal Savings Bank completed a Subordination Agreement, later recorded on March 5, 2008, in which said defendant's security interest in the aforementioned subject Property became subject to and of lower priority than the lien created by the forthcoming refinanced first mortgage by Bank of Utah. See Record p. 22.

8. On or about February 27, 2008, Plaintiff refinanced her first mortgage by executing a Promissory Note (hereinafter "the first position Note") in favor of Bank of Utah. Defendant US Bank NA purports to be the successor in interest of Bank of Utah in the first position Note. On information and belief the original of said first position Note was then retained by Bank of Utah. See Record p. 23.

9. On or about February 27, 2008, Plaintiff made and delivered the Trust Deed (hereinafter "the first position Trust Deed"), conveying the subject property in trust for the purposes recited therein to Lender Bank of Utah as Trustee. Defendant successor Trustee eTitle Insurance Agency (hereinafter "eTitle") purports to be the successor in interest thereof. Said first position Trust Deed was recorded on March 5, 2008, and found at Entry # 10365848, Book 9578, Page 8391-8404 in the Salt Lake County Recorder's Office. See Record p. 23.

10. Said first position Trust Deed names as beneficiary of said Trust Deed defendant Mortgage Electronic Registration Systems, Inc. (hereinafter "MERS") acting solely

as nominee for Lender and Lender's successors and assigns, and the successors and assigns of MERS. See Record p. 23.

11. As a result of said transactions the subject property was subject, as of February 28, 2008, to a first position Note in favor of Bank of Utah, secured by a first Trust Deed in which the Trustee is Bank of Utah, and a second position Note in favor of Citibank Federal Savings Bank, subordinate to such first position Note, and secured by a second Trust Deed in which the trustee is First American Title Company. See Record p. 23.

12. The first position Trust Deed recites that the beneficiary of this security instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS and Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of these interests, including, but not limited to, the right to foreclose and sell the property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument. See Record p. 24.

13. First position Lender Bank of Utah and defendant second position Lender Citibank Federal Savings Bank (hereinafter "Lenders"), independently pooled the first position Note and the second position Note (hereinafter "Notes") with other such instruments,

and then sold the pooled instruments as securities to unknown investors. See Record p. 24.

14. Both Lenders have been reimbursed all sums advanced by each of them in connection with said Notes. See Record p. 24.

15. Lenders' function was limited to obtaining the Notes, in exchange for a fee, as a preliminary step to "securitization" of the obligations as described herein. See Record p. 24.

16. The obligations on the Notes were pooled and sold by Bank of Utah and/or defendant US Bank NA, and defendant Citibank Federal Savings Bank and/or a person or persons unknown as securities to numerous investors unknown. See Record p. 25.

17. The second position Trust Deed has not been assigned or transferred of record, in whole or in part. See Record p. 25.

18. Thereafter, on or about April 16, 2009, defendant Woodall, purporting to act as Trustee for the subordinated second position Trust Deed Beneficiary, defendant Citibank Federal Savings Bank, recorded on the public record, but failed to serve upon plaintiff, the Notice of Default pursuant to Utah Code § 57-1-26. Said Notice of Default states that a Trustee was not named in the pertinent Deed of Trust. In fact, said Deed of Trust names First American Title Company as Trustee. See Record p. 26.

19. Defendant Citibank Federal Savings Bank and defendant Woodall failed to record and serve upon plaintiff a Substitution of Trustee at the time of filing said Notice of Default pursuant to Utah Code § 57-1-22(3)(a). See Record p. 26.

20. On or about June 30, 2009, defendant eTitle served upon plaintiff, the Notice of Default and Election to Sell for the first position Note/Trust Deed. See Record p. 26.

21. Defendant MERS and defendant eTitle failed to record and serve upon plaintiff a Substitution of Trustee naming eTitle as successor Trustee to Bank of Utah for the first position Trust Deed at the time of filing said Notice of Default pursuant to Utah Code § 57-1-22(3)(a). See Record p. 26.

22. On or about August 11, 2009 a Notice of Trustee's Sale for the second position Trust Deed was posted on the door of the subject property by defendant Woodall stating his intention to sell the subject property on September 16, 2009 at 11:30 a.m. This was the first communication plaintiff received from defendant Woodall. See Record p. 26.

23. On or about September 16, 2009, defendant Woodall, purporting to act as Trustee for defendant Citibank Federal Savings Bank on their previously subordinated second position lien, foreclosed and sold the subject property at auction to defendant Corleen Kemker Trust (hereinafter "Kemker"). Defendant Woodall was not then a qualified successor trustee under the second Trust Deed. See Record p. 26.

24. On or about September 18, 2009 a Substitution of Trustee was recorded for the first position Trust Deed by Kara Knable, "Assistant Vice President" for US Bank NA,

Beneficiary, naming eTitle Insurance Agency as Successor Trustee. At such time MERS remained the Beneficiary, nominated in said Trust Deed, and hadn't assigned beneficial interest to defendant US Bank NA. See Record p. 27.

25. The first position Trust Deed was not assigned or transferred of record until after the described attempted foreclosure of the second position Trust Deed. See Record p. 27.

26. On or about September 18, 2009, a Notice to Quit - Five Day Notice to Vacate was posted on the door of the subject property by Defendant Kemker. See Record p. 27.

27. On or about September 24, 2009, a Trustee's Deed for the second position Trust Deed was recorded at Entry # 10803743 Book 9765 Page 4347-4349 in the Salt Lake County Recorders Office by defendant Woodall to Corlene Kemker Trust as Grantee. See Record p. 27.

28. On or about September 24, 2009, defendant Kemker posted a Ninety (90) Day Notice to Vacate on the door of the subject property. See Record p. 27.

29. On or about October 2, 2009, a Notice of Trustee's Sale, on behalf of defendant US Bank NA as Beneficiary, was posted on the door of the subject property stating a sale date of November 2, 2009. As of October 2, 2009, MERS was the Beneficiary of said Trust Deed. See Record p. 27.

30. On or about October 30, 2009, an Assignment of Trust Deed, was recorded for the first position Trust Deed by Kara Knable, in this instance as "Certifying Officer" for

MERS, as Beneficiary, purporting to assign beneficial interest to defendant US Bank NA.
See Record p. 27.

31. On or about October 30, 2009, a Substitution of Trustee was recorded for the second position Trust Deed by defendant Citibank Federal Savings Bank as Beneficiary to James H. Woodall as Successor Trustee. See Record p. 28.

32. Judge Skanchy refused to issue an Order of Restitution based upon such proceedings.

33. Judge Medley thereafter issued such an Order, approving foreclosure by the “substitute” trustee, upon the basis of § 57-1-22, UCA (1953), and the provisions thereof relating to “ratification.” See Record pp. 604-607.

34. This appeal was timely filed February 2, 2011. See Record pp. 608-609 An amended appeal was filed on February 3, 2011. See Record pp. 610-611.

SUMMARY OF ARGUMENT

An oral substitution of trustee violates the Statute of Frauds, and is a nullity. Substitution of a trustee long after the fact cannot validate actions taken by a person not then the trustee. A written substitution of trustee not recorded at the time of filing a Notice of Default is ineffective. Notices filed in such circumstances are ineffective. The “ratification” provision of § 57-1-22, UCA (1953) cannot validate the actions of one who does not timely file a written substitution of trustee.

ARGUMENT

THE JUDGMENT IS DIRECTLY CONTRARY TO TWO STATUTES.

The ruling rises and falls upon the district court's assertion that a beneficiary of a trust deed can substitute trustees by oral agreement, and the power of the substitute trustee will run from the date of the oral arrangement, not from the date of any written and subscribed substitution, or the recording of the writing.

The ruling violates the Statute of Frauds (§25-5-1, UCA (1953)) on its face, does not comport with the applicable statute, §57-1-22(1)(c), UCA (1953)), and is wholly unsupported by an appropriate finding of fact.

LACK OF SUPPORTING FINDINGS OF FACT

There was no evidence before the district court of any oral substitution of trustee of the subject trust deed. There was no evidence that any oral substitution contained an express ratification provision. There is no finding that any such oral arrangement took place.

The evidence is simply that a written substitution was finally executed and recorded months after completion of foreclosure proceedings by the alleged substitute trustee.

The district court may not rely upon an oral substitution of trustee which it can't find occurred.

THE STATUTE

Section 57-1-22(1)(c), UCA (1953) expressly allows a beneficiary to ratify "action taken - - - by the new trustee prior to the *recording* of the substitution of trustee." This says nothing at all about acts prior to the *execution* or existence of a substitution. The word "recording" presumes a written document. A recordable document is required by §

57-1-22(3). The Statute of Frauds, § 25-5-1, UCA (1953) renders an oral substitution void.

STATUTE OF FRAUDS

The statutory language recognizes the plain requirement of a writing satisfying the Statute of Frauds, §25-5-1, UCA (1953). The Statute of Frauds provides:

No estate or interest in real property - - - nor any trust power over or concerning real property or in any manner relating thereto, shall be created, granted, assigned, surrendered or declared otherwise than by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting, surrendering or declaring the same - - -

Plainly the statute includes any transfer from one trustee to another of a “trust power over or concerning” realty.

That a substitution of trustee was, in fact, eventually reduced to writing, is immaterial. The writing was admittedly executed *after* the Notice of Default was recorded. The Notice of Default was void at the time recorded, because no authority then existed to record it. The subsequent foreclosure proceeding and sale based on it were void.

Occidental/Nebraska Fed. Savings Bank v. Mehr, supra, 791 P.2d at 221.

A trust deed is

a deed . . . conveying real property to a trustee in trust to secure the performance of an obligation of the trustor or other person named in the deed to a beneficiary.

A trust deed is similar to a mortgage in that it is given as security for the performance of an obligation. However, a trust deed is a conveyance by which title to the trust property passes to the trustee. Upon

default, the trustee has power to sell the property to satisfy the trustor's debt to the beneficiary.

First Sec. Bank v. Banberry Crossing, 780 P.2d 1253, 1256 (Utah 1989) (emphasis added) (internal quotation marks and footnotes omitted); see also Utah Code Ann. §§ 57-1-16 to -36 (1994).

Thus, a trust deed is intended to convey some kind of title to real property. Of necessity, it conveys more than "bare legal title" to land because the point of the deed is to allow the sale of the property upon default to satisfy the underlying obligation. See Utah Code Ann. § 57-1-23 (1994).

Capital Assets Financial Services v. Maxwell, 994 P.2d 201, 203-04 (Utah 2000) (footnotes omitted).

First, we examine the purpose and hybrid nature of a trust deed under Utah statutes. " 'Trust deed' means a deed executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the deed to a beneficiary." Utah Code Ann. § 57-1-19(3) (1986). Although a trust deed, like a mortgage, is given as security for the performance of some obligation, it is nevertheless a conveyance by which title to the trust property passes to the trustee. See Utah Code Ann. § 57-1-19(4) (1986) ("trustee" is a person to whom title to real property is conveyed by trust deed); see also Utah Code Ann. § 57-1-28 (1986).

As a general rule, an instrument purporting to be a deed and in which a blank has been left for the name of the grantee is no deed and is inoperative as a conveyance of legal title as long as the blank remains. Burnham v. Eschler, 116 Utah 61, 208 P.2d 96 (1949). Thus, the document recorded by American on April 8, 1983, is ineffective as a title-conveying instrument because it does not identify or name the trustee, who is the grantee under the deed. We nonetheless agree with the trial court's alternative conclusion that the instrument recorded is operative as a mortgage despite this omission.

Unlike a trust deed, a mortgage in Utah is not a title-conveying instrument.

General Glass Corp. v. Mast Constr. Co., 766 P.2d 429, 432 (Utah 1988)

(footnotes omitted).

Not only is a trust deed a conveyance of title subject to the Statute of Frauds, because identification of the trustee makes the document such a conveyance, substitution of the trustee is necessarily a further conveyance subject to the Statute of Frauds.

THE LIMITS OF RATIFICATION

It cannot be claimed in this case that any substitution of trustee could have been affected prior to the making of a written, signed substitution, or that the actions of anyone other than the original trustee could be effective as acts of the trustee, or could subsequently be “ratified” as such.

It is at least peculiar to assert that actions of a substitute trustee can be “ratified,” and thereby rendered legal, which no one would suggest could be thus “ratified” if taken by an original trustee. Of course, under the decision below, this discrepancy is easily finessed by pretending an oral, unrecorded substitution as trustee of anyone whose actions the beneficiary wishes to “ratify.” Such oral substitutions are valid and enforceable according to the decision below. If the substitution is not put into writing and recorded before the actions sought to be legalized, all such actions can be “ratified” after the fact, even though they would be plainly illegal after the recording.

The purpose of the technical requirements for foreclosure is protection of the interests of borrowers. *Occidental/Nebraska Fed. Savings Bank v. Mehr*, 791 P.2d 217, 221

(U. Apps. 1990). The requirements are not to be ignored or glibly misconstrued to assist lenders.

Section 57-1-21.5(1), UCA (1953), provides

- (1) Except as provided in Subsection (2), the following duties of the trustee may not be delegated:
 - (a) the preparation and execution of:
 - (i) the notice of default and election to sell;
 - (ii) the cancellation of notice of default and election to sell;
 - (iii) the notice of sale; and
 - (iv) the trustee's deed;
 - (b) the notification of foreclosure through publication, posting, and certified or registered mail;
 - (c) the receiving and responding to requests for reinstatement or payoff requirements; and
 - (d) the handling of reinstatement or payoff funds.

Subsection (2) contains no exceptions pertinent to this case.

Section 57-1-20(4), UCA (1953) provides:

- - - the power of sale and other trustee powers under the trust deed may be exercised only if the beneficiary has appointed a qualified successor trustee under Section 57-1-22.

Under §§57-1-20(4) and 57-1-21.5(1), no one could properly prepare notices of default and sale, or conduct a trustee's sale, or give a trustee's deed, prior to September 23, 2009, except U.S. Title. These powers and duties could not be delegated.

Section 57-1-22(1), UCA (1953), provides:

- (1)(a) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the county recorder of each county in which the trust property or some part of the trust property is situated, a substitution of trustee.

(b) The new trustee shall succeed to all the power, duties, authority, and title of the trustee named in the deed of trust and of any successor trustee.

(c) The beneficiary may, by express provision in the substitution of trustee, ratify and confirm action taken on the beneficiary's behalf by the new trustee prior to the recording of the substitution of trustee.

The appointment of a successor trustee does not violate the prohibition against delegation of authority contained in §57-1-21.5(1). Section 57-1-22, however, is subject to the Statute of Frauds, §25-5-1, UCA (1953). That is, without regard for recording, a substitution of trustee, which is an assignment of a trust power, is invalid if not in writing, executed by the beneficiary of the trust deed.

A WRITTEN SUBSTITUTION MUST BE RECORDED TO INITIATE FORECLOSURE

Further, §57-1-22(3), provides:

(3)(a) If not previously recorded, at the time of recording a notice of default, the successor trustee shall file for record, in the office of the county recorder of each county in which the trust property or some part of it is situated, the substitution of trustee.

(b) A copy of the substitution of trustee shall be sent in the manner provided in Subsection 57-1-26(2) to any:

(i) person who requests a copy of any notice of default or notice of sale under Subsection 57-1-26(1)(a); and

(ii) person who is a party to the trust deed to whom a copy of a notice of default would be required to be mailed by Subsection 57-1-26 (3).

The necessary recording of a Notice of Default requires existence of a written substitution of trustee which can be recorded at the same time (if not previously recorded). This simply disallows the district court's ruling that a Notice of Default can be recorded long before a written, recordable substitution is executed.

Apparently, the district court did not read §57-1-22(3)(a). It is irrelevant that the statute allows a substitution to be made which is not recorded “*prior* to recording of a Notice of Default”. It disallows recording of a notice of default before recording of the substitution. The statute requires that the successor trustee record the substitution of trustee *at* or before recording of a notice of default. Recording the substitution *after* the notice of default is non-compliance. There can be no trustee’s sale unless the notice of default is recorded, no later than at the same time as any substitution of trustee, in compliance with the statute.¹

The ratification authority set forth in Utah Code 57-1-22(1)(c) is precisely what it says it is, nothing more: “The beneficiary may - - - ratify and confirm action taken - - - by the new trustee prior to the recording of the substitution of trustee”. Regardless of recordation, unless and until there is a writing satisfying the statute of frauds, there is no “appointment” of a “new trustee”. There is no “substitution of trustee”. This is indicated by the phrase “express provision in the substitution of trustee”. “Express” here must mean written, to satisfy the Statute of Frauds. Barring an appropriate written appointment, there is no transfer of power from the preceding trustee to the “new trustee”. See §57-1-22(1)(b), UCA (1953).

¹ Even if the statute were read to validate prior recording of a notice of default upon recording of the substitution of trustee the present foreclosure was illegal because (1) the substitution did not exist at the time the notice of default was recorded, and (2) the time from recording of the substitution to sale was too short.

The ability conferred by §57-1-22(1)(c) is to “*ratify* and confirm” actions of the “*new trustee*” taken “prior to the *recording* of the substitution of trustee”. “Ratify”, however, does not include power to “legitimize” actions illegal when taken; nor does ability to confirm acts prior to “recording” of a substitution include any power respecting acts taken before the *existence* of a substitution. If “ratify” had the meaning given it by the district court, all of the foreclosure requirements enacted for the purpose of protecting borrowers could be avoided by simply never recording a proper substitution of trustee.

The undisguisable facts are that the actions of Woodall and eTitle now relied upon by the district court were statutorily forbidden at the time taken, and the substitution of trustee relied upon was not created or executed until after the foreclosure. There is no authority in §57-1-22(1)(c) to legitimize illegal acts, such as the filing of a notice of default by a person not the trustee, who does not then record his substitution of trustee. There is no authority in the section to ratify actions “by the new trustee” before execution of a written substitution making him the new trustee.

It is not permissible, as the district court supposes, to assert, months after a trustee’s sale, that the beneficiary had orally appointed a new trustee, with notice to no one. Such an appointment would constitute an improper delegation of authority under §57-1-21.5. It would eliminate reliability of the present public record, showing authority lodged in the currently appointed trustee.

The appointment as substitute trustee was not executed until after the foreclosure. Until then, only the original trustee was empowered to act. Debtor was entitled to rely upon this appointment.

The requirement of §57-1-22(3)(a) that the substitution of trustee be recorded “at the time of recording a notice of default” presumes that a written, recordable substitution of trustee exists at the time of recording a notice of default. An oral “appointment”, not only violates the statute of frauds, it cannot be recorded as required. The further requirement to deliver a copy to the debtor is obviously to protect the debtor. The purported substitution here was not created or executed until after foreclosure. It could not have been recorded “at the time” of recording the Notice of Default. It did not then exist. The power to declare a default and foreclose remained with the original trustee. Debtor was never appropriately notified of a change of trustee.

Section 57-1-22(1)(c) applies during the period between execution of a written substitution of trustee and the time it can be recorded. It deletes any requirement inferred from §57-1-22(1)(a) that the substitution be of record *before* a new trustee can file a notice of default, and permits recording of the substitution and notice *at the same time*. Otherwise, the authority to “ratify” applies to acts which, having no statutorily defined compliance, are not outlawed by failure to observe the statute. Beneficiaries may not, by ratification, render legal after the fact what was illegal when it was done; notwithstanding they may “confirm” actions which do not violate any express provision.

Certainly, §57-1-22(1)(c) does not repeal §57-1-21.5(1) or §25-5-1, the Statute of Frauds.

There is nothing in §57-1-22(1)(c) from which the district court might have concluded that, without executing a substitution of trustee, the purported beneficiary of the trust deed, could have terminated the authority of the trustee of record, and conferred it upon another. Beneficiary could not have notified the debtor, through the public record, to deal with the original trustee, while secretly empowering another. It could not delete the protection accorded the debtor by §57-1-22(3)(b), by authorizing long after the fact apparently stray proceedings of an unknown “trustee”. “The grantor of the power is entitled to have his directions obeyed; to have the proper notice of sale given; to have it take place at the time and place, *by the person appointed by him.*” *Concepts, Inc. v. First Sec. Realty Services*, 743 P. 2d 1158, 1160-61 (Utah 1987) (emphasis added).

The statutory scheme contemplates that there be only one trustee at any time. Some powers of the trustee, including filing of Notices of Default and Sale, and foreclosure, must be perfected by strict compliance with the statutory requirements. Failure to do so vitiates any actions taken in the purported exercise of the power of the trustee.

No authority of a trustee exists prior to appointment, which must be in writing; no power exists to “ratify” actions taken prior to such appointment. Prior to such appointment, authority to act is conferred exclusively upon the predecessor trustee duly appointed.

As noted, §57-1-22(3)(a) makes *recordation* of the substitution “a prerequisite to the validity of the Notice of Default”. Recording of a Notice of Default is not an act which, in defiance of statutory requirements, can be “ratified”. Sections 57-1-23 and 57-1-24 relate to sale of the trust property by a properly qualified and appointed trustee. Section 57-1-21(4), regarding qualifications of trustees, provides:

- - - the power of sale and other trustee powers under the trust deed may be exercised only if the beneficiary has appointed a qualified successor trustee under section 57-1-22.

Until a written substitution of trustee has been recorded as required by §57-1-22, the beneficiary has not appointed a successor trustee, and no power of sale or other trustee’s power may be exercised, except by the predecessor trustee. The exercise of such power in violation of this provision cannot be “ratified” after the fact by the beneficiary.

Each part of a statute must be construed to operate in cooperation with the remainder, and with the statutory scheme of which it is part. An interpretation of part of a statute will not be adopted which is not compelled by the language, and which effectively repeals other parts of the statute and critical provisions of the statutory scheme. *Mountain States Tel. & Tel. Co. v. Garfield County*, 811 P.2d 184, 187 (Utah 1990).

There is neither evidence nor finding of an oral substitution of trustee in this case, nor of inclusion in any such arrangement of an express ratification of any action. There is no factual basis for the district court’s ruling.

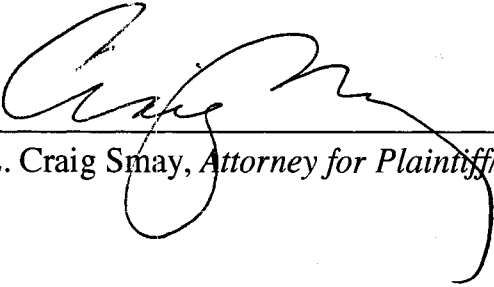
There is no statutory basis. The pertinent statutes do not permit oral substitution of trustees. A written substitution long after the recording of a Notice of Default cannot validate the notice, or any subsequent proceedings based on it.

The foreclosure proceeding in this case was void. The judgment enforcing the foreclosure should be reversed at once.

CONCLUSIONS

The district court's ruling is simply a misreading of the pertinent statutes. It should be reversed at once.

Respectfully submitted this 13th day of July, 2011.



E. Craig Smay, *Attorney for Plaintiff/Appellant*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing “**REVISED BRIEF OF APPELLANT**”, was sent this 13th day of July, 2011, postage pre-paid to the following by U.S. Mail:

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E. Craig Smay, *Attorney for Plaintiff/Appellant*

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DISTRICT COURT
11 JAN - 3 PM 4:46
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FILED DISTRICT COURT
Third Judicial District

JAN - 7 - 2011

SALT LAKE COUNTY

by _____
Deputy Clerk

Attorneys for Defendant U.S. Bank, NA

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH**

<p>STEPHANIE REYNOLDS, Plaintiff, vs. JAMES H. WOODALL, CITIBANK FEDERAL SAVINGS BANK, U.S. BANK, N.A., MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ETITLE INSURANCE AGENCY L.L.C., and JOHN DOES OF UNKNOWN NUMBER; Defendants.</p>	<p>ORDER GRANTING DEFENDANT U.S. BANK, NA'S MOTION TO DISMISS Judge: Tyrone E. Medley Civil No.: 090919624</p>
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On December 13, 2010, at 3:30 p.m., the motion to dismiss filed by defendant U.S. Bank, NA, came on for hearing before the Court. Present at the hearing were Mr. Jeff Williams, counsel for defendant U.S. Bank, NA, and Mr. E. Craig Smay, counsel for the plaintiff Stephanie

Reynolds. U.S. Bank, NA's motion to dismiss was fully briefed, and having considered the parties' arguments, the Court hereby rules and orders as follows:

1. Defendant U.S. Bank, NA's motion to dismiss is granted.
2. The parties' cross requests for an award of fees in connection with this motion to dismiss are denied.
3. The Court grants this motion to dismiss on the ground that the proper application of the law of the case doctrine, in conjunction with the prior rulings of the Court in this case, requires the dismissal of all claims asserted against defendant U.S. Bank, NA.
4. Plaintiff Stephanie Reynolds' amended complaint asserts various causes of action contesting the trust deed foreclosure proceedings and subsequent foreclosure sale of property located at 10449 Hyacinth Circle, Sandy City, Utah, 84094. Previously, the Court dismissed plaintiff Stephanie Reynolds' causes of action against the substitute trustee, co-defendant James H. Woodall, the party to have conducted the foreclosure sale of the above identified property. In addition, based in significant part on that ruling, the Court thereafter granted summary judgment and quieted title to the identified property in favor of the co-defendant The Corlene Kemker Trust, the party to have acquired the property at the trust deed foreclosure sale.
5. The Court here incorporates the content of its prior rulings, which are here controlling under the law of the case doctrine, and justify the dismissal of all claims asserted against U.S. Bank, NA, as set forth in the amended complaint.

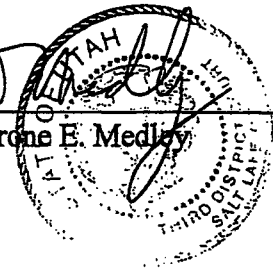
6. As such, all claims asserted against defendant U.S. Bank, NA, by the plaintiff

Stephanie Reynolds in the amended complaint are hereby dismissed.

DATED this 7 day of Jan, 2011.

BY THE COURT:


Honorable Tyrone E. Medley



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ORDER GRANTING DEFENDANT U.S. BANK NA'S MOTION TO DISMISS** was served via U.S. first-class mail, postage prepaid, this 3rd day of January, 2011, upon:

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Attorneys for Defendant Citibank Federal Savings Bank

**IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

STEPHANIE REYNOLDS,

Plaintiff,

vs.

**CITIBANK FEDERAL SAVINGS BANK,
dba CITICORP; JAMES H. WOODALL;
US BANK NA, dba US BANCORP;
CORLENE KEMKER TRUST; ETITLE
INSURANCE AGENCY; and JOHN DOES
OF UNKNOWN NUMBER,**

Defendants.

ORDER OF DISMISSAL

Case No.: 090919624

Honorable Tyrone E. Medley

The matter came before the Court on the motion to dismiss (the "Motion") filed by Defendant Citibank Federal Savings Bank ("Citibank FSB"). The Court heard oral argument on the Motion on December 13, 2010. After reviewing the briefing presented by the parties, and

hearing the oral argument of counsel, the Court finds that Plaintiff failed to effect service of process on Citibank FSB within 120 days of the filing of the Complaint.

ACCORDINGLY, IT IS HEREBY ORDERED THAT, pursuant to Utah R. Civ. P. 4(b)(i), Plaintiff's claims against Citibank FSB are dismissed without prejudice.

DATED this _____ day of _____ 201__.

Honorable Tyrone E. Medley



District Court Judge

Approved as to Form and Content:



E. Craig Smay
Attorney for Plaintiff, Stephanie Reynolds

NOTICE TO ATTORNEYS OF RECORD

E. Craig Smay
174 E. South Temple
Salt Lake City, UT 84111

Please take notice that the undersigned, attorneys for Citibank Federal Savings Bank, will submit the above and foregoing Order to the Honorable Tyrone E. Medley for signature upon the expiration of five (5) days from the date of this notice, unless written objection is filed prior to that time, pursuant to Rule 7(f)(2) of the Utah Rules of Civil Procedure.

DATED this 21st day of December 2010.



Anthony C. Kaye, Esq.
Steven D. Burt, Esq.
BALLARD SPAHR LLP
Attorneys for Defendant Citibank Federal
Savings Bank

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing proposed **ORDER ON MOTION TO DISMISS** was served to the following this 21st day of December 2010, in the manner set forth below:

- Hand Delivery
- U.S. Mail, postage prepaid
- Electronic Mail
- Federal Express
- Certified Mail, Receipt No. _____, return receipt requested

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Salt Lake City, UT 84111
ecslawyerII@aol.com
cari@smaylaw.com



CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing **ORDER OF DISMISSAL** was served to the following this _____ day of _____ 201____, in the manner set forth below:

Hand Delivery

U.S. Mail, postage prepaid

Federal Express

Certified Mail, Receipt No. _____, return receipt requested

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FILED
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SALT LAKE COUNTY
BY _____
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Attorney for Plaintiff

IN THE THIRD DISTRICT COURT,
SALT LAKE COUNTY, STATE OF UTAH, SALT LAKE DEPARTMENT

STEPHANIE REYNOLDS

Plaintiff,

vs.

JAMES H. WOODALL, CITIBANK FEDERAL SAVINGS BANK, CORLENE KEMKER TRUST, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., US BANK NA, ETITLE INSURANCE AGENCY, AND JOHN DOES OF UNKNOWN NUMBER,

Defendants

AMENDED COMPLAINT
(Jury Trial Demanded)

Civil No. 090919624

Judge Medley

Plaintiff complains of defendants, and for cause of action alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Plaintiff is a citizen of Utah, whose address is 10291 South 1300 East #101 Sandy, Utah 84094.

2. Defendant second position Beneficiary, Citibank Federal Savings Bank, is a corporation of the State of North Carolina doing business in the State of Utah.

3. Defendant second position successor Trustee, James H. Woodall, is an attorney licensed in the State of Utah.

4. Defendant Corleen Kemker is a resident of the State of Utah, whose address is 1170 Bullion Street, Murray, Utah 84123.

5. Defendant first position original Beneficiary, Mortgage Electronic Registration Systems, Inc. is a Delaware corporation, whose address is P.O. Box 2026, Flint, Michigan. 48501-2026.

6. Defendant first position successor Beneficiary, US Bank NA, is a corporation of the State of Minnesota, doing business in the State of Utah.

7. Defendant first position successor Trustee, eTitle Insurance Agency, is a title company licensed in the State of Utah.

8. The unnamed defendants are persons who may have or assert an interest in the subject property as investors in the obligations purportedly secured thereby.

9. The court has jurisdiction of this action pursuant to §78B-6-401 et seq. (declaratory judgment) and §78B-6-1301 et seq. (quiet title), Utah Code Ann. 1953.

10. The situs of the property the subject of this action is Salt Lake County, Utah. Venue is proper in Salt Lake County.

BACKGROUND FACTS

11. Plaintiff is the owner of the property located at 10449 Hyacinth Circle, Sandy, Utah 84094 in Salt Lake County (hereinafter "the subject property"), under a deed thereto made and recorded on October 28, 2004, Entry # 921278, Book 9054, Page 3294 in Salt Lake County, a copy of which is attached hereto as Exhibit "A."

12. Prior to April 4, 2006, said property was subject to a first and second mortgage under trust deeds thereto made and recorded respectively on October 28, 2004 and found at Entry # 9210279, Book 9054, Page 3295 and Entry # 9210280, Book 9054, Page 3314 in the Salt Lake County Recorder's Office..

13. On or about April 4, 2006, Plaintiff refinanced her second mortgage by executing a Promissory Note (hereinafter "the second position Note") in favor of defendant second position Lender Citibank Federal Savings Bank. On information and belief the original of said second position Note was then retained by defendant Citibank Federal Savings Bank.

14. On or about April 4, 2006, Plaintiff made and delivered the Trust Deed (hereinafter "the second position Trust Deed"), a copy of which is attached hereto as Exhibit "B", conveying the subject property in trust for the purposes recited therein to First American Title of Utah as Trustee. Defendant Trustee James H. Woodall (hereinafter "Woodall") purports to be the successor in interest thereof. Said second position Trust Deed was recorded on April 19, 2006, and found at Entry # 9698034, Book 9282, Page 3031-3039 in the Salt Lake County Recorder's Office.

15. Said second position Trust Deed names as Beneficiary of said Trust Deed defendant Citibank Federal Savings Bank.

16. On or about July 25, 2007, Plaintiff increased her credit limit on her second mortgage with defendant Citibank Federal Savings Bank by executing a Note and Modification Agreement in favor of Citibank. Said Note and Modification Agreement was recorded on October 12, 2007, and found at Entry # 10248288, Book 9525, Page 4978-4982 in the Salt Lake County Recorder's Office.

17. On or about February 11, 2008, Defendant Citibank Federal Savings Bank completed a Subordination Agreement, later recorded on March 5, 2008, in which said defendant's security interest in the aforementioned subject Property became subject to and of lower priority than the lien cre-

ated by the forthcoming refinanced first mortgage by Bank of Utah. A copy of the Subordination Agreement is attached hereto as Exhibit "C."

18. On or about February 27, 2008, Plaintiff refinanced her first mortgage by executing a Promissory Note (hereinafter "the first position Note") in favor of Bank of Utah. Defendant US Bank NA purports to be the successor in interest of Bank of Utah in the first position Note. On information and belief the original of said first position Note was then retained by Bank of Utah.

19. On or about February 27, 2008, Plaintiff made and delivered the Trust Deed (hereinafter "the first position Trust Deed"), a copy of which is attached hereto as Exhibit "D," conveying the subject property in trust for the purposes recited therein to Lender Bank of Utah as Trustee. Defendant successor Trustee eTitle Insurance Agency (hereinafter "eTitle") purports to be the successor in interest thereof. Said first position Trust Deed was recorded on March 5, 2008, and found at Entry # 10365848, Book 9578, Page 8391-8404 in the Salt Lake County Recorder's Office.

20. Said first position Trust Deed names as beneficiary of said Trust Deed defendant Mortgage Electronic Registration Systems, Inc. (hereinafter "MERS") acting solely as nominee for Lender and Lender's successors and assigns, and the successors and assigns of MERS.

21. As a result of said transactions the subject property was subject, as of February 28, 2008, to a first position Note in favor of Bank of Utah, secured by a first Trust Deed in which the Trustee is Bank of Utah, and a second position Note in favor of Citibank Federal Savings Bank, subordinate to such first position Note, and secured by a second Trust Deed in which the trustee is First American Title Company.

22. A Servicer was designated for each respective loan ("Servicers") to act as the representative/agent for the holders of the respective Notes and the corresponding Trust Deeds. US Bank Home Mortgage was designated as the Servicer for the first position loan and Citibank was designated as the Servicer for the second position loan.

23. MERS is a private corporation that administers the MERS system, a national electronic registry that tracks the transfer of ownership interests and servicing rights in mortgage loans. Through the MERS system, MERS becomes the mortgagee of record for participating members through assignment of the members interests to MERS. MERS is listed as the grantee in the official records maintained at county recorders offices. The lenders retain the promissory notes as well as the servicing rights to the mortgages. The lenders can then sell these interests to investors.

24. The first position Trust Deed recites that the beneficiary of this security instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS and

Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of these interests, including, but not limited to, the right to foreclose and sell the property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

25. Upon information and belief, both first position Lender Bank of Utah and defendant second position Lender Citibank Federal Savings Bank (hereinafter "Lenders"), independently pooled the first position Note and the second position Note (hereinafter "Notes") with other such instruments, and then sold the pooled instruments as securities to unknown investors.

26. Upon information and belief, both Lenders have been reimbursed all sums advanced by each of them in connection with said Notes.

27. Upon information and belief, both Lenders' function was limited to obtaining the Notes, in exchange for a fee, as a preliminary step to "securitization" of the obligations as described herein.

28. Upon information and belief, the obligations on the Notes were pooled and sold by Bank of Utah and/or defendant US Bank NA, and defendant Citibank Federal Savings Bank and/or a person or persons unknown as securities to numerous investors unknown.

29. Upon information and belief, such investors and/or the person or persons who sold such securities have obtained insurance against default on the underlying obligations in the form of "credit default swaps" or other similar instruments.

30. Notwithstanding the transfer of the obligations under said Notes as herein described, no transferee thereof has recorded a copy of any security agreement providing any security interest in either the first position Trust Deed or second position Trust Deed (hereinafter "Trust Deeds") or any appropriate affidavits, pursuant to Section §70A-9a-607(2), Utah Code Ann. 1953, in order to perfect any right of enforcement under §70A-9a-607(1), Utah Code Ann. 1953.

31. As a result of the transfer of the Notes as part of these securities transactions, and of the lack of such recordings, both Bank of Utah and/or defendant US Bank NA and defendant Citibank Federal Savings Bank are not the present holders of the Notes or the obligees thereon, and plaintiff, and, upon information and belief, defendants, do not know who is or are the present holders of the Notes, or the obligees thereon.

32. The second position Trust Deed has not been assigned or transferred of record, in whole or in part.

33. Plaintiff, having a right under the Notes and federal law to do so, repeatedly demanded of Servicers, who purport to have a relationship in the nature of agency with persons to whom the Notes and/or Trust Deeds may be assigned, and/or persons in fiduciary relationships to such assignees, all information and records showing transfer of such Notes to any person or persons, for the purposes, among others, of determining the proper person(s) to receive payments under the Notes, or to negoti-

ate payment or reinstatement of the obligations, or to obtain acknowledgment of proper application of payments. No information was provided.

34. Thereafter, on or about April 16, 2009, defendant Woodall, purporting to act as Trustee for the subordinated second position Trust Deed Beneficiary, defendant Citibank Federal Savings Bank, recorded on the public record, but failed to serve upon plaintiff, the Notice of Default pursuant to Utah Code § 57-1-26, a copy of which is attached hereto as Exhibit "E." Said Notice of Default states that a Trustee was not named in the pertinent Deed of Trust. In fact, said Deed of Trust names First American Title Company as Trustee.

35. Defendant Citibank Federal Savings Bank and defendant Woodall failed to record and serve upon plaintiff a Substitution of Trustee at the time of filing said Notice of Default pursuant to Utah Code § 57-1-22(3)(a).

36. On or about June 30, 2009, defendant eTitle served upon plaintiff, the Notice of Default and Election to Sell for the first position Note/Trust Deed, attached hereto as Exhibit "F."

37. Defendant MERS and defendant eTitle failed to record and serve upon plaintiff a Substitution of Trustee naming eTitle as successor Trustee to Bank of Utah for the first position Trust Deed at the time of filing said Notice of Default pursuant to Utah Code § 57-1-22(3)(a).

38. On or about August 11, 2009 a Notice of Trustee's Sale for the second position Trust Deed was posted on the door of the subject property by defendant Woodall stating his intention to sell the subject property on September 16, 2009 at 11:30 a.m. A copy of said Notice is attached hereto as Exhibit "G." This was the first communication plaintiff received from defendant Woodall.

39. On or about September 16, 2009, defendant Woodall, purporting to act as Trustee for defendant Citibank Federal Savings Bank on their previously subordinated second position lien, foreclosed and sold the subject property at auction to defendant Corleen Kemker Trust (hereinafter

“Kemker”). Defendant Woodall was not then a qualified successor trustee under the second Trust Deed.

40. On or about September 18, 2009 a Substitution of Trustee was recorded for the first position Trust Deed by Kara Knable, “Assistant Vice President” for US Bank NA, Beneficiary, naming eTitle Insurance Agency as Successor Trustee. A copy of said Substitution of Trustee is attached hereto as Exhibit “H.” At such time MERS remained the Beneficiary, nominated in said Trust Deed, and hadn’t assigned beneficial interest to defendant US Bank NA.

41. The first position Trust Deed was not assigned or transferred of record until after the described attempted foreclosure of the second position Trust Deed.

42. On or about September 18, 2009, a Notice to Quit - Five Day Notice to Vacate was posted on the door of the subject property by Defendant Kemker.

43. On or about September 24, 2009, a Trustee’s Deed for the second position Trust Deed was recorded at Entry # 10803743 Book 9765 Page 4347-4349 in the Salt Lake County Recorders Office by defendant Woodall to Corlene Kemker Trust as Grantee. A copy of said Trustee’s Deed is attached hereto as Exhibit “I.”

44. On or about September 24, 2009, defendant Kemker posted a Ninety (90) Day Notice to Vacate on the door of the subject property.

45. On or about October 2, 2009, a Notice of Trustee’s Sale, on behalf of defendant US Bank NA as Beneficiary, was posted on the door of the subject property stating a sale date of November 2, 2009. A copy of said Notice is attached hereto as Exhibit “J.” As of October 2, 2009, MERS was the Beneficiary of said Trust Deed.

46. On or about October 30, 2009, an Assignment of Trust Deed, a copy of which is attached hereto as Exhibit “K,” was recorded for the first position Trust Deed by Kara Knable, in this instance as “Certifying Officer” for MERS, as Beneficiary, purporting to assign beneficial interest to defendant US Bank NA.

47. On or about October 30, 2009, a Substitution of Trustee was recorded for the second position Trust Deed by defendant Citibank Federal Savings Bank as Beneficiary to James H. Woodall as Successor Trustee. A copy of said Substitution of Trustee is attached hereto as Exhibit "L."

48. On or about October 30, 2009, Occupant of the subject property, Cheryl Chandler, was served with a Complaint for Unlawful Detainer with a 3 Day Summons by defendant Kemker. A copy of said complaint is attached hereto as Exhibit "M."

49. On or about November 2, 2009, Cheryl Chandler filed an Answer to the aforementioned eviction action, a copy of which is attached hereto as Exhibit "N."

50. On or about November 6, 2009, counsel for defendant Kemker requested a hearing on the unlawful detainer action which was originally scheduled for November 18, 2009.

FIRST CAUSE OF ACTION-ESTOPPEL/DECLARATORY JUDGMENT

51. Plaintiff incorporates herein by reference paragraphs 1- 50 hereinabove.

52. The Servicers of the respective Notes both purport in the respective Trust Deeds to have a relationship in the nature of agency with persons to whom the Notes and/or Trust Deeds may be assigned, and/or persons in fiduciary relationships to such assignees.

53. By permitting the respective Servicers to so represent their respective capacities, both defendant first position Beneficiaries, MERS and US Bank NA, and defendant second position Beneficiary, Citibank Federal Savings Bank, (hereinafter "defendant Beneficiaries") and any respective assignees have conferred upon each respective Servicer the right and obligation to disclose and assert the interests of such assignees as necessary to protect such interests.

54. The refusal of the Servicers, upon demand, to disclose such interests is binding upon their respective assignees.

55. The result of such behavior by Servicers, and such assignees is to subject plaintiff and any successors in title, to risks, abuses, and prejudice, and to render impossible proper discharge of the obligations on the Notes.

56. As a result of such behavior, defendant Beneficiaries, and such assignees, including those served by publication herein, are estopped to assert any present default on the Notes, or power of sale under the Trust Deeds.

57. An actual controversy exists between plaintiff and defendants regarding the amenability of the subject property to sale by defendants, which may be resolved by the Court pursuant to §78B-6-401, et seq., Utah Code Ann. 1953 (Supp. 2008).

58. The Court should appropriately advance this matter on the calendar as provided by Rule 57, U.R.C.P., and promptly enter its Order declaring that defendants, including unnamed defendants who have asserted no assignment of the Trust Deeds, lack any interest under the Trust Deeds which may be enforced by lien upon or sale of the subject property.

SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT

59. Plaintiff incorporates herein by reference paragraphs 1 through 58 hereinabove.

60. As a result of such transfers of the Notes as securities, the Servicers, defendant Beneficiaries, and defendant Trustees Woodall and eTitle (hereinafter "defendant Trustees"):

a. did not know whether a default had occurred, or had been declared by the actual holder(s) of the obligations under the Notes;

b. lacked authority to declare a default or otherwise pursue collection of the obligation on the respective Notes;

c. lacked authority to sell the subject property or to distribute any proceeds thereof;

d. were not entitled to any of such proceeds on their own account;

e. could not give trustee's deeds which were free and clear of the obligations of the Notes;

f. could not give an enforceable release of the Trust Deeds.

61. Plaintiff, at any time relevant hereto, by diligent search or otherwise, could not have discovered, without the assistance of Servicers and, consequently, the named defendants, the identities of any actual holders of the Notes or obligees thereunder, or any interest of any such holder.

62. In the event that any investor in the obligations under the Notes, or any assignee of an interest in the Notes, did not obtain assignment of the Trust Deeds, the obligations of the Notes have, to that extent, become unsecured, and the Notes and Trust Deeds, may not be foreclosed.

63. Said Notices of Default, Exhibit "E & F", were without authority, and void.

64. The sale of the subject property by defendant Trustee Woodall, and any trustee's deed given thereafter, was without authority, and void. Any sale by defendant Trustee eTitle will be equally unauthorized.

65. An actual controversy exists between plaintiff and defendants regarding the amenability of the subject property to sale by defendants, which may be resolved by the Court pursuant to §78B-6-401, Utah Code Ann. 1953.

66. The Court should **appropriately** advance this matter on the calendar as provided by Rule 57, U.R.C.P., and promptly enter its Order declaring that defendants, including unnamed defendants who are not assignees of the Trust Deeds, lack any interest under the Trust Deeds which may be enforced by lien upon or sale of the subject property.

THIRD CAUSE OF ACTION: QUIET TITLE

67. Plaintiff incorporates herein by reference paragraphs 1-66 hereinabove.

68. The transfer of the Notes as part of securities, subjects plaintiff to potential multiple and unpredictable recoveries or attempts to recover, against the subject property.

69. The failure of defendants Beneficiaries and defendant Trustees to retain any interest in the obligations under the Notes voided any title or power they might have under the Trust Deeds, and rendered the Trust Deeds unenforceable by them.

70. The inability of plaintiff to safely discharge any lien of the Trust Deeds against the subject property in favor of assignees of interests in the Notes and Trust Deeds, and the threat of multiple recoveries or attempts to recover against the subject property constitute a cloud on plaintiff's title which can only be removed by requiring all such assignees to appear and assert their interests and the extent to which any obligation owing to them has not been discharged by payment, including collections on insurance against default, or, failing such assertion of claims, entry of a decree of quiet title freeing the subject property from the lien of such obligations.

71. The Court, pursuant to §78B-6-1301 et seq., Utah Code Ann (1953) (Supp. 2008), should enter its Order herein forthwith quieting title to the subject property in Plaintiff and against defendants, including all those served by publication, freeing title to the subject property of the lien of the Trust Deeds and leaving any obligations under the Notes unsecured by any interest in the subject property.

FOURTH CAUSE OF ACTION: REFUND, FEES AND COSTS

72. Plaintiff incorporates herein by reference paragraphs 1 through 71 hereinabove.

73. The Trust Deeds have been unenforceable by defendants Beneficiaries and defendant Trustees from the first transfer of the Notes as set out hereinabove.

74. Defendant Beneficiaries' and defendant Trustee's pretenses of authority to foreclose, or attempt to foreclose, under the Trust Deeds were fraudulent.

75. Defendant Beneficiaries' and defendant Trustee's assertions to the Court herein that they hold and are entitled to enforce the obligations of the Notes would constitute a fraud upon the Court, subjecting defendants to sanctions and imposition of fees and costs under §78-5-825, U.C.A. (1953).

76. The Court should enter its Order herein forthwith to Defendant Beneficiaries and defendant Trustees, jointly and severally, to pay to plaintiff its fees and costs, together with a reasonable attorney's fee, to be shown by affidavit, and to reimburse to plaintiff unnecessary fees and charges under the Notes and Trust Deeds.

Wherefore, plaintiff prays that the court enter its Order herein:

1. Declaring that Defendant Beneficiaries and defendant Trustees lack any interest in the subject property which permitted them to foreclose, or attempt to foreclose, the Trust Deeds and/or to sell the subject property; and

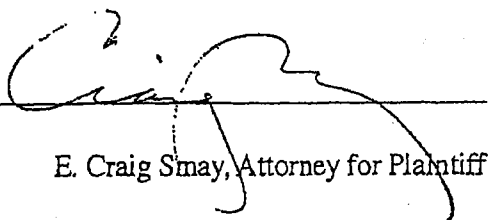
2. Declaring that the sale of the subject property by defendant Trustees, and any Trustee's deeds resulting therefrom, were without authority, and void.

3. Declaring that the Trust Deeds are not a lien against the subject property, ordering the immediate release of the Trust Deeds of record, and quieting title to the subject property in plaintiff against defendants and all claiming by, through, or under them, including unnamed defendants served by publication;

4. Refunding to plaintiff from Defendant Beneficiaries and defendant Trustees, jointly and severally, all fees and charges paid under the Trust Deeds, and awarding plaintiff its cost of the action, including a reasonable attorney's fee; and

5. For such other and further relief as the court deems just in the premises.

RESPECTFULLY submitted on December 4th, 2009.



A handwritten signature in black ink, appearing to read "E. Craig Smay", is written over a horizontal line. The signature is fluid and cursive.

E. Craig Smay, Attorney for Plaintiff

EXHIBIT

“A”

Warranty Deed

PINNACLE TITLE



Gayle W. Threet , Grantor(s)

9210278
10/28/2004 04:17 PM \$10.00
Book - 9054 Pg - 3294
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
EQUITY TITLE
BY: SEM, DEPUTY - WI 1 P.

hereby CONVEYS AND WARRANTS TO

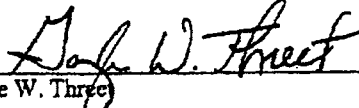
Stephanie Reynolds , A SINGLE WOMAN , Grantee(s)

for the sum of (\$10.00) Ten Dollars and other good and valuable considerations the following described tract of land in Salt Lake County, State of Utah, to-wit:

LOT 26, WHITE CITY #32, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

Parcel No.: 28-17-276-010


Witness the hand of said Grantor(s), this 25 day of October , 20 04 .



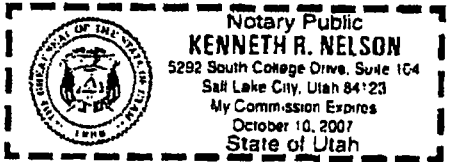
Gayle W. Threet

STATE OF UTAH)
 :SS
County of Salt Lake)

On the 25 day of October, 2004, personally appeared before me Gayle W. Threet, the signer(s) of the foregoing instrument, who being by me duly sworn, did say and duly acknowledge to me that she executed the same.



Notary Public



EXHIBIT

“B”

9698034

9698034
04/19/2006 09:24 AM \$26.00
Book - 9282 Pg - 3031-3039
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
US RECORDINGS INC
BY: ZJM, DEPUTY - MA 9 P.

Recording Requested by &
When Recorded Return To: 30867116
US Recordings, Inc.
2925 Country Drive Ste 201
St. Paul, MN 55117

THIS INSTRUMENT WAS PREPARED BY:
SHWETA VAHI

ACCOUNT NO.: 106030908770000

Tax ID# 28172760100600

HOME EQUITY LINE OF CREDIT DEED OF TRUST

In this Deed of Trust, "You", "Your" and "Yours" means STEPHANIE REYNOLDS, A SINGLE WOMAN ("Trustor"). "We," "Us" and "Our" means CITIBANK FEDERAL SAVINGS BANK, which has a home office of 11800 Spectrum Center Drive, Reston, VA 22090 (beneficiary). The "Trustee" means First American Title Company or any successor appointed pursuant to paragraph 28 of this Deed of Trust. The "Borrower" means the individual(s) who has (vc) signed the Home Equity Line of Credit Agreement and Disclosure (the "Agreement") of even date herewith and in connection with this Deed of Trust.

The "Property" means the real estate, including the leasehold (if any), located at 10449 HYACINTH CL SANDY, UT 84094, SALT LAKE County, State of Utah.

[SEE ATTACHED LEGAL DESCRIPTION]

THIS DEED OF TRUST between You and Us is made as of the date next to Your first signature below and has a final maturity date 30 years and 2 months from such date.

The Agreement provides that the credit secured by the Property is an open-end revolving line of credit at a variable rate of interest. The maximum amount of all loan advances made to the Borrower under the Agreement and which may be secured by this Deed of Trust may not exceed \$67,100.00 (the "Credit Limit"). At any particular time, the outstanding obligation of Borrower to Us under the Agreement may be any sum equal to or less than the Credit Limit plus interest and other charges owing under the Agreement and amounts owing under this Deed of Trust. Obligations under the Agreement, Deed of Trust and any riders thereto shall not be released even if all indebtedness under the Agreement is paid, unless and until We cause a reconveyance of the property to be executed to Trustor and such release is properly recorded.

TO SECURE to Us: (a) the payment and performance of all indebtedness and obligations of the Borrower under the Agreement or any modification or replacement of the Agreement; (b) the payment of all other sums advanced in accordance herewith to protect the security of this Deed of Trust, with finance charges thereon at the variable rate described in the Agreement; and (c) the payment of any future advances made by Us to Borrower (pursuant to Paragraph 16 of this Deed of Trust (herein "Future Loan Advances")) and, in consideration of the indebtedness herein recited, You hereby irrevocably grant and convey to the Trustee, in trust for our benefit, with power of sale, the Property;

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 You 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 (which, if this Deed of Trust is on a unit in a condominium project or planned unit development, shall include the common elements in such project or development associated with such unit), all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property.

Deed of Trust, continued



IN WITNESS WHEREOF, YOU HAVE EXECUTED THIS DEED OF TRUST, AND AGREE TO BE BOUND BY ALL TERMS AND CONDITIONS STATED ON PAGES 3 THROUGH 8 FOLLOWING.

IF TRUSTOR IS AN INDIVIDUAL

Stephanie Reynolds 04/04/2006

Trustor: STEPHANIE REYNOLDS
 Married Unmarried

Trustor:
 Married Unmarried

Trustor:
 Married Unmarried

Trustor:
 Married Unmarried

Married Unmarried

Married Unmarried

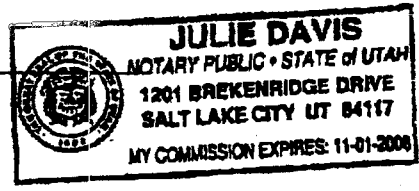
STATE OF UTAH)
County of Salt Lake)

The foregoing instrument was acknowledged before me this 04/04/2006 by STEPHANIE REYNOLDS.

Notary Public in and for the State of Utah residing at Salt Lake County

(My commission expires): 11/1/08

[Signature]



IF TRUSTOR IS A TRUST: _____
not personally but solely as trustee as aforesaid

By: _____
Title

Deed of Trust, continued



You covenant that You are lawfully seized of the estate hereby conveyed and have the right to mortgage, grant, and convey the Property, and that the Property is unencumbered, except for the encumbrances of record and any first deed of trust. You covenant that You warrant and will defend generally the title to the Property against all claims and demands, except those disclosed in writing to Us as of the date of this Deed of Trust.

You and We covenant and agree as follows:

1. **Payment of Indebtedness.** Borrower shall promptly pay when due the indebtedness secured by this Deed of Trust including, without limitation, that evidenced by the Agreement.
2. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Us under the Agreement will be applied to the principal balance and any finance charges, late charges, collection costs, and other charges owing with respect to the indebtedness secured by this Deed of Trust in such order as We may choose from time to time.
3. **Charges; Liens.** Except as expressly provided in this Paragraph 3, You shall pay 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, by Your making payments, when due, directly to the payee thereof. In the event You make payments directly to the payee thereof, upon Our request You shall promptly furnish to Us receipts evidencing such payment.

You shall make payments, when due, on any indebtedness secured by a Deed of Trust or other lien that is prior in right of time to this Deed of Trust (a "Prior Deed of Trust"). You shall promptly discharge the lien of any Prior Deed of Trust not disclosed to Us in writing at the time of application for the Agreement, provided, however, that You shall not be required to discharge any such lien so long as You shall (a) 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, or (b) secure from the holder of such prior lien an agreement in form and substance satisfactory to Us subordinating such lien to this Deed of Trust. You shall not enter into any agreement with the holder of a Prior Deed of Trust whereby such Prior Deed of Trust, or the indebtedness secured thereby is modified, amended, extended or renewed, without Our prior written consent. You shall neither request nor allow any future advances to be secured by a Prior Deed of Trust without Our prior written consent.

4. **Hazard Insurance.** You 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 We may require (including flood insurance coverage, if required by Us) and in such amounts and for such periods as We may require. Unless We require in writing otherwise, the policy shall provide insurance on a replacement cost basis in an amount not less than that necessary to comply with any coinsurance percentage stipulated in the hazard insurance policy. All insurance policies and renewals thereof shall be in form and substance and with carriers acceptable to Us and shall include a standard mortgagee clause in favor of and in form and substance satisfactory to Us. In the event of loss, You shall give prompt notice to the insurance carrier and Us. We may make proof of loss if not made promptly by You.

If the Property is abandoned by You, or if You fail to respond to Us within thirty (30) days from the date the notice is mailed by Us to You that the insurance carrier offers to settle a claim for insurance benefits, We are authorized to collect and apply the insurance proceeds at Our option either to restoration or repair of the Property, or to sums secured by this Deed of Trust.

If the Property is acquired by Us under Paragraph 14 of this Deed of Trust, all of Your right, title and interest 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 Us to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

Deed of Trust, continued



The provisions of this Paragraph 4 shall be subject to the provisions of Paragraph 5 if this Deed of Trust covers a unit in a condominium project or planned unit development.

5. Preservation and Maintenance of Property; Condominiums and Planned Unit Developments. If this Deed of Trust is on a unit in a condominium or a planned unit development (herein "Condominium Project"), then: (a) You shall perform all of Your obligations under the declaration or covenants creating or governing the Condominium Project, the by-laws and regulations of the Condominium Project, and all constituent documents (herein "Project Documents"), including the payment when due of assessments imposed by the homeowners association or other governing body of the Condominium Project (herein "Owner's Association"); (b) You shall be deemed to have satisfied the insurance requirements under Paragraph 4 of this Deed of Trust if the Owners Association maintains in full force and effect a "master" or "blanket" policy on the Condominium Project which provides insurance coverage against fire, hazards included within the term "extended coverage" and such other hazards (including flood insurance) as We may require, and in such amounts and for such periods as We may require naming Us as additional loss payee; (c) the provisions of any Project Documents regarding the application of any insurance proceeds from "master" or "blanket" policies covering the Condominium Project shall supersede the provisions of Paragraph 4 of this Deed of Trust to the extent necessary to avoid conflict between the provisions thereof and hereof; (d) You hereby assign to Us the right to receive distributions on account of the Property under "master" or "blanket" policies covering the Condominium Project to the extent not applied to the restoration or repair of the Property, with any such distributions in excess of the amount necessary to satisfy in full the obligations secured by this Deed of Trust being paid to You; (e) You shall give Us prompt written notice of any lapse in any insurance coverage under a "master" or "blanket" policy on the Condominium Project; and (f) You shall not, without Our prior written consent, consent to either (i) the abandonment or termination of the Condominium Project (except for the abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking or condemnation or eminent domain), (ii) any material amendment to the Project Documents (including any change in the percentage interests of the unit owners in the Condominium Project), or (iii) the effectuation of any decision by the Owners Association to terminate professional management and assume self-management of the Condominium Project. If the Property has rental units, You shall maintain insurance against rent loss in addition to the other hazards for which insurance is required herein.

6. Protection of Our Security. If You fail to perform Your obligations under this Deed of Trust, or if any action or proceedings adversely affects Our interest in the Property, We may, at Our option, take any action reasonably necessary (including, without limitation, paying expenses and attorneys' fees and to have entry upon the Property to make repairs) to perform Your obligations or to protect Our interests. Any amounts disbursed by Us pursuant to this Paragraph 6, with interest thereon at the variable rate described in the Agreement, shall become indebtedness secured by this Deed of Trust (except as expressly provided herein). Nothing contained in this Paragraph 6 shall require Us to incur any expense or take any action hereunder.

7. Inspection. We or Our agents may enter and inspect the Property, after giving You reasonable prior notice.

8. 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 Us. Neither Borrower nor You will be relieved of any obligation to make payments if We apply the award received to the outstanding balance owed.

If You abandon the Property, or if, after notice by Us to You that the condemnor offers to make an award or settle a claim for damages, You fail to respond to Us within thirty (30) days after the date such notice is mailed, We are authorized to collect and apply the proceeds in the same manner as provided in Paragraph 4 hereof.

Deed of Trust, continued



9. **Forbearance Not a Waiver.** Any forbearance by Us 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 in the future. Any waiver by Us must be in writing and signed by Us.

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

11. **Notices.** Except for any notice required under applicable law to be given in another manner, (a) any notice to You provided for in this Deed of Trust shall be given by personal delivery or by mailing such notice by first-class postage paid, addressed to You at the address of the Property shown at the beginning of this Deed of Trust or at such other address as You may designate by notice to Us as provided herein, and (b) any notice to Us shall be given by personal delivery or by mailing such notice by certified mail, return receipt requested, to Our address stated herein or to such other address as We may designate by notice to You as provided herein.

12. **Severability.** If any term of this Deed of Trust is found to be unenforceable, all other provisions will remain in full force.

13. **Due on Transfer Provision - Transfer of the Property.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in You is sold or transferred and You are not a natural person) without Our prior written consent, We may, at Our option, require immediate payment in full of all sums secured by this Deed of Trust. However, We shall not exercise this option if the exercise is prohibited by applicable law as of the date of this Deed of Trust. If We exercise this option, We shall give You notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which all sums secured by this Deed of Trust must be paid. If these sums are not paid prior to the expiration of this period, We may invoke any remedies permitted by this Deed of Trust without further notice or demand on You.

14. **Default.** If You breach any term in this Deed of Trust, or if Borrower fails to perform any obligation under the Agreement, We may, at Our option, declare all sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale under this Deed of Trust and any other remedies permitted by law. The power of sale conferred by this Deed of Trust is not an exclusive remedy. We may cause this Deed of Trust to be foreclosed as a mortgage. We may collect from You all reasonable costs incurred in enforcing the terms of this Deed of Trust, including attorneys' fees and allocated costs of Our salaried employees.

15. **Assignment of Rents.** As additional security hereunder, You hereby assign to Us the rents of the Property, provided, however, that You shall have, prior to acceleration under Paragraph 14 hereof or abandonment of the Property, the right to collect and retain such rents as they become due and payable.

16. **Future Loan Advances.** Upon request, We are obligated to make Future Loan Advances to Borrower up to the amount of the Credit Limit in accordance with the Agreement unless there is a default or other event under the Agreement that terminates or suspends Future Loan Advances.

17. **Release.** Upon payment of all sums secured by this Deed of Trust and any applicable Early Closure Release Fee or other fees due Us and upon (a) expiration of the Agreement or (b) Your request, We shall release this Deed of Trust and You shall pay all costs of recordation, if any.

18. **Appointment of Receiver; Lender in Possession.** Upon acceleration under this Deed of Trust or abandonment of the Property, We shall be entitled to have a receiver appointed by a court to enter upon, take possession of, and manage the Property and collect the rents of the Property including those past due. All rents collected by 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 and premiums on the receiver's bonds and reasonable attorneys' fees and then to the sums secured by this Deed of Trust. The receiver shall be liable to account only for those rents actually received.

19. **Statement of Obligation.** We may collect a fee for furnishing a statement of obligation in an amount not to exceed the maximum amount permitted under applicable law.

20. **No Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for Our benefit in any capacity, without Our prior written consent.

21. **Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county in which the Property is located with respect to any and all fixtures included within the term "Property" as used in this Deed of Trust and with respect to any goods or other personal property that may now or hereafter become such fixtures.

22. **Third Party Waivers.** In the event that any of You has not also signed the Agreement as Borrower, each of You: (a) agrees that We may, from time to time, without notice to, consent from or demand on You, and without affecting or impairing in any way any of Our rights or Your obligations, (i) renew, extend, accelerate, compromise or change the interest rate or other terms of the Agreement and any promissory note or agreement evidencing a Future Loan Advance, and (ii) accept, waive and release other security (including guarantees) for the obligations arising under the Agreement or any promissory note or agreement evidencing a Future Loan Advance, and (b) waives (i) any right to require Us to proceed against any Borrower or any other person, proceed against or exhaust any security for the obligations secured by this Deed of Trust or pursue any other remedy in Our power whatsoever, (ii) any defense or right against Us arising out of any disability or other defense or cessation of liability of any Borrower for any reason other than full payment, (iii) any defense or right against Us arising out of Our foreclosure upon the Property, even though such foreclosure results in the loss of any right of subrogation, reimbursement or other right You have against any Borrower, (iv) all presentments, diligence, protests, demands and notice of protest, dishonor, and nonperformance, (v) until payment in full of the indebtedness secured by this Deed of Trust, any right of subrogation or the benefit of any security for such indebtedness, and (vi) the benefit of the statute of limitations affecting the Property to the extent permitted by law. Any partial payment by Borrower or other circumstance that operates to toll any statute of limitations as to such person shall operate to toll such statute as to You.

23. **Choice of Law.** The Deed of Trust will be governed by United States federal law and, to the extent the United States federal law is inapplicable, then by the laws of the Commonwealth of Virginia; except that, with regard to the perfection and enforcement of Citibank's security interest in the Property, the Deed of Trust will be governed by the law of the state where the Property is located.

24. **Your Copy.** You shall be given one conformed copy of the Agreement and this Deed of Trust.

25. **Loan Charges Legislation Affecting Our Rights.** If the Agreement is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Agreement exceed the permitted limits, then (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any such loan charge already

Deed of Trust, continued



collected from You or Borrower which exceeded permitted limits will be refunded to You or Borrower; We may choose to make this refund by reducing the principal owed under the Agreement or by making a direct payment to You or Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge due. If enactment or expiration of applicable laws has the effect of rendering any provision of the Agreement or this Deed of Trust unenforceable according to its terms, We may at Our option, require immediate payment in full of all sums secured by this Deed of Trust and may invoke any remedies permitted by Paragraph 14.

26. **Waiver of Homestead.** You waive all right of homestead exemption in the Property.

27. **Trustee Exculpation.** If this Deed of Trust is executed by a trust, You execute this Deed of Trust as trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such trustee, and it is expressly understood and agreed by Us and by every person hereafter claiming any right hereunder that nothing contained herein or in the Agreement shall be construed as creating any liability on You personally to pay amounts owing in connection with the Agreement or this Deed of Trust or any interest that may occur thereon, or to perform any covenants either express or implied contained in this Deed of Trust, all such liability, if any, being expressly waived, and that any recovery on the Deed of Trust or the Agreement shall be solely against and out of the Property by enforcement of the provisions of this Deed of Trust and the Agreement, but this waiver shall in no way affect the personal liability of any individual Borrower, co-maker or guarantor of this Agreement.

28. **Substitute Trustee.** We may, at Our option, from time to time, remove the 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.

29. **Reconveyance.** After compliance with all requirements of the Agreement and payment of all fees due to Us, We shall request the Trustee to release and reconvey the Property to You. Trustee shall reconvey the Property without Warranty. You shall pay any fee legally charged by the Trustee for the issuance of reconveyance and all costs of recordation.

30. **One Trustor.** If there is only one person executing this Deed of Trust, You represent that You are single or married. [Check one as applicable].

**REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE
UNDER SUPERIOR DEED OF TRUST OR MORTGAGE**

We and You request the holder of any encumbrance with a lien which has priority over this Deed of Trust give notice to Us, at Our 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 with respect to the Property whose legal description is annexed hereto.

REQUEST FOR RECONVEYANCE

TO TRUSTEE:

The undersigned is the holder of the Agreement secured by this Deed of Trust. The Agreement together with all other indebtedness and obligations secured by this Deed of Trust have been paid and performed in full. Trustee is hereby directed to cancel the Agreement and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all estate now held by Trustee to the persons legally entitled thereto.

Date: _____

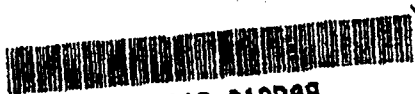
LEGAL ADDENDUM

LOT 26, WHITE CITY #32, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

TAX ID #: 28172760100000

BY FEE SIMPLE DEED FROM GAYLE W. THREET AS SET FORTH IN DEED BOOK 9054, PAGE 3294 AND RECORDED ON 10/28/2004, SALT LAKE COUNTY RECORDS.

THE SOURCE DEED AS STATED ABOVE IS THE LAST RECORD OF VESTING FILED FOR THIS PROPERTY. THERE HAVE BEEN NO VESTING CHANGES SINCE THE DATE OF THE ABOVE REFERENCED SOURCE.



U30867116-010P09
LINE/CREDIT INSTRM
LOAN# 106830908770000
US Recordings

EXHIBIT

“C”

10365849

10365849
3/5/2008 4:50:00 PM \$20.00
Book - 9578 Pg - 8405-8410
Gary W. Ott
Recorder, Salt Lake County, UT
INWEST TITLE SERVICES
BY: eCASH, DEPUTY - EF 6 P.

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

Citibank
1000 Technology Dr. MS 321
O'Fallon, MO 63368
CitiBank Account No 1080131068340000

Space Above This Line for Recorder's Use Only

A.P.N. 26-17-276-016 Order No. _____ Escrow No 133508

SUBORDINATION AGREEMENT

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

THIS AGREEMENT, made this 11th day of February, 2008, by

Stephanie Reynolds and _____

owner(s) of the land hereinafter describe and hereinafter referred to as "Owner," and

Citibank, N.A.,

present owner and holder of the mortgage or deed of trust and related note first hereinafter described and hereinafter referred to as "Creditor."

WITNESSETH

THAT WHEREAS, Owner has executed a mortgage or deed of trust, dated on or about 2/27/08 to Creditor, covering:

SEE ATTACHED EXHIBIT "A"

To secure a note in the sum of \$ 83,300.00, dated July 25, 2007, in favor of Creditor, which mortgage or deed of trust was recorded on October 12, 2007, in Book 9525 Page 4978 and/or as Instrument No. 10248288 in the Official Records of the Town and/or County of referred to in Exhibit A attached hereto; and

WHEREAS, Owner has executed, or is about to execute, a mortgage or deed of trust and a related note in a sum not greater than \$ 145,000.00, to be dated no later than Feb 27, 2008, in favor of Bank of Utah, hereinafter referred to as "Lender", payable with interest and upon the terms and conditions described therein, which mortgage or deed of trust is to be recorded concurrently herewith; and

WHEREAS, it is a condition precedent to obtaining said loan that said mortgage or deed of trust last above mentioned shall unconditionally be and remain at all times a lien or charge upon the land herein before described, prior and superior to the lien or charge of the mortgage or deed of trust first above mentioned; and

SUBORDINATION AGREEMENT CONTINUED ON NEXT PAGE

CONTINUATION OF SUBORDINATION AGREEMENT

WHEREAS, Lender is willing to make said loan provided the mortgage or deed of trust securing the same is a lien of charge upon the above described property prior and superior to the lien of charge of the mortgage or deed of trust first above mentioned and provided that Creditor will specifically and unconditionally subordinate the lien or charge of the mortgage or deed of trust first above mentioned to the lien or charge of the mortgage or deed of trust in favor of Lender; and

WHEREAS, it is the mutual benefit of the parties hereto that Lender make such loan to Owner; and Creditor is willing that the mortgage or deed of trust securing the same shall, when recorded, constitute a lien or charge upon said land which is unconditionally prior and superior to the lien or charge of the mortgage or deed of trust in favor of the Creditor above mentioned.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Lender to make the loan above referred to, it is hereby declared, understood and agreed as follows:

- (1) That said mortgage or deed of trust securing said note in favor of Lender shall unconditionally be and remain at all times a lien or charge on the property therein described, prior and superior to the lien or charge of the mortgage or deed of trust in favor of the Creditor first above mentioned.
- (2) That Lender would not make its loan above described without this subordination agreement.
- (3) That this agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the mortgage or deed of trust in favor of the Creditor first above mentioned to the lien or charge of the mortgage or deed of trust in favor of the Lender above referred to and shall supersede and cancel, but only insofar as would affect the priority between the mortgages or deeds of trust hereinbefore specifically described, any prior agreement as to such subordination including, but not limited to, those provisions, if any, contained in the mortgage or deed of trust in favor of the Creditor first above mentioned, which provide for the subordination of the lien or charge thereof to another mortgage or deed of trust to another mortgage or deed of trust.

Creditor declares, agrees and acknowledges that

- (a) It consents to and approves (i) all provisions of the mortgage or deed of trust and the related note in favor of Lender above referred to, and (ii) all agreements, including but not limited to any loan or escrow agreements, between Owner and Lender for the disbursement of the proceeds of Lender's loan;
- (b) Lender in making disbursements pursuant to any such agreement is under no obligation or duty to, nor has Lender represented that it will see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds and any application or use of such proceeds for purposes other than those provided for in such agreements shall not defeat the subordination herein made in whole or in part;
- (c) It intentionally and unconditionally waives, relinquishes and subordinates the lien or charge of the mortgage or deed of trust in favor of the Creditor to the lien or charge upon said land of the mortgage or deed of trust in favor of Lender above referred to and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination; and
- (d) If requested by Lender, an endorsement has been placed upon the note secured by the mortgage or deed of trust first above mentioned in favor of the Creditor that said mortgage or deed of trust has by this instrument been subordinated to the lien or charge of the mortgage or deed of trust in favor of Lender above referred to.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

SUBORDINATION AGREEMENT CONTINUED ON NEXT PAGE

CONTINUATION OF SUBORDINATION AGREEMENT

CREDITOR: Citibank, N.A.,

By [Signature]
Printed Name Christine Dean
Title Vice President

OWNER:

Printed Name Stephanie Reynolds
Title _____

Printed Name _____
Title _____

Printed Name _____
Title _____

Printed Name _____
Title _____

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT THERETO.

STATE OF MISSOURI)
County of St. Louis) Ss.

On February 11th 2008, before me, Kevin Gehring personally
appeared Christine Dean Vice President of
Citibank, N.A.

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(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.

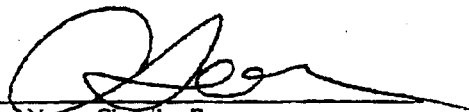
Witness my hand and official seal.




[Signature]
Notary Public in said County and State

CONTINUATION OF SUBORDINATION AGREEMENT

CREDITOR: Citibank, N.A.,

By 
Printed Name Christine Dean
Title Vice President

OWNER:


Printed Name Stephanie Reynolds
Title _____

Printed Name _____
Title _____

Printed Name _____
Title _____

Printed Name _____
Title _____

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT THERETO.

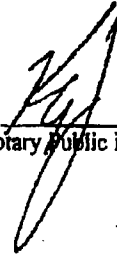
STATE OF MISSOURI)
County of St. Louis) Ss.

On February 11th 2008, before me, Kevin Gehring personally appeared Christine Dean Vice President of Citibank, N.A.

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(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.

Witness my hand and official seal.



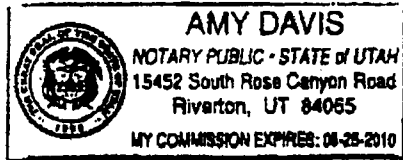

Notary Public in said County and State


STATE OF Utah
County of Salt Lake

On 2/27/08 before me, Amy Davis personally appeared
Stephane Reynolds and

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.

Witness my hand and official seal.




Notary Public in said County and State

ORDER NUMBER: 133508

EXHIBIT "A"

(28-17-276-010)

LOT 26, WHITE CITY #32, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER, STATE OF UTAH.

EXHIBIT

“D”

10365848

10365848
3/5/2008 4:50:00 PM \$36.00
Book - 8578 Pg - 8391-8404
Gary W. Ott
Recorder, Salt Lake County, UT
INVEST TITLE SERVICES
BY: eCASH, DEPUTY - EF 14 P.

After Recording Return To:

Bank of Utah
Shipping Department
2605 Washington Blvd.
Ogden, UT 84401

133508 Invest

[Space Above This Line For Recording Data]

28.17.276 010

DEED OF TRUST

MIN #: 1000849-009808003-7

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated February 27, 2008, together with all Riders to this document.
(B) "Borrower" is Stephanie Reynolds, individually

Borrower is the trustor under this Security Instrument.

(C) "Lender" is Bank of Utah. Lender is a Utah Corporation organized and existing under the laws of the State of Utah. Lender's address is 2605 Washington Blvd., Ogden UT 84401.

(D) "Trustee" is Bank of Utah, a Utah Corporation 2605 Washington Blvd., Ogden UT 84401.

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, telephone (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated February 27, 2008.

The Note states that Borrower owes Lender One Hundred Forty Two Thousand Two Hundred Thirty Two Dollars and 00/100

Dollars (U.S. \$142,232.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than March 1, 2038.

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

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

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

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

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

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

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

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants, conveys and warrants to Trustee, in trust, with power of sale, the following described property located in the state of Utah

county of

Salt Lake:

(Name of Recording Jurisdiction)

(Type of Recording Jurisdiction)

LOT 26, WHITE CITY #32, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER, STATE OF UTAH.

TAX ID # 28-17-276-010

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due

for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 16 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

which currently has the address of

10449 South Hyacinth Circle

Sandy
(City)

Utah

(Street)

84094

(Zip Code)

("Property Address")

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property, and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

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

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

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payment is 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 Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

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

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

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree

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

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

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

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

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

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property

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

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

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

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

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

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that

derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

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

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if

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

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

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

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

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

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

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

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure.

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

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

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

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

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

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

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

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

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not

prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If the power of sale is invoked, Trustee shall execute a written notice of the occurrence of an event of default and of the election to cause the Property to be sold and shall record such notice in each county in which any part of the Property 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. In the event Borrower does not cure the default within the period then prescribed by Applicable Law, Trustee shall give public notice of the sale to the persons and in the manner prescribed by Applicable Law. After the time 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 any order Trustee determines (but subject to any statutory right of Borrower to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold). Trustee may in accordance with Applicable Law, 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 its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it or to the county clerk of the county in which the sale took place.

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

24. **Substitute Trustee.** Lender, at its option, 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 Trustee herein and by Applicable Law.

25. **Request for Notices.** Borrower requests that copies of the notices of default and sale be sent to Borrower's address which is the Property Address.

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

Witnesses:

Stephanie Reynolds (Seal)
Stephanie Reynolds - Borrower

_____ (Seal)
- Borrower

_____ (Seal)
- Borrower

_____ (Seal)
- Borrower

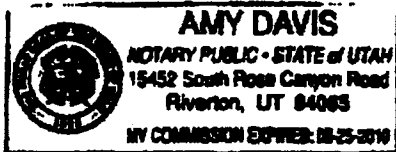
_____ [Space Below This Line For Acknowledgment] _____

STATE OF UTAH,

Salt Lake

County ss:

The foregoing instrument was acknowledged before me this 27th day of February 2008 by
Stephanie Reynolds



[Signature]

Notary Public residing at _____

ORDER NUMBER: 133508

EXHIBIT "A"

(28-17-278-010)

LOT 28, WHITE CITY #32, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER, STATE OF UTAH.

EXHIBIT "E"

10676476
4/16/2009 11:12:00 AM \$12.00
Book - 8710 Pg - 7820-7821
Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN TITLE
BY: eCASH, DEPUTY - EF 2 P.

WHEN RECORDED RETURN TO:

James H. Woodall
10653 River Front Parkway, Suite 290
South Jordan, Utah 84095
Telephone: (801) 254-9450
Hours: 8:00 a.m. - 5:00 p.m.

4094271

Trustee Sale Number: 09-02474

Loan Number: 2712029095

APN: 24-17-276-010-0000

NOTICE OF DEFAULT
(Successor Trustee)

NOTICE IS GIVEN that JAMES H. WOODALL, as Trustee under that certain Deed of Trust executed by STEPHANIE REYNOLDS, A SINGLE WOMAN, as Trustor, Trustee not named, and CITIBANK FEDERAL SAVINGS BANK, is named as Beneficiary, recorded on April 19, 2006, as Entry No. 9698034, in Book 9282, at Page 3031-3039, Official Records of SALT LAKE County, Utah, describing the following real property:


PLEASE SEE LEGAL DESCRIPTION ATTACHED AS EXHIBIT A.

A breach or default in the obligation for which said Deed of Trust was conveyed as security has occurred as follows:

Failure to make the payments of principal and interest and all subsequent installments due thereafter, together with late charges, impounds, deposits, taxes and all other amounts due under the terms of the Note and Deed of Trust and/or modifications/amendments, if any.

By reason of such default, the Beneficiary has instructed the Trustee to cause the trust property to be sold to satisfy the obligations secured thereby.

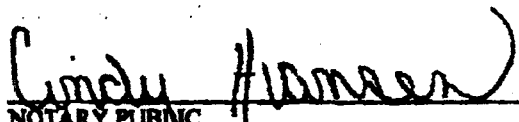
DATED April 15, 2009.



JAMES H. WOODALL, TRUSTEE

STATE OF UTAH)
 : ss.
SALT LAKE COUNTY)

The foregoing instrument was acknowledged before me this 15 day of April 2009 by James H. Woodall in his authorized capacity.



NOTARY PUBLIC

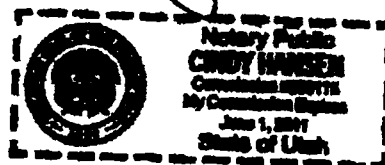


EXHIBIT “F”

10743926

10743926
6/30/2009 3:45:00 PM \$10.00
Book - 8741 Pg - 5852
Gary W. Ott
Recorder, Salt Lake County, UT
eTITLE INSURANCE AGENCY
BY: eCASH, DEPUTY - EF 1 P.

After Recording Return To:
eTitle Insurance Agency
3269 South Main Street, Suite 100
Salt Lake City, UT 84115

Case No. 09-78843
KBR



Parcel ID #: 28-17-276-010

(Space above for County Recorder's use)

NOTICE OF DEFAULT AND ELECTION TO SELL

On or about February 27, 2008, Stephanie Reynolds, as trustor, executed a trust deed to secure the performance by the trustor of promissory note obligations. The trust deed was filed for record on March 5, 2008, with recorder's entry No. 10365848, Salt Lake County, Utah, and covers the following real property:

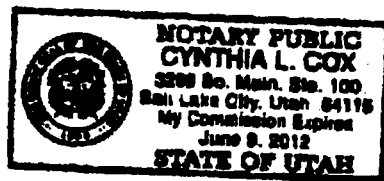
Lot 26, WHITE CITY #32, according to the official plat thereof, recorded in the Office of the Salt Lake County Recorder, State of Utah.

Together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property.

The monthly payment obligation set forth in the promissory note is in default. All delinquent monthly payments, together with all unpaid taxes, insurance and other obligations under the promissory note and trust deed, are due. Under the provisions of the promissory note and trust deed, the unpaid principal balance is accelerated and now due, together with accruing interest, late charges, costs and trustees' and attorneys' fees. Accordingly, the trustee has elected to sell the property described in the trust deed.

DATED: June 29, 2009.

eTitle Insurance Agency, Trustee



By: [Signature]
Printed Name: LARK EWING
Authorized Officer
3269 South Main, Suite 100
Salt Lake City, UT 84115
Office Hours: 8:00 a.m. - 5:00 p.m.
801-263-3400

State of Utah)
): ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me on June 29, 2009, by
[Signature] an Authorized Officer of eTitle Insurance Agency, Trustee.

[Signature]
Notary Public

EXHIBIT

“G”

NOTICE OF TRUSTEE'S SALE

The following described property will be sold at public auction to the highest bidder at the Main Entrance, Scott M. Matheson Courthouse, 450 South State Street, Salt Lake City, Utah, on November 2, 2009, at 12:30 p.m. of said day, for the purpose of foreclosing a trust deed originally executed on February 27, 2008 by Stephanie Reynolds, as trustor, in favor of Mortgage Electronic Registration Systems, Inc., as nominee for Bank of Utah, its successors and assigns, covering the following real property purported to be located in Salt Lake County at 10449 South Hyacinth Circle, Sandy, UT 84094 (the undersigned disclaims liability for any error in the address), and more particularly described as:

Lot 26, WHITE CITY #32, according to the official plat thereof, recorded in the Office of the Salt Lake County Recorder, State of Utah.


Together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property.

The current beneficiary of the trust deed is US Bank NA and the record owner of the property as of the recording of the notice of default is Stephanie Reynolds.

The sale is subject to bankruptcy filing, payoff, reinstatement or any other circumstance that would affect the validity of the sale. If any such circumstance exists, the sale shall be void, the successful bidder's funds returned and the trustee and current beneficiary shall not be liable to the successful bidder for any damage.

Bidders must tender to the trustee a \$5,000.00 deposit at the sale and the balance of the purchase price by 12:00 noon the day following the sale. The deposit must be in the form of a bank or credit union cashier's check or bank official check payable to eTitle Insurance Agency. The balance must be in the form of a wire transfer, bank or credit union cashier's check, bank official check or U.S. Postal money order payable to eTitle Insurance Agency. Cash payments are not accepted. A trustee's deed will be delivered to the successful bidder within three business days after receipt of the amount bid.

DATED: October 2, 2009.

eTitle Insurance Agency, Trustee
3269 South Main, #100
Salt Lake City, UT 84115
(801) 263-3400
Office Hours: 8:00 a.m. - 5:00 p.m.
L&A Case No. 09-78843
CAP 

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

EXHIBIT

“H”

After Recording Return to:
eTitle Insurance Agency
3269 South Main Street, Suite 100
Salt Lake City, UT 84115

10800330
8/18/2009 2:28:00 PM \$10.00
Book - 8784 Pg - 903
Gary W. Ott
Recorder, Salt Lake County, UT
eTITLE INSURANCE AGENCY
BY: eCASH, DEPUTY - EF 1 P.

Case No. 09-78843/KBR



Parcel ID #: 28-17-276-010

(Space above for County Recorder's use)

7:29 am

SUBSTITUTION OF TRUSTEE

eTitle Insurance Agency, 3269 South Main Street, Suite 100, Salt Lake City, Utah 84115, is hereby appointed successor trustee under the trust deed executed by Stephanie Reynolds, as trustor, in which Mortgage Electronic Registration Systems, Inc., as nominee for Bank of Utah, its successors and assigns is named as beneficiary and Bank of Utah as trustee, and filed for record on March 5, 2008, with recorder's entry No. 10365848, Salt Lake County, Utah. The undersigned beneficiary hereby ratifies and confirms all actions taken on its behalf by the successor trustee prior to the recording of this instrument.

The Trust Deed covers the following described real property situated in Salt Lake County, Utah:

Lot 26, WHITE CITY #32, according to the official plat thereof, recorded in the Office of the Salt Lake County Recorder, State of Utah.

DATED: July 24, 2009

US Bank NA, Beneficiary

By: Kara Knable
Printed name: Kara Knable
Its: Assistant Vice President

State of Kentucky)

County of Daviess)

The foregoing instrument was acknowledged before me this 24th day of July 2009 by Kara Knable, a Assistant Vice President of US Bank NA.

[Signature]
Notary Public



EXHIBIT

“I”

10803743

When recorded mail to:

CORLENE KEMKER TRUST
1170 BULLION STREET
MURRAY, UTAH 84123

10803743

09/24/2009 02:26 PM \$14.00

Book - 9765 Pg - 4347-4349

GARY W. OTT

RECORDER, SALT LAKE COUNTY, UTAH

CORLENE KEMKER

1170 BULLION ST

MURRAY UT 84123

BY: CDC, DEPUTY - WI 3 P.

TRUSTEE'S DEED

T.S. NO. 09-02474

LOAN NO. XXXXXX9095

APN. 28-17-276-010-0000

JAMES H. WOODALL, Successor Trustee under a Deed of Trust executed by STEPHANIE REYNOLDS, A SINGLE WOMAN, Trustors, to secure certain obligations in favor of CITIBANK FEDERAL SAVINGS BANK, as Beneficiary,

and filed for record on April 19, 2006, as Entry No. 9698034, in Book 9282, at Page 3031-3039, of the Official Records of SALT LAKE County, State of Utah, after the recording of a Notice of Default on April 16, 2009, as Entry No. 10676476, in Book 9710 at Page 7920,

of the official records of said County; and a copy of such Notice of Default with the date of recordation shown thereon having been mailed by Certified Mail, postage prepaid within ten (10) days after recordation, to each person entitled to receive a copy of said Notice; and three (3) months having thereafter lapsed, and then the Trustee having given written notice of the time and place of the Trustee's Sale, particularly describing the property to be sold, by publication of such Notice at least three (3) times, once a week for three (3) consecutive weeks, the last publication having been at least ten (10) days but not more than thirty (30) days prior to the sale, in a newspaper having general circulation in the County in which the property is situated, and by posting such Notice at least twenty (20) days before the date of sale in a conspicuous place on the property to be sold, and also, in three public places in the precinct or city in which the property is situated; and the Trustee, having mailed a copy of said written Notice by Certified Mail, postage prepaid, at least twenty (20) days before the date of sale to those persons entitled thereto;

and the sale, having been held on September 16, 2009 at 11:30 a.m. at the time and place designated in the Notice of Sale, which was held between 9:00 a.m. and 5:00 p.m., at the Courthouse of the County in which the property is situated; and the property having been sold by the Trustee at public auction to the highest bidder, for and the price bid therefore having been received by the Trustee; and the Trustee hereby conveys to

CORLENE KEMKER as Grantee, whose address is:

TRUSTEE'S DEED


T.S. NO. 09-02474
LOAN NO. XXXXXX9095

**CORLENE KEMKER TRUST
1170 BULLION STREET
MURRAY, UTAH 84123**

for valuable consideration, all of the Trustee's right, title interest and claim of the Trustor and his successors-in-interest and of all persons claiming by, through or under them, in and to the within described property, including all such right, title, interest and claim in and to such property acquired by the Trustor or his successors-in-interest subsequent to the execution of the Trust Deed. Said property is described more particularly, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO.

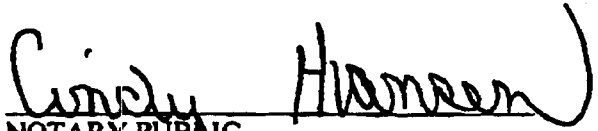
DATED this 17 day of September 2009.



JAMES H. WOODALL, TRUSTEE

STATE OF UTAH)
 : ss.
SALT LAKE COUNTY)

The foregoing instrument was acknowledged before me this 17 day of Sept. 2009 by JAMES H. WOODALL in his authorized capacity.



NOTARY PUBLIC



LEGAL ADDENDUM

LOT 26, WHITE CITY 632, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

TAX ID #: 281726819800

BY FEE SIMPLE DEED FROM GAYLE W. THREKET AS SET FORTH IN DEED BOOK 9254, PAGE 3394 AND RECORDED ON 10/26/2004, SALT LAKE COUNTY RECORDS.

THE SOURCE DEED AS STATED ABOVE IS THE LAST RECORD OF VESTING FILED FOR THIS PROPERTY. THERE HAVE BEEN NO VESTING CHANGES SINCE THE DATE OF THE ABOVE REFERENCED SOURCE.

EXHIBIT

“J”

NOTICE OF TRUSTEE'S SALE

The following described property will be sold at public auction to the highest bidder at the Main Entrance, Scott M. Matheson Courthouse, 450 South State Street, Salt Lake City, Utah, on November 2, 2009, at 12:30 p.m. of said day, for the purpose of foreclosing a trust deed originally executed on February 27, 2008 by Stephanie Reynolds, as trustor, in favor of Mortgage Electronic Registration Systems, Inc., as nominee for Bank of Utah, its successors and assigns, covering the following real property purported to be located in Salt Lake County at 10449 South Hyacinth Circle, Sandy, UT 84094 (the undersigned disclaims liability for any error in the address), and more particularly described as:

Lot 26, WHITE CITY #32, according to the official plat thereof, recorded in the Office of the Salt Lake County Recorder, State of Utah.


Together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property.

The current beneficiary of the trust deed is US Bank NA and the record owner of the property as of the recording of the notice of default is Stephanie Reynolds.

The sale is subject to bankruptcy filing, payoff, reinstatement or any other circumstance that would affect the validity of the sale. If any such circumstance exists, the sale shall be void, the successful bidder's funds returned and the trustee and current beneficiary shall not be liable to the successful bidder for any damage.

Bidders must tender to the trustee a \$5,000.00 deposit at the sale and the balance of the purchase price by 12:00 noon the day following the sale. The deposit must be in the form of a bank or credit union cashier's check or bank official check payable to eTitle Insurance Agency. The balance must be in the form of a wire transfer, bank or credit union cashier's check, bank official check or U.S. Postal money order payable to eTitle Insurance Agency. Cash payments are not accepted. A trustee's deed will be delivered to the successful bidder within three business days after receipt of the amount bid.

DATED: October 2, 2009.

eTitle Insurance Agency, Trustee
3269 South Main, #100
Salt Lake City, UT 84115
(801) 263-3400
Office Hours: 8:00 a.m. - 5:00 p.m.
L&A Case No. 09-78843
CAP 

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

EXHIBIT

“K”

10828786

10828786
10/30/2009 3:44:00 PM \$12.00
Book - 8775 Pg - 8086-8087
Gary W. Ott
Recorder, Salt Lake County, UT
eTITLE INSURANCE AGENCY
BY: eCASH, DEPUTY - EF 2 P.

After Recording, Return To:
eTitle Insurance Agency
3269 South Main Street, Suite 100
Salt Lake City, Utah 84115
(801) 263-3400

Case No. 09-78843\BM

Loan No.



Parcel ID #: 28-17-276-010

(Space above for County Recorder's use)

ASSIGNMENT OF TRUST DEED

For valuable consideration, the receipt of which is hereby acknowledged, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR BANK OF UTAH hereby assigns to US BANK NA all beneficial interest and rights accrued or to accrue under the trust deed, together with the indebtedness secured thereby, dated February 27, 2008, executed by Stephanie Reynolds, as trustor, to Bank of Utah, as trustee, filed for record on March 5, 2008, with recorder's entry No. 10365848, Salt Lake County, Utah, and covering real property situated in said county described as follows:

Lot 26, WHITE CITY #32, according to the official plat thereof, recorded in the Office of the Salt Lake County Recorder, State of Utah.

Together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property.

Dated: October 2,
2009

Mortgage Electronic Registration Systems,
Inc., as nominee for Bank of Utah
Beneficiary

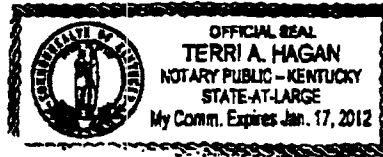
By: 
Printed Name: KARA KNABLE
Its: Certifying Officer

State of)
 KENTUCKY

County of) : ss.
 DAVISS

The foregoing Assignment of Trust Deed was acknowledged before me this 2ND day of OCTOBER , 2009, by KARA KNABLE , a Certifying Officer for Mortgage Electronic Registration Systems, Inc., as nominee for Bank of Utah.

Terrill Hagan
Notary Public



EXHIBIT

“L”

10828445

10828445
10/30/2009 2:00:00 PM \$12.00
Book - 9775/Pg - 6119-6120
Gary W. Ott
Recorder, Salt Lake County, UT
TRUSTEES TITLE & ESCROW LC
BY: eCASH, DEPUTY - EF 2 P.

WHEN RECORDED RETURN TO:

James H. Woodall
10653 River Front Parkway, Suite 300
South Jordan, Utah 84095
Telephone: (801) 254-0450
Hours: 8:00 a.m. - 5:00 p.m.

Trustee Sale Number: 09-02474

Loan No. 2712029095

APN. 26-17-276-010-0000

SUBSTITUTION OF TRUSTEE

NOTICE IS HEREBY that JAMES H. WOODALL, is hereby appointed Successor Trustee Under a Deed of Trust, Note and any and all judgments related to the Note and Deed of Trust described below dated April 4, 2006, executed by STEPHANIE REYNOLDS, A SINGLE WOMAN, as Trustor, in which FIRST AMERICAN TITLE COMPANY is named as Trustee, and CITIBANK FEDERAL SAVINGS BANK is named as Beneficiary, recorded on April 19, 2006, as Entry No. 9698034, in Book 9282, at Page 3031-3039, of the official records of SALT LAKE County, Utah, describing the land therein as follows:

PLEASE SEE LEGAL DESCRIPTION ATTACHED AS EXHIBIT A

The undersigned Beneficiary hereby ratifies and confirms any and all actions taken on the beneficiary's behalf by the Successor Trustee prior to the recording of this Substitution of Trustee.

DATED: October 30, 2009.

CITIBANK FEDERAL SAVINGS BANK



CORPORATE ACKNOWLEDGMENT

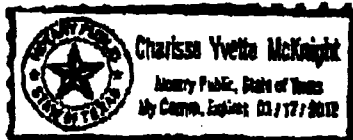
STATE OF Texas)
COUNTY OF Dallas) ss

On October 30, 2009, before me, Charisse McKnight Notary Public, personally appeared Eddie Cresspo, 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 the 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 Charisse McKnight
NOTARY PUBLIC



LEGAL ADDENDUM

LOT 24, WHITE CITY 234, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

TAX ID #: 1817670000

BY FES SIMPLE DEED FROM GAYLE W. THRENT AS SET FORTH IN DEED BOOK 944, PAGE 124 AND RECORDED ON 10/28/2004, SALT LAKE COUNTY RECORDS.

THE SOURCE DEED AS STATED ABOVE IS THE LAST RECORD OF VESTING FILED FOR THIS PROPERTY. THERE HAVE BEEN NO VESTING CHANGES SINCE THE DATE OF THE ABOVE REFERENCED SOURCE.

EXHIBIT

“M”

John A. Snow (3025) jsnow@vancott.com
Seth M. Mott (12176) smott@vancott.com
Alex B. Leeman (12578) aleeman@vancott.com
VAN COTT, BAGLEY, CORNWALL & MCCARTHY, P.C.
36 South State Street, Suite 1900
Salt Lake City, Utah 84111
Telephone: (801) 532-3333
Facsimile: (801) 534-0058

Attorneys for Plaintiff Corlene Kemker

Server [Signature]
Title Process Server
Date 10/30/09 Time 5:27 PM
P/S [Signature]

IN THE THIRD DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

<p>CORLENE KEMKER, Plaintiff, vs. CHERYL CHANDLER, and JOHN DOES 1-10, Defendant.</p>	<p>3-DAY SUMMONS Civil No. <u>090917873</u> Judge <u>Peuler</u></p>
---	---

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT:

CHERYL CHANDLER
10449 Hyacinth Circle
Sandy, UT 84094

You are hereby summoned and required to file an answer in writing to the attached Complaint with the Clerk of the above-entitled Court whose address is 450 South State Street, Salt Lake City, Utah, and to serve upon, or mail to Alex B. Leeman, of the law firm of VANCOTT, BAGLEY, CORNWALL & MCCARTHY, P.C., 36 South State Street, Suite 1900, Salt Lake City, Utah 84111, a copy of said answer within THREE (3) DAYS after service of this summons upon you. If you fail to do so, judgment by default may be taken against you for the

relief demanded in the Complaint, which has been filed with the Clerk of said Court, and a copy of which is annexed and herewith served upon you.

DATED this 27 day of October, 2009.

VAN COTT, BAGLEY, CORNWALL, & MCCARTHY, P.C.

By: _____

Seth M. Mott

Alex B. Leeman

Attorneys for Plaintiff Corlene Kemker

COPY

FILED
THIRD DISTRICT COURT

09 OCT 27 PM 4:18

SALT LAKE DEPARTMENT

John A. Snow (3025) jsnow@vancott.com
Seth M. Mott (12176) smott@vancott.com
Alex B. Leeman (12578) aleeman@vancott.com BY _____
VAN COTT, BAGLEY, CORNWALL & MCCARTHY, P.C. DEPUTY CLERK
36 South State Street, Suite 1900
Salt Lake City, Utah 84111
Telephone: (801) 532-3333
Facsimile: (801) 534-0058

Attorneys for Plaintiff Corlene Kemker

IN THE THIRD DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

<p>CORLENE KEMKER,</p> <p style="text-align: right;">Plaintiff,</p> <p>vs.</p> <p>CHERYL CHANDLER, and JOHN DOES 1-10,</p> <p style="text-align: right;">Defendant.</p>	<p>COMPLAINT FOR UNLAWFUL DETAINER</p> <p>Civil No. <u>090917813</u></p> <p>Judge <u>PEULER</u></p> <p>EXPEDITED HEARING REQUESTED</p>
---	--

Plaintiff Corlene Kemker complains against Defendant Cheryl Chandler and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff Corlene Kemker is the owner of real property located at 10449 Hyacinth Circle, Sandy, UT 84094 (the "Property"), more particularly described at Lot 26, White City 32, according to the official plat thereof, recorded in the office of the Salt Lake County recorder, Tax Parcel No. 28-17-276-010.

2. Defendant Cheryl Chandler is an individual residing in Salt Lake County, Utah, and is the current occupant of the Property.

3. Defendants John Does 1-10 are individuals whose identity is presently unknown to Plaintiff and who also reside at the Property.

4. Stephanie Reynolds is the prior owner of the property, having acquired title thereto in fee simple on October 25, 2004.

5. Jurisdiction and venue are proper in this Court pursuant to Utah Code Ann. §§ 78B-3-301 and 78B-3-307.

GENERAL ALLEGATIONS

6. On September 16, 2009, Plaintiff purchased the subject Property at a trustee's sale, lawfully conducted by trustee James H. Woodall in Salt Lake County, Utah.

7. Plaintiff bid and paid the sum of \$87,645.75 and was granted title to the property in fee simple by a duly executed Trustee's Deed. A true and correct copy of the Trustee's Deed is attached as Exhibit A and incorporated herein.

8. After purchasing the Property, Plaintiff discovered that Defendant Chandler was residing in the Property, allegedly under a lease agreement¹ with former owner Stephanie Reynolds. Defendant refused to produce a copy of the purported lease agreement, and refused to vacate the Property.

9. On September 18, 2009, Plaintiff Kemker caused to be served upon Defendant a Five-Day Notice to Quit ("Notice to Quit"), demanding that Defendant vacate the Property within five days. The Notice to Quit was posted in a conspicuous place on the premises, in

¹ Upon information and belief, the purported lease is an at-will tenancy.

VAN COTT, BAGLEY, CORNWALL, & MCCARTHY, P.C.

By: 

Seth M. Mott

Alex B. Leeman

Attorneys for Plaintiff Corlene Kemker

EXHIBIT A

When recorded mail to:

CORLENE KEMKER TRUST
1170 BULLION STREET
MURRAY, UTAH 84123

TRUSTEE'S DEED

T.S. NO. 09-02474

LOAN NO. XXXXXX9095

APN. 28-17-276-010-0000

JAMES H. WOODALL, Successor Trustee under a Deed of Trust executed by STEPHANIE REYNOLDS, A SINGLE WOMAN, Trustors, to secure certain obligations in favor of CITIBANK FEDERAL SAVINGS BANK, as Beneficiary,

and filed for record on April 19, 2006, as Entry No. 9698034, in Book 9282, at Page 3031-3039, of the Official Records of SALT LAKE County, State of Utah, after the recording of a Notice of Default on April 16, 2009, as Entry No. 10676476, in Book 9710 at Page 7920,

of the official records of said County; and a copy of such Notice of Default with the date of recordation shown thereon having been mailed by Certified Mail, postage prepaid within ten (10) days after recordation, to each person entitled to receive a copy of said Notice; and three (3) months having thereafter lapsed, and then the Trustee having given written notice of the time and place of the Trustee's Sale, particularly describing the property to be sold, by publication of such Notice at least three (3) times, once a week for three (3) consecutive weeks, the last publication having been at least ten (10) days but not more than thirty (30) days prior to the sale, in a newspaper having general circulation in the County in which the property is situated, and by posting such Notice at least twenty (20) days before the date of sale in a conspicuous place on the property to be sold, and also, in three public places in the precinct or city in which the property is situated; and the Trustee, having mailed a copy of said written Notice by Certified Mail, postage prepaid, at least twenty (20) days before the date of sale to those persons entitled thereto;

and the sale, having been held on September 16, 2009 at 11:30 a.m. at the time and place designated in the Notice of Sale, which was held between 9:00 a.m. and 5:00 p.m., at the Courthouse of the County in which the property is situated; and the property having been sold by the Trustee at public auction to the highest bidder; for and the price bid therefore having been received by the Trustee; and the Trustee hereby conveys to

CORLENE KEMKER as Grantee, whose address is:

TRUSTEE'S DEED

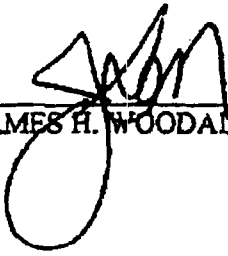
T.S. NO. 09-02474
LOAN NO. XXXXXX9095

CORLENE KEMKER TRUST
1170 BULLION STREET
MURRAY, UTAH 84123

for valuable consideration, all of the Trustee's right, title interest and claim of the Trustor and his successors-in-interest and of all persons claiming by, through or under them, in and to the within described property, including all such right, title, interest and claim in and to such property acquired by the Trustor or his successors-in-interest subsequent to the execution of the Trust Deed. Said property is described more particularly, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO.

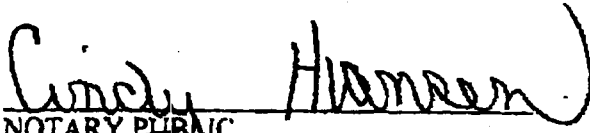
DATED this 17 day of September 2009.



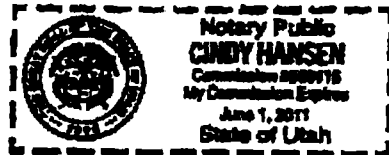
JAMES H. WOODALL, TRUSTEE

STATE OF UTAH)
 : ss.
SALT LAKE COUNTY)

The foregoing instrument was acknowledged before me this 17 day of Sept. 2009 by JAMES H. WOODALL in his authorized capacity.



NOTARY PUBLIC



LEGAL ADDENDUM

LOT 26, WHITE CITY #2, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

TAX ID #: 281727010000

BY FEE SIMPLE DEED FROM GAYLE W. THREET AS SET FORTH IN DEED BOOK 9054, PAGE 324 AND RECORDED ON 10/28/2004, SALT LAKE COUNTY RECORDS.

THE SOURCE DEED AS STATED ABOVE IS THE LAST RECORD OF VESTING FILED FOR THIS PROPERTY. THERE HAVE BEEN NO VESTING CHANGES SINCE THE DATE OF THE ABOVE REFERENCED SOURCE.

EXHIBIT B

NOTICE TO QUIT

FIVE-DAY NOTICE TO VACATE

Stephanie Reynolds
10449 Hyacinth Circle
Sandy, UT 84094

WITHIN FIVE DAYS after having been served this notice, you are requested to vacate the premises at the above address, which premises you now occupy for the reason:

New owner has purchased the
home through a trustee
sale and received a free and clear title.

If you fail to vacate the said premises within such period of FIVE DAYS, you will be deemed guilty of an unlawful detainer and legal action will be initiated against you for restitution for the period you are unlawfully detaining possession of the premises in accordance with the provisions of Section 78-36-10, Utah Code Annotated, 1953, together with any attorney's fees and/or court costs.

DATED this 18 day of September, 2009
From: Carlene Kim Kay
10449 Hyacinth Circle
Sandy, UT 84094

Municipal Ordinances Provide:

It shall be unlawful for any person upon vacating or removing from dwellings, store rooms, or any other building to fail to remove all garbage, rubbish, and refuse from such building and premises and also the ground appurtenant thereto, or to fail to place same in a thoroughly sanitary condition, 24 hours after said premises shall be vacated.

RETURN OF SERVICE

I certify that service of this notice was completed in accordance with the provisions of Section 78-36-5 and Section 78-36-6, Utah Code Annotated, 1953, on (date) _____ at (place) _____ by:

- Delivering a copy to the resident personally, OR
- Sending a copy through certified or registered mail, addressed to the resident at his place of residence, OR
- Leaving a copy with _____ Person of suitable age and discretion at the resident's residence or place of business, and by mailing a special copy to the resident at said residence or place of business, OR
- Affixing a copy in a conspicuous place on the premises, after failing to find anyone there.

EXHIBIT C

NINETY (90) DAY NOTICE TO VACATE

Owner: Stephanie Reynolds
Tenant: Cheryl Chandler
10449 Hyacinth Circle
Sandy, UT 84094

WITHIN NINETY DAYS after having been served this notice, you are requested to vacate the premises at the above address, which premises you now occupy.

POSTED this 24 day of September, 2009
From: Corlene Kemker
10449 Hyacinth Circle
Sandy, UT 84094

The owner, Corlene Kemker, has purchased this home at a trustee auction. See attached deed. The sale has not been contested and has been recorded with the state of Utah. This home was purchased as a primary residence and not an investment property.

If you have a bona fide lease as defined in the Foreclosure Act of 2009 you have ninety (90) days (December 17th, 2009) to vacate from the date of first notice (Saturday, September 19th 2009).

If you have a bona fide lease

- (1) Then you must provide the following within five calendar days (Sept 30th):
 - (a) A copy of your lease
 - (b) Copies of rent checks, front and back, from July, August and September from 2009
 - (c) Full disclosure of all residents living on the premises
- (2) You are required to pay rent in person to the owner, Corlene Kemker, no later than October 1st, 2009 by noon (12:00 PM) to the following address:

1170 W Bullion St
Murray, UT 84123

DISCLAIMER: If this situation does not fall under the protection of the Foreclosure Act of 2009 then you are required to abide by the five (5) day Notice to Quit served upon you.

MUNICIPAL ORDINANCES PROVIDE: It shall be unlawful for any person, upon vacating or removing from dwellings, store rooms, or any other building to fail to remove all garbage, rubbish, and ashes from such building and premises and also the ground appertaining thereto, or to fail to place same in a thoroughly sanitary condition 24 hours after said premises shall be vacated.

RETURN OF SERVICE

I certify that service of this notice was completed in accordance with the provisions of Section 78-36-5 and Section 78-36-6, Utah Code Annotated, 1953, on (date) Sept 24 at (place) 10449 Hyacinth Cir

- Corlene Kemker
- Delivering a copy to the resident personally, OR
 Sending a copy through certified or registered mail, addressed to the resident at his place of residence, OR
 Leaving a copy with _____ Person of suitable age and discretion at the resident's residence or place of business, and by mailing a second copy to the resident at said residence or place of business, OR
 Affixing a copy in a conspicuous place on the premises, after failing to find anyone there.

EXHIBIT

“N”

Cheryl Chandler, Pro Se
10449 Hyacinth Circle
Sandy, UT 84094
Telephone: 801-523-8823

FILED DISTRICT COURT
Third Judicial District

NOV 02 2009

SALT LAKE COUNTY

Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

CORLENE KEMKER,

Plaintiff,

vs.

CHERYL CHANDLER, and JOHN DOES
1-10,

Defendant.

ANSWER

Case No. 090917873

Judge Peuler

Defendant Cheryl Chandler answers plaintiff's Complaint herein against her, and, with respect to the numbered allegations thereof, admits, denies, and alleges as follows:

1. Denies that plaintiff Corlene Kemker is the owner of the property described.
2. Admits.
3. No response required.
4. Denies that Stephanie Reynolds's ownership is "prior", and asserts that Stephanie Reynolds is the present owner of the Property.
5. Admits.

6. Denies that plaintiff purchased the subject property. Plaintiff actually purportedly purchased a second position lien in the Property. Denies that the alleged proceeding was lawful, authorized, or effective.

7. Admits that Plaintiff purportedly paid the sum of \$87,645.75, denies the authenticity of the alleged trust deed. Denies that lawful title was granted to the property as title was clouded due to owner Stephanie Reynolds' lawfully and properly executed rescissions to both the first and second lien holders which were recorded on the public record after both lien holders defaulted on their obligations pursuant to 15 USC 1625 and Reg. Z-226.15, 226.23. Additionally, first position lien holder is also scheduled to attempt to foreclose on the same Property on November 2, 2009 which further invalidates plaintiff's claim of title to Property (Exhibit A).

8. Admits that defendant Cheryl Chandler is residing in the Property. Denies that Stephanie Reynolds is the former owner. Denies that a lease agreement is between her and Stephanie Reynolds. Admits that lease is between Stephanie Reynolds and Merrill Chandler, defendant's ex-husband. Denies that defendant refused to produce a copy of the lease agreement. Admits that defendant referred plaintiff to Merrill Chandler, leaseholder. Admits that defendant refused to vacate property, denies that plaintiff is the owner of said property and, therefore, denies the legal validity of such a demand.

9. Admits service of a 5 day notice to quit. Denies that such notice is lawful or effective.

10. Admits service of a 90 day notice to vacate. Denies that such notice is lawful or effective. Denies that Notice was served to leaseholder. Defendant referred plaintiff to Merrill Chandler, lease-option holder, to fulfill request. Merrill Chandler emailed plaintiff on October 5,

2009 detailing his concern about dealing with plaintiff in the matter after speaking with his own attorney regarding the apparent controversy regarding the title and with Stephanie Reynolds' attorney who explained that title was clouded and a Quiet Title action was being filed as soon as the first lien holder completed their foreclosure sale on November 2, 2009 so all parties could be present. He explained in the attached email (Exhibit B), that given the circumstances, he did not know who the lawful owner of record was, given the cloud on title and, therefore, felt that it was best to wait for the judge to decide the matter. He never heard back from plaintiff and so he assumed that plaintiff was in agreement that the matter needed to be adjudicated. Merrill denies that plaintiff ever asked him for any documentation and, therefore, he has not failed to provide any information. After plaintiff's failure to respond to the foregoing email, Merrill again emailed plaintiff on October 16, 2009 (Exhibit C) with an update on the disposition of the forthcoming quiet title action. Again, no response from plaintiff.

11. Admits to time since service of Notice. Denies that such notice is lawful or effective.

Admits that defendant occupies property.

12. Admits to time since service of Notice. Denies that such notice is lawful or effective.

Denies that defendant is proper party to produce documentation. Alleges that proper party was referred to plaintiff (See #10 above) and plaintiff failed to request any such documentation or payment. Alleges that plaintiff agreed to terms of Merrill Chandler's email through plaintiff's silence.

13. Denies. Defendant is lawfully occupying property as plaintiff's claim to property is misguided as title is clouded.

14. No response required.

15. Denies. Alleges that plaintiff agreed through her silence to the terms of the aforementioned emails, thereby, causing Merrill Chandler to believe that the disposition of ownership of the Property was to be adjudicated and therefore the current terms of his lease with owner Stephanie Reynolds was still valid and in effect. Alleges that if plaintiff didn't agree with the terms of the aforementioned emails, then plaintiff had the option to demand such documentation by responding to either email which she failed to do.

16. Denies.

17. Denies that defendant's right to occupy should be terminated. Defendant asserts that, at a minimum, she has the right to occupy Property for the full 90 days pursuant to federal law if plaintiff is determined to be the lawful owner of the Property pending the disposition of the forthcoming quiet title action. Defendant alleges that plaintiff is attempting to use judicial might to gain control over the Property by evicting defendant rather than to wait to assert plaintiff's alleged claim to Property in the quiet title action because, at best, plaintiff has a second position lien which will be determined to be inferior to the claim of either whoever purchases the property at the first lien holder's trustee's sale or to the owner, Stephanie Reynolds. Denies that plaintiff is entitled to be awarded any writs or orders.

18. Denies plaintiff is entitled to any damages, attorneys' fees, or costs from defendant. Defendant alleges that plaintiff is trying to damage defendant by attempting to evict defendant when plaintiff's claim to property is unclear and title is clouded.

FIRST DEFENSE

The Complaint fails to state any claim upon which relief may be granted.

SECOND DEFENSE

The complaint is defective as Plaintiff's claim to Property is unclear as title is significantly clouded.

THIRD DEFENSE

Plaintiff's trust deed is defective and inauthentic as transmitting lender's security interest was void and foreclosure was unlawful.

FOURTH DEFENSE

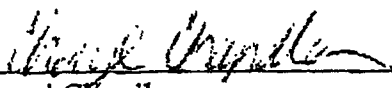
Foreclosing party was not the real party in interest nor the holder in due course, therefore, foreclosure was invalid and subsequent trust deed is void.

FIFTH DEFENSE

True owner of property is in dispute and title needs to be quieted.

Wherefore, defendant prays that the complaint herein against him be terminated and dismissed, that plaintiff take nothing thereby, for defendants' fees and costs, and for such other and further relief as the court deems just in the premises.

DATED this 2nd day of November, 2009



Cheryl Chandler
Pro Se Defendant

EXHIBIT A

NOTICE OF TRUSTEE'S SALE

The following described property will be sold at public auction to the highest bidder at the Main Entrance, Scott M. Matheson Courthouse, 450 South State Street, Salt Lake City, Utah, on November 2, 2009, at 12:30 p.m. of said day, for the purpose of foreclosing a trust deed originally executed on February 27, 2008 by Stephanie Reynolds, as trustor, in favor of Mortgage Electronic Registration Systems, Inc., as nominee for Bank of Utah, its successors and assigns, covering the following real property purported to be located in Salt Lake County at 10449 South Hyacinth Circle, Sandy, UT 84094 (the undersigned disclaims liability for any error in the address), and more particularly described as:

Lot 26, WHITE CITY #32, according to the official plat thereof, recorded in the Office of the Salt Lake County Recorder, State of Utah.


Together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property.

The current beneficiary of the trust deed is US Bank NA and the record owner of the property as of the recording of the notice of default is Stephanie Reynolds.

The sale is subject to bankruptcy filing, payoff, reinstatement or any other circumstance that would affect the validity of the sale. If any such circumstance exists, the sale shall be void, the successful bidder's funds returned and the trustee and current beneficiary shall not be liable to the successful bidder for any damage.

Bidders must tender to the trustee a \$5,000.00 deposit at the sale and the balance of the purchase price by 12:00 noon the day following the sale. The deposit must be in the form of a bank or credit union cashier's check or bank official check payable to eTitle Insurance Agency. The balance must be in the form of a wire transfer, bank or credit union cashier's check, bank official check or U.S. Postal money order payable to eTitle Insurance Agency. Cash payments are not accepted. A trustee's deed will be delivered to the successful bidder within three business days after receipt of the amount bid.

DATED: October 2, 2009.

eTitle Insurance Agency, Trustee
3269 South Main, #100
Salt Lake City, UT 84115
(801) 263-3400
Office Hours: 8:00 a.m. - 5:00 p.m.
L&A Case No. 09-78843
CAP 

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

EXHIBIT B

From: "Merrill Chandler, Executive Director"
<Merrill@EchelonAdvisoryGroup.com>
Subject: 10449 S Hyacinth Circle
Date: October 5, 2009 7:17:06 AM MDT
To: RKemker@comcast.net



To Whom it May Concern:

My ex-wife has informed me that you believe you have purchased the property we are leasing at 10449 Hyacinth Circle at a foreclosure sale. She also said that you have stopped by on numerous occasions asking her to move out and requesting my lease and banking information in order to prove the legitimacy of the lease. Unfortunately, the owner of the property represents that it was an illegal foreclosure and that the bank did not have the authority to foreclose. This leaves me in a predicament as I have two individuals claiming to be the owner of the property.

Given this apparent controversy and the fact that it will be a significant expense to move my family to a new home, I spoke with my lawyer and asked him to research the situation so I can know who the true owner of the house is and what my rights are as the lessee. His research into the disposition of the title confirmed that there is a cloud on the title and a definite controversy exists as to who owns the property which would typically need to be adjudicated in a quiet title action. Based on his research into the Stephanie Reynolds' claims, he confirmed that her claims are valid, significant, and based on law.

In speaking with the owner's attorney, I have learned that a quiet title action is being initiated this week in which you will have the opportunity to assert your claim on the property. I have forwarded your information to the prosecuting attorney so that you will be included in the quiet title action. Their intention is to ask the judge to set aside the foreclosure or, at the very least, stop any eviction proceedings until this matter is settled. Therefore, I must ask you to cease all communication with my ex-wife and family as you are causing them significant stress and they cannot help you as I'm the lessee and financially responsible party. Please direct any further communication regarding this matter to me at the phone number below.

I feel for you and the situation you have found yourself in, but it is not my place to make a determination as to who the owner of the property is and, until the courts decide this matter, I can only operate as if my lease with the owner is still valid and that she is my contact regarding the property.

Sincerely,

Merrill Chandler
463-3377

EXHIBIT C

From: "Merrill Chandler, Executive Director"
res. <Merrill@EchelonAdvisoryGroup.com>
Subject: **10449 Hyacinth Circle**
Date: October 16, 2009 11:11:54 AM MDT
To: RKemker@comcast.net



Thank you for your patience in this very important matter. Utah statute requires certain notification periods in order to ensure that all parties who may have an interest in a property are duly noticed. Please send me the name and address of the person you would like the plaintiff to summons to the quiet title action. My understanding is that the quiet title action will be filed between the 10th and 15th of November.

Thanks again for your cooperation,

Merrill Chandler

CERTIFICATE OF SERVICE

I hereby certify that on November 2nd, 2009, I caused a true and correct copy of the foregoing "ANSWER" to be sent by U.S. mail, first-class postage prepaid to:

John A. Snow (3025) jsnow@vancot.com
Seth M. Mott (12768) smott@vancott.com
Alex B. Leeman (12578) aleeman@vancott.com
VAN COTT, BAGLEY, CORNWALL & MCCARTHY, P.C.
36 South State Street, Suite 1900
Salt Lake City, Utah 84111
Telephone: 801-532-3333
Facsimile: 801-534-0058

7009 3110 0003 7450 1425

Utah Code Annotated

25-5-1. Estate or interest in real property.

No estate or interest in real property, other than leases for a term not exceeding one year, nor any trust or power over or concerning real property or in any manner relating thereto, shall be created, granted, assigned, surrendered or declared otherwise than by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing.

57-1-20. Transfers in trust of real property -- Purposes -- Effect.

Transfers in trust of real property may be made to secure the performance of an obligation of the trustor or any other person named in the trust deed to a beneficiary. All right, title, interest and claim in and to the trust property acquired by the trustor, or the trustor's successors in interest, subsequent to the execution of the trust deed, shall inure to the trustee as security for the obligation or obligations for which the trust property is conveyed as if acquired before execution of the trust deed.

57-1-21. Trustees of trust deeds -- Qualifications.

- (1) (a) The trustee of a trust deed shall be:
 - (i) any active member of the Utah State Bar who maintains a place within the state where the trustor or other interested parties may meet with the trustee to:
 - (A) request information about what is required to reinstate or payoff the obligation secured by the trust deed;
 - (B) deliver written communications to the lender as required by both the trust deed and by law;
 - (C) deliver funds to reinstate or payoff the loan secured by the trust deed; or
 - (D) deliver funds by a bidder at a foreclosure sale to pay for the purchase of the property secured by the trust deed;
 - (ii) any depository institution as defined in Section 7-1-103, or insurance company authorized to do business and actually doing business in Utah under the laws of Utah or the United States;
 - (iii) any corporation authorized to conduct a trust business and actually conducting a trust business in Utah under the laws of Utah or the United States;
 - (iv) any title insurance company or agency that:
 - (A) holds a certificate of authority or license under Title 31A, Insurance Code, to conduct insurance business in the state;
 - (B) is actually doing business in the state; and
 - (C) maintains a bona fide office in the state;
 - (v) any agency of the United States government; or

(vi) any association or corporation that is licensed, chartered, or regulated by the Farm Credit Administration or its successor.

(b) For purposes of this Subsection (1), a person maintains a bona fide office within the state if that person maintains a physical office in the state:

(i) that is open to the public;

(ii) that is staffed during regular business hours on regular business days; and

(iii) at which a trustor of a trust deed may in person:

(A) request information regarding a trust deed; or

(B) deliver funds, including reinstatement or payoff funds.

(c) This Subsection (1) is not applicable to a trustee of a trust deed existing prior to May 14, 1963, nor to any agreement that is supplemental to that trust deed.

(d) The amendments in Laws of Utah 2002, Chapter 209, to this Subsection (1) apply only to a trustee that is appointed on or after May 6, 2002.

(2) The trustee of a trust deed may not be the beneficiary of the trust deed, unless the beneficiary is qualified to be a trustee under Subsection (1)(a)(ii), (iii), (v), or (vi).

(3) The power of sale conferred by Section 57-1-23 may only be exercised by the trustee of a trust deed if the trustee is qualified under Subsection (1)(a)(i) or (iv).

(4) A trust deed with an unqualified trustee or without a trustee shall be effective to create a lien on the trust property, but the power of sale and other trustee powers under the trust deed may be exercised only if the beneficiary has appointed a qualified successor trustee under Section 57-1-22

57-1-21.5. Trustees of trust deeds -- Duties -- Prohibited conduct -- Penalties.

(1) Except as provided in Subsection (2), the following duties of the trustee may not be delegated:

(a) the preparation and execution of:

(i) the notice of default and election to sell;

(ii) the cancellation of notice of default and election to sell;

(iii) the notice of sale; and

(iv) the trustee's deed;

(b) the notification of foreclosure through publication, posting, and certified or registered mail;

(c) the receiving and responding to requests for reinstatement or payoff requirements; and

(d) the handling of reinstatement or payoff funds.

(2) Nothing in this section is intended to prevent:

(a) the trustee from using clerical or office staff:

(i) that is under the trustee's direct and immediate supervision; and

(ii) to assist in the duties described in Subsection (1);

(b) the trustee from using the services of others for publication, posting, marketing, or advertising the sale; or

(c) a beneficiary of a trust deed or the servicing agent of the beneficiary from directly performing the functions described in:

(i) Subsection (1)(c); or

(ii) Subsection (1)(d).

(3) The amendments in Laws of Utah 2002, Chapter 209, to Subsection (2) do not apply to a foreclosure if the notice of default related to the foreclosure was filed before May 6, 2002.

(4) (a) Except as provided in Subsection (4)(c), a trustee may not solicit or receive any fee for referring business to a third party.

(b) Fees prohibited under Subsection (4)(a) include:

(i) a commission;

(ii) a referral based fee, including a fee for the referral of:

(A) title work;

(B) posting services; or

(C) publishing services; or

(iii) a fee similar to a fee described in Subsection (4)(b)(i) or (ii).

(c) Subsection (4)(a) does not apply to:

(i) fees received by a trustee for the trustee acting as co-legal counsel, if the trustee is otherwise permitted by law to receive fees as co-legal counsel; or

(ii) a nonpreferred participation in net profits based upon an ownership interest or franchise relationship that is not otherwise prohibited by law.

(5) A trustee may not require the following to pay any costs that exceed the actual costs incurred by the trustee:

(a) a trustor reinstating or paying off a loan; or

(b) a beneficiary acquiring property through foreclosure.

(6) (a) A person that violates Subsection (4) or (5) is guilty of a class B misdemeanor.

(b) In addition to a person's liability under Subsection (6)(a), if a person violates Subsection (4) or (5), that person is liable to the trustor for an amount equal to the greater of:

(i) the actual damages of the trustor as a result of the violation; or

(ii) \$1,000.

(c) In an action brought under Subsection (6)(b), the party that does not prevail in the action that is brought under Subsection (6)(b) shall pay the attorney fees of the prevailing party.

57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution of trustee -- Recording -- Form.

(1) (a) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the county recorder of each county in which the trust property or some part of the trust property is situated, a substitution of trustee.

(b) The new trustee shall succeed to all the power, duties, authority, and title of the trustee named in the deed of trust and of any successor trustee.

(c) The beneficiary may, by express provision in the substitution of trustee, ratify and confirm action taken on the beneficiary's behalf by the new trustee prior to the recording of the substitution of trustee.

(2) The substitution shall:

(a) identify the trust deed by stating:

(i) the names of the original parties to the trust deed;

(ii) the date of recordation; and

(iii) (A) the book and page where the trust deed is recorded; or

(B) the entry number;

(b) include the legal description of the trust property;

(c) state the name and address of the new trustee; and

(d) be executed and acknowledged by all of the beneficiaries under the trust deed or their successors in interest.

(3) (a) If not previously recorded at the time of recording a notice of default, the successor trustee shall file for record, in the office of the county recorder of each county in which the trust property or some part of it is situated, the substitution of trustee.

(b) A copy of the substitution of trustee shall be sent in the manner provided in Subsection 57-1-26(2) to any:

(i) person who requests a copy of any notice of default or notice of sale under Subsection 57-1-26(1)(a); and

(ii) person who is a party to the trust deed to whom a copy of a notice of default would be required to be mailed by Subsection 57-1-26(3).

(4) A substitution of trustee shall be in substantially the following form:
Substitution of Trustee

(insert name and address of new trustee)

is hereby appointed successor trustee under the trust deed executed by ____ as trustor, in which ____ is named beneficiary and ____ as trustee, and filed for record _____ (month\day\year), and recorded in Book ____, Page ____, Records of ____ County, (or filed for record _____ (month\day\year), with recorder's entry No. ____, ____ County), Utah.

(Insert legal description)

Signature _____

(Certificate of Acknowledgment)

57-1-23. Sale of trust property -- Power of trustee -- Foreclosure of trust deed.

The trustee who is qualified under Subsection 57-1-21(1)(a)(i) or (iv) is given the power of sale by which the trustee may exercise and cause the trust property to be sold in the manner provided in Sections 57-1-24 and 57-1-27, after a breach of an obligation for which the trust property is conveyed as security; or, at the option of the beneficiary, a trust deed may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision for it in the trust deed.

57-1-24. Sale of trust property by trustee -- Notice of default.

The power of sale conferred upon the trustee who is qualified under Subsection 57-1-21(1)(a)(i) or (iv) may not be exercised until:

(1) the trustee first files for record, in the office of the recorder of each county where the trust property or some part or parcel of the trust property is situated, a notice of default, identifying the trust deed by stating the name of the trustor named in the trust deed and giving the book and page, or the recorder's entry number, where the trust deed is recorded and a legal description of the trust property, and containing a statement that a breach of an obligation for which the trust property was conveyed as security has occurred, and setting forth the nature of that breach and of the trustee's election to sell or cause to be sold the property to satisfy the obligation;

(2) not less than three months has elapsed from the time the trustee filed for record under Subsection (1); and

(3) after the lapse of at least three months the trustee shall give notice of sale as provided in Sections 57-1-25 and 57-1-26.

57-1-26. Requests for copies of notice of default and notice of sale -- Mailing by trustee or beneficiary -- Publication of notice of default -- Notice to parties of trust deed.

(1) (a) Any person desiring a copy of any notice of default and of any notice of sale under any trust deed shall file for record a duly acknowledged request for a copy of any notice of default and notice of sale:

(i) in the office of the county recorder of any county in which the trust property or any part of the trust property is situated; and

(ii) at any time:

(A) subsequent to the filing for record of the trust deed; and

(B) prior to the filing for record of a notice of default.

(b) Except as provided in Subsection (3), the request described in Subsection (1)(a) may not be included in any other recorded instrument.

(c) The request described in Subsection (1)(a) shall:

(i) set forth the name and address of the one or more persons requesting copies of the notice of default and the notice of sale; and

(ii) identify the trust deed by stating:

(A) the names of the original parties to the trust deed;

(B) the date of filing for record of the trust deed;

(C) (I) the book and page where the trust deed is recorded; or

(II) the recorder's entry number; and

(D) the legal description of the trust property.

(d) The request described in Subsection (1)(a) shall be in substantially the following form:

REQUEST FOR NOTICE

The undersigned requests that a copy of any notice of default and a copy of notice of sale under the trust deed filed for record _____ (month\day\year), and recorded in Book ____, Page ____, Records of ____ County, (or filed for record _____ (month\day\year), with recorder's entry number ____, _____ County), Utah, executed by ____ and _____ as trustors, in which ____ is named as beneficiary and ____ as trustee, be mailed to ____ (insert name) ____ at ____ (insert address) ____.
(Insert legal description)

Signature _____

(Certificate of Acknowledgement)

(e) If a request for a copy of a notice of default and notice of sale is filed for record under this section, the recorder shall index the request in:

(i) the mortgagor's index;

(ii) mortgagee's index; and

(iii) abstract record.

(f) Except as provided in Subsection (3), the trustee under any deed of trust is not required to send notice of default or notice of sale to any person not filing a request for notice as described in this Subsection (1).

(2) (a) Not later than 10 days after recordation of a notice of default, the trustee or beneficiary shall mail a signed copy of the notice of default:

(i) by certified or registered mail, with postage prepaid;

(ii) with the recording date shown;

(iii) addressed to each person whose name and address are set forth in a request that has been recorded prior to the filing for record of the notice of default; and

(iv) directed to the address designated in the request.

(b) At least 20 days before the date of sale, the trustee shall mail a signed copy of the notice of the time and place of sale:

- (i) by certified or registered mail, return receipt requested, with postage prepaid;
- (ii) addressed to each person whose name and address are set forth in a request that has been recorded prior to the filing for record of the notice of default; and
- (iii) directed to the address designated in the request.

(3) (a) Any trust deed may contain a request that a copy of any notice of default and a copy of any notice of sale under the trust deed be mailed to any person who is a party to the trust deed at the address of the person set forth in the trust deed.

(b) A copy of any notice of default and of any notice of sale shall be mailed to any person requesting the notice who is a party to the trust deed at the same time and in the same manner required in Subsection (2) as though a separate request had been filed by each person as provided in Subsection (1) except that a trustee shall include with a signed copy of a notice of default and the signed copy of a notice of sale the following information current as of the time the notice of default and the notice of sale is provided:

- (i) the name of the trustee;
- (ii) the mailing address of the trustee;
- (iii) if the trustee maintains a bona fide office in the state meeting the requirements of Subsection 57-1-21(1)(b), the address of a bona fide office of the trustee meeting the requirements of Subsection 57-1-21(1)(b);
- (iv) the hours during which the trustee can be contacted regarding the notice of default and notice of sale, which hours shall include the period during regular business hours in a regular business day; and
- (v) a telephone number that the person may use to contact the trustee during the hours described in Subsection (3)(b)(iv).

(4) If no address of the trustor is set forth in the trust deed and if no request for notice by the trustor has been recorded as provided in this section, no later than 15 days after the filing for record of the notice of default, a copy of the notice of default shall be:

- (a) mailed to the address of the property described in the notice of default; or
- (b) posted on the property.

(5) The following shall not affect the title to trust property or be considered notice to any person that any person requesting copies of notice of default or of notice of sale has or claims any right, title or interest in, or lien or claim upon, the trust property:

- (a) a request for a copy of any notice filed for record under Subsection (1) or (3);
- (b) any statement or allegation in any request described in Subsection (5)(a); or
- (c) any record of a request described in Subsection (5)(a).