

Exhibit 1

Mont. LBF 8. MOTION TO MODIFY STAY; AND NOTICE.

[Mont. LBR 4001-1(a)]

Lewis N. Stoddard, Bar Number 60723896

HALLIDAY, WATKINS & MANN, P.C.

Attorneys for U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust c/o U.S. Bank Trust National Association

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File No.: MT11366

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re)	
)	Case No. 1:22-bk-10100-BPH
DENISE ALLISON PARSONS)	
AND TIMOTHY JAMES)	
PARSONS)	
)	
Debtors.)	

MOTION TO MODIFY STAY; AND NOTICE

The Motion of U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust c/o U.S. Bank Trust National Association (“Creditor”) respectfully represents:

1. The Debtors filed a Petition in this Court under Chapter 13 of the Bankruptcy

Code on August 17, 2022 and have since moved to convert to a Chapter 7.

2. Creditor is the holder of a secured claim against the Debtors, and pursuant to

Mont. LBR 4001-1, provides the following information:

- (a) The present balance owing to Creditor, excluding any precomputed interest or other unearned charges, is, as of October 17, 2023, as follows: \$397,256.79
- (b) The date upon which the subject debt was incurred was January 8, 2008.
- (c) Creditor holds a security interest or lien upon the following described property of the estate:

That part of NE1/4NE1/4 of Section 26, Township 3 South, Range 23 East, of the Principal Montana Meridian in Carbon County, Montana, described as Tract 1, of Certificate of Survey No. 830 on file in the office of the Clerk and Recorder of said County, under Document No. 199927 (the "Property").

(d) The nature of Creditor's security interest, the date upon which the security interest was obtained, and the date upon which the security interest was perfected are as follows:

Creditor is a secured creditor whose claim is secured by the Property, as evidenced by that certain Deed of Trust dated January 8, 2008 (the "Deed of Trust"). The lien created by the Deed of Trust was perfected by recording of the Deed of Trust in the office of Carbon County on January 28, 2008. All rights and remedies under the Deed of Trust have been assigned to the Creditor pursuant to an assignment of deed of trust, attached hereto as an Exhibit.

Creditor has attached to this Motion copies of all security agreements, financing statements, titles, and other perfection documents necessary to prove the validity of its security interest.

(e) Creditor has standing to file this motion on the following grounds:

Creditor is an entity entitled to enforce the promissory note that the Debtors have executed and delivered or with respect to which the Debtors are otherwise obligated.

(f) A description of Creditor's collateral, including its location, is as follows:

The Property and all other collateral described in the Deed of Trust, a copy of which is attached.

(g) The fair market value of Creditor's collateral is \$567,867.00 according to the Debtors' Statements and Schedules.

(h) A description of, and the amounts due upon, any other security interests are as follows:

(1) Homestead exemption in the amount of \$0.00.

(i) If the Debtor is in default, the number of defaulted installments and the total amount in default are, as of October 17, 2023, as follows:

Number of Defaulted Installments	From	To	Monthly Payment Amount	Total Amount in Default
14	May 1, 2019	June 1, 2020	\$1,770.67	\$24,789.38
26	July 1, 2020	August 1, 2022	\$1,826.89	\$47,499.14
13	September 1, 2022	September 1, 2023	\$1,916.11	\$24,909.43
1	October 1, 2023	October 1, 2023	\$1,948.05	\$1,948.05
	Less partial payments:			(\$0.00)

Total: \$99,146.00

In addition to the amounts listed above, Debtors are obligated to make on-going monthly payments, pursuant to the express terms of the Note and Deed of Trust that have or will accrue after October 17, 2023.

Creditor attests that it responded promptly and thoroughly to the trustee's or to the Debtors' reasonable requests for account information.

(j) If the Creditor alleges a postpetition payment default by the Debtors, the amount and date of the payments the Debtors are alleged to have failed to make are, as of October 17, 2023, as follows:

See paragraph (i) above.

Creditor attests that it responded promptly and thoroughly to the trustee's or to the Debtors' reasonable requests for account information.

(k) This Motion is made under and pursuant to the following subsection of 11 U.S.C. §§ 362: (d)(1) & (d)(2).

3. Creditor further represents that in the event the Court grants this Motion, Creditor will seek foreclosure and liquidation of the above-described collateral in accordance with applicable nonbankruptcy law. Upon disposition of such collateral, Creditor will account for all proceeds to the Court, and trustee, if applicable, and agrees to turn over any proceeds in excess of Creditor's allowed secured claim to the Court, and trustee, if applicable.

4. Creditor requests that in the event that the Court grants this Motion, that the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived.

WHEREFORE, Creditor moves the Court to grant this Motion to Modify Stay, and to grant such other relief as the Court may deem appropriate.

DATED this October 24, 2023.

/s/Lewis N. Stoddard

Lewis N. Stoddard

Attorney for U.S. Bank Trust National Association,
not in its individual capacity but solely as owner
trustee for RCF 2 Acquisition Trust c/o U.S. Bank
Trust National Association

**NOTICE OF OPPORTUNITY TO RESPOND
AND REQUEST A HEARING**

If you object to the motion, you must file a written responsive pleading and request a hearing within fourteen (14) days of the date of the motion. The objecting party shall schedule the hearing and shall include in the caption of the responsive pleading in bold and conspicuous print the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING

Date: _____

Time: _____

Location: _____

This contested matter shall be scheduled for hearing for the next hearing date scheduled in the division within which the case is filed. The date, time and location of the hearing can be obtained from the Clerk of Court or from the Court's website at www.mtb.uscourts.gov. In the event such scheduled hearing date is thirty (30) days beyond the filing date of the motion for relief, then a preliminary hearing within such thirty (30) day period shall be scheduled by the responding party after such party contacts the Clerk of Court to confirm the preliminary telephone hearing date and time, which shall be set forth in the response.

If you fail to file a written response to the above Motion to Modify Stay with the particularity required by Mont. LBR 4001-1(c), and request a hearing, within fourteen (14) days of the date of this Notice, with service on the undersigned and all parties entitled to service under all applicable rules, then your failure to respond or to request a hearing will be deemed an admission that the motion for relief should be granted without further notice or hearing.

DATED this October 24, 2023

/s/ Lewis N. Stoddard

Lewis N. Stoddard
Attorney for U.S. Bank Trust National
Association, not in its individual capacity
but solely as owner trustee for RCF 2
Acquisition Trust c/o U.S. Bank Trust
National Association

CERTIFICATE OF MAILING

I, the undersigned, Lewis N. Stoddard, do hereby certify under penalty of perjury that a copy of the within and foregoing Motion to Modify Stay and Notice was sent by first class mail postage prepaid on the 24th day of October, 2023, Salt Lake City, Utah, and directed to the following:

Denise Allison Parsons
Timothy James Parsons
PO Box 981
Laurel, MT 59044
Debtor
VIA U.S. MAIL

Denise Allison Parsons
Timothy James Parsons
PO Box 981
Laurel, MT 59044-0981
Debtor
VIA U.S. MAIL

Bret T Allred
117 North Bent Street Suite C
Powell, WY 82435
Debtor Attorney
VIA ECF

Robert G. Drummond
PO Box 1829
Great Falls, MT 59403
Chapter 13 Trustee
VIA ECF

United States Trustee
P.O. Box 1315
Coeur D Alene, ID 83816
VIA ECF

/s/ Lewis N. Stoddard

Lewis N. Stoddard
Attorney for U.S. Bank Trust National Association,
not in its individual capacity but solely as owner
trustee for RCF 2 Acquisition Trust c/o U.S. Bank
Trust National Association

ATTN: NDD LEAM

When recorded return to:
First American Title Insurance
Lenders Advantage
1100 Superior Avenue, Suite 200
Cleveland, Ohio 44114

Prepared By:
JULIE LATNEY

4241 JUTLAND DRIVE, SUITE 305
SAN DIEGO, CA 92117



[Space Above This Line For Recording Data]

331212

State of Montana }
County of Carbon } SS

This instrument file # 331212 was filed in my
office this 28 day of Jan 20 08
at 1:01 o'clock p m.

Linda M. Ladvala
County Clerk - Recorder
by *[Signature]*
Fee \$ 140.00 pd

DEED OF TRUST

Trust Indenture Under the Small Tract Financing Act of Montana

LOAN NO.:
ESCROW NO:



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 JANUARY 08, 2008, together with all Riders to this document.

(B) "Borrower" is
TIMOTHY J. PARSONS AND DENISE A. PARSONS, JOINT TENANTS WITH RIGHT OF SURVIVORSHIP

PARSONS
13885441 MT
FIRST AMERICAN LENDERS ADVANTAGE
DEED OF TRUST

Borrower is the trustor under this Security Instrument.

(C) "Lender" is
AMERICAN INTERNET MORTGAGE, INC., A CALIFORNIA CORPORATION

Lender is a CORPORATION
organized and existing under the laws of CALIFORNIA

Initials *[Signature]*

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 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 and conveys to Trustee, in trust, with power of sale, the following described property located in the _____ COUNTY [Type of Recording Jurisdiction] of Carbon [Name of Recording Jurisdiction]:

SEE ATTACHED

[Redacted] which currently has the address of [Street]
4488 Highway 212 [City], Montana 59041 [Zip Code]
Silesia

("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 seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

Initials: 

of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

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in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

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

Initials: 

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

Initials: 

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

Initials: 

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.

Initials: 

(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.

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

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

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

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

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

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

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

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

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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 Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Lender or Trustee shall record a notice of sale in each county in which any part of the Property is located, and Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. After the time required by Applicable Law and after publication and posting of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of 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 clerk or recorder 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. Area of Property. The area of the Property is not more than 40 acres.




26. Waiver of Homestead Exemption Rights. In conformance with the provisions of § 70-32-202, M.C.A., this transaction involving a mortgage upon real property for purposes of securing a debt on premises, as subject hereto, and executed and acknowledged by the husband and wife, or by an unmarried person, the undersigned grantors have by separate written waiver, which waiver is incorporated herein by this reference, waived, renounced and abandoned for themselves and their family, any and all homestead exemption rights or other exemption law now or subsequently enforced within the State of Montana, or any other state or territory where judgment may be entered by virtue of this agreement or in the event of a sale pursuant to the provisions of the Montana Small Tract Financing Act.


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:

-Witness

-Witness


TIMOTHY J. PARSONS (Seal)
-Borrower


DENISE A. PARSONS (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

STATE OF Montana County ss: Carbon
On this 9th day of January 2008, before me, a Notary Public for the
State of Montana, personally appeared Timothy J Parsons and

Denise A Parsons, Joint Tenants with Right of
Survivorship

known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and
acknowledged to me that he/she/they executed the same.

My Commission Expires: 01/20/2011

(Seal)



Jean Hogstad
Notary Public for the State of Montana
Residing at Billings, Montana

JEAN HOGSTAD
Notary Public for the State of Montana
Residing in Billings
My Commission Expires 01/20/2011

FIXED/ADJUSTABLE RATE RIDER

(LIBOR One-Year Index (As Published In *The Wall Street Journal*)- Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this 8th day of JANUARY, 2008 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to AMERICAN INTERNET MORTGAGE, INC., A CALIFORNIA CORPORATION

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

4488 Highway 212, Silesia, MT 59041
[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 6.000 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of FEBRUARY, 2015 , and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

Initials 

MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family -
Fannie Mae Uniform Instrument Form 3187 6/01

V-168R (0401).02 Page 1 of 4 LENDER SUPPORT SYSTEMS INC. 168R.NEW (08/06)

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND THREE EIGHTHS percentage points (2.375 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.000 % or less than 2.375 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.000 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

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.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

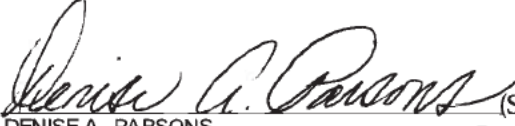
To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note

and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, 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.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.


TIMOTHY J. PARSONS (Seal)
-Borrower


DENISE A. PARSONS (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

INTEREST-ONLY PERIOD ADJUSTABLE RATE NOTE

(One-Year LIBOR Index (As Published In *The Wall Street Journal*)-Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE AND FOR CHANGES IN MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

JANUARY 08, 2008
[Date]

Grand Rapids
[City]

MICHIGAN
[State]

4488 Highway 212, Silesia, MI 49041
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 300,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is AMERICAN INTERNET MORTGAGE, INC., A CALIFORNIA CORPORATION

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.000 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment on the first day of every month, beginning on MARCH, 2008 Before the First Principal and Interest Payment Due Date as described in Section 4 of this Note, my payment will consist only of the interest due on the unpaid principal balance of this Note. Thereafter, I will pay principal and interest by making a payment every month as provided below.

I will make monthly payments of principal and interest beginning on the First Principal and Interest Payment Due Date as described in Section 4 of this Note. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date, and if the payment includes both principal and interest, it will be applied to interest before Principal. If, on FEBRUARY 01, 2008, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at AMERICAN INTERNET MORTGAGE, INC.
4241 JUTLAND DRIVE, SUITE 305, SAN DIEGO, CA 92117
or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1,500.00 before the First Principal and Interest Payment Due Date, and thereafter will be in an amount sufficient to repay the principal and interest at the rate determined as described in Section 4 of this Note in substantially equal installments by the Maturity Date. The Note Holder will notify me prior to the date of change in monthly payment.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 or 5 of this Note.

Initials: 

MULTISTATE INTEREST-ONLY PERIOD ADJUSTABLE RATE NOTE - ONE-YEAR LIBOR INDEX - Single Family - Fannie Mae Uniform Instrument Form 3530 11/01 (rev. 9/06)

V-170N (0609)

Page 1 of 5

LENDER SUPPORT SYSTEMS INC. 170NXX.NEW (11/06)

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of FEBRUARY, 2015, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND THREE EIGHTHS percentage points (2.375 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.000 % or less than 2.375 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.000 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

Before the effective date of any change in my interest rate and/or monthly payment, the Note Holder will deliver or mail to me a notice of such change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

(G) Date of First Principal and Interest Payment

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the first Change Date.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payment unless the Note Holder agrees in writing to those changes. If the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist only of interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, my partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this 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 me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund

by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

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.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, 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.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


TIMOTHY J. PARSONS (Seal)
-Borrower


DENISE A. PARSONS (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

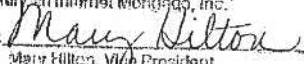
(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

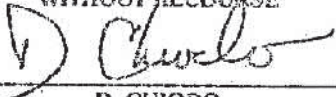
(Seal)
-Borrower

Pay to the Order of:
GMAC Bank

Without recourse,
American Internet Mortgage, Inc.
By: 
Mary Hilken, Vice President


[Sign Original Only]

**PAY TO THE ORDER OF
GMAC MORTGAGE, LLC
WITHOUT RECOURSE**


D. CHIODO
ASSISTANT SECRETARY
GMAC BANK

PAY TO THE ORDER OF

WITHOUT RECOURSE


D. CHIODO
LIMITED SIGNING OFFICER
GMAC MORTGAGE, LLC 1/k/a
GMAC MORTGAGE CORPORATION

12/29/2015

J, PARSONS TIMO



State of Montana } This instrument file # 374045 was filed in my
County of Carbon } SS office on July 27, 2018 at 3:08 PM
Marcia Henigman
County Clerk Recorder

When Recorded Return To:
Ditech Financial LLC
C/O Nationwide Title Clearing, Inc.
2100 Alt. 19 North
Palm Harbor, FL 34683

by *[Signature]* deputy
Fee \$7.00

CORPORATE ASSIGNMENT OF DEED OF TRUST

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS DESIGNATED NOMINEE FOR AMERICAN INTERNET MORTGAGE, INC., BENEFICIARY OF THE SECURITY INSTRUMENT, ITS SUCCESSORS AND ASSIGNS, (ASSIGNOR), (MERS Address: P.O. Box 2026, Flint, Michigan 48501-2026) by these presents does convey, grant, assign, transfer and set over the described Deed of Trust with all interest secured thereby, all liens, and any rights due or to become due thereon to DITECH FINANCIAL LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 2100 E. ELLIOT RD., T314, TEMPE, AZ 85284 (800)643-0202, ITS SUCCESSORS AND ASSIGNS, (ASSIGNEE).

Said Deed of Trust is dated 01/08/2008, and executed by TIMOTHY J PARSONS AND DENISE A PARSONS to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS DESIGNATED NOMINEE FOR AMERICAN INTERNET MORTGAGE, INC., BENEFICIARY OF THE SECURITY INSTRUMENT, ITS SUCCESSORS AND ASSIGNS, and recorded on 01/28/2008 in Book , Page , and/or Document # 331212, in the office of the Recorder of CARBON County, MT.

THE LAND REFERRED TO IN THIS POLICY IS SITUATED IN THE STATE OF MONTANA, COUNTY OF CARBON, CITY OF SILESIA, AND DESCRIBED AS FOLLOWS: THAT PART OF NE1/4NE1/4 OF SECTION 26, TOWNSHIP 3 SOUTH, RANGE 23 EAST, OF THE PRINCIPAL MONTANA MERIDIAN IN CARBON COUNTY, MONTANA, DESCRIBED AS TRACT 1 OF CERTIFICATE OF SURVEY NO. 830 ON FILE IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY, UNDER DOCUMENT NO. 199927.

Dated this 27th day of July in the year 2018
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS DESIGNATED NOMINEE FOR AMERICAN INTERNET MORTGAGE, INC., BENEFICIARY OF THE SECURITY INSTRUMENT, ITS SUCCESSORS AND ASSIGNS

[Signature]

SUSAN SCHOTSCH
VICE PRESIDENT

All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me on this 27th day of July in the year 2018, by Susan Schotsch as VICE PRESIDENT of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS DESIGNATED NOMINEE FOR AMERICAN INTERNET MORTGAGE, INC., BENEFICIARY OF THE SECURITY INSTRUMENT, ITS SUCCESSORS AND ASSIGNS, who, as such VICE PRESIDENT being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

[Signature]

NICOLE SHIELDS
COMM EXPIRES: 08/05/2020



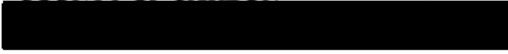
NICOLE SHIELDS
Notary Public - State of Florida
My Comm. Expires August 5, 2020
Commission # GG126925

Document Prepared By: Dave LaRose/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
MERS Mailing

by *Christine L Stovall*

Fee \$7.00

WHEN RECORDED MAIL TO:
FIRST AMERICAN MORTGAGE SOLUTIONS
1795 INTERNATIONAL WAY
IDAHO FALLS, ID 83402
PH. 208-528-9895
MONTANA
COUNTY OF CARBON



ASSIGNMENT OF DEED OF TRUST

KNOW ALL MEN BY THESE PRESENTS, that for value received, receipt thereof is hereby acknowledged, DITECH FINANCIAL, LLC, BY NEWREZ LLC F/K/A NEW PENN FINANCIAL, LLC D/B/A SHELLPOINT MORTGAGE SERVICING, ITS ATTORNEY IN FACT, located at 55 BEATTIE PLACE SUITE 110 MS#001, GREENVILLE, SC 29601, Assignor, does hereby convey unto NEWREZ LLC F/K/A NEW PENN FINANCIAL, LLC D/B/A SHELLPOINT MORTGAGE SERVICING, located at 55 BEATTIE PLACE, SUITE 110, MS#01, GREENVILLE, SC 29601, Assignee, its successors and assigns, all of Assignor's rights, title, and interest of, in and to that certain Deed of Trust dated JANUARY 08, 2008 executed by TIMOTHY J. PARSONS AND DENISE A. PARSONS, JOINT TENANTS WITH RIGHT OF SURVIVORSHIP, Trustor, to FIRST AMERICAN TITLE COMPANY, Original Trustee, for the benefit of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS DESIGNATED NOMINEE FOR AMERICAN INTERNET MORTGAGE, INC., BENEFICIARY OF THE SECURITY INSTRUMENT, ITS SUCCESSORS AND ASSIGNS, Original Beneficiary, or designated nominee of the Original Beneficiary, and duly filed for record in the County Clerk and Recorder's Office of CARBON County, State of MONTANA, and recorded on JANUARY 28, 2008 as Document No. 331212; MODIFICATION RECORDED ON 11/29/2017 AS DOCUMENT/INSTRUMENT # 372038..

LEGAL DESCRIPTION: THE LAND REFERRED TO IN THIS POLICY IS SITUATED IN THE STATE OF MONTANA, COUNTY OF CARBON, CITY OF SILESIA, AND DESCRIBED AS FOLLOWS: THAT PART OF NE1/4NE1/4 OF SECTION 26, TOWNSHIP 3 SOUTH, RANGE 23 EAST, OF THE PRINCIPAL MONTANA MERIDIAN IN CARBON COUNTY, MONTANA, DESCRIBED AS TRACT 1 OF CERTIFICATE OF SURVEY NO. 830 ON FILE IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY, UNDER DOCUMENT NO. 199927.

IN WITNESS WHEREOF, the undersigned has caused this Instrument to be executed on 6/13/2019
DITECH FINANCIAL, LLC, BY NEWREZ LLC F/K/A NEW PENN FINANCIAL, LLC D/B/A SHELLPOINT MORTGAGE SERVICING, ITS ATTORNEY IN FACT

Stephanie N. Wesel
STEPHANIE N. WESSEL, SUPERVISOR

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE) ss.

On 6/13/2019, before me, SANDRA D MCCOY, personally appeared STEPHANIE N. WESSEL known to me to be the SUPERVISOR of NEWREZ LLC F/K/A NEW PENN FINANCIAL, LLC D/B/A SHELLPOINT MORTGAGE SERVICING AS ATTORNEY-IN-FACT FOR DITECH FINANCIAL LLC the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

Sandra D McCoy
SANDRA D MCCOY (COMMISSION EXP. 06/07/2026)
NOTARY PUBLIC



WHEN RECORDED MAIL TO:
FIRST AMERICAN MORTGAGE SOLUTIONS
1795 INTERNATIONAL WAY
IDAHO FALLS, ID 83402
PH. 208-528-9895
MONTANA
COUNTY OF CARBON

Doc # 379088 Fee: \$7.00
Asgmt Deed of Trust/Mtg
Christine L. Stovall, Clerk & Recorder, Carbon County, MT
Recorded 10/25/2019 At 12:02 PM
By *Cynthia Brock*, deputy

ASSIGNMENT OF DEED OF TRUST

KNOW ALL MEN BY THESE PRESENTS, that for value received, receipt thereof is hereby acknowledged, **NEWREZ LLC F/K/A NEW PENN FINANCIAL, LLC D/B/A SHELLPOINT MORTGAGE SERVICING**, located at 55 BEATTIE PLACE SUITE 110 MS#001, GREENVILLE, SC 29601, Assignor, does hereby convey unto **U.S BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT**, located at 60 LIVINGSTON AVENUE, EP-MN-WS2D, ST. PAUL, MN 55107, Assignee, its successors and assigns, all of Assignor's rights, title, and interest of, in and to that certain Deed of Trust dated **JANUARY 08, 2008** executed by **TIMOTHY J. PARSONS AND DENISE A. PARSONS, JOINT TENANTS WITH RIGHT OF SURVIVORSHIP**, Trustor, to **FIRST AMERICAN TITLE COMPANY**, Original Trustee, for the benefit of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS")**, AS DESIGNATED NOMINEE FOR AMERICAN INTERNET MORTGAGE, INC., BENEFICIARY OF THE SECURITY INSTRUMENT, ITS SUCCESSORS AND ASSIGNS, Original Beneficiary, or designated nominee of the Original Beneficiary, and duly filed for record in the County Clerk and Recorder's Office of **CARBON** County, State of **MONTANA**, and recorded on **JANUARY 28, 2008** as Document No. **331212; MODIFICATION RECORDED ON 11/29/2017 AS DOCUMENT/INSTRUMENT #372038**.

LEGAL DESCRIPTION: THE LAND REFERRED TO IN THIS POLICY IS SITUATED IN THE STATE OF MONTANA, COUNTY OF CARBON, CITY OF SILESIA, AND DESCRIBED AS FOLLOWS: THAT PART OF NE1/4NE1/4 OF SECTION 26, TOWNSHIP 3 SOUTH, RANGE 23 EAST, OF THE PRINCIPAL MONTANA MERIDIAN IN CARBON COUNTY, MONTANA, DESCRIBED AS TRACT 1 OF CERTIFICATE OF SURVEY NO. 830 ON FILE IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY, UNDER DOCUMENT NO. 199927.

IN WITNESS WHEREOF, the undersigned has caused this Instrument to be executed on 9.4.19
NEWREZ LLC F/K/A NEW PENN FINANCIAL, LLC D/B/A SHELLPOINT MORTGAGE SERVICING

Cynthia Brock
CYNTHIA M. BROCK, VICE PRESIDENT

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE) ss.


On 9.4.19, before me, *Cynthia Brock* personally appeared **CYNTHIA M. BROCK** known to me to be the **VICE PRESIDENT** of **NEWREZ LLC F/K/A NEW PENN FINANCIAL, LLC D/B/A SHELLPOINT MORTGAGE SERVICING** the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

Cynthia Brock
COMMISSION EXP. 11/07/2027
NOTARY PUBLIC



State of Montana }
County of Carbon } SS

This instrument file # 394542 was filed in my
office on January 5, 2023 at 1:35 PM
Macque L. Bohleen
County Clerk Recorder

by  deputy
Fee \$24.00

Prepared By and Return To:

Collateral Department
Meridian Asset Services, LLC
3201 34th Street South, Suite 310
St. Petersburg, FL 33711
(239) 351-2442

Space above for Recorder's use



ASSIGNMENT OF DEED OF TRUST

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, **U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT**, whose address is **60 LIVINGSTON AVENUE, EP-MN-WS3D, ST. PAUL, MN 55107**, (ASSIGNOR), does hereby grant, assign and transfer to **U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR RCF 2 ACQUISITION TRUST**, whose address is **C/O SELENE FINANCE LP, 9990 RICHMOND AVE., SUITE 400 SOUTH, HOUSTON, TX 77042**, (ASSIGNEE), its successors, transferees and assigns forever, all beneficial interest under that certain deed of trust, together with the certain note(s) described therein with all interest, all liens, and any rights due or to become due thereon.

Date of Deed of Trust: **1/8/2008**

Original Loan Amount: **\$300,000.00**

Executed by (Borrower(s)): **TIMOTHY J. PARSONS & DENISE A. PARSONS**

Original Trustee: **FIRST AMERICAN TITLE COMPANY**

Original Beneficiary: **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS DESIGNATED NOMINEE FOR AMERICAN INTERNET MORTGAGE, INC., A CALIFORNIA CORPORATION, BENEFICIARY OF THE SECURITY INSTRUMENT, ITS SUCCESSORS AND ASSIGNS**

Filed of Record: In Book N/A, Page N/A

Document/Instrument No: **331212** in the Recording District of **Carbon, MT**, Recorded on **1/28/2008**.

Legal Description: **SEE EXHIBIT "A" ATTACHED**

Property more commonly described as: **4488 HIGHWAY 212, SILESIA, MONTANA 59041**



IN WITNESS WHEREOF, the undersigned by its duly elected officers and pursuant to proper authority of its board of directors has duly executed, sealed, acknowledged and delivered this assignment.

Date: DEC 16 2022

U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT, BY RUSHMORE LOAN MANAGEMENT SERVICES, LLC, ITS ATTORNEY-IN-FACT

By: David Segovia
Title: Assistant Secretary

[Signature]
Witness Name: Enadia Pierce

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT

State of TEXAS
County of DALLAS

On DEC 16 2022, before me, Sandra Cuellar, a Notary Public, personally appeared David Segovia, Assistant Secretary of/for **RUSHMORE LOAN MANAGEMENT SERVICES, LLC, AS ATTORNEY-IN-FACT FOR U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT**, personally known to me, or who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of TEXAS that the foregoing paragraph is true and correct. I further certify David Segovia, signed, sealed, attested and delivered this document as a voluntary act in my presence.

Witness my hand and official seal.

[Signature]

(Notary Name): Sandra Cuellar
My commission expires: 5-6-2024

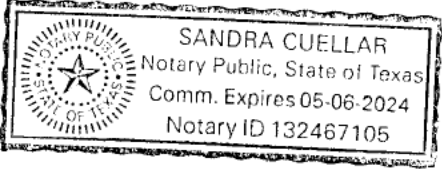


EXHIBIT "A"

The land referred to in this policy is situated in the **STATE OF MONTANA, COUNTY OF CARBON, CITY OF SILESIA**, and described as follows:

THAT PART OF NE1/4NE1/4 OF SECTION 26, TOWNSHIP 3 SOUTH, RANGE 23 EAST, OF THE PRINCIPAL MONTANA MERIDIAN IN CARBON COUNTY, MONTANA, DESCRIBED AS TRACT 1 OF CERTIFICATE OF SURVEY NO. 830 ON FILE IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY, UNDER DOCUMENT NO. 199927.



**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**DENISE ALLISON PARSONS and
TIMOTHY JAMES PARSONS,**

Debtor.

Case No. **1:22-bk-10100-BPH**

ORDER

In this Chapter 7 case, creditor U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust c/o U.S. Bank Trust National Association (“Creditor”) filed a “Motion to Modify Stay (Real Property)” on October 24, 2023, at ECF No. 111 (“Motion”). The Motion requests relief pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Creditor attached a “Notice” to its Motion consistent with Fed. R. Bankr. P. 4001, Mont. LBR 4001-1 and 9013-1. The Notice explains that the time to respond or object to the Motion and schedule the matter for a hearing is fourteen (14) days. The time to respond or object has passed. No responses or objections were filed. Accordingly, absent any opposition after notice,

IT IS ORDERED that pursuant to 11 U.S.C. § 362(d)(1) the Motion is granted. The stay afforded by 11 U.S.C. § 362(a) of the Bankruptcy Code is modified to permit Creditor to pursue its non-bankruptcy remedies against the following property of the estate:

That part of NE1/4NE1/4 of Section 26, Township 3 South, Range 23 East, of the Principal Montana Meridian in Carbon County, Montana, described as Tract 1, of Certificate of Survey No. 830 on file in the office of the Clerk and Recorder of said County, under Document No. 199927. (the “Property”).

IT IS FURTHER ORDERED that this Order is effective immediately and not stayed for fourteen days under Fed. R. Bankr. P. 4001(a)(3).

Dated November 13, 2023.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana

Exhibit 2

2021 Mont. B.R. 273

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

DANIELLE ANTOINETTE KENNEDY,

Debtor(s).

Case No. 21-10024-BPH

O R D E R

In this Chapter 7¹ bankruptcy, a hearing was held on June 22, 2021, on the Trustee’s Notice of Intent to Sell Property with Opportunity for Upset Bid on May 26, 2021, at ECF No. 24 (“Notice”). Although no objections were filed within the time permitted under the applicable rules, the Court deemed it necessary to have a hearing to obtain clarification from the Trustee on a couple points. After the hearing was scheduled, the Trustee filed a Corrected Notice of Intent to Sell at ECF No. 28 (“Corrected Notice”). Appearances were noted on the record.

The Corrected Notice recites that the Trustee intends to sell to the Debtor whatever interest the Estate has in a 2017 Ford F150 – VIN 1FTEW1EP4HKC36246 (“Ford”) as a result of Debtor’s bankruptcy filing. The Ford will be sold without any warranty of any kind, “as is/where is.” The Ford is subject to a lien held by First Interstate Bank in the approximate amount of \$19,000. Debtor claims an exemption in the Ford in the amount of \$2,500. Subject to any upset bid, the sales price will be \$2,500. According to the Corrected Notice, the sale is pursuant to § 363 and Rule 2002. The Corrected Notice concludes, “Upon completion of the sale

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all “Rule” references are to the Federal Rules of Bankruptcy Procedure, and all “Civil Rule” references are to the Federal Rules of Civil Procedure.

2021 Mont. B.R. 274

Trustee will notify the Court of the successful bid and bidder and will request that a final Order be issued approving the sale.” No upset bids were received.

The rights and powers of the Trustee to use, sell, or lease the property of the estate are set forth in § 363 and make a distinction between transactions “other than in the ordinary course of business” and “in the ordinary course of business.” *See* § 363(b) and (c). Further, a sale may be “free of liens or interests.” § 363(f). In this case, the Corrected Notice did not explicitly identify the subsection of § 363 that was applicable to the Notice. The Trustee confirmed at the hearing that relief was being requested pursuant to § 363(b). The sale is not in the ordinary course of business.

Before a sale under § 363(b) may occur, the Trustee must provide notice and an opportunity for a hearing. Rule 6004 makes Rule 2002 applicable, and the applicable notice period is 21 days. Rule 2002(a)(2). The Court may for cause reduce the notice period. Rule 9006(c). A hearing is only necessary if there is an objection to the notice. § 102(1).

Importantly, sales pursuant to § 363(b) may occur without court action. *In re Robert L. Hallamore Corp.*, 40 B.R. 181, 182-83 (Bankr. D. Mass. 1984) (“The 1978 Bankruptcy Code radically changed the procedure for selling property of the estate In the absence of objections or counter-offers, a sale in accordance with Section 363, Rule 2002 and Rule 6004 does not require court approval Pursuant to Section 102(1), absent a request for a hearing the sale will take place without court order.”)

Despite the application and interpretation afforded § 363, the Corrected Notice indicated that a final Order will be requested approving the sale. The Court questioned the necessity of this prospective future request since there were no objections in this case. The Trustee explained that the practice of filing a notice and requesting an order, even though an order is not required under

2021 Mont. B.R. 275

these circumstances, reflected a practice and custom that has long been a feature in this District. He explained that it is in essence a “comfort order.” Although this Court appreciates the practical implications of such an order, it is reluctant to dole out orders like papal blessings simply because it reassures the buyer or other parties.

Courts have reached different results when tasked with whether to enter an order approving a sale under § 363(b)(1). A noted commentator explains:

A legitimate question is whether a sale grounded upon an authorization arising from a failure to object timely by requesting a hearing is entitled to the full dignity of a judicial sale. When the sale is of an asset of significant value, it may well be that the trustee should request a formal hearing so that an order approving both the notice and the sale may be obtained. Such an order can provide the purchaser with greater assurance that it is receiving good title. Some courts have refused to give such an order for sale of unencumbered personal property, reasoning that section 363(b)(1) and Rule 6004 make an order unnecessary, while acknowledging that in complex matters, an order may be appropriate.

3 Collier on Bankruptcy ¶ 363.02 (16th ed. 2021). At the hearing the Trustee explained that the better practice would be to file a motion when an order from the Court is sought, and in less significant matters, provide notice and in the absence of an objection, proceed without a court order.² Filing a motion would clearly signal to the Court when its involvement is being requested. Alternatively, a notice would signal that absent an objection, the sale will occur as noticed without court involvement. This approach is more consistent with the Code and cases interpreting it. Having considered the Corrected Notice, and recognizing the change in practice discussed at the hearing is prospective,

² Currently, the Court receives “Notices” under § 363 that request a court order or allude to a future request for court order, and others that do not include such a request, and instead operate as § 363 was intended (absent objection no court order necessary).

2021 Mont. B.R. 276

IT IS ORDERED the Corrected Notice at ECF No. 28 is approved. The Trustee shall complete the sale to the Debtor in the absence of objection or upset bid in accordance with the Corrected Notice.

Dated June 22, 2021.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana

Exhibit 3

Richard J. Samson
CHRISTIAN SAMSON & BASKETT, PLLC
310 W. Spruce St.
Missoula, MT 59802
Telephone: (406)721-7772
Fax:(406)721-7776
E-mail: rjs@csblawoffice.com
Attorney ID No. 1904
Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

IN RE:)
)
JERI C. GOODWIN) Case No. **18-60741-7**
JENNY E. GOODWIN,)
)
Debtor.)

**TRUSTEE'S MOTION FOR AUTHORITY TO SELL DEBTOR'S INTEREST IN
JOINTLY OWNED PROPERTY
(11 U.S.C. §§363(b))**

COMES NOW, the Chapter 7 Trustee, Richard J. Samson ("Trustee"), and respectfully requests the Court to enter an Order authorizing the sale of the estate's interest in certain real property of this estate, pursuant to 11 U.S.C. § 363(b). The basis for the proposed sale is as follows:

1. Debtors filed a voluntary petition under Chapter 7, Title 11, U.S.C., on July 30, 2018. Trustee was appointed to serve in this case on or about the same date and remains as the duly qualified and acting Trustee in the case.

2. Part of the property of this Bankruptcy Estate consists of certain real property described as follows:

Tract 33 located in the N1/2SW1/4SE1/4 OF Section 22, Township 11 North, Range West, M.P.M. Lewis and Clark County, Montana.

3. Trustee proposes to sell the estate's interest in said real property, for the total cash sum of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) to Debtor, Jenny E. Goodwin. The proposed sale price has previously been paid by the Debtor to the Trustee.

4. The bankruptcy estate's interest in the subject real property arises from a one-half ($\frac{1}{2}$) ownership interest held by Debtor Jenny E. Goodwin (Debtor). Debtor holds a one-half ($\frac{1}{2}$) interest in the subject real property, together with her brother, Dale D. Hoffman, who also maintains a one-half ($\frac{1}{2}$) ownership interest. The property was gifted to the Debtor and her brother as joint tenants by their parents on or about December 28, 2007.

5. The Trustee's proposed sale of the real property to Debtor Jenny E. Goodwin shall be "AS IS, WHERE IS" and be "subject to" any and all liens which may encumber the subject real property, including real property taxes.

6. Based on his analysis and investigation of the subject real property, Trustee represents that he believes the proposed sale price of \$10,000.00 is a fair and reasonable offer for the sale of the Debtor's equity in the subject real property. Trustee's investigation of the real property revealed that starting in approximately 2015, the Debtor's brother, Dale E. Hoffman, reached a verbal agreement with the Debtor to purchase/acquire her one-half ($\frac{1}{2}$) interest in the real property for the cash sum of \$80,000.00. An initial down payment for the purchase of the Debtor's one-half ($\frac{1}{2}$) interest in the amount of \$40,000.00 was paid on May 20, 2015. Thereafter, the Debtor's brother completed his purchase of the Debtor's one-half ($\frac{1}{2}$) interest in the real property with two (2) payments in the sum of \$20,000.00 each, that were paid on

December 4, 2017 and December 28, 2017, respectively. Trustee has obtained copies of the wire transfer receipts from the purchaser, Dale E. Hoffman, which confirm his payments to the Debtor, Jenny E. Goodwin, to acquire her one-half (1/2) interest. Based on the payments to the Debtor by her brother, Trustee does not dispute that Dale E. Hoffman has both a title interest as well as an equitable interest in all of the subject real property.

7. Trustee has also consulted with a real estate broker located in Helena, Montana to assist him in the determination of the fair market value for the subject real property. The real property consists of approximately 20 acres of vacant land with several “shacks” or outbuildings. The real estate broker advised Trustee that the fair market value of the subject real property is in the range of \$160,000.00 to \$200,00.00. Debtors’ Schedules listed the value of the real property to be \$144,794.00.

8. Based on the foregoing information and taking into account the equitable claim of the Debtor’s brother in and to the subject real property, Trustee believes that the Debtor’s offer in the amount of \$10,000.00 to purchase any remaining equity in the subject real property is fair and reasonable.

9. Trustee will incur no additional costs or expenses related to the sale of the Debtor’s interest in the real property.

WHEREFORE, Trustee respectfully requests the Court to enter its Order authorizing the sale of said real property as described herein for the cash sum of \$10,000.00, to Debtor, Jenny E. Goodwin

DATED this 12th day of July, 2021.

CHRISTIAN SAMSON & BASKETT, PLLC

By: /s/ Richard J. Samson

Richard J. Samson
Chapter 7 Trustee

CERTIFICATE OF SERVICE

The undersigned does hereby certify under penalty of perjury that on September 23, 2022, a true and correct copy of the foregoing Motion for Authority to Sell Debtor's Interest in Jointly Owned Property was served by either electronic means, pursuant to LBR 7005-1, 9013(c) and 9036-1, on all parties entitled to notice through the Court's ECF system and/or by regular first class mail, postage prepaid, at Missoula, Montana, to those persons requesting special notice in this case and to those persons or entities further identified below:

Office of the U.S. Trustee
(Via ECF)

Gregory Duncan
(Via ECF)

/s/ Richard J. Samson

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**JERI C. GOODWIN and
JENNY E. GOODWIN,**

Debtors.

Case No. **18-60741-BPH**

ORDER

In this Chapter 7 bankruptcy, pursuant to 11 U.S.C. § 363(b), the Trustee filed a “Motion for Authority to Sell Debtor’s Interest in Jointly Owned Property” on September 23, 2022, at ECF No. 32 (“Motion”). Upon review of the Trustee’s Motion and no objections having been received,

IT IS ORDERED that the Trustee’s Motion is GRANTED; and Richard J. Samson, the Trustee herein, is authorized to sell - in accordance with the Trustee’s Motion - to Debtor Jenny E. Goodwin, for \$10,000.00, the Estate’s interest in the following property:

Tract 33 located in the N1/2SW1/4SE1/4 OF Section 22, Township 11 North,
Range West, M.P.M. Lewis and Clark County, Montana.

IT IS FURTHER ORDERED that Trustee shall promptly file a Report of Sale as required by Fed. R. Bankr. P. 6004(f)(1) upon completion of said sale.

Dated October 18, 2022.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana

Exhibit 4

Bret T. Allred 56499647
117 N Bent St, Powell, WY 82435
Phone: 406-606-9700
Fax: 866-875-7582
bret@YellowstoneLawGroup.com
State Bar I.D. Number: 56499647 MT
(Attorney for Debtor(s))

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re:

TIMOTHY PARSONS, and,

DENISE PARSONS

Debtor(s).

Case No. 1:23-bk-10100-BPH

Chapter 13

MOTION FOR SALE OF PROPERTY, FREE
AND CLEAR OF LIENS, REQUEST FOR
EXPEDITED HEARING, AND NOTICE

COMES NOW, the Debtors through counsel and hereby moves the Court for an order allowing Debtor to sell the property located in Carbon County, Montana free and clear of liens, pursuant to 11 U.S.C. §363(f). Said property is more particularly described as follows:

That part of NE1/4NE1/4 of Section 26, Township 3 South, Range 23 East, of the Principal Montana Meridian in Carbon County, Montana, described as Tract 1 of Certificate of Survey No. 830 on file in the office of the clerk and Recorder of said County, under Document No. 199927.

1. The Debtors as joint tenants of the property have received a buy-sell offer for the sale of the property from **Brendon Zierlein** for the sum of **\$600,000.00**. A copy of the Buy-Sell Agreement is attached hereto as **Exhibit "A"** and incorporated herein.
2. After costs of sale, real estate taxes, and the claims of secured creditors, the net sale proceeds will be paid to the Chapter 13 Trustee to be disbursed pursuant to the Chapter 13 Plan.
3. The following creditors have lien priorities on the subject property:
 - a. Any **property taxes** owed to Carbon County, Montana.
 - b. **Opportunity Bank of Montana** is owed approximately **\$96,339.60**.
 - c. **Selene** is owed approximately **\$393,181.67**.

4. Secured creditors shall retain their priority liens on the sale proceeds.
5. Any remaining monies from the sale, after payment of administrative expenses, and disbursements made pursuant to a confirmed Chapter 13 Plan, shall be paid to Debtor.
6. If the sale is not timely approved, Debtor may suffer irreparable harm. If the sale is approved, the existing secured creditors will not be harmed as they will be paid in full as set forth in this Motion. All other creditors will benefit as well.
7. Accordingly, in the event an objection is filed, the Debtor requests that the Court schedule a hearing on shortened notice relative to this motion.
8. Pursuant to F.R.B.P. 6004(h), Debtor also requests that the Order authorizing the sale of the property be effective immediately and not stayed for fourteen (14) days.

WHEREFORE, Debtor respectfully requests the Court approve the subject sale, free and clear of liens and Order monies be paid as set forth above.

DATED this 24th day of August 2023.

/s/ Bret T. Allred
BRET T. ALLRED
(Attorney for Debtor)

NOTICE OF OPPORTUNITY TO RESPOND
AND REQUEST A HEARING

If you object to the motion, you must file a written responsive pleading and request a hearing within twenty-one (21) days of the date of the motion. The responding party shall schedule the hearing on the motion at least twenty-one (21) days after the date of the response and request for hearing and shall include in the caption of the responsive pleading in bold and conspicuous print the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING

Date: _____

Time: _____

Location: _____

If no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.

DATED this 24th day of August 2023.

/s/ Bret T. Allred
BRET T. ALLRED

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify under penalty of perjury that on the 24th day of August 2023, a copy of the foregoing was served by electronic means pursuant to LBR 9013-1(d)(2) on the parties noted in the Court's ECF transmission facilities and/or by mail on the following parties:

See attached mailing matrix.

** The attached list will not be mailed out to creditors but will be on file with the United States Bankruptcy Court. A copy will be provided upon request.*

/s/ Bret T. Allred
BRET T. ALLRED

LIST OF CREDITORS

Absolute Resolutions
ATTN: Bankruptcy
8000 Norman Center Dr., #350
Bloomington, MN 55437

Capital One
ATTN: Bankruptcy
PO Box 30285
Salt Lake City, UT 84130

Chase Card Services
ATTN: Bankruptcy
PO Box 15298
Wilmington, DE 19850

Griffith Vance
96 Clarks River Rd
Joliet, MT 59041

Montana Department of Revenue
PO Box 7701
Helena, MT 59604

Opportunity Bank of Montana
1400 Prospect Ave
Helena, MT 59601

Selene
P.O. Box 8619
Philadelphia, PA 19101-8619

US Bank National Association
425 Walnut St., FL 14
Cincinnati, OH 45202-3989

U.S. Trustee's Office

Chapter 13 Trustee.

BUY - SELL AGREEMENT (Residential)

(Including Earnest Money Receipt)



This Agreement stipulates the terms of sale of this property. Read carefully before signing. This is a legally binding contract. If not understood, seek competent advice.

1 Date: 08/19/2023
2 Brendon L. Zierlein

3 as joint tenants with rights of a survivorship, tenants in common, individually, other
4 _____ (hereafter the "Buyer") agrees to purchase, and the Seller agrees to
5 sell the following described real property (hereafter the "Property") commonly known as

6 _____
7 94 CLARKS RIVER ROAD
8 in the City of Joliet, County of Carbon, Montana,
9 legally described as: S26, T03 S, R23 E, TR 1 COS 830

10 _____
11 _____
12 TOGETHER with all interest of Seller in vacated streets and alleys adjacent thereto, all easements and other
13 appurtenances thereto, and all improvements thereon. All existing permanently installed fixtures and fittings that are
14 attached to the Property are included in the purchase price and transfer to the Buyer. Certain fixtures and fittings are
15 included in the purchase price and transfer to the Buyer regardless of whether they are in fact permanently installed and
16 attached to the Property. These fixtures and fittings are electrical, plumbing and heating fixtures, Seller owned water
17 softeners/conditioners and propane tanks, wood, pellet, or gas stoves, built-in appliances, screens, storm doors, storm
18 windows, curtain rods and hardware, window treatments, attached floor coverings, television wall mounts, satellite dish,
19 hot tub, air cooler or conditioner, garage door openers and controls, fireplace inserts, mailbox, storage sheds, trees and
20 shrubs and perennials attached to the Property, attached buildings or structures, unless otherwise excluded below:

24 PURCHASE PRICE AND TERMS:

25 \$ 575,000.00 Purchase Price: Five Hundred Seventy-Five Thousand (U.S. Dollars)
26 \$ 1,000.00 Earnest Money (credited to Buyer at closing)
27 \$ 574,000.00 Balance Due (not including closing costs, prepaids and prorations) payable as follows

28 (check one):
29 All cash at closing (no financing contingency);
30 Certification of cash funds provided with offer **OR** delivered by Buyer within
31 _____ days of the date all parties have signed this Agreement.
32 Additional cash down payment at closing in the minimum amount of:
33 \$ _____ **OR** _____ % of the Purchase Price
34 Balance to be financed as indicated below:
35 Conventional FHA VA MBOH USDA-RD Seller Financing Assumption
36 Other:

37 _____
38 Pre-approval letter from financial institution provided with offer **OR** delivered by Buyer
39 within _____ days of the date all parties have signed this Agreement.

40 _____
41 **CLOSING DATE:** The date of closing shall be (date) 09/22/2023 (the "Closing Date").
42 The parties may, by mutual agreement, close the transaction anticipated by this Agreement at any time prior to the date
43 specified. The Buyer and Seller will deposit with the closing agent all instruments and funds necessary to complete the
44 purchase in accordance with this Agreement. If third party financing is required by the terms of this Agreement (including
45 assumptions, contracts for deed, and lender financing), the Closing Date may be extended without amendment by not
46 more than 7 days to accommodate delays attributable solely to such third party financing including, but not limited
47 to, delays attributable to governmental regulations. If the Closing Date, or any extension of the Closing Date, falls on a
48 Saturday, Sunday or Montana or federal holiday, it shall automatically be extended to the first day immediately following
49 that is not a Saturday, Sunday or Montana or federal holiday.

Authentic
BZ

Buyer's Initials

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Buy - Sell Agreement Residential, April 2022

TJP DAP

Seller's Initials

50 **POSSESSION:** Seller shall deliver to Buyer possession of the Property and allow occupancy:
51 when the closing agent is in receipt of all required, signed documents and all funds necessary for the purchase: OR
52 upon recording of the deed or notice of purchaser's interest, OR
53

54 _____
55 Property shall be vacant unless otherwise agreed in writing. Seller shall provide keys and/or means to operate locks,
56 mailboxes, security systems, alarms, garage door opener(s), and Property Owner's Association facilities, if applicable.
57

58 **EARNEST MONEY:** (check one)
59 Broker/Salesperson acknowledges actual receipt of earnest money in the amount as set forth herein as evidenced by
60 check, cash or wire transfer.
61

62 Broker/Salesperson: Michelle Garton _____
63 (name printed) (signature acknowledging receipt of earnest money)

64 **OR**

65
66 Buyer agrees to provide earnest money in the amount as set forth herein within 3 days, by 5:00 p.m. (Mountain
67 Time), of the date all parties have signed this Agreement. If the date the earnest money is due falls on a Saturday,
68 Sunday or Montana or federal holiday, it shall be paid on the first day immediately following the due date that is not a
69 Saturday, Sunday or Montana or federal holiday.
70

71 Earnest money may be made by check, cash or wire transfer and shall be held in trust by First Montana Title
72 _____. If Buyer fails to provide earnest money as set forth herein,
73 Buyer will be in default and Seller may declare this Agreement terminated and any earnest money already paid forfeited.
74 The parties agree that accrued interest, if any, shall be payable to the holder of the funds and that sums so paid are
75 consideration for services rendered.
76

77 **PERSONAL PROPERTY:** The following items of personal property, free of liens and without warranty of condition, are
78 included and shall transfer to the Buyer at Closing:
79 2 Refrigerators, 1 Oven, 1 Stove, 2 Dishwashers, 1 Oven/Range (Second house), Microwave, Metal
80 Shed
81

82 Buyer acknowledges that only the personal property set forth above is to transfer to the Buyer at Closing regardless of
83 any other advertisements or information to the contrary.
84

85 **LEASED/RENTED PERSONAL PROPERTY:** The following personal property is leased/rented: water softener
86 water conditioner propane tank satellite dish, satellite control alarm system other _____
87 _____

88 Buyer is responsible for making arrangements concerning Buyer's right to lease/rent said items and Seller makes no
89 representations or warranties concerning the transferability of said items or the assignment of any agreements relating to
90 the lease/rental of said items.
91

92 **FINANCING CONDITIONS AND OBLIGATIONS:**

93
94 **BUYER'S REPRESENTATION OF FUNDS:** Buyer represents that they have sufficient funds for the down payment
95 and closing costs to close this sale in accordance with this Agreement and are not relying upon any contingent source
96 of such funds unless otherwise expressly set forth herein.
97

98 **LOAN APPLICATION:** If Buyer fails to (i) make written application for financing with a lender which shall include
99 providing a full executed copy of this Agreement to the lender, provide notice of their intent to a lender and pay to the
100 lender any required fees, (ii) apply for assumption of an existing loan or contract, or (iii) initiate any action required
101 for completion of seller financing by 5:00 P.M. (Mountain Time) (date) Complete Buyer will be in breach
102 of this Agreement and Seller can exercise Seller's remedies under this Agreement. This clause shall not be construed
103 to restrict Buyer's right to review a loan estimate granted by governmental regulations.

Authentic
BZ

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Buy - Sell Agreement Residential, April 2022

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Buyer's Initials

Seller's Initials

104 **V.A. BUYERS:** It is expressly agreed that, notwithstanding any other provisions of this contract, the Buyer shall not
105 incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the Property
106 if the contract purchase price or cost exceeds the reasonable value of the Property established by the Veteran's
107 Administration. The Buyer shall, however, have the privilege and option of proceeding with the consummation of this
108 Agreement without regard to the amount of the reasonable value established by the Veteran's Administration.

109
110 **F.H.A. BUYERS:** In the event funds for the transaction anticipated by this Agreement are to be derived from an F.H.A.
111 insured loan, it is expressly agreed that, notwithstanding any other provisions of this Agreement, the Buyer shall not be
112 obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest
113 money deposits or otherwise, unless the Buyer has received a written statement issued by the Federal Housing
114 Commissioner, Veteran's Administration, or a Direct Endorsement lender setting forth the appraised value of the
115 Property for mortgage insurance purposes of not less than the amount set forth in the APPRAISAL PROVISION section,
116 which amount is incorporated herein by reference. The Buyer shall have the privilege and option of proceeding with the
117 consummation of this Agreement without regard to the amount of the appraised valuation made by the Federal Housing
118 Commissioner. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing
119 and Urban Development (HUD) will insure. HUD does not warrant the value nor the condition of the Property. The Buyer
120 should satisfy himself/herself that the price and condition of the Property are acceptable.

121
122 **DETECTION DEVICES:** The Property is equipped with the following detection devices:
123 Smoke detector(s)
124 Carbon monoxide detector(s)
125 Other fire detection device(s): _____
126 _____
127

128 **PROPERTY INSPECTIONS:** The Buyer is aware that any Brokerage Firm(s) and Brokers/Salespersons involved in the
129 transaction anticipated by this Agreement have not conducted an expert inspection or analysis of the Property or its
130 condition and make no representations to the Buyer as to its condition, do not assure that the house and/or buildings will
131 be satisfactory to the Buyer in all respects, that all equipment will operate properly or that the Property and/or
132 improvements comply with current building and zoning codes and ARE NOT building inspectors, building contractors,
133 structural engineers, electricians, plumbers, sanitarians, septic or cesspool experts, well drillers or well experts, land
134 surveyors, civil engineers, flood plain or water drainage experts, roofing contractors or roofing experts, accountants,
135 attorneys, or title examiners, or experts in identifying hazardous waste and/or toxic materials.

136
137 **CONTINGENCIES:** The contingencies set forth in this Agreement or on attached addenda shall be deemed to have been
138 released, waived, or satisfied, and the Agreement shall continue to closing, unless, by 5:00 p.m. (Mountain Time) on the
139 date specified for each contingency, the party requesting that contingency has notified the other party or the other party's
140 Broker/Salesperson in writing that the contingency is not released, waived, or satisfied. If a party has notified the other
141 party on or before the release date that a contingency is not released, waived, or satisfied, this Agreement is terminated,
142 and the earnest money will be returned to the Buyer, unless the parties negotiate other terms or provisions.

143
144 **INSPECTION CONTINGENCY:**
145 This Agreement is contingent upon Buyer's acceptance of any Property conditions that Buyer deems appropriate,
146 including but not limited to any inspections or advice listed below. Buyer agrees to acquire, at Buyer's own expense,
147 independent inspections or advice from qualified inspectors or advisors of the Buyer's choice. Buyer agrees that any
148 investigations or inspections undertaken by Buyer or on his/her behalf shall not damage or destroy the Property,
149 without the prior written consent of Seller. Seller agrees to provide Buyer and Buyer's agents, inspectors and advisors
150 reasonable access to the Property to conduct any inspections desired by Buyer. Buyer agrees to indemnify, defend
151 and hold harmless Seller from any and all claims or damage, including attorney's fees, caused by or incurred during
152 any inspections of the Property by or on behalf of the Buyer and that arise out of or are related to (i) any loss or
153 damage to the Property or the contents of the Property caused by any inspection or (ii) any injury to Buyer or Buyer's
154 inspectors or advisors.

- | | |
|---|---|
| 156 Home/Property Inspection | Review and Approval of Protective Covenants |
| 157 Owner's Property Disclosure Statement | Easements |
| 158 Roof Inspection | Flood Plain Determination |
| 159 Structural/Foundation Inspection | Water Sample Test |
| 160 Electrical Inspection | Septic or Cesspool Inspection |
| 161 Plumbing Inspection | Mineral Rights Search |
| 162 Heating, ventilation, cooling system – Inspection | Radon |

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- 163 Stove/Fireplace Inspection
- 164 Pest/Rodent Inspection
- 165 Well Inspection for Condition of Well and Quantity of Water
- 166 Accounting Advice
- 167 Survey or Corner Pins located
- 168 Access to Property
- 169 Verification of # of code compliant bedrooms
- 170 Verification of square footage of improvements
- 171 Water Rights
- 172 Zoning Determination
- 173 Post-Closing Rental Obligations
- 174 Inspection/Testing for Methamphetamine

- Asbestos
- Wild Fire Risk
- Legal Advice
- Toxic Waste/Hazardous Material
- Underground Storage Tanks
- Sanitary Approval/Septic permit
- Mold
- Verification of lot size
- Airport Affected Area
- Road Maintenance
- Internet Availability/Speed

176 Unless Buyer delivers written notice(s) of Buyer's disapproval of the Property conditions on or before
 177 (Notice Date) 08/29/2023 at 5:00 p.m. (Mountain Time), this inspection contingency shall be of
 178 no further force or effect. **If Buyer disapproves** of the Property condition, Buyer shall deliver written notice to the
 179 Seller or the Seller's Broker/Salesperson on or before the date specified above, together with a copy of ONLY that
 180 portion of the inspection or report upon which the disapproval is based. Buyer shall also state whether Buyer elects
 181 to immediately terminate the Agreement or negotiate a resolution of the conditions noted. **If Buyer elects to**
 182 **negotiate** a resolution of the conditions noted, the notice must contain all of Buyer's objections and requested
 183 remedies.

185 If the parties enter into a written agreement in satisfaction of the conditions noted, this contingency shall be of no
 186 further force or effect. If the parties cannot come to written agreement in satisfaction of the conditions noted or if the
 187 Buyer does not withdraw, in writing, his/her disapproval of the condition noted, on or before
 188 (Resolution Date) 08/29/2023 at 5:00 p.m. (Mountain Time), the earnest money shall be returned
 189 to the Buyer, and the Agreement then terminated.

191 **FINANCING CONTINGENCY:**

192 This Agreement is contingent upon Buyer obtaining the financing specified in the section of this Agreement entitled
 193 "PURCHASE PRICE AND TERMS." If financing cannot be obtained by the Closing Date this Agreement is
 194 terminated and the earnest money will be refunded to the Buyer.

196 **APPRAISAL CONTINGENCY:**

197 Property must appraise for at least the Purchase Price **OR** at least \$ _____. If the
 198 Property does not appraise for at least the specified amount, this Agreement is terminated and earnest money
 199 refunded to the Buyer unless the Buyer elects to proceed with closing this Agreement without regard to appraised
 200 value. Written notice of Buyer's election to proceed shall be given to Seller or Seller's Broker/Salesperson within
 201 3 days of Buyer or Buyer's Broker/Salesperson receiving notice of appraised value; **OR**
 202 This Agreement is contingent upon the Property appraising for at least the Purchase Price **OR** at least
 203 \$ _____. Release Date: _____ at 5:00 p.m. (Mountain Time).

205 **TITLE CONTINGENCY:** This Agreement is contingent upon Buyer's receipt and approval (to Buyer's satisfaction) of
 206 the preliminary title commitment (the "Commitment") issued for the Property. However, Buyer may not object to the
 207 standard pre-printed exceptions (general exceptions not unique to the Property).
 208 Release Date: 5 days from the earlier of Buyer's or Buyer Broker's/Salesperson's receipt
 209 of the Commitment.

211 Buyer may approve the Commitment subject to the removal of specified exceptions. However, Buyer may not object
 212 to the standard pre-printed exceptions (general exceptions not unique to the Property). If Buyer provides Seller written
 213 objections to the Commitment prior to the release date above, Seller shall have ten (10) days from receipt of those
 214 objections to satisfy said objections or propose to Buyer a plan by which the objections would be satisfied within a
 215 time frame satisfactory to Buyer. If within said ten (10) day period Seller has not either satisfied Buyer's objection to
 216 the Commitment or proposed to Buyer a plan by which the objections would be satisfied, Buyer shall have three (3)
 217 days after expiration of said ten (10) day period to notify Seller whether Buyer desires to (i) terminate this Agreement
 218 in which case the earnest money shall be returned to the Buyer or (ii) waive said objections in which case this
 219 Agreement shall remain in full force and effect. The two remedies stated above shall be Buyer's sole remedies if
 220 Seller and Buyer are unable to resolve Buyer's objections to the Commitment.

221 



222 Buyer shall have the right to examine any updated or revised Commitment at any time after the expiration of the Release
223 Date set forth above and to object to any new title exceptions created or suffered since the effective date of the original
224 Commitment. If Buyer notifies Seller of any such additional objections prior to the Closing Date, the parties shall have
225 the same rights set forth above and the Closing Date shall be extended by the number of days equal to the number of
226 days set forth after the Release Date, above, plus thirteen (13).

227
228 **INSURANCE CONTINGENCY:** This Agreement is contingent upon Buyer's ability to acquire, at a rate acceptable to
229 the Buyer, hazard insurance on the Property. Release Date: 08/25/2023 at 5:00 p.m. (Mountain Time).

230
231 **LEAD BASED PAINT CONTINGENCY:** For housing built prior to 1978, if Seller is required by applicable law to
232 provide a Lead Based Paint Disclosure and pamphlet entitled "Protect Your Family from Lead in Your Home" (the
233 LBP Documents), and if said LBP Documents have been provided to Buyer **after** the full execution of this Agreement
234 by all parties, Buyer shall have the unconditional right to cancel this Agreement (without risk of loss or other adverse
235 effects) within three (3) days after electronic or hand delivery of the LBP Documents, or five (5) days after deposit of
236 the LBP Documents in the mail, by giving written notice of cancellation to Seller or Seller's Broker/Salesperson.

237
238 This Agreement is contingent upon

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241 Release Date: _____ at 5:00 p.m. (Mountain Time).

242 This Agreement is contingent upon

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246 Release Date: _____ at 5:00 p.m. (Mountain Time).

247
248 **ADDITIONAL PROVISIONS:**

249 Home inspection is being done for Buyers to be fully aware of the home's current condition, and to
250 either proceed with the sale or terminate. Buyers are aware home is being sold "as is."

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271 **CONVEYANCE:** The Seller shall convey the Property by Warranty deed, free of
272 all liens and encumbrances except those described in the preliminary title commitment, as approved by the Buyer.

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274 **MANUFACTURED HOME(S):** If a MANUFACTURED HOME is included in the sale of this Property, title will be conveyed
275 at time of closing. Year _____ Make/Model _____
276 Serial Number _____ Title Number _____

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277 **WATER:** All water, including surface water or ground water, any legal entitlement to water, including statements of claim,
278 certificates of water rights, permits to appropriate water, exempt existing rights, decreed basins or any ditches, ditch rights,
279 or ditch easements appurtenant to and/or used in connection with the Property are included with the Property, except
280

281 Filing or transfer fees will be paid by Seller, Buyer, split equally between Buyer and Seller.
282 Documents for transfer will be prepared by First Montana Title

283
284 **WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:** By Montana law, failure of the parties at closing or transfer of
285 real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating
286 water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of
287 water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could
288 result in a penalty against the transferee and rejection of the deed for recording.
289

290 **NATURAL WATER BODIES AND LAND PRESERVATION DISCLOSURE:** Buyers of property in the State of Montana
291 should be aware that some properties contain or are adjacent to streams, rivers, wetlands, floodplains and other water
292 bodies. It is the general policy of the State of Montana that natural water bodies and the lands immediately adjacent to
293 them are to be protected and preserved to be available in their natural or existing state, and to prohibit unauthorized
294 projects related thereto. Property owners should consult their local soil conservation board, a land use professional, or
295 other qualified advisor, regarding any applicable local, state or federal regulations, including permitting or other approvals,
296 before working in or around any streams, rivers, wetlands, floodplains or other water bodies, including vegetation removal.
297

298 **MINERAL RIGHTS:** "Mineral rights" as defined in this Agreement (which may be different than the definition under
299 Montana law) is a term used to describe the rights the owner of those rights has to use, mine, and/or produce any or all
300 of the minerals and hydrocarbons including oil, gas, coal, sand, gravel, etc., lying below the surface of property. These
301 mineral rights may be separate from the rights a property owner has for the surface of a property. In some cases, these
302 mineral rights have been transferred to a party other than the property owner and as a result the subsurface mineral rights
303 have been severed from the property owner's surface rights. If the mineral rights have been severed from the surface
304 rights, the owner of the mineral rights has the right to enter the land and occupy it in order to mine the minerals even
305 though they don't own the property. The undersigned Buyer acknowledges and agrees that neither the Seller nor the
306 brokerage firms, brokers and salespersons involved in the transaction anticipated by this Agreement warrant or make any
307 representations concerning the mineral rights, if any, for this Property and that neither the Seller nor the brokerage firms,
308 brokers and salespersons involved in the Buyer's purchase of the Property have conducted an inspection or analysis of
309 the mineral rights to and for the Property.
310

311 **CLOSING FEE:** The fee charged by the individual or company closing the transaction will be paid by Seller Buyer
312 Equally Shared.
313

314 **TITLE INSURANCE:** Seller, at Seller's expense and from a title insurance company chosen by Seller, shall furnish Buyer
315 with an ALTA Standard Coverage Owner's Title Insurance Policy (as evidenced by a standard form American Land Title
316 Association title insurance commitment) in an amount equal to the purchase price. Buyer may purchase additional owner's
317 title insurance coverage in the form of "Extended Coverage," "Enhanced Coverage" for an additional cost to the Buyer. It
318 is recommended that Buyer obtain details from a title company.
319

320 **CONDITION OF TITLE:** All mortgages, judgments and liens shall be paid or satisfied by the Seller at or prior to closing
321 unless otherwise provided herein. Seller agrees that no additional encumbrances, restrictions, easements or other
322 adverse title conditions will be placed against the title to the Property subsequent to the effective date of the preliminary
323 title commitment approved by the Buyer.
324

325 **SECTION 1031 LIKE-KIND EXCHANGE:** If either Buyer or Seller intends for this transaction to be part of a Section 1031
326 like-kind exchange, then the other party shall cooperate in the completion of the like-kind exchange provided the
327 cooperating party does not incur any additional liability or cost in doing so. Any party who intends for this transaction to
328 be part of a Section 1031 like-kind exchange may assign their rights under this Agreement to a qualified intermediary or
329 any entity expressly created for the purposes of completing a Section 1031 like-kind exchange, notwithstanding the
330 prohibition against the Buyer's assignment of this Agreement set forth in the "Binding Effect and Non-Assignability" section
331 below.

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332 **SPECIAL IMPROVEMENT DISTRICTS AND ASSOCIATION SPECIAL ASSESSMENTS:** All Special Improvement
333 Districts (including rural SIDs), and all special or non-recurring assessments of any non-governmental association,
334 including those that have been noticed to Seller by City/County but not yet spread or currently assessed or that have been
335 approved but not yet billed or assessed, will be assumed by Buyer at closing unless otherwise agreed.
336

337 **PRORATION OF TAXES AND ASSESSMENTS:** Seller and Buyer agree to prorate taxes, Special Improvement District
338 and association special assessments for the current tax year, as well as prepaid rents, water and sewer system charges,
339 heating fuel and tank rental, irrigation assessments, Homeowner's Association dues and/or common maintenance fees,
340 as of the date of closing unless otherwise agreed.
341

342 **HEATING FUEL/PROPANE PRORATION:** Seller and Buyer agree to prorate the heating fuel/propane at the current
343 market price as provided by a heating fuel/propane company no more than 7 days prior to closing, OR at the price charged
344 for the last refill per a receipt to be provided by the Seller prior to closing, whichever is LESS. If the heating fuel/propane
345 tank is rented, proration will be based on the most current rental fee charged or owing at the time of closing.
346

347 **CONDITION OF PROPERTY:** Seller agrees that the Property shall be in the same condition, normal wear and tear
348 excepted, from the date of the execution of this Agreement up to the time Buyer takes possession of the Property. Seller
349 agrees to leave the Property in broom clean or better condition, free and clear of Seller's personal property and
350 possessions, tenants, and occupants, except as otherwise agreed to in the Agreement. Seller also agrees to allow Buyer
351 a walk-through inspection of said Property prior to closing to confirm that all appurtenances and appliances included in
352 the sale remain on the Property and that there has been no significant change in the condition of the Property, except for
353 normal wear and tear and changes agreed upon by the parties.
354

355 **NOXIOUS WEEDS DISCLOSURE:** Buyers of property in the State of Montana should be aware that some properties
356 contain noxious weeds. The laws of the State of Montana require owners of property within this state to control, and to
357 the extent possible, eradicate noxious weeds. For information concerning noxious weeds and your obligations as an
358 owner of property, contact either your local county extension agent or Weed Control Board.
359

360 **MEGAN'S LAW DISCLOSURE:** Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code Annotated,
361 certain individuals are required to register their address with the local law enforcement agencies as part of Montana's
362 Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the information
363 concerning registered offenders available to the public. If you desire further information please contact the local County
364 Sheriff's office, the Montana Department of Justice, in Helena, Montana, and/or the probation officers assigned to the
365 area.
366

367 **RADON DISCLOSURE STATEMENT:** The following disclosure is given pursuant to the Montana Radon Control Act,
368 Montana Code Annotated Section 75-3-606. RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE
369 GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH
370 RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL
371 GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON
372 AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT. If the Property
373 has been tested for radon, the Seller will provide a copy of the test results concurrent with an executed copy of this
374 Agreement. If the Property has received radon mitigation treatment, the Seller will provide the evidence of the mitigation
375 treatment concurrent with an executed copy of this Agreement.
376

377 **NEWLY CONSTRUCTED RESIDENCE:** See "Newly Constructed Residence Addendum and Disclosure."
378

379 **BUYER'S REMEDIES:**

- 380 (A) If the Seller fails to accept the offer contained in this Agreement within the time period provided in the
- 381 BUYER'S COMMITMENT section, all earnest money shall be returned to the Buyer.
- 382 (B) If the Seller accepts the offer contained in this Agreement, but refuses or neglects to consummate the transaction
- 383 anticipated by this Agreement within the time period provided in this Agreement, the Buyer may:
- 384 (1) Demand immediate repayment of any earnest money paid by the Buyer, and upon the return of such
- 385 money, the rights and duties of Buyer and Seller under this Agreement shall be terminated;
- 386 **OR** (2) Demand that Seller specifically perform Seller's obligation under this Agreement;
- 387 **OR** (3) Demand monetary damages from Seller for Seller's failure to perform the terms of this Agreement.

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388 **SELLER'S REMEDIES:**

389 If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the transaction
390 anticipated by this Agreement within the time period provided in this Agreement, the Seller may:

- 391 (1) Declare the earnest money paid by Buyer be forfeited whereupon the rights and duties of the Buyer and Seller
- 392 under this Agreement shall be terminated;
- 393 **OR** (2) Demand that Buyer specifically perform Buyer's duties and obligations under this Agreement;
- 394 **OR** (3) Demand that Buyer pay monetary damages for Buyer's failure to perform the terms of this Agreement.

395
396 **BUYER'S AND SELLER'S CERTIFICATION:** By entering into this Agreement, each person or persons executing this
397 Agreement, as Buyer or Seller, represents that he/she is eighteen (18) years of age or older, of sound mind, and legally
398 competent to own or transfer real property in the State of Montana; and, if acting on behalf of a corporation, partnership,
399 or other non-human entity, that he/she is duly authorized to enter into this Agreement on behalf of such entity.

400
401 **FOREIGN PERSON OR ENTITY:** Section 1445 of the Internal Revenue Code provides for the withholding of tax upon
402 the sale of U.S. real property owned by a foreign entity or foreign person unless the amount realized (usually the sales
403 price) does not exceed \$300,000 and the Buyer intends to use the Property as a residence. If the Seller is a foreign entity
404 or foreign person, Seller acknowledges and agrees that the Buyer or closing agent is required to deduct and withhold the
405 applicable tax from the proceeds of sale at closing and submit the tax to the Internal Revenue Service unless the transfer
406 of the Property satisfies an exception provided for in Section 1445 of the Internal Revenue Code.

407
408 **CONSENT TO DISCLOSE INFORMATION:** Buyer and Seller hereby consent to the procurement and disclosure by
409 Buyer, Seller, and Brokers/Salespersons and their attorneys, agent, and other parties having interests essential to this
410 Agreement, of any and all information reasonably necessary to consummate the transaction anticipated by this
411 Agreement, specifically including access to escrows for review of contracts, deeds, trust indentures, or similar documents
412 concerning this Property or underlying obligations pertaining thereto.

413
414 **WIRE FRAUD ALERT:** Criminals are hacking email accounts of title companies, real estate agents, settlement attorneys
415 and others, resulting in fraudulent wire instructions being used to divert funds to the account of the criminal. The emails
416 may look legitimate, but they are not. Buyer and Seller are advised NOT to wire any funds without personally speaking
417 with the intended recipient of the wire to confirm the routing number and the account number. Buyer and Seller should
418 NOT send personal information such as social security numbers, bank account numbers and credit card numbers through
419 email.

420
421 **RISK OF LOSS:** All loss or damage to any of the above-described Property or personal property from any cause is
422 assumed by Seller through the time of closing unless otherwise specified.

423
424 **TIME IS OF THE ESSENCE:** Time is of the essence as to the terms and provisions of this Agreement.

425
426 **BINDING EFFECT AND NON-ASSIGNABILITY:** The Agreement is binding upon the heirs, successors and assigns of
427 each of the parties hereto; however, Buyer's rights under this Agreement are not assignable without the Seller's express
428 written consent.

429
430 **ATTORNEY FEE:** In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement, the
431 prevailing party in such action shall be entitled to such reasonable attorney fees as the court or arbitrator shall determine
432 just.

433
434 **COMMISSION:** The Seller's and/or Buyer's commitment to pay a commission in connection with the transaction
435 anticipated by this Agreement is an integral part of this Agreement.

436
437 **FAX/COUNTERPARTS/ELECTRONIC SIGNATURES:** This Agreement may be executed in counterparts and, when all
438 counterpart documents are executed, the counterparts shall constitute a single binding instrument. Moreover, a signature
439 transmitted by fax or other electronic means will be enforceable against any party, who executes the Agreement and
440 transmits the signature by fax or other electronic means. The parties hereto, all agree that the transaction contemplated
441 by this document may be conducted by electronic means in accordance with the Montana Uniform Electronic Transaction
442 Act.

443
444 **ENTIRE AGREEMENT:** This Agreement, together with any attached exhibits and any addenda or amendments signed
445 by the parties, shall constitute the entire agreement between Seller and Buyer, and supersedes any other written or oral
446 agreements between Seller and Buyer. This Agreement can be modified only in writing, signed by the Seller and Buyer.

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447 **EARNEST MONEY DISPUTES:** Buyer and Seller agree that, in the event of any controversy regarding the earnest
448 money and things of value held by the Broker, closing agent, or any person or entity holding such money or property,
449 unless mutual written instructions are received by the holder of the earnest money and things of value, Broker or closing
450 agent shall not be required to take any action, but may await any proceedings, or, at Broker's or closing agent's option
451 and sole discretion, may interplead all parties and deposit any monies or things of value in a Court of competent
452 jurisdiction and may utilize as much of the earnest money deposit as may be necessary to advance the cost and fees
453 required for filing such action.
454

455 **ADDENDA AND/OR DISCLOSURES ATTACHED:** (check all that apply):

- 456 Lead Based Paint Disclosure
- 457 Addendum for Additional Provisions
- 458 Multi-Family Disclosure
- 459 Mold Disclosure
- 460 Newly Constructed Residence Addendum and Disclosure
- 461 Rent-Back Agreement (Post-Closing Seller Occupancy)
- Contingency for Sale of Buyer's Property
- Back-up Offer
- Water Rights Acknowledgement
- Condominium Disclosure/Addendum

463 **RELATIONSHIP CONFIRMATION:** The parties to this Agreement confirm that the real estate licensees identified
464 hereafter have been involved in the capacities indicated below and the parties have previously received the required
465 statutory disclosures setting forth the licensees duties and the limits of their obligations to each party:
466

467 Robin Hanel of Berkshire Hathaway HS Floberg
 468 (name of licensee) (name of brokerage company)

470 RRE-RBS-LIC-257 of 1550 Poly Drive Billings MT 59102
 471 (licensee's Montana license number) (brokerage company address)

473 406-860-6181 406-254-1550
 474 (licensee phone number) (brokerage company phone number)

476 robin@robinhanel.com
 477 (licensee email address)

478 is acting as Seller's Agent Dual Agent Statutory Broker

480 Michelle Garton of eXp Realty, LLC
 481 (name of licensee) (name of brokerage company)

483 69917 of 432 E. Idaho St., Ste. C 473 Kalispell MT 59901
 484 (licensee's Montana license number) (brokerage company address)

486 (406) 670-5215 4065784399
 487 (licensee phone number) (brokerage company phone number)

489 michelle@mkrealtymt.com
 490 (licensee email address)

491 is acting as Buyer's Agent Dual Agent Statutory Broker
 492 Seller's Agent (includes Seller's Sub-Agent).

494 **BUYER'S ACKNOWLEDGMENT:** Buyer acknowledges that prior verbal representations by the Seller or Seller's
495 representatives do not modify or affect this Agreement. Buyer acknowledges that by signing this Agreement he/she has
496 examined the subject real and personal property and represents that Buyer has **OR** has not physically visited the
497 Property in person prior to the execution of this Agreement; has entered into this Agreement in full reliance upon his/her
498 independent investigation and judgments and has read and understood this entire Agreement.

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499 **BUYER'S COMMITMENT:** I/We agree to purchase the above-described Property on the terms and conditions set forth
500 in the above offer and grant to said Broker/Salesperson until (date) 08/20/2023, at 8 am
501 pm (Mountain Time) to secure Seller's written acceptance, whether or not that deadline falls on a Saturday, Sunday or
502 holiday. Buyer may withdraw this offer at any time prior to Buyer being notified of Seller's written acceptance. If Seller has
503 not accepted by the time specified, this offer is automatically withdrawn. I/we hereby acknowledge receipt of a copy of
504 this Agreement bearing my/our signature(s).

505  Date: 08/20/2023, at 03:51 am pm (Mountain Time)
506 Brendon Zierlein
507 Buyer's Signature

508
509 Name Printed: Brendon L. Zierlein

510
511 Address: 309 S 2nd St Bridger State MT Zip Code 59014

512
513 _____ Date: _____, at _____ am pm (Mountain Time)
514 Buyer's Signature

515
516 Name Printed: _____

517
518 Address (if different): _____ State _____ Zip Code _____

519
520 **SELLER'S COMMITMENT:**
521 I/We agree to sell to Buyer the above-described Property on the terms and conditions herein above stated. I/We hereby
522 acknowledge receipt of a copy of this Agreement bearing my/our signature(s) and that of the Buyer(s) named above.

523
524 _____ Date: _____, at _____ am pm (Mountain Time)
525 Seller's Signature

526
527 Name Printed: _____

528
529 Address: _____ State _____ Zip Code _____

530
531 _____ Date: _____, at _____ am pm (Mountain Time)
532 Seller's Signature

533
534 Name Printed: _____

535
536 Address (if different): _____ State _____ Zip Code _____

537
538 Modified per the attached Counter Offer:
539 TJP / 08/20/2023, 11:00:01 AM MDT DAP / 08/20/2023, 11:03:34 AM MDT
540 _____ / _____ Seller's Initials Date
541 _____ / _____ Seller's Initials Date

542
543 Rejection of this offer by Seller (No counter offer is being made):
544
545 _____ / _____ Seller's Initials Date
546 _____ / _____ Seller's Initials Date

NOTE: Unless otherwise expressly stated the term "days" means calendar days and not business days. Business days are defined as all days except Sundays and Montana or federal holidays.

COUNTER OFFER



1 Date: August 20, 2023

2
3 This Counter Offer pertains to a Buy-Sell Agreement (hereafter the "Agreement") dated August 19, 2023,
4 by and between Timothy J Parsons, Denise A Parsons (hereafter the "Seller") and
5 Brendon L Zierlein (hereafter the "Buyer") concerning
6 the property described as: 94 Clarks River Road, Joliet, MT 59041

7
8
9
10 All the terms and conditions of the Agreement, except the Buyer's Commitment provision, are hereby incorporated by
11 reference except as modified by the following terms and conditions: _____

12
13 Line 25: \$600,000.00 Purchase Price

14
15 Line 27: \$599,000.00 Balance Due

16
17 Pre-approval letter updated for new purchase price.

18
19
20
21
22
23
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44
45

AuthenticSign
BZ

Buyer's Initials

TJP / DAP

Seller's Initials

46 The performance dates contained in the Agreement:

47

48 Shall remain the same, except as otherwise stated herein; OR


49

50 Shall be extended the same number of days that have elapsed between the date of the Agreement and the date
51 of final acceptance of this Counter Offer except for the closing date which shall remain as set forth in the
52 Agreement.

53

54 Acceptance of this Counter Offer may be made by providing a signed copy to the offering party or their
55 Broker/Salesperson not later than 08/21/2023 11:30 (Date/Time) at am pm (Mountain Time), whether or not
56 that deadline falls on a Saturday, Sunday or holiday. Offering party may withdraw this Counter Offer any time prior to
57 receiving written acceptance. If acceptance is not given to the offering party or their Broker/Salesperson by expiration of
58 the time for acceptance, this offer is then null and void.

59

60  <u>Brendan Zierlein</u> 08/21/23	Date	<u>Timothy J Parsons</u> 08/20/2023, 11:00:01 AM MDT	Date
61 Buyer's Signature		Seller's Signature	
62 <u>Brendon L Zierlein</u>		<u>Timothy J Parsons</u>	
63		<u>Denise A Parsons</u> 08/20/2023, 11:03:34 AM MDT	Date
64		Seller's Signature	
65 Buyer's Signature	Date	<u>Denise A Parsons</u>	Date
66			

NOTE: Unless otherwise expressly stated the term "days" means calendar days and not business days. Business days are defined as all days except Sundays and Montana or federal holidays.

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**DENISE ALLISON PARSONS and
TIMOTHY JAMES PARSONS,**

Debtor.

Case No. **1:22-bk-10100-BPH**

ORDER

In this Chapter 13 bankruptcy, Debtors filed a “Motion to Sell Property Free and Clear of Liens and Interest” on August 24, 2023, at ECF No. 98 (“Motion”). The Motion seeks an Order authorizing the sale free and clear of all liens and interests pursuant to 11 U.S.C. § 363(f). The Motion proposes to sell property of the estate identified in the Buy/Sell Agreement attached to the Motion and described as:

That part of NE1/4NE1/4 of Section 26, Township 3 South, Range 23 East, of the Principal Montana Meridian in Carbon County, Montana, described as Tract 1 of Certificate of Survey No. 830 on file in the office of the clerk and Recorder of said County, under Document No. 199927.

(“Real Property”).

In the Motion, Debtors identify three liens held by creditors that are secured by the Real Property:

- a. Any property taxes owed to Carbon County, Montana.
- b. Opportunity Bank of Montana is owed approximately \$96,339.60.
- c. U.S. Bank Trust National Association (Selene) is owed approximately \$393,181.67.

(collectively, “Liens”). The Motion states that the Liens shall attach to the sale proceeds of the Real Property.

Debtors attached a “Notice” to its Motion consistent with Fed. R. Bankr. P. 6004, and Mont. LBR 9013-1. The Notice explains that the time to respond or object to the Motion and schedule the matter for a hearing is twenty-one (21) days. The time to respond or object has passed. No responses or objections were filed. Accordingly, absent any opposition after notice,


IT IS ORDERED that the Motion is granted. Debtors are authorized to sell the Real Property free and clear of all liens and interest pursuant to 11 U.S.C. § 363(f).

IT IS FURTHER ORDERED that the Liens shall attach to the proceeds of the Real Property until creditors Carbon County, Opportunity Bank of Montana and U.S. Bank Trust National Association (Selene) are paid as hereby ordered.

IT IS FURTHER ORDERED that, pursuant to the Motion, the 14-day stay period afforded under Fed. R. Bankr. P. 6004(h) is waived.

Dated September 25, 2023.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana

Exhibit 5

2023 Mont. B.R. 305

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

FORTUNE PROPERTIES, LLC,

Debtor.

Case No. **4:22-bk-40009-BPH**

ORDER

In this subchapter V bankruptcy, Debtor filed a “Motion to Sell Property Free and Clear of Liens under 11 U.S.C. § 363(f)” on December 15, 2023, at ECF No. 95 (“Sale Motion”) and “Motion to Shorten Time to Object” on December 18, 2023, at ECF No. 98 (“Motion to Shorten”). Consideration of the relief requested in the Sale Motion requires this Court to recite prior filings in this case that the Court has difficulty reconciling with the Sale Motion.

I. Prior Proceedings and filings in this case.

A. Debtor confirmed a plan under 11 U.S.C. § 1191(a) in May 2022.¹

Debtor confirmed its Plan in May 2022. Confirmation enjoyed the support of all creditors that cast a ballot and was consensual. Under the confirmed Plan, only one creditor was impaired, and it voted to accept the Plan. The remaining creditors were unimpaired. Debtor’s Plan was a liquidating plan that provided as follows:

The Debtor shall sell its Real Estate and other assets and shall apply the net sales proceeds to the Allowed Claims in the order of priority. The Debtor anticipates generating sufficient proceeds from these sources to meet all Plan payments, costs and expenses. The Debtor shall list the Real Estate for sale with a licensed real estate broker at a price that the Debtor and broker mutually agree should generate buyer interest and whose employment is subject to approval by the Court, under 11 U.S.C. § 327, no later than the Effective Date and shall keep the Real Estate continuously listed until the employment of the Real Estate Auctioneer and such additional time as agreeable with the listing realtor and the Real Estate Auctioneer.²

Consistent with this term, Debtor proceeded to market the property with a realtor. Neither the Plan, nor the Order confirming the Plan provide for anything other than property revesting in the Debtor.

Additionally, the Plan treats the claims of Dawson County and RB Smith Land LLC as secured claims. Under the Plan, those claims will be paid from the net proceeds of the sale of the

¹ See Plan at ECF Nos. 44, 47 and Order at 51.

² Plan Article 7.

2023 Mont. B.R. 306

Real Estate. In the case of RB Smith Land LLC, the Plan notes that it will be paid to the extent allowed.

The confirmed Plan explicitly retains jurisdiction for this Court for any other matter reasonably necessary for Debtor's implementation and consummation of the Plan.

B. Notice of Substantial Consummation, Motion for Final Decree, and closure of case.

Debtor filed a "Notice of Substantial Consummation" on October 19, 2022, at ECF No. 85. The Subchapter V Trustee filed a Report of No Distribution on the same day. Debtor next filed a "Motion for Final Decree" on January 18, 2023, at ECF No. 91. In the Motion for Final Decree, Debtor recited that:

. . . Any property proposed by the Plan to be transferred has been transferred;
. . . The Debtor is no longer operating, and all property and assets dealt with by the Plan have been disbursed;
. . . The payments under the Plan have commenced . . .³

Consistent with 11 U.S.C. § 350(a) and Fed. R. Bankr. P. 3022, having considered the Motion for Final Decree and the representation that Debtor had substantially consummated its Plan, the Court entered a Final Decree closing the case. The case was closed on February 3, 2023.

II. The Sale Motion and Motion to Shorten.

A. Consideration of the Sale Motion must be preceded by reopening the case.

11 U.S.C. § 350(b) provides that "a case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." Additionally, Fed. R. Bankr. P. 5010 states that "[a] case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code." In this closed case, the Court has before it a motion that requests an order approving a sale of real property. Assuming the Court may grant the relief requested, the Court would presumably, reopen this case, shorten notice, grant the Sale Motion, and close the case. Instead, as the Court explains below, approval of the sale is unnecessary because that relief was granted at confirmation, and the Order confirming the Plan requires Debtor, any buyer, and title company to complete the sales transaction.

Although not inclined to reopen the case on its own motion based on the immediate motions, the Court does question the basis for the representations that the Plan had been substantially consummated. Contrary to those representations, it appears the primary funding for the Plan, liquidation of specific real estate had not occurred at the time the representation was made and payments remain to be made to creditors. The Court cannot reconcile the immediate Sale Motion with the prior Notice of Substantial Consummation and Motion for Final Decree.

³ Paragraphs 3, 4, and 5 of Motion for Final Decree.

2023 Mont. B.R. 307

B. The Sale Motion.

The Sale Motion requests an order approving sale of the real property to Jeremy Alley for \$850,000, “free and clear” of liens pursuant to 11 U.S.C. § 363(f). Although the Sale Motion meticulously outlines that the sale reflects a reasonable exercise of debtor’s business judgment, is in good faith, and maximizes the return attainable by the Debtor, the Sale Motion does not address the applicability of 11 U.S.C. § 363 to non-estate property.

The general rule regarding sale of property of the estate is that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate[.]” 11 U.S.C. § 363(b)(1). The trustee may sell property of the estate free and clear of liens or interests:

only if—

- (1) Applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) Such entity consents;
- (3) Such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) Such interest is in bona fide dispute; or
- (5) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Notably, 11 U.S.C. § 363(b) refers to property of the estate. Unless the plan or confirmation order provides otherwise, under 11 U.S.C. § 1141(b) property of the estate vests in the debtor upon confirmation of a consensual plan. Here, the Court has not seen language in the plan or order suggesting the property did not vest in the debtor. As a result, the Court questions the applicability of 11 U.S.C. § 363(b) and (f) to a sale of Debtor’s property following confirmation of a plan.

The Plan in this case does not contemplate a sale free and clear pursuant to 11 U.S.C. § 363(b) and (f). To the contrary, Article 7 of the Plan simply states, “Debtor shall sell its Real Estate and other assets and shall apply the net sales proceeds to the Allowed Claims in the order of priority.” As other courts have explained, “[p]ost-confirmation sales of assets are accomplished pursuant to terms of the confirmed plan, or, since the debtor is generally outside of the jurisdiction of a bankruptcy court within a short period of time after confirmation of a plan, such sales are accomplished pursuant to non-bankruptcy law.” *In re Golf, L.L.C.*, 322 B.R. 874, 877 (Bankr. D. Neb. 2004). The *Golf* court elaborated on its explanation:

Some authors note the distinction between the purposes of § 363 and §§ 1123 and 1141, observing that § 363(b) and (f) control asset sales prior to plan approval and require less notice and opportunity for hearing than § 1123(a)(5)(D) and § 1141(c), which govern sales made pursuant to a plan.

Id. The distinction noted above is reinforced by review of 11 U.S.C. § 1123(a)(5)(D). It states:

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Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall— provide adequate means for the plan’s implementation, such as— sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate . . .

Additionally, 11 U.S.C § 1141(c) provides, in part, “except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.”

Although not explicitly stated in the Plan, 11 U.S.C. § 1123(a)(5)(D) permits the sort of transaction that is the subject of the Sale Motion. Further, when read in conjunction with 11 U.S.C. § 1141(c), the Plan must be construed as not only permitting the sale, but also permitting the sale as a sale free and clear of claims or interests because absent contrary language in the Plan or the confirmation order, the property in the Plan is free and clear of all claims of creditors. The Court notes that in this Plan, it does not explicitly state that the secured creditors will retain their liens. However, such treatment is implied by the described plan treatment and payment from the proceeds of the sale of the Real Estate. Under these circumstances, 11 U.S.C. § 363(b) and (f) are not applicable to this post confirmation sale of Debtor’s property.

B. This Court’s confirmation Order is binding on Debtor and Debtor shall complete the sale to Jeremy Alley without further order of the Court.

Debtor must perform its obligations under its confirmed Plan. *Trulis v. Barton*, 107 F.3d 685, 691 (9th Cir. 1995) (holding that “[o]nce a bankruptcy plan is confirmed, it is binding on all parties and all questions that could have been raised pertaining to the plan are entitled to res judicata effect.”). Pursuant to this Court’s Order confirming Debtor’s Plan, Debtor shall sell the following described real estate:

Tract 2: A tract of land lying the Southeast Quarter of the Southeast Quarter (SE¹/₄SE¹/₄) of Section Twenty-Two (22), Township Sixteen (16) North, Range Fifty-Five (55) East of the MPM, Dawson County, Montana, more particularly described as Certificate of Survey No. 723 Recorded December 30, 1987 at 11:10 a.m. as Document No. 381332 in the Office of the Clerk and Recorder in and for Dawson County, Montana;

Tract 3: A tract of land lying in the Southeast Quarter of the Southeast Quarter (SE¹/₄SE¹/₄) of Section Twenty-Two (22), Township Sixteen (16) North, Range Fifty-Five (55) East of MPM, Dawson County, Montana, more particularly described as Certificate of Survey No. 724 recorded December 30, 1987 at 11:11 a.m. as Document No. 381333 in the Office of the County Clerk and Recorder in and for Dawson County, Montana.

2023 Mont. B.R. 309

(“Real Estate”). Debtor’s sale of the Real Estate must occur prior to the retention of an auctioneer which shall occur within eighteen months of the effective date of the Plan. In essence, the Real Property is to be sold by a realtor, and if a realtor fails to sell the Real Property, an auctioneer will conduct a sale.

Consistent with this Court’s confirmation Order, Debtor shall proceed with the sale to Jeremy Alley. As noted above, a sale like the one to Jeremy Alley for \$850,000 was included in the Plan and is explicitly permitted by 11 U.S.C. § 1123(a)(5)(D). More importantly, the order confirming the Plan authorizes the Debtor to go forward and carry out the sale. Further, consistent with any post confirmation transaction Debtor shall pay closing costs or other expenses necessary for completing the transaction, and the remaining funds shall be disbursed in accordance with the confirmed Plan.

To the extent Debtor anticipates this Court playing any role in the further administration of this case, Debtor should consider filing a motion to reopen, and be prepared to explain why the Notice of Substantial Consummation and Motion for Final Decree were filed if the Plan had not been substantially consummated at that time. Accordingly,

IT IS ORDERED:

1. The Sale Motion is denied because the confirmed Plan does not contemplate a post confirmation sale of the Debtor’s Real Estate free and clear of liens pursuant to 11 U.S.C. § 363(f);
2. Instead, the sale permitted under the Plan and authorized by the confirmation order is pursuant to 11 U.S.C. §§ 1123(a)(5)(D) and 1141(c), and the confirmation order already authorizes Debtor to complete the sale of the Real Property; and
3. To the extent the title company or any third-party has difficulty construing the Plan and confirmation order as authorizing the sale from Debtor to Jeremy Alley, or any other third-party for a purchase price of \$850,000, this Order confirms that the documents should be read together, given effect, and the funds disbursed in the manner consistent with the Plan.

IT IS FURTHER ORDERED that the Motion to Shorten denied as moot.

Dated December 19, 2023.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana

Exhibit 6

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**HERBERT WILLIAM OEHLKE and
SHERRI LYNN OEHLKE,**

Debtors.

Case No. **4:23-bk-40002-BPH**

ORDER

In this Chapter 12 bankruptcy, Debtors filed a “Motion for Approval of Sale of Property, Free and Clear of Liens, and Notice” on February 23, 2024, at ECF No. 165 (“Motion”). The Motion seeks an Order authorizing the sale of estate property free and clear of all liens and interests pursuant to 11 U.S.C. § 363(f). The Motion proposes to sell certain real property located at 20720 Sollid Road, Conrad, Montana 59425 and described as:

Township 28 North, Range 2 East, P.M.M.
Section 20: N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$

(the “Property”).

The Motion represents that it is being filed because Debtors’ confirmed Chapter 12 Plan at ECF No. 108 (“Plan”) specifically states that “no sale of such property shall be completed without notice to the Trustee and any lienholders and an opportunity provided for a hearing on such sale with the safeguards afforded lienholders under 11 U.S.C. § 363.” Debtors attached a “Notice” to its Motion consistent with Fed. R. Bankr. P. 6004, and Mont. LBR 9013-1. The Notice explains that the time to respond or object to the Motion and schedule the matter for a hearing is twenty-one (21) days. The time to respond or object has passed. Any objections have been resolved.

Despite the absence of opposition, approval of a sale of property pursuant to 11 U.S.C. § 363(b) or (f), where the property revested in the debtor at confirmation is suspect at best. Upon confirmation of a chapter 12 plan, property revests in the debtor. In this case, the Plan explicitly states, “upon confirmation of this plan all of the property of the estate shall vest in the Debtors free and clear of any claim or interest of any creditor provided for by this plan, pursuant to 11 U.S.C. § 1227.”¹ As a result, there is no longer property of the estate. 11 U.S.C. § 1222(b)(10). The plain language of 11 U.S.C. § 363(f) contemplates, “sale of property under subsection (b) or (c).” Subsection (f) modifies subsections (b) and (c). The references to subsection (b) of § 363 highlight the property subject to sale under § 363 is “property of the estate.”

The confirmed Plan in this case provides for the sale of property and explains:

¹ See, Plan, ¶ 8.

2024 Mont. B.R. 108

. . . no sale of such property shall be completed without notice to the Trustee and any lienholders and an opportunity provided for a hearing on such sale with the safeguards afforded lienholders under 11 U.S.C. § 363. The collateral will be listed for sale until December 31, 2024. FSA and Opportunity Bank each reserve the right, at their respective discretion, to individually obtain an appraisal of the real property at any time. Debtors shall cooperate and assist with the appraisal process and will not object to the request or order for an appraisal.²

The Plan was confirmed. The Plan is binding on Debtor and creditors. 11 U.S.C. § 1227(a).

“Post-confirmation sales of assets are accomplished pursuant to terms of the confirmed plan, or, since the debtor is generally outside of the jurisdiction of a bankruptcy court within a short period of time after confirmation of a plan, such sales are accomplished pursuant to non-bankruptcy law.” *In re Golf, L.L.C.*, 322 B.R. 874, 877 (Bankr. D. Neb. 2004). At least one commentator has endeavored to highlight the distinctions between different code sections authorizing the sale of property, and the important differences between them:

The Bankruptcy Code provides two separate and distinct sets of provisions under which a Chapter 11 debtor or trustee may sell property free and clear of claims or interests. Sections 363(b) and 363(f) govern sales prior to plan approval and impose only the Bankruptcy Code's minimal requirements for notice and a hearing. Sections 1123(a)(5)(D) and 1141(c) govern sales made as part of a plan of reorganization confirmed after extensive disclosure and a multiple hearing process.

George W. Kuney, *Misinterpreting Bankruptcy Code Section 363(f) and Undermining the Chapter 11 Process*, 76 Am. Bankr. L.J. 235, 236 (Spring 2002). Although the foregoing observation is specific to chapter 11, its importance extends to sales in plans of reorganization under chapters 12 and 13.

In chapter 12 cases, the plan may provide for the sale of all or any part of the property of the estate or the distribution of all or any part of the property of the estate among those having an interest in such property. 11 U.S.C. § 1222(b)(8). A joint reading of 11 U.S.C. §§ 1222(b)(8) and 1227 permits debtors to identify estate property to be sold in their plan, describe a sales process, and upon confirmation and revesting of the property in the debtor, the manner of disposition of that property is binding on debtor.³ Alternatively, a plan that contemplates the sale of property may explicitly provide that the property to be sold will not revest in the debtor at confirmation, but instead will revest at some later time, or not all if it is sold.⁴

Notably, the text of 11 U.S.C. § 1123(a)(5)(d) explicitly recognizes the sale may be

² Plan, ¶ 6.

³ Chapter 12 explicitly recognizes that the source of plan funding may be from either property of the estate or property of the debtor. The same is true in chapter 13. 11 U.S.C. § 1322(b)(8).

⁴ “Property of the estate shall vest in the debtor or in another entity, either on confirmation of the plan or at a later time.” 11 U.S.C. § 1222(b)(10).

2024 Mont. B.R. 109

“subject to or free from any lien.” 11 U.S.C. § 1222(b)(8) does not include any similar, “free from any lien” language,” which makes it distinguishable from chapter 11. Unlike chapters 11 and 12, which explicitly provide that the plan may provide for the sale of all or any part of the property of the estate, chapter 13 does not include a similar provision.⁵

Turning to the Motion, the Court notes that the Plan explicitly provided for the sale of Property. The gross sales price is \$518,000. This purchase is allocated \$98,000 to State Leases owned by a third party and \$425,000 to the Property. Additionally, the Motion explains that “the net sale proceeds from the \$425,000.00 due to Debtors will be paid to the Chapter 12 Trustee to be disbursed pursuant to a confirmed Chapter 12 Plan.” Secured creditors with an interest in the property being sold will retain their liens in the proceeds. However, the total amount of the secured claims exceeds the net sales proceeds.

Opportunity Bank has two allowed secured claims in the amount of \$118,846.45 and \$330,339.37. Farm Service Agency (“FSA”) has an allowed secured claim in the amount of \$117,806.41. The sale that is the subject of approval occurred following marketing and nothing suggests the purchase price does not reflect a fair market value. Although Opportunity Bank and FSA objected to the sale, those objections have been resolved. Both creditors seemingly recognized the value of the property is less than the total secured claims. Absent a better outcome that might be achieved by objecting, consenting to the sale, (or resolving the objections), reflects the best outcome possible. Resolution of the objections reflects an agreement between Debtor, Opportunity Bank and FSA that permits a “short sale” to be completed.

Although the Stipulation⁶ resolving the objections and Order⁷ approving the Stipulation do not explicitly address the real estate closing, the Court anticipates that after paying real estate taxes, costs of sale and other sale costs, the title company will disburse any remaining balance (\$425,000 less real estate taxes, and costs of sale) to the Chapter 12 Trustee. Prior to closing, Opportunity Bank and FSA will provide the title company with lien releases in exchange for their anticipated plan payment from the Chapter 12 Trustee. Not discussed in the Motion or Stipulation that was approved is the manner of treatment that will be afforded the secured claims that are shorted after the payments on secured claims are received. In essence, a creditor is receiving and consenting to different treatment than the treatment provided under the plan.

Having considered the Motion, and the record in this case, the Motion is denied as moot for the following reasons:

⁵ The Plan and the immediate Motion in this case highlight the importance of considering the following when drafting a plan of reorganization: (1) when will property be sold, before or after confirmation; (2) if property will be sold after confirmation, what are the applicable statutory provisions that permit sale of property pursuant to a plan and is there a basis for a free and clear sale post confirmation; (3) should the property that is subject to sale remain property of the estate, rather than reverting in debtor at confirmation; and (4) carefully drafting plans of reorganization that involve the sale of property. This list is not exclusive, but instead intended to illustrate a few considerations.

⁶ ECF No. 178.


⁷ ECF No. 179.

2024 Mont. B.R. 110

1. The sale is a post-confirmation sale of real property contemplated by the Plan, approved by the Court's confirmation Order, and to the extent it results in treatment of a secured claim different than the treatment contemplated by the Plan, the affected creditors, Debtor and Chapter 12 Trustee have agreed and consented to that treatment.⁸
2. Having approved the Stipulation, and having previously through the confirmation order approved the sale of the Property, there is nothing before the Court that requires its consideration or approval and the Motion is denied as moot.

Dated April 8, 2024.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana

⁸ To the extent the agreements involving Opportunity Bank, FSA, Debtor and the Trustee are a basis for modification of the plan, the Court anticipates Debtor will file a motion to modify plan.

2023 Mont. B.R. 310

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**RICKY RAY WINKOWITSCH and
KIMBERLY JOAN WINKOWITSCH,**

Debtor.

Case No. **4:20-bk-40068-BPH**

ORDER

In this Chapter 12 case, on December 20, 2023, Debtor filed: a Motion to Sell Property Free and Clear of Liens under 11 U.S.C. § 363(f) at ECF No. 327 (“Sale Motion”); Motion to Expedite Hearing at ECF No. 329 (“Motion to Expedite”); and Motion to Shorten Time to Object on December 20, 2023, at ECF No. 98 (“Motion to Shorten”).

The Sale Motion seeks authorization from this Court to sell, pursuant to 11 U.S.C. § 363(f), the following described real property to David J. and Barbara Broberg for a purchase price of \$200,000:

Township 34 North, Range 6 West, M.P.M.

Section 7: S½SE¼

(“Real Property”).¹ The Sale Motion further explains:

. . . the Court should enter an order authorizing the closing agent to pay the net sum of \$125,000.00 from the sale proceeds to First Interstate Bank, usual and customary escrow fees and charges, and the Trustee’s fees related to the disbursement. Pursuant to the Debtors’ Plan, First Interstate Bank was to be paid by the Trustee. By agreement between the Debtors and the Trustee, and to simplify the recording of documents, the parties stipulate and agree that the closing agent shall disburse said sum to First Interstate Bank, on behalf of the Trustee and the Trustee is authorized to take his fee for that disbursement from the proceeds remaining after payment to First Interstate Bank and satisfaction of the customary escrow fees and charges.

The Chapter 12 Trustee filed a consent to the sale at ECF No. 331.

¹ Exhibit A to Sale Motion.

2023 Mont. B.R. 311

Debtors are operating under their Third Amended Plan of Reorganization dated September 8, 2023 (“Plan”).² The operative Plan reflects an approved modified plan.³ It includes provisions that provide for the liquidation of real property. Specifically, it states:

Eighty acre undeveloped Parcel of Real Property: The Debtors shall have a binding buy-sell agreement in place for the sale of the Parcel within sixty (60) days of the Court’s approval of the Stipulation as set forth above. In the event Debtors do not have a binding buy-sell agreement in place within sixty (60) days of the Court’s approval of this Stipulation, Debtors shall list the Parcel for sale with a licensed commercial real estate professional approved by the Court within thirty (30) days thereafter. Debtor shall pay First Interstate \$75,000.00 from the sale of the Parcel and shall use the remaining net proceeds from the sale to purchase new/updated equipment for operations.

Consistent with this term, Debtor proceeded to market the property with a realtor. Neither the Plan, nor the Order confirming the Plan provide for anything other than property revesting in the Debtor pursuant to 11 U.S.C. § 1227. It appears to the Court that the Real Property described in the Sale Motion is the same real property described in the Plan as the “Eighty Acre undeveloped Parcel of Real Property.”

The general rule regarding sale of property of the estate is that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate[.]” 11 U.S.C. § 363(b)(1). The trustee may sell property of the estate free and clear of liens or interests:

only if—

- (1) Applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) Such entity consents;
- (3) Such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) Such interest is in bona fide dispute; or
- (5) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Notably, 11 U.S.C. § 363(b) refers to property of the estate. Unless the plan or confirmation order provides otherwise, under 11 U.S.C. § 1227(b) property of the estate vests in the debtor upon confirmation of a plan. Here, the Court has not seen language in the plan or order suggesting the property did not vest in the debtor. As a result, the Court questions the applicability of 11 U.S.C. § 363(b) and (f) to a sale of Debtors’ property post confirmation.

The Plan in this case does not explicitly contemplate a sale of estate property free and clear pursuant to 11 U.S.C. § 363(b) and (f). Instead, the Plan provides for the sale of Debtors’

² ECF No. 312.

³ ECF No. 314.

2023 Mont. B.R. 312

property post-confirmation and it is silent on the authority or type of sale. Further, pursuant to 11 U.S.C. § 1227(b), the Real Property has reverted in the Debtors. Importantly, when property reverts in the Debtor pursuant to § 1227(b), it vests free and clear of any claim or interest of any creditor provided for by the plan. 11 U.S.C. § 1227(c). However, subsection (c) is subject to two important caveats: the property will remain subject to all liens and claims that are left in place or modified under the terms of the plan or the confirmation order; and, the property will remain subject to claims that are not discharged in the case.⁴

Debtors must perform its obligations under its confirmed Plan. *Trulis v. Barton*, 107 F.3d 685, 691 (9th Cir. 1995) (holding that “[o]nce a bankruptcy plan is confirmed, it is binding on all parties and all questions that could have been raised pertaining to the plan are entitled to res judicata effect.”). Pursuant to this Court’s Order confirming Debtor’s Plan, Debtor shall sell the “Eighty Acre undeveloped Parcel of Real Property,” which is the Real Property identified in the Sale Motion. Under these circumstances, it appears to this Court that the sale that is the subject of the Sale Motion is authorized by this Court’s order approving the modified Plan. Notably, the Plan incorporates by reference a stipulation with First Interstate Bank that was approved by the Court by separate order.⁵

Consistent with this Court’s confirmation Order, Debtor shall proceed with the sale to David J. and Barbara Broberg for a purchase price of \$200,000. A sale in form and substance like the one to David J. and Barbara Broberg for a purchase price of \$200,000 was included in the Plan. More importantly, the order confirming the Plan authorizes the Debtor to go forward and carry out the sale. Further, consistent with any post confirmation transaction Debtor shall pay closing costs or other expenses necessary for completing the transaction.

Consistent with other real estate transactions, any title company should act in accordance with the closing instructions provided by the parties and disburse the sales proceeds consistent with those instructions. These instructions should be jointly submitted by the Debtor and Chapter 12 Trustee. First Interstate Bank may also join in the instructions from Debtors and the Chapter 12 Trustee. The Court anticipates the closing instructions will direct that certain proceeds be disbursed at closing directly to creditors, such as First Interstate Bank, or for real property taxes, and other amounts will be disbursed to the Chapter 12 Trustee and he will disburse those funds in a manner consistent with the Plan.

Accordingly,

IT IS ORDERED:

1. The Sale Motion is denied because the confirmed Plan does not contemplate a post confirmation sale of the Debtor’s Real Estate free and clear of liens pursuant to 11 U.S.C. § 363(f);

⁴ See 8 Collier on Bankruptcy P 1227.03 (16th 2023).

⁵ ECF Nos. 297 and 299.

2023 Mont. B.R. 313

2. Instead, the sale permitted under the Plan and authorized by the confirmation order is pursuant to 11 U.S.C. §§ 1227(b) and (c), and the confirmation order already authorizes Debtor to complete the sale of the Real Property; and

3. To the extent the title company or any third-party has difficulty construing the Plan and confirmation order as authorizing the sale from Debtors to David J. and Barbara Broberg, or any other third-party for a purchase price of \$200,000, this Order confirms that the documents should be read together, given effect, and the funds disbursed in the manner consistent with the Plan.

IT IS FURTHER ORDERED that the Motion to Shorten and Motion to Expedite are denied as moot, but the parties shall complete the sale on or before December 31, 2023.

Dated December 21, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "B. Hursh", with a long horizontal line extending to the right.

Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana

Exhibit 7

2022 Mont. B.R. 27

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**THOMAS GUESSEPPE ROBINSON AND
MICHELLE KATHLEEN BRAZEE,**

Debtors.

Case No. **20-10007-BPH**

ORDER

In this Chapter 13 bankruptcy, Debtors filed a “Notice of Proposed Sale of Real Property; Motion for Order Approving Sale of Real Property Free and Clear of the Bankruptcy Estate and Not in the Ordinary Course” on January 6, 2022, at ECF No. 74 (“Motion”). Debtors attached a “Notice” to the Motion consistent with Mont. LBR 9013-1. The Notice explains that the time to respond or object to the Motion and schedule the matter for a hearing is fourteen (14) days. The time to respond or object has passed. No responses or objections were filed. Trustee filed a consent to the Motion at ECF No. 75.

The Motion seeks approval of a sale of Debtors’ real property located at 12 Rauch Road, Roundup, MT 59072 more particularly described as:

That part of SW1/4 of Section 1, Township 7 North, Range 25 East, of the Principal Montana Meridian, Musselshell County, Montana, described as Tract A, of Certificate of Survey No. 1-1970 Amended on file in the office of the Clerk and Recorder of said County, under Document #181140.

(“Property”). The Motion acknowledges that an order approving the sale is not necessary because the Property reverted in the debtor upon confirmation. Nevertheless, the Motion requests an order from the court approving the sale along with other relief, identified in the Motion explaining that an order approving the sale will address issues associated with closing and concerns or questions of the title company conducting the closing. According to the Motion, in connection with the sale of the Property:

- (1) The Trustee will participate in the closing;
- (2) The secured lender’s unimpaired secured claim will be paid at closing;
- (3) The secured lender’s prepetition arrearage claim that is included in Debtors’ confirmed plan will be paid at closing, (as if it was paid by the Trustee)¹; and

¹ The parties have structured the transaction to reflect payment of the arrearage by the estate.

2022 Mont. B.R. 28

- (4) The closing agent will pay an additional \$12,000 to the Trustee, for payment of administrative claims, including Trustee's administrative claims and Debtors' attorney's fees.

In essence, sale of the Property will result in a supplemental source of plan funding.

The plain language of 11 U.S.C. § 363(b), provides in part:

The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate [emphasis added].

Pursuant to 11 U.S.C. § 1327(b), confirmation of a plan vests all of the property of the estate in the debtor, except as otherwise provided in the plan or the order confirming the plan. Here, the Plan at ECF No. 48 ("Plan") revested property of the estate in the Debtors upon confirmation. The Plan was confirmed at ECF No. 49. The Property is not property of the estate. As a result, the Court has difficulty concluding relief pursuant to 11 U.S.C. § 363(b) is appropriate.

Although relief under 11 U.S.C. § 363(b) may not be available, proceeds from the sale of the property are to be utilized to fund the plan. *In re Berkley*, 613 B.R. 547, 553 (BAP 9th Cir. 2020) (plans may be funded from non-estate sources). More specifically, "[u]nder § 1329, the bankruptcy court can approve a plan modification that increases the debtor's plan payments due to a postconfirmation increase in the debtor's income, whether or not the additional income is property of the estate." *Id.* Notably, the Plan in this case was not a liquidating plan. Instead, Debtors' plan was to be funded with payments of \$320/month for 60 months. According to the Motion, Debtors will use the sales proceeds from the sale of the Property to payoff the secured creditor, including the prepetition arrearage claim. In essence, the Motion requests Court approval of an additional source of plan funding from the sale of the Property to pay the arrearage claim of the secured creditor, and administrative claims. Based on the Court's review of the Motion, relief is appropriate. Accordingly, absent any opposition after notice,

IT IS ORDERED that the Motion is denied in part and granted in part. Debtors are authorized to sell the Property according to the terms set forth in the Motion including:

- (1) Chapter 13 Trustee Robert Drummond shall be required to participate in the closing.
- (2) Prior to the scheduled closing and sale of the property, the debtors, their counsel, or the closing agent, will contact Wilmington Savings Fund Society, FSB ("Wilmington") to verify or obtain the amount necessary to pay off the debt owed to Wilmington in full (the "Payoff Amount"), which payoff amount must be in writing and good through the anticipated closing date. If the Debtors or the Chapter 13 Trustee make any payments to Wilmington after obtaining said Payoff Amount, and before the closing date, said payments shall be applied to, and reduce the Payoff Amount.
- (3) Upon closing, the closing agent will pay the entire Payoff Amount to Wilmington, which will include all pre-petition and/or post-petition arrears owed on said debt.

2022 Mont. B.R. 29

Upon said payment, the Chapter 13 Trustee will be considered to have paid the pre-petition and/or post-petition arrearages referred to in paragraph 2(C) of the Chapter 13 currently in effect. Trustee shall be entitled to be paid for his administrative expenses related to said arrearages, and will account for the payment of said arrearages, in his final report, as a payment under the Chapter 13 Plan.

- (4) Upon closing, the closing agent will pay the sum of \$12,000.00 to the Chapter 13 Trustee, who shall use these funds to pay all remaining administrative claims, in accordance with the Chapter 13 Plan, including the trustee's administrative claims related to these distributions, and including all currently approved and unpaid fees owed to Debtors' attorney, and any fees subsequently requested by Debtors' attorney and approved by this Court. Once all of these claims have been paid, the trustee shall return to the debtor any portion of the \$12,000.00 which remains unused for said purpose.

Dated January 26, 2022.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana

Exhibit 8

Joseph V. Womack
P. O. Box 81065
Billings, MT 59108
Telephone: (406) 252-7200
Fax: (406) 252-4266
Email: jwomack@jvwlaw.com
Attorney No. 2641

Attorney for Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In Re:

TYLER JAMES SKOLRUD

Debtor(s)

Case No. 22-10060-7

MOTION TO APPROVE TRUSTEE'S ABANDONMENT OF PROPERTY

TO: THE UNITED STATES TRUSTEE, DEBTOR(S), AND PARTIES IN INTEREST:

COMES NOW JOSEPH V. WOMACK, Trustee in the above-named Bankruptcy Estate, and moves the Court pursuant to 11 U.S.C. 554(a) to approve the Trustee's abandonment of the property of the above-named Debtor's estate described below as burdensome and of inconsequential value to the estate. Trustee seek approval of the abandonment of the Property because it is the subject of a sale by the Debtor and his wife and the Title Insurance Company insuring the title as part of the sale requires a Court Order approving the abandonment in order to insure title for the Buyer's lender.

Description of Property:

Lot 11, Block 1100, Original Townsite of Fort Peck, Montana, According to the official plat thereof on file and of record in the office of the clerk and recorder, Valley County, Montana.

Commonly known as 1111 East Kansas Avenue, Fort Peck, MT 59223

Scheduled or Estimated Value:

\$254,700.00

Amount Secured or Exempt:

The full value of the property. The property is subject to the Debtor and his spouse's homestead exemption and is also subject to a mortgage held by Wells Fargo Home Mortgage for \$224,882.00.

Lienholder Name & Address:

Wells Fargo Home Mortgage
P.O. Box 10335
Des Moines, IA 50306

Estimated Liquidation Expenses:

\$0.00

Net Value to Estate:

\$0.00

Reason for Abandonment:

Wells Fargo Home Mortgage has a claim in the property and the Debtor and his spouse together claim up to the remaining equity as exempt per M.C.A. §70-32-104, 25-13-615. Therefore, there is no value to the Estate. Debtor is trying to sell the property and the title company requires an Order approving the abandonment of the real property.

WHEREFORE, the undersigned Trustee moves the Court to enter an Order abandoning the real property.

DATED this 30th day of June, 2023.

WOMACK & ASSOCIATES, LLC

By: /s/Joseph V. Womack
Joseph V. Womack
Ch. 7 Bankruptcy Trustee

NOTICE OF OPPORTUNITY TO RESPOND
AND REQUEST A HEARING

If you object to this motion, you must file a written responsive pleading and request a hearing within fourteen (14) days of the date of filing. The responding party shall schedule the hearing on the motion at least twenty-one (21) days after the date of the response and request for hearing and shall include in the caption of the responsive pleading in bold and conspicuous print the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING

Date: _____
Time: _____
Location: _____

If no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted

DATED this 30th day of June, 2023.

WOMACK & ASSOCIATES, LLC

By: /s/Joseph V. Womack
Joseph V. Womack
Ch. 7 Bankruptcy Trustee

CERTIFICATE OF SERVICE

I, the undersigned, certify under penalty of perjury that on June 30, 2023, or as soon as possible thereafter, a copy of the foregoing was served electronically by the Court's ECF notice to all persons/entities requesting special notice or otherwise entitled to the same and that in addition service by mailing a true and correct copy, first class mail, postage prepaid, was made to the following persons/entities who are not ECF registered users:

Debtor:

Tyler James Skolrud
Po Box 317
Fort Peck, MT 59223

Interested Parties:

Creditor Mailing Matrix

By: /s/ Mikaila Widdicombe
Mikaila Widdicombe
Legal Asst. to Trustee

American Express National Bank
c/o Becket and Lee LLP
PO Box 3001
Malvern, PA 19355-0701

American National Bank
ATTN: Glenda/American National Bank
8004 South 84th St
La Vista, NE 68128-3300

Capital One Bank (USA), N.A.
by American InfoSource as agent
PO Box 71083
Charlotte, NC 28272-1083

Discover Bank
Discover Products Inc
PO Box 3025
New Albany, OH 43054-3025

Goldman Sachs Bank, USA
by AIS InfoSource, LP as Agent
PO Box 4457
Houston, TX 77210-4457

INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA, PA 19101-7346

Midland Credit Management, Inc.
P.O. Box 2037
Warren, MI 48090

MONTANA DEPARTMENT OF REVENUE
ATTN BANKRUPTCY UNIT
PO BOX 7701
HELENA MT 59604-7701

OSLA/Dept of Ed
ATTN: Bankruptcy
P.O. Box 18475
Oklahoma City, OK 73154

PORTFOLIO RECOVERY ASSOCIATES LLC
PO BOX 12914
NORFOLK VA 23541

TYLER JAMES SKOLRUD
PO BOX 317
FORT PECK, MT 59223-0317

Upstart Network
PO Box 1931
Burlingame, CA 94011

Wells Fargo Bank NA
Wells Fargo Card Services
P.O. Box 10438, MAC F8235-02F
Des Moines, IA 50306-0438

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

TYLER JAMES SKOLRUD,

Debtor.

Case No. **1:22-bk-10060-BPH**

ORDER

In this Chapter 7 bankruptcy, the Trustee filed a “Motion to Approve Trustee’s Abandonment of Property” on July 21, 2023, at ECF No. 45 (“Motion”). The Motion requests that the Court enter an Order approving the Trustee’s abandonment of real property located at 1111 East Kansas Avenue, Fort Peck, Montana 59223, which has the following legal description:

Lot 11, Block 1100, Original Townsite of Fort Peck, Montana, According to the official plat thereof on file and of record in the office of the clerk and recorder, Valley County, Montana (“Property”).

In accordance with Mont. LBR 9013-1, a “Notice” attached to the Motion explains that the time to respond or object to the Motion and schedule the matter for a hearing is fourteen (14) days. The time to respond or object has passed. No objections were filed.

Pursuant to 11 U.S.C. § 554(a), after notice and a hearing, the Trustee may “abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” In this case, Trustee asserts that the Property is burdensome and is of inconsequential value to the estate. Accordingly,

IT IS ORDERED that the Motion is granted. Trustee’s abandonment of the Property is approved.

Dated July 25, 2023.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana

Exhibit 9

Wendy A. Jungblut (ID #52095280)
James A. Patten (ID. No. 1191)
PATTEN, PETERMAN, BEKKEDAHL & GREEN, P.L.L.C.
2817 Second Ave. North, Suite 300
P.O. Box 1239
Billings, MT 59103-1239
Telephone (406) 252-8500
Facsimile: (406) 294-9500
Email: apatten@ppbglaw.com

Attorney for Debtors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

IN RE:) Case No. 20-10025-13
)
SHAWN DOUGLAS,)
and STEPHANIE DOUGLAS,)
)
Debtors.)
)

MOTION TO AVOID LIEN UNDER 11 U.S.C. § 522(f); AND NOTICE

Pursuant to Rule 4003(d), F.R.B.P., and Mont. LBR 4003-4, the undersigned respectfully move the Court to avoid the lien of SOFI LENDING CORP., on property of the Debtors' estate pursuant to 11 U.S.C. § 522(f)(1)(A). In support of its motion, the undersigned alleges as follows:

1. (a) Name of creditor: **SOFI LENDING CORP.**
- (b) Type of lien: Judicial, Cause No. DV-17-1925, Montana Thirteenth Judicial District Court, Yellowstone County, Judgment filed on December 17, 2018 for the sum of \$44,699.40. Attached as Exhibit "A" is a complete and true copy of the Judgment.

2. Description of property secured by the lien:

Lot 17, Block 4, Linlee Lake Estates Subdivision, Yellowstone County,
Montana, aka 6945 Trailake Drive, Billings, MT 59106

3. Tax assessed value of the Debtors' interest in the above-described property:

\$465,000.00.

4. Statute(s) under which Debtors claims property as exempt: §25-13-615 MCA, §70-32-101 et seq. MCA

5. For purposes of 11 U.S.C. § 522(f)(2)(A):

- (a) Amount of the judgment lien: SOFI LENDING CORP. has a judgment lien in the amount of \$44,699.40.
- (b) Description of other creditors and amounts of all other liens on the property and the respective priority of each: PNC Bank, National Association, 1st lien, \$348,018.89.
- (c) Amount of exemption the Debtors could claim if no judgment liens existed on the property: \$250,000.00.

WHEREFORE, the undersigned moves the Court to avoid the lien of SOFI LENDING CORP. pursuant to 11 U.S.C. § 522(f)(1)(A) on the ground that such lien impairs an exemption to which the Debtors are entitled under 11 U.S.C. § 522(b).

DATED this 31st day of August, 2020.

PATTEN, PETERMAN, BEKKEDAHL & GREEN
2817 Second Ave. North, Suite 300
P.O. Box 1239
Billings, Montana 59103-1239

By: /s/ Wendy A. Jungblut
Wendy A. Jungblut
Attorney for Debtors

**NOTICE OF OPPORTUNITY TO RESPOND
AND REQUEST HEARING**

If you object to the motion, you must file a written responsive pleading and request a hearing within fourteen (14) days of the date of the motion. The responding party shall schedule the hearing on the motion at least twenty-one (21) days after the date of the response and request for hearing and shall include in the caption of the responsive pleading in bold and conspicuous print the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING

Date: _____

Time: _____

Location: _____

If no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.

DATED this 31st day of August, 2020.

**PATTEN, PETERMAN, BEKKEDAHL
& GREEN**

2817 Second Ave. North, Suite 300
P.O. Box 1239
Billings, Montana 59103-1239

By: /s/ Wendy A. Jungblut

Wendy A. Jungblut
Attorney for Debtors

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify, under penalty of perjury, that on the 31st day of August, 2020, a copy of the foregoing was filed electronically with the Court's ECF system, giving notice to all persons/entities requesting special notice or otherwise entitled to the same and that in addition service by mailing a true and correct copy, first class mail, postage prepaid, was made to the following persons/entities who are not ECF registered users:

Stephanie Hayden
Rodenburg Law Firm
PO Box 2427
Fargo, ND 58108-2427

SoFi Lending Corp.
2750 E. Cottonwood Pkwy
Suite 300
Cottonwood Heights, UT 84121

SoFi Lending Corp.
One Letterman Drive
Suite 4700 Building A
San Francisco, CA 94129

SoFi Lending Corp.
375 Healdsburg Ave., STE 280
Healdsburg, CA 95448-4151

SoFi Lending Corp.
Attn: Lacey Hunsaker
2750 E. Cottonwood Pkwy
Suite 300
Salt Lake City, UT 84121-7285

/s/ Wendy A. Jungblut
for PATTEN, PETERMAN, BEKKEDAHL & GREEN

Stephanie Hayden
RODENBURG LAW FIRM
Attorneys for Plaintiff
PO BOX 2427
Fargo, ND 58108-2427
701/235-6411
JRL_Enotices@jrllawoffice.com

EXHIBIT "A" 210398-98

CLERK OF THE
DISTRICT COURT
TERRY HALPIN

2019 MAR 22 AM 9 01

FILED (2)

BY _____
DEPUTY

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

SoFi Consumer Loan)
Program 2015-1 Trust,)
)
Plaintiff,)
)
vs.)
)
Shawn Douglas,)
)
Defendant.)


Cause No.: DV DV-17-1925
Before: Hon. Gregory Todd

NOTICE OF ENTRY OF JUDGMENT

TO THE ABOVE NAMED DEFENDANT:

Please take notice that judgment has been duly entered in writing in words and figures as set forth in a true copy thereof, annexed to a copy of this notice and served upon you. Please govern yourselves accordingly.

Dated: March 19, 2019



Stephanie Hayden

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

SoFi Consumer Loan
Program 2015-1 Trust,

Plaintiff,

vs.

Shawn Douglas,

Defendant.

Cause No.: DV-17-1925

Before: Hon. Gregory Todd

DEFAULT JUDGMENT

In this action, the defendant, Shawn Douglas, having been regularly served with process and having failed to answer the plaintiff's complaint filed herein, the legal time for answering having expired, and the default of the said defendant in the premises having been duly entered according to law, now upon the application of said plaintiff, judgment is hereby entered against said defendant, in pursuance of the prayer of said complaint.

WHEREFORE, BY VIRTUE OF THE LAW, and by reason of the premises aforesaid, it is ordered, adjudged and decreed that said plaintiff, SoFi Consumer Loan Program 2015-1 Trust, does recover from the said defendant, Shawn Douglas, the sum of \$44,494.40, plus costs and disbursements of \$205.00 making a total judgment of \$44,699.40.

Dated this 17th day of December, 2018

Gregory R. Todd

District Judge or Clerk of Court

cc: Stephanie Hayden

Stephanie Hayden
RODENBURG LAW FIRM
Attorneys for Plaintiff
PO BOX 2427
Fargo, ND 58108-2427
701/235-6411

CLERK OF THE
DISTRICT COURT
TERRY HALPIN

2019 MAR 22 AM 9 01

BY _____
DEPUTY

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

SoFi Consumer Loan)
Program 2015-1 Trust,)
)
Plaintiff,)
)
vs.)
)
Shawn Douglas,)
)
Defendant.)

Cause No.: DV DV-17-1925

Before: Hon. Gregory Todd

CERTIFICATE OF SERVICE


I, Stephanie Hayden, hereby certify that on March 19, 2019, I served the following:

- Notice of Entry of Judgment
- Judgment

by placing a true and correct copy in an envelope and depositing the same, with postage prepaid for first class mail delivery, in the United States mail at Fargo, North Dakota and addressed as follows:

Patten, Peterman, Bekkedaahl & Green, PLLC
2817 2nd Ave. N Suite 300
Billings, MT 59101

Dated: March 19, 2019



Stephanie Hayden

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**SHAWN DOUGLAS and
STEPHANIE DOUGLAS,**

Debtors.

Case No. **20-10025-BPH**

O R D E R

At Butte in said District this 15th day of September, 2020.

In this Chapter 13 bankruptcy, Debtors filed a Motion to Avoid Lien under 11 U.S.C. § 522(f) (“Motion”) and Notice on August 31, 2020, at ECF No. 54. Debtors seek to avoid a judicial lien held by Sofi Lending Corp. (“Creditor”) against Debtors’ homestead property. Debtors’ Motion was filed in accordance with Mont. LBF 24 as required by Mont. LBR 4003-4. The Motion was accompanied by a “Notice” provision which grants the affected creditor fourteen (14) days to object to the Motion and schedule the matter for hearing. The “Notice” provision also provides that “[i]f no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.”

Creditor did not respond to Debtors’ Motion within the fourteen-day time period. The Court deems Creditor’s failure to respond an admission by Creditor and/or its counsel that the Motion is well taken.

Debtors assert in the Motion that Creditor’s judicial lien impairs Debtors’ homestead exemption. In support of their assertion, Debtors represent that the market value of the

homestead property is \$465,000 and that the property is encumbered by a consensual lien held by PNC Bank, N.A., in the amount of \$348,018.89. The allowable homestead exemption under Mont. Code Ann. § 70-32-104 is \$250,000.00.

The avoidance of liens, in general, is governed by 11 U.S.C. § 522(f), which provides in relevant part:

Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is-

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5)[.]

Applying the formula set forth in 11 U.S.C. § 522(f)(2)(A) to the uncontested facts asserted in the Motion, the Court finds that Creditor's judicial lien impairs Debtors' homestead exemption. Accordingly, pursuant to 11 U.S.C. § 522(f), Fed. R. Bankr. P. 4003(d) and Mont. L.B.R. 4003-4,

IT IS ORDERED Debtors' Motion filed at ECF No. 54, is **GRANTED**. Pursuant to 11 U.S.C. § 522(f)(1)(A), the judicial lien held by Creditor. against Debtors' homestead property, as described below, is hereby avoided to the extent allowed by law:

Lot 17, Block 4, Linlee Lake Estates Subdivision, Yellowstone County, Montana, more commonly known as 6945 Trailake Drive, Billings, Montana 59106.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana