

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY GENERAL



STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

TEL: (802) 828-3171
FAX: (802) 828-3187
TTY: (802) 828-3665

<http://www.ago.vermont.gov>

January 30, 2018

Katy Savage
NHVT News
nhvtnews@gmail.com

Re: Public Records Request

Dear Ms. Savage:

I write to further respond to your public records act request dated January 16, 2018. Attached please find approximately 270 pages in response to your request. This production does not include at least one matter in which the State of Vermont/ Lottery Commission was a plaintiff in a lawsuit seeking return of property (including lottery tickets) following the closure of a business. Retrieval of the complaint in that matter will require additional time as the file is with the Secretary of State's Office. If you would like the complaint in that matter, please let us know and we will follow up with the State Records Center.

Personal contact and medical information has been redacted pursuant to 1 V.S.A. § 317(c)(7). If you feel information has been withheld in error, you may appeal to the Deputy Attorney General, Joshua Diamond.

Thank you.

Sincerely,

/s/ Sarah E.B. London
Sarah London
Assistant Attorney General

Current Case Docket Information

Court record: 44792

Vermont Superior Court

Washington Civil Division

Docket No.	575-9-02 Wncv	Vermont Lottery Commission vs. Knapp et
Case Type:		Last judge: Mary Miles Teachout
Case Track:	Not set	Recused: None
Case Status:	Disposed	
Court/Jury:	Court trial	
Next Hearing:		

PARTIES				
No.	Role	Litigant Name	Attorney Name	Telephone
p# 1	plf	Vermont Lottery Commission	Rice, William H.	828-3171
p# 2	def	Knapp, Gregory Jr., d/b/a CastWelch,	John J. Jr.	773-3384
p# 3	def	Knapp, Barbara J. d/b/a CastleWelch,	John J. Jr.	773-3384

DISPUTES				
DsptCase	Name	Disputants	Dispo	Date
1	cmpl Preliminary Injunction/TRO	p#1 v p#2	dc	11/20/02
2	cmpl Preliminary Injunction/TRO	p#1 v p#3	dc	11/20/02

MOTIONS/PETITIONS/REQUESTS FOR RELIEF				
No.	Type	Status	Judge	Date
1	M/for Temporary Restraining Order	granted	MT	09/18/02
2	M/for Preliminary Injunction			09/13/02

09/13/02

945580 - partyadd

Vermont Lottery Commission, Plaintiff.

945584 - partyadd

Gregory Knapp Jr. d/b/a Castleton Redemption Center, Defendant.

945585 - partyadd

Barbara J. Knapp d/b/a Castleton Redemption Center, Defendant.

945592 - cvfile - status set to asd

Preliminary Injunction/TRO case filed by Plaintiff Vermont Lottery Commission against Defendant Gregory Knapp Jr. d/b/a Castleton Redemption Center and Defendant Barbara J. Knapp d/b/a Castleton Redemption Center.

945593 - mprfile

MPR 1) Motion for Temporary Restraining Order filed by Plaintiff Vermont Lottery Commission. Motion for Temporary Restraining Order. Documents filed: Mo. for TRO; Memorandum of law in support; Proposed TRO ORder.

945594 - mprfile

MPR 2) Motion for Preliminary Injunction filed by Plaintiff Vermont Lottery Commission. Motion for Preliminary Injunction. Documents filed: Mo. for Preliminary Injunction; Affidavit of Frances McAvoy.

945595 - hrgset

Motion Hearing set for 09/18/02 at 10:30 AM.

945597 - letsent

letter advising of docket number assigned letter sent to Plaintiff Vermont Lottery Commission.

09/17/02 Service complete on party(s) 2-3: acknowledgement/acceptance. Documents served: Acceptance of Service by John Welch, Esq; Defts' attorney.

945908 - couappr

Appearance entered by John J. Welch Jr. on behalf of Defendant Gregory Knapp Jr. d/b/a Castleton Redemption Center and Defendant Barbara J. Knapp d/b/a Castleton Redemption Center.

09/18/02

946010 - hrgheld

Motion Hearing held. MT/TAPE.

946011 - entorder

Entry Order by Judge Mary Miles Teachout: Hearing held on Mo. for Temporary Restraining Order. No opposition. Order issued.

946013 - mprstat

MPR 1 status changed to granted.

09/19/02

946309 - note

Copy of letter from Atty Rice to Atty Welch RE: copy of TRO.

09/27/02

947255 - note

List of Inventory of property recovered pursuant to TRO filed by Atty Rice.

11/08/02

952288 - letsent

Blank Pre-Trial Order form mailed letter sent to Plaintiff Vermont Lottery Commission and Defendant Gregory Knapp Jr. d/b/a Castleton Redemption Center.

952289 - cstat - status set to aptr

Case status changed.

11/18/02

953226 - note

Letter from Atty Rice advising Atty Welch has advised Deft has filed bankruptcy, therefore there is no need to file a proposed discovery order.

11/20/02

953495 - cvdisp - status set to dis

Dispute 1-2 disposed: dismissed by court.

9-21-2014

SEP 25 2014

I am writing in regards to the
lottery Commission of N.J. The
lottery has greatly changed with
no notice I have a written
agreement to sell lottery tickets
in 90 days they have changed with
no notice to 3 wks

The lottery says I owe \$537.24

When I don't, they took \$489.46

From my acct on 8-5 - 8-12
twice. I owe \$52.78 That is it

Doris Lemery

Description	Debits	Credits	Date	Balance
VT LOTTERY 3 LOTTERY 22674WS08/19/14	\$47.23		Aug 20, 2014	\$156.29
RETURNED ITEM, INSUFFICIENT FUNDS, VT LOTTERY 3 LOTTERY 22674WS8/26/14		\$537.24	Aug 27, 2014	\$693.53
VT LOTTERY 3 LOTTERY 22674P 8/26/14	\$37.38		Aug 27, 2014	\$656.15
VT LOTTERY 3 LOTTERY 22674WS8/26/14	\$537.24		Aug 27, 2014	\$118.91
NS RETURNED ITEM	\$30.00		Aug 27, 2014	\$88.91
****Statement Produced****			Aug 29, 2014	\$88.91
STOP PAYMENT FEE	\$30.00		Sep 02, 2014	\$58.91
Balance This Statement:			Sep 18, 2014	\$58.91

Demand Deposit [REDACTED] - **TODD-BIGART INC**

	Relationship	Date of Birth	Phone Number	Tax Identification
☞ TODD-BIGART INC	☞ Owner/Signer		*****	EIN **-*****
☞ DBA RIVER STREET VARIETY	☞ Owner/Signer		*****	
☞ DORIS A LEMIEUX	☞ Owner/Signer	*** **, ****	*****	SSN ***-**-****

LOTTERY ACCOUNT
 1047 COLEVILLE ROAD
 BENNINGTON VT 05201

Additional Relationships
 Tax Name: TODD-BIGART INC
 See Mailing Information

*Consumer Ass't. 146 University place
 Burlington, 05405*

Mailing Label

TODD-BIGART INC
 DBA RIVER STREET VARIETY
 DORIS A LEMIEUX
 LOTTERY ACCOUNT
 1047 COLEVILLE ROAD
 BENNINGTON VT 05201

Memo Balances

Current Ledger Balance:	\$58.91	Current Available Balance:	\$58.91
Less Presentments:	(\$58.91)	Less Presentments:	(\$58.91)
Memo Ledger Balance:	\$0.00	Memo Available Balance:	\$0.00

Presentments

Description	Memopost	Expiration	Ledger Adjustment	Available Adjustment
☞ Source: Teller-Terminal 222580 (15) CREDIT BENNINGTON	Sep 19, 2014 11:06 a.m.	Sep 19, 2014	\$30.00	\$30.00
☞ Source: Teller-Terminal 222575 (29) CLOSING BENNINGTON	Sep 19, 2014 11:07 a.m.	Sep 19, 2014	(\$88.91)	(\$88.91)

Current & Previous Cycle

Description	Debits	Credits	Date	Balance
Balance Forward:			Jul 31, 2014	\$255.32
Deposit		\$20.00	Aug 01, 2014	\$275.32
Deposit		\$70.00	Aug 04, 2014	\$345.32
Deposit		\$40.00	Aug 05, 2014	\$385.32
RETURNED ITEM, INSUFFICIENT FUNDS, VT LOTTERY 3 LOTTERY 22674WS08/05/14		\$484.46	Aug 06, 2014	\$869.78
VT LOTTERY 3 LOTTERY 22674WS08/05/14	\$484.46		Aug 06, 2014	\$385.32
Deposit		\$223.00	Aug 08, 2014	\$608.32
Deposit		\$44.00	Aug 11, 2014	\$652.32
Deposit		\$20.00	Aug 12, 2014	\$672.32
Deposit		\$50.00	Aug 13, 2014	\$722.32
VT LOTTERY 3 LOTTERY 22674WS08/12/14	\$34.34		Aug 13, 2014	\$687.98
VT LOTTERY 3 LOTTERY 22674R 08/12/14	\$484.46		Aug 13, 2014	\$203.52



Vermont Lottery Commission
1311 US Route 302, Suite 100
Barre, VT 05641
www.vtlottery.com

[phone] 802-479-5686
[fax] 802-479-4294

September 04, 2014

Doris Bigart
River Street Variety
Bennington, VT 05201

Ms. Bigart:

As you know there is a balance of \$537.24 that is outstanding on your account. Tim was in the store to pick up the entire inventory and to give you credit on the tickets that you had not sold. This balance is from tickets that you sold and need to pay for. I have printed off a copy of the statement that I have and you will see the credit and the amount you owe. Please send a bank check in the full amount by September 12, 2014. If you have concerns you would like to discuss please call me at 802-479-5686.

Thank you for your attention to this matter.

Doris Bigart
Sincerely,

David Sicely
Customer Service Representative II

Cc: file

Date 9/04/14



Cadmin

10-07-1098

From: Jason Coplan [REDACTED]
Sent: Thursday, July 08, 2010 5:24 PM
To: staff@vtlottery.com; vlc@state.vt.us; letters@musl.com; Cadmin
Subject: Fw: New Vermont Tickets

----- Original Message -----

From: Jason Coplan
To: letters@musl.com
Sent: Tuesday, July 06, 2010 12:12 PM
Subject: New Vermont Tickets

On the new tickets for the Powerball in Vermont:

Only one option for Easy Pick -

On previous tickets you were able to choose 1-5 numbers on the general pick and then choose easy pick for the rest - and then either choose your Powerball number or easy pick the Powerball number.

For example: I used to be able to pick 11, 26 and then easy pick the rest of the five numbers. And then I could either easy pick the Powerball number or choose my own.

I can no longer do that with the new ticket.

Was this done intentionally? Will it be fixed?

+++++

Jason Coplan
[REDACTED]

090313-Depaul

Sent: Tuesday, September 03, 2013 10:43 AM
To: consumer@uvm.edu
Subject: Consumer Complaint Form

Below is the result of your feedback form. It was submitted by
([REDACTED]) on Tuesday, September 3, 2013 at 10:42:48

email: [REDACTED]

Name: Patricia M DePaul

street: [REDACTED]

City: [REDACTED]

State: [REDACTED]

ZIP: [REDACTED]

Phone: [REDACTED]

Senior: Yes

Irene: No

Business Name: VERMONT LOTTERY

Business Street: 1311 US ROUTE 302

Business City: BARRE

Business State: VERMONT

Business ZIP: 05641

Business Phone: 8023228800

Business E-mail: www.vtlottery.com

Complaint: I WAS ON VACATION AND WAS IN UNIVERSITY MALL IN SO BURLINGTON AND PURCHASE A LOTTERY TICKET FROM A MACHISE AND (\$10.00) AND SAID TO MY SISTER I WILL DO LATER PUT IN MY SHOPPING BAG. WELL WHEN I PUT OUT TICKET TO MY SURPRISE IT WAS ALREADY DONE AND I CALL LOTTERY (FRAN) AND SHE SAID IT WAS A FIVE DOLLAR TICKET AND IT HAD ALREADY HAD BEEN PAID OUT TICKET PURCHASE AT BEVEAGE WAREHOUSE IN WINOOSKI AND EXCHANGED FOR 10 O DOLLAR TICKET AND I TOLD HER THIS IS THE ONLY TICKET I PURCHASED FOR \$10.00. I DID NOT GO ANYWHERE ELSE TO BUY A TICKET I THEN ASK HER IF SHE WAS CALLING ME A LIAR . I TRIED TO EXPLAIN THAT I WAS IN THE STATE OF VACATION AND DID NOT PURCHASE ANY OTHER TICKETS...SHE TOLD ME THAT THEIR WAS NO....MONEY PUT IN THE MACHINE IN THE MALL FOR 10.00 DOLLAR...FRAN WAS VERY NICE AND SAID I MUST BE MAKING A MISTATE ABOUT MY PURCHASE...WHAT????????????????I ASKED HER AGAIN IF SHE SAID I WAS A LAIR...I HUNG UP ON HER....

Loss: 10.00

090313-Depaul

Relief Requested: KEEP THE MONEY BUT I AM ON A LAIR AND NOT DUMB.....HOW DARE
ANYONE DO
THAT TO ANYONE...IT WAS EASY FOR HER TO SAY I WAS ON THE PHONE....OE T

100215-Kelley

Sent: Thursday, October 01, 2015 8:24 PM
To: consumer@uvm.edu
Subject: Consumer Complaint Form

Below is the result of your feedback form. It was submitted by
() on Thursday, October 1, 2015 at 20:24:17

Intake Number: Ag15-08936

Name: Vicky Kelley

Senior: No

Consumer is Business: No

Veteran or Service Member: No

Business Name: Vermont Lottery

Business Street: 1311 US Route 302, suite 100

Business City: Barre

Business State: Vermont

Business ZIP: 05641

Business Phone: 802-479-4294

Business E-mail: Gsmith@vtlottery.com

Complaint: I bought a 10\$ lottery ticket from Champlain farms in Barre Vermont on 9-30-15 at about 10:20 pm well actually a few and the lay ticket I played ticket number 20 was a winning ticket for 500\$ I immediatly showed it to the cashier (Jeremy) he then looked at it and gave me a pen to sign my information on the back, I gave him 20\$ for a little tip and left the next am I went to pump and pantry around 7:30 am or so scanned the ticket in there lottery machine and as I thought it said file a claim at Vermont lottery, I went home with snacks for my kids for school and was getting ready to leave and my son was helping me start a wood stove and I had some old tickets and papers to burn and without noticing he grabbed the wrong one shock was the winning ticket I was able to get the corner out with the numbers of the ticket I immediatly called the store and talked to the store manager Cindy she said i will write u a letter becaus Her employee jeremy had wrote her a note telli! ng her about the ticket he sold me and then she game me the information about the tickets book Info which lines up with the remaining of the ticket I have she also wrote me a note and said vt lottery could contact her and her district manager (Scott) to view the video of me buying and signing the ticket at about 10:20 in the called the vt lottery and spoke to 2 men one being security and the other being the executive director (Gregory smith) he said my situation was a different from others and asked me to bring the letters from Champlain farms and the remains of my tickets and if he felt he could build up

100215-Kelley

enough information that they could pay me my winnings I brought all that they asked me for along with a friend so i had someone there with me he told me they would look into this and contact the store to view the camera but he seemed like he was not annoyed with me then anything and I feel Like I was just being told something to go away... This is why I am contacting you..!
. I have all the proof that proves that I purchased and won the ticket and that's what they told me they needed to see was the numbers of the winning ticket I have done what they asked please help me the ticket number and game number is 1281-02181-020 the first gentleman I talked to had called me phone and gave me his cell phone number to text him the pictures which I did [REDACTED] is his number

Loss: \$500

Relief Requested: To be paid what I won I have proved this in every way possible and have done what they asked me to. why would they have asked me for proof of they had no intent in making it right?

STATE OF VERMONT
CALEDONIA COUNTY, SS.

CALEDONIA SUPERIOR COURT
DOCKET NO. _____

CitiFinancial, Inc.,
Plaintiff

v.

Roger K. Hooker, Donna Aldrich Hooker,
Vermont Lottery Commission, State of Vermont
Department of Taxes and Occupants residing at
72 Hillside Drive, Walden, Vermont,
Defendants

RECEIVED
APR 10 2009

BY: _____

SUMMONS

TO THE ABOVE NAMED DEFENDANT: Vermont Lottery Commission

1. **YOU ARE BEING SUED.** The plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights.
2. **YOU MUST REPLY WITHIN 20* DAYS TO PROTECT YOUR RIGHTS.** You must give or mail the Plaintiff a **written response** called an Answer within 20* days of the date on which you received this Summons. You must send a copy of your Answer to the Plaintiff's attorney located at:

Lobe & Fortin, PLC
30 Kimball Ave, Ste. 306
South Burlington, VT 05403

You must also give or mail your Answer to the Court located at:

Kathleen Pearl, Clerk
Caledonia Superior Court
1126 Main Street, Suite 1
St. Johnsbury, VT 05819

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.
4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT GIVE YOUR WRITTEN ANSWER TO THE COURT.** If you do not Answer within 20* days and file it with the Court, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint.
5. **YOU MUST MAKE ANY CLAIMS AGAINST THE PLAINTIFF IN YOUR REPLY.** Your Answer must state any related legal claims you have against the Plaintiff. Your claims against the Plaintiff are called Counterclaims. If you do not make your Counterclaims in writing in your Answer, you may not be able to

bring them up at all. Even if you have insurance and the insurance company will defend you, you must still file any Counterclaims you may have.

6. **LEGAL ASSISTANCE.** You may wish to get help from a lawyer. If you cannot afford a lawyer, you should ask the court clerk for information about places where you can get free legal help. **Even if you cannot get legal help, you must still give the Court a written Answer to protect your rights or you may lose the case.**

Dated 4/7/11

By: _____

Joshua Lobe
Lobe & Fortin, PLC
30 Kimball Ave., Ste. 306
South Burlington, VT 05403
Attorney for Plaintiff

*SERVED ON 04-10-09
Date

Curtis W. [Signature]
(Sheriff's name)

NOTICE TO HOMEOWNER

**THIS IS A FORECLOSURE CASE AGAINST YOU.
YOU MAY LOSE YOUR HOME**

THE VERMONT SUPREME COURT REQUIRES THAT THIS NOTICE BE
GIVEN TO YOU. THIS IS NOT LEGAL ADVICE

TO BE INFORMED OF THE NEXT STEPS IN THE COURT CASE, YOU MUST
GIVE THE COURT YOUR MAILING ADDRESS AS SOON AS POSSIBLE. THE
COURT'S ADDRESS IS ON THE "SUMMONS" ATTACHED TO THIS NOTICE.

READ THE SUMMONS THAT IS PART OF THE PACKAGE OF PAPERS
ATTACHED TO THIS NOTICE. IT EXPLAINS OTHER IMPORTANT INFORMATION
ABOUT YOUR COURT CASE. YOU SHOULD ALSO TALK TO A LAWYER IF
POSSIBLE.

TO GET **FREE HELP** IN WORKING WITH YOUR LENDER TO TRY TO KEEP
YOUR HOME, OR IN DECIDING WHETHER YOU CAN AFFORD TO KEEP YOUR
HOME, YOU CAN CALL THE NUMBERS BELOW:

1. Vermont Homeownership Centers: (call the one closest to your residence)

Barre Office: (802) 476-4493 www.cvclt.org
Brattleboro Office: (802) 246-2109 www.windhamhousingtrust.org
Burlington Office: (802) 660-0642 www.getahome.org
Lyndonville Office: (802) 535-3554 www.NEKHome.org
Rutland Office: (802) 438-2303 www.nwwwvt.org
Springfield Office: (802) 885-1856 www.raclt.org
St. Albans Office: (802) 527-2361 www.getahome.org

2. Vermont Department of Banking, Insurance, Securities & Health Care Administration
(BISHCA):

Toll Free Mortgage Assistance Program: 1-888-568-4547

STATE OF VERMONT
CALEDONIA COUNTY, SS.

CALEDONIA SUPERIOR COURT
DOCKET NO. _____

CitiFinancial, Inc.,
Plaintiff

v.

Roger K. Hooker, Donna Aldrich Hooker,
Vermont Lottery Commission, State of Vermont
Department of Taxes and Occupants residing at
72 Hillside Drive, Walden, Vermont,
Defendants

COMPLAINT FOR FORECLOSURE

1. Plaintiff/mortgagee, CitiFinancial, Inc., is a banking institution with a place of business in the City of Coppell and State of Texas.
2. Upon information and belief, defendants, Roger K. Hooker and Donna Aldrich Hooker (hereinafter "mortgagors"), are residents of the Town of Walden and State of Vermont.

COUNT I

3. On or about September 3, 1987, Sunday E. Burnham, Alicia Burnham, and mortgagor, Roger K. Hooker, purchased and acquired certain real property located at 72 Hillside Drive in the Town of Walden, County of Caledonia and State of Vermont (hereinafter referred to as "mortgaged premises").
4. On February 26, 1993, Sunday E. Burnham and Alicia Burnham executed a Quitclaim Deed conveying their interest in the subject premises to Roger K. Hooker by Quitclaim Deed recorded on March 16, 1993 in Volume 41 at Page 46 of the Land Records of the Town of Walden.
5. On December 9, 2004, mortgagors, Roger K. Hooker and Donna Aldrich Hooker executed a Disclosure Statement, Note and Security Agreement, in favor of CitiFinancial, Inc., in the original principal amount of \$166,743.00. (Said Disclosure Statement, Note and Security Agreement is attached hereto and incorporated herein, as if set forth in full, as Plaintiff's Exhibit 1).
6. The subject Disclosure Statement, Note and Security Agreement is secured by a Mortgage Deed, dated December 9, 2004 from Roger K. Hooker and Donna Aldrich Hooker to CitiFinancial, Inc. Said Mortgage Deed was recorded on December 14, 2004 in Volume 57, Page 77 of the Land Records of the Town of Walden. (Said Mortgage Deed is attached hereto and incorporated herein as if set forth in full, as plaintiff's Exhibit 2).

7. The real property, which is the subject of this foreclosure action, is more particularly described in exhibit 3 attached hereto and incorporated herein.

8. The subject Disclosure Statement, Note and Security Agreement calls for monthly payments commencing on the fourteenth day of January, 2005.

9. The Mortgage, which is the subject of this action, provides that plaintiff shall be entitled to collect all reasonable costs and expenses incurred in bringing this action, including reasonable attorney's fees.

10. The Mortgage provides that plaintiff may make payment to protect the subject property including, but not limited to delinquent taxes and insurance premiums and may recover the same from mortgagors.

11. Mortgagors have failed to make the payments called for under the subject Disclosure Statement, Note and Security Agreement and Mortgage.

12. The failure of mortgagors to make payments as set forth herein, constitute a breach of the Subject Disclosure Statement, Note and Security Agreement and Mortgage held by plaintiff.

13. In compliance with any provisions of the Disclosure Statement, Note and Security Agreement and Mortgage, mortgagors have been notified of their breach of the Disclosure Statement, Note and Security Agreement and Mortgage Deed and have failed to cure the same.

14. The following individuals may have or claim some interest or lien upon the mortgaged premises, as described in the mortgages, which interest is junior and inferior to that of plaintiff, and are hereby joined in this action as defendants under Rule 80.1(b) of the Vermont Rules of Civil Procedure:

- a. Vermont Lottery Commission by virtue of an Installment Judgment Order in the amount of \$1,052.50 dated June 23, 2006 and recorded on October 2, 2006 in Volume 60 at Page 81 of the Walden Town Land Records.
- b. State of Vermont Department of Taxes by virtue of a Tax Lien in the amount of \$825.46 dated November 4, 2008 and recorded on November 6, 2008 in a Hanging File in the Walden Town Land Records.
- c. Occupants, if any, are named in this action pursuant to 12 V.S.A. Section 4523(c)(1). Plaintiff has no actual knowledge whether the property is mortgagee occupied or tenant occupied.

WHEREFORE, plaintiff prays that this Honorable Court;

- a. Take jurisdiction of this matter;

- b. Determine the priorities of the parties' claims and interest in the collateral pledged to plaintiff;
- c. Order defendants to pay to the Clerk of the Court for the benefit of plaintiff all amounts due and to become due on the Disclosure Statement, Note and Security Agreement and Mortgage, with interest thereon, together with sums expended, reasonable attorneys' fees and costs, and in default thereof order that the defendants and all persons claiming by and from and under them be forever foreclosed of all equity of redemption in the mortgaged premises;
- d. Upon defendants' failure to redeem their interest in the property, grant plaintiff a Writ of Possession of the mortgaged premises;
- e. Award plaintiff its costs of maintaining and protecting the value of the mortgaged premises during the pendency of this action, including, but not limited to the payment of municipal charges, taxes and insurance payments which may now be due or become due and owing;
- f. To the extent appropriate, award plaintiff its costs, attorneys' fees including attorney's fees in excess of 2 percent, and expenses incurred in bringing this action; and
- g. Grant such other relief as is equitable and just.

NOTICE TO DEFENDANTS: YOU MUST ENTER YOUR APPEARANCE IN ORDER TO RECEIVE NOTICE OF THE FORECLOSURE JUDGMENT WHICH WILL SET FORTH THE MONEY WHICH YOU MUST DEPOSIT TO REDEEM THE PREMISES IN THE PERIOD OF TIME ALLOWED TO DEPOSIT THIS AMOUNT.

NOTICE TO OCCUPANTS: THE PROPERTY IN WHICH YOU LIVE IS BEING FORECLOSED UPON. YOU ARE NAMED AS A DEFENDANT IN THE FORECLOSURE BECAUSE YOUR RIGHT TO REMAIN ON THE PREMISES MAY END WHEN THE FORECLOSURE IS COMPLETED. YOU MUST NOTIFY THE COURT OF YOUR NAME AND ADDRESS IN ORDER TO BE KEPT INFORMED OF THE STATUS OF THE FORECLOSURE.

DATED at South Burlington, Vermont this 21st day of April, 2009.

CitiFinancial, Inc.,

By: _____

Joshua Lobe
Lobe & Fortin, PLC
30 Kimball Ave., Ste. 306
South Burlington, VT 05403

EXHIBIT A

All that certain parcel of land in Town of Walden, Caledonia County, State of Vermont, as more fully described in Deed Book 41, Page 46, ID# 11-13.11. Being known and designated as a metes and bounds description.

Being the same property conveyed by fee simple deed from Sunday E. Burnham and Alicia M. Burnham, husband and wife, to Roger K. Hooker, dated 02/26/1993, recorded on 03/16/1993 in Book 41, Page 46 in Caledonia County Records, State of VT.

Being the same property conveyed by fee simple deed from Sunday E. Burnham and Alicia M. Burnham, husband and wife, to Roger K. Hooker, dated 02/26/1993, recorded on 03/16/1993 in Book 41, Page 46 in Caledonia County Records, State of VT.

Disclosure Statement, Note and Security Agreement

Borrower(s) (Name and mailing address) ROGER K HOOKER DONNA ALDRICH HOOKER 72 HILLSIDE DRIVE WALDEN VT 05873	Lender (Name, address, city and state) CITIFINANCIAL, INC. 1184 MAIN STREET SUITE 1 ST JOHNSBURY, VT 05819	Account No. 203141
		Date of Loan 12/09/2004

ANNUAL PERCENTAGE RATE The cost of Borrower's credit as a yearly rate. 8.50 %	FINANCE CHARGE The dollar amount the credit will cost Borrower. \$ 286,222.82	Amount Financed The amount of credit provided to Borrower or on Borrower's behalf. \$ 161,861.98	Total of Payments The amount Borrower will have paid after Borrower has made all payments as scheduled. \$ 448,084.80
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Payment Schedule:

Number of Payments	Amount of Payments*	When Payments Are Due
360	\$ 1,244.68	MONTHLY BEGINNING 01/14/2005
	\$	
	\$	
	\$	

See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Security: If checked, Borrower is giving a security interest in:
 Motor Vehicle Mobile Home
 Real Property Other:

Late Charge: If a payment is more than 10 days late, Borrower will pay a late charge equal to the greater of 5.0 % of the unpaid portion of the payment due or \$ 15.00.

Prepayment: If Borrower pays off early, Borrower will not have to pay a penalty and will not be entitled to a refund of part of the finance charge.

* Does not include any insurance premium.

Additional Information:

Total amount of first month's payment (including insurance premiums, if any.) \$ 1,310.68	PRINCIPAL \$ 166,743.59	POINTS \$ 4,856.61	MATURITY DATE 12/14/2034	DATE CHARGES BEGIN 12/14/2004
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Required Insurance Disclosure:
If Borrower grants Lender a security interest as indicated in this document, insurance to protect the Lender's interest in the collateral may be required. If this loan is secured by real property, or mobile/manufactured home, then fire, extended coverage, collision and/or comprehensive casualty insurance is required naming Lender as loss payee, until the loan is fully paid. The amount of such insurance must be sufficient to satisfy the unpaid balance of the loan, or be equal to the value of the collateral, whichever is less. Such insurance may be provided through an existing policy or a policy obtained independently and purchased by Borrower. Borrower may obtain such insurance from any insurer that is reasonably acceptable to Lender.

Optional Insurance Disclosure:
Borrower is not required to purchase optional insurance products, such as: Credit Life, Credit Disability, Involuntary Unemployment Insurance or any other optional insurance products. Lender's decision to grant credit will not be affected by Borrower's decision to purchase or decline to purchase optional insurance.

Coverage will not be provided unless Borrower signs and agrees to pay the applicable monthly premium in addition to the monthly loan payment disclosed above.

Borrower should refer to the terms contained in the applicable certificate or policy of insurance issued for the exact description of benefits, exclusions and premium rates.

If Borrower purchases insurance, Borrower's monthly payment will include both the monthly loan payment disclosed above and the applicable monthly premiums.

I/We request the following insurance:

Premium Due with the First Month's Loan Payment	First Year's Premium *	Insurance Type:	Signature	Date
\$ 66.00	\$ 792.00	JOINT CREDIT LIFE	<i>Roger K. Hooker</i> First Borrower's Signature	12-9-04 Date
\$ NONE	\$		<i>Donna Aldrich Hooker</i> Second Borrower's Signature	12-9-04 Date
\$ NONE	\$			

(* First year's premiums are calculated on the assumption that monthly loan payments are timely made). Accrued but unpaid premium, if not paid earlier, will be due and payable at the time of the final payment on the loan. However, failure to pay premiums may result in termination of insurance as described below.

Termination of Insurance:
Borrower may cancel any of the optional insurance products offered at any time. The optional insurance will terminate upon the earliest of the following occurrences:

- (1) the Lender's receipt of Borrower's written request for termination;
- (2) on the date when the sum of past due premiums equal or exceed four times the first month premium;
- (3) termination pursuant to the provisions of the insurance certificate;
- (4) payment in full of Borrower's Loan;
- (5) death of Borrower.

TERMS: In this Disclosure Statement, Note and Security Agreement, the word "Borrower" refers to the persons signing below as Borrower, whether one or more. If more than one borrower signs, each will be responsible, individually and together, for all promises made and for repaying the loan in full. The word "Lender" refers to the lender, whose name and address are shown above.

PROMISE TO PAY: In return for a loan that Borrower has received, Borrower promises to pay to the order of Lender the Principal amount shown above, plus interest on the unpaid Principal balance from the Date Charges Begin shown above until fully paid at the following Annual Rate of Interest:

ANNUAL RATE OF INTEREST: (Applicable Box Must be Checked)

08.1816 % per annum on the entire unpaid Principal balance.

% per annum on the first \$ _____ of the unpaid Principal balance; and _____ % per annum on the remaining unpaid Principal balance.

Lender will compute interest on the unpaid Principal balance on a daily basis from the date charges begin until Borrower repays the loan. If Borrower does not make sufficient or timely payments according to the payment schedule above, Borrower will incur greater interest charges on the loan.

(Intentionally left blank)

Borrower's Initials: *RKH* *DH*

Principal and interest shall be payable in the substantially equal monthly installments shown above, except that any appropriate adjustments will be made to the first and final payments, beginning on the first payment date shown above and continuing on the same day in each following month until paid in full unless this loan is subject to a call provision as indicated, in which event the final payment date may be accelerated. Upon the final payment date or the acceleration thereof, the entire outstanding balance of Principal and interest evidenced by this Disclosure Statement, Note and Security Agreement shall be due and payable. Any payment(s) which Lender accepts after the final payment date or the acceleration thereof do not constitute a renewal or extension of this loan unless Lender so determines. Each payment shall be applied as follows: (1) monthly loan payments due (first to interest, then principal), (2) insurance premiums due, (3) unpaid interest to the date of payment, if any, then (4) principal. Lender may collect interest from and after maturity upon the unpaid Principal balance at the rate of 12% per annum.

PREPAYMENT: Borrower may prepay this loan in whole or in part at any time without penalty. However, upon partial prepayment, interest will continue to accrue on any remaining Principal balance. Partial prepayment and the application of a Refund to the unpaid balance of the loan will not affect the amount or due date of subsequent scheduled payments on the loan, but may reduce the number of such payments.

SECURITY AGREEMENT:

- A. If this box is checked, this loan is unsecured.
B. If this box is checked, to secure the payment and performance hereof, Borrower gives to Lender a security interest under the Uniform Commercial Code in any property for which a description is completed below and all parts and equipment now or later added to the property and any proceeds of the property, all of which will be called "Property". See below for additional terms applicable to this security interest.

1. Motor vehicle/mobile home:

Table with 5 columns: Make, No. Cylinders, Year/Model, Model No. Or Name, Body Type, Identification Number

2. Other Property:

- C. If this box is checked, Borrower's loan is secured by a Deed of Trust or Mortgage of even date on real property which requires Lender's written consent to a sale or transfer of the encumbered real property located at 72 HILLSIDE DRIVE WALDEN VT 05873. See either the Deed of Trust or the Mortgage for terms applicable to Lender's interest in Borrower's real property ("Property").

OWNERSHIP OF PROPERTY: Borrower represents that the Property is owned by Borrower free and clear of all liens and encumbrances except those of which Borrower has informed Lender in writing. Prior to any default, Borrower may keep and use the Property at Borrower's own risk, subject to the provisions of the Uniform Commercial Code. If the Property includes a motor vehicle or a mobile home, Borrower will, upon request, deliver the certificate of title to the motor vehicle or a mobile home to Lender.

USE OF PROPERTY: Borrower will not sell, lease, encumber, or otherwise dispose of the Property without Lender's prior written consent. Borrower will keep the Property at Borrower's address (as shown on page 1) unless Lender has granted permission in writing for the Property to be located elsewhere. The Property will be used only in the state in which Borrower lives unless the Property is a motor vehicle, in which case it will be used outside the state only in the course of Borrower's normal use of the Property. Borrower will not use or permit the use of the Property for hire or for illegal purposes.

TAXES AND FEES: Borrower will pay all taxes, assessments, and other fees payable on the Property, this Disclosure Statement, Note and Security Agreement, or the loan.

INSURANCE: If Borrower purchases any insurance at Lender's office, Borrower understands and acknowledges that (1) the insurance company may be affiliated with Lender, (2) Lender's employee(s) may be an agent for the insurance company, (3) such employee(s) is not acting as the agent, broker or fiduciary for Borrower on this loan, but may be the agent of the insurance company, and (4) Lender or the insurance company may realize some benefit from the sale of that insurance. If Borrower fails to obtain or maintain any required insurance or fails to designate an agent through whom the insurance is to be obtained, Lender may purchase such required insurance for Borrower through an agent of Lender's choice, and the amounts paid by Lender will be added to the unpaid balance of the loan.

FINANCING STATEMENTS: Borrower will sign all financing statements, continuation statements, security interest filing statements, and similar documents with respect to the Property at Lender's request.

LATE CHARGE: If a payment is more than 10 days late, Borrower will pay a late charge equal to the greater of 5.0 % of the unpaid portion of the payment due or \$ 15.00. Lender may, at its option, waive any late charge or portion thereof without waiving its right to require a late charge with regard to any other late payments.

LOAN CHARGES: If a law that applies to this loan and that 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 (i) any such loan charge will be reduced by the amount necessary to reduce the charge to the permitted limit, and (ii) any sums already collected from Borrower that exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under this loan 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.

DEFAULT: Borrower will be in default if:

- 1. Borrower does not make any scheduled payment on time;
2. Borrower is (or any other person puts Borrower) in bankruptcy, insolvency or receivership;
3. Any of Borrower's creditors attempts by legal process to take and keep any property of Borrower, including the Property securing this loan;
4. Borrower fails to fulfill any promise made under this agreement; or
5. A default occurs under any Real Estate Mortgage or Deed of Trust which secures this loan or under any other mortgage or deed of trust on the real property.

Subject to Borrower's right to any notice of default, right to cure default, and any other applicable laws, if Borrower defaults, Lender may require Borrower to repay the entire unpaid Principal balance and any accrued interest at once, Lender's failure to exercise or delay in exercising any of its rights when default occurs does not constitute a waiver of those or any other rights under this agreement.

EFFECTS OF DEFAULT: If Borrower defaults, Borrower will deliver the Property to Lender or, upon Lender's demand, assemble the Property and make it available to Lender at a reasonably convenient place. Lender may, without previous notice or demand and without legal process, peacefully enter any place where the Property is located and take possession of it.

The Property may be sold with notice at a private or public sale at a location chosen by Lender. At such public sale, Lender may purchase the Property. The proceeds of the sale, minus the expenses of taking, removing, holding, repairing, and selling the Property, and minus the cost of paying off and removing any superior liens or claims on the Property, will be credited to the unpaid balance of Borrower's loan. If Borrower has left other property in the repossessed Property, Lender may hold such property temporarily for Borrower without any responsibility or liability for the property.

Notice of the time and place of a public sale or notice of the time after which a private sale will occur is reasonable if mailed to the Borrower's address at least five days before the sale. The notice may be mailed to Borrower's last address shown on Lender's records.

LAW THAT APPLIES: Vermont law and federal law, as applicable, govern this Disclosure Statement, Note and Security Agreement. If any part is unenforceable, this will not make any other part unenforceable. In no event will Borrower be required to pay interest or charges in excess of those permitted by law.

OTHER RIGHTS: Lender may accept payments after maturity or after a default without waiving its rights with respect to any subsequent default in payment. Borrower agrees that Lender may extend time for payment after maturity without notice. The terms of this agreement can be waived or changed only in a writing signed by Lender.

Where the context requires, singular words may be read in the plural and plural words in the singular. References to the masculine gender may be read to apply to the feminine gender.

Borrower's Initials: RKH DAH

OTHER TERMS: Each Borrower under this Disclosure Statement, Note and Security Agreement, if more than one, agrees that Lender may obtain approval from one Borrower to change the repayment terms and release any Property securing the loan, or add parties to or release parties from this agreement, without notice to any other Borrower and without releasing any other Borrower from his responsibilities. Lender does not have to notify Borrower before instituting suit if the note is not paid, and Lender can sue any or all Borrowers upon default by any Borrower.

Borrower, endorsers, sureties and guarantors, to the extent permitted by law, severally waive their right to require Lender to demand payment of amounts due, to give notice of amounts that have not been paid, to receive notice of any extensions of time to pay which Lender allows to any Borrower and to require Lender to show particular diligence in bringing suit against anyone responsible for repayment of this loan, and additionally, waive benefit of homestead and exemption laws now in force or later enacted, including stay of execution and condemnation, on any Property securing this loan and waive the benefit of valuation and appraisal.

This Disclosure Statement, Note and Security Agreement shall be the joint and several obligation of all makers, sureties, guarantors and endorsers and shall be binding upon them, their heirs, successors, legal representatives and assigns.

If any part of the Disclosure Statement, Note and Security Agreement and, if applicable, the Mortgage or Deed of Trust and accompanying Itemization of Amount Financed and Arbitration Agreement is unenforceable, this will not make any other part unenforceable.

REFINANCING: The overall cost of refinancing an existing loan balance may be greater than the cost of keeping the existing loan and obtaining a second loan for any additional funds Borrower wishes to borrow.

AUTHORIZATION TO USE CREDIT REPORT: By signing below, Borrower authorizes Lender to obtain, review and use information contained in the Borrower's credit report in order to determine whether the Borrower may qualify for products and services offered by Lender. This authorization terminates when Borrower's outstanding balance due under this Disclosure Statement, Note and Security Agreement is paid in full. Borrower may cancel such authorization at any time by writing the following: Transaction Processing, 300 St. Paul Place, BSP13A, Baltimore, MD 21202. In order to process Borrower's request, Lender must be provided Borrower's full name, address, social security number and account number.

ARBITRATION. Borrower, Non-Obligor(s) (if any) and Lender have entered into a separate Arbitration Agreement on this date, the terms of which are incorporated and made a part of this Disclosure Statement, Note and Security Agreement by this reference.

The following notice applies only if this box is checked.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

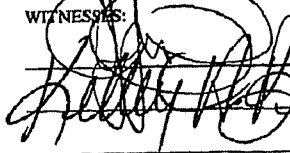
By signing below, Borrower agrees to the terms contained herein, acknowledges receipt of a copy of this Disclosure Statement, Note and Security Agreement and, if applicable, the Mortgage or Deed of Trust and of the accompanying Itemization of Amount Financed and Arbitration Agreement, and authorizes the disbursements stated therein.

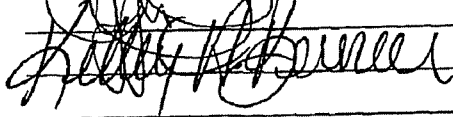
The following notice applies to any person signing this Note as a Co-signer:

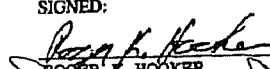
NOTICE TO CO-SIGNER: YOUR SIGNATURE ON THIS NOTE MEANS THAT YOU ARE EQUALLY LIABLE FOR REPAYMENT OF THIS LOAN. IF THE BORROWER DOES NOT PAY, THE LENDER HAS A LEGAL RIGHT TO COLLECT FROM YOU.

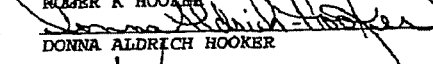
WITNESSES:

SIGNED:








ROGER K HOOKER -Borrower (Seal)


DONNA ALDRICH HOOKER -Borrower (Seal)

-Borrower (Seal)

CTTE FINANCIAL, INC.

By: 
(Name and Title) 12/09/2004 17:44:00

SECURITY INTEREST OF NONOBLIGOR: Borrower only is personally liable for payment of the loan. Nonobligor is liable and bound by all other terms, conditions, covenants, and agreements contained in this Disclosure Statement, Note and Security Agreement, including but not limited to the right and power of Lender to repossess and sell the Property securing this loan, in the event of default by Borrower in payment of this loan.

(Seal) _____ (Seal)
Signature Date Signature Date

Settlement Statement

U.S. Department of Housing and Urban Development

OMB Approval No. 2502-0491

Name & Address of Borrower ROGER K HOOKER DONNA ALDRICH HOOKER 72 HILLSIDE DRIVE WALDEN VT 05873		Name & Address of Lender: CITIFINANCIAL, INC. 1184 MAIN STREET SUITE 1 ST JOHNSBURY, VT 05819	
Property Location: (if different from above) 72 HILLSIDE DRIVE WALDEN VT 05873		Settlement Agent: CITIFINANCIAL, INC. Place of Settlement: 1184 MAIN STREET SUITE 1 ST JOHNSBURY, VT 05819	
Loan Number: 203141		Settlement Date: 12/09/2004	
L. Settlement Charges		M. Disbursement to Others	
800. Items Payable in Connection with Loan:			
801. Loan origination fee 3.0000 % to	4,856.61	1501. CITIFINANCIAL	19,976.94
802. Loan discount % to		1502. CITIFINANCIAL	5,029.75
803. Appraisal fee to CHESAPEAKE APP. & SETTL. SVCS	370.00	1503.	
* Fee for full appraisal, Automated Valuation Model (AVM), Broker Price Opinion (BPO), or Comparative Market Analysis (CMA).		1504.	
804. Credit report to		1505.	
805. Inspection fee to		1506.	
900. Items Required by Lender to be Paid in Advance:			
903. Hazard insurance premium for year(s) to		1507.	
905. Credit Life Insurance Premium to		1508.	
906. Disability Insurance Premium to		1509.	
907. Involuntary Unemployment Insurance Premium to		1510.	
908.		1511.	
909.		1512.	
910.		1513.	
1000. Reserves Deposited with Lender		1514.	
1100. Title Charges:			
1101. Settlement or closing fee to		1515.	
1102. Abstract or title search to		1516.	
1103. Title examination to CHESAPEAKE APP. & SETTL. SVCS	225.00	1517.	
1104. Title insurance binder to		1518.	
1105. Document preparation to		1519.	
1106. Notary fees to		1520.	
1107. Attorney's fees to (includes above item numbers)		1521.	
1108. Title insurance to CHESAPEAKE APP. & SETTL. SVCS (includes above item numbers)	205.25	1522.	
1109. Lender's coverage \$N/A		1523.	
1110. Owner's coverage \$N/A		1524.	
1111. Texas Title Guaranty Fee			
1112. Tax Related Service Fee to TRANSAMERICA	25.00	1525. CitiFinancial	133,374.88
1200. Government Recording and Transfer Charges:			
1201. Recording fee	49.00	1526. TOTAL DISBURSED (enter on line 1803)	158,381.57
1202. City/county tax/stamps		N. Net Settlement	
1203. State tax/stamps		1800. Loan Amount	\$ 166,743.59
1204. to \$	0.00	1801. Plus Cash/Check from Borrower	\$
1205. Release Fee		1802. Minus Total Settlement Charges (line 1400)	\$ 5,730.86
1300. Additional Settlement Charges:			
1301. Survey to		1803. Minus Total Disbursements to Others (line 1526)	\$ 158,381.57
1302. Pest inspection to		1804. Equals Disbursements to Borrower (after expiration of any applicable rescission period required by law)	\$ 2,631.16
1303. Overnight Delivery Fee to	0.00		
1304. Flood Certification Fee to	0.00		
1305. to			
1400. Total Settlement Charges (enter on line 1802)	5,730.86		

Borrower(s) Signature(s):

x *Roger K. Hooker*
ROGER K HOOKER

Donna Aldrich Hooker
DONNA ALDRICH HOOKER

21231-4 8/2004

Form HUD-1A (2/94)
INT. RESPA

Original (Branch)

Copy (Customer)

After recording, return to:
CITIFINANCIAL, INC.

1184 MAIN STREET SUITE 1
ST JOHNSBURY, VT 05819

511

WALDEN VT. Town Clerk's Office
Received for Record

December 14, 2004
at 2 o'clock 30 minutes P. M.
and Recorded in Book 57 Page 77-81
of Land Records

Attest

Wm. Smith
Town Clerk

MORTGAGE

THIS MORTGAGE is made this 9th day of December, 2004, between the Mortgagor,
ROGER K HOOKER DONNA ALDRICH HOOKER (herein "Borrower"),
and the Mortgagee, CITIFINANCIAL, INC., whose
a corporation organized and existing under the laws of address is 1184 MAIN STREET SUITE 1 ST JOHNSBURY, VT 05819 (herein
"Lender").

BORROWER, in consideration of the indebtedness herein recited, grants and conveys to Lender and Lender's
successors and assigns, with power of sale, the following described property located in the County of
CALEDONIA, State of Vermont:

SEE SCHEDULE A

which has the address of 72 HILLSIDE DRIVE WALDEN
Vermont 05873 (herein "Property Address");

TO HAVE AND TO HOLD such property unto Lender and Lender's successors and assigns, forever, together
with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all
of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing,
together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the
"Property."

TO SECURE to Lender the repayment of the indebtedness evidenced by Borrower's note dated 12/09/2004 and extensions and renewals thereof (herein Note"), in the principal sum of U.S. \$ 166,743.59 with interest thereon, providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on 12/14/2034 ; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained.

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

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

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Mortgage and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

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

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

4. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

5. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

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.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

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

7. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

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

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

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

11. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note, (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to Lender under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

12. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. **Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

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

15. **Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

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

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

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

17. **Acceleration; Remedies.** Except as provided in paragraph 16 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the nonexistence of a default or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law.

If Lender or Borrower invokes the power of sale, and the Property is judicially ordered to be sold pursuant to such power, Lender shall mail a copy of a notice of sale by registered mail to Borrower at the Property Address or at such other address as Borrower may subsequently deliver in writing to Lender for that purpose. Lender shall publish the notice of sale for the time and in the manner required by applicable law and, without further demand on Borrower, the Property shall be sold at the time and under the terms designated by the court and in the notice of sale. Lender or Lender's designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable attorneys' fees and costs of title evidence; (b) to all sums secured by this Mortgage; and (c) the excess, if any, to the person or persons legally entitled thereto.

18. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Mortgage due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to the earlier to occur of (i) sale of the Property pursuant to the power of sale contained in this Mortgage or (ii) entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would be then due under this Mortgage and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in paragraph 17 hereof, and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

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

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

20. Release. Upon payment of all sums secured by this Mortgage, this Mortgage shall become null and void and Lender shall discharge this Mortgage without charge to Borrower. Borrower shall pay all costs or recordation, if any.

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

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

As used in this paragraph 21, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 21, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, with a copy to P. O. Box 17170, Baltimore, MD 21203, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage,

Witnesses:

[Handwritten signature]

ROGER K. HOOKER -Borrower
DONNA ALDRICH HOOKER -Borrower

STATE OF VERMONT, CALEDONIA County ss:

On this 9TH day of DECEMBER, 2004, personally appeared

ROGER K. HOOKER AND DONNA ALDRICH HOOKER, signer(s)

and sealer(s) of the foregoing written instrument and acknowledged the same to be THEIR free act and deed.

Before me:

My Commission expires: 2/10/07

5)

The land referred to in this Commitment is described as follows:

ALL THAT CERTAIN PARCEL OF LAND IN TOWN OF WALDEN, CALEDONIA COUNTY, STATE OF VERMONT, AS MORE FULLY DESCRIBED IN DEED BOOK 41, PAGE 48, DM 11-13, 11 BEING KNOWN AND DESIGNATED AS A METES AND BOUNDS DESCRIPTION, BEING THE SAME PROPERTY CONVEYED BY FEE SIMPLE DEED FROM SUNDAY E BURHAM, JR. and ALICIA M BURHAM, HUSBAND AND WIFE, TO ROGER K HOOKER, DATED 02/28/1993 RECORDED ON 03/16/1993 IN BOOK 41, PAGE 48 IN CALEDONIA COUNTY RECORDS, STATE OF VT.
BEING THE SAME PROPERTY CONVEYED BY FEE SIMPLE DEED FROM SUNDAY E BURHAM, JR. and ALICIA M BURHAM, HUSBAND AND WIFE, TO ROGER K HOOKER, DATED 02/28/1993 RECORDED ON 03/16/1993 IN BOOK 41, PAGE 48 IN CALEDONIA COUNTY RECORDS, STATE OF VT.

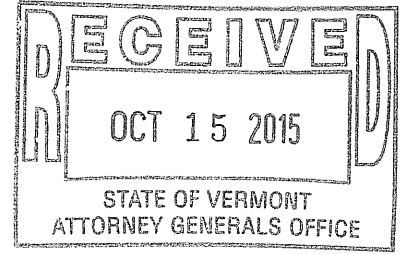
2015-09074

ATTORNEYS AT LAW
**SHECHTMAN
HALPERIN
SAVAGE, LLP**
A Limited Liability Partnership

1073-15

October 9, 2015

Handwritten signature



Washington County Sheriff's Office
Attn: Civil Process Division
P.O. Box 678
Montpelier, VT 05601-0678

RE: Deutsche Bank National Trust Company, as Indenture trustee for the Registered Noteholders of Aegis Asset Backed Securities Trust 2006-1, Mortgage Backed Notes v. James Fenner, et al.

Dear Madam or Sir:

Enclosed please find an original Summons and a copy of the summons and complaint for service on the following parties on or before November 13, 2015.

1. Vermont Lottery Commission - 1311 U.S. Route 302, Ste 100, Barre, VT 05641

The Summons and Return of Service can be returned to me in the enclosed self-addressed padded envelope. Please submit your invoice for services rendered together with the Return of Service.

If you are unable to complete service for any reason, please provide a detailed Affidavit of Diligent Search as it will be required for any alternative service going forward.

Should you have any questions, please do not hesitate to contact me at 877-575-1400.

Very truly yours,

Handwritten signature line

Amanda Johnson
Legal Assistant

Enclosures
5505622

15-10-560
TOM

1080 Main Street
Pawtucket, Rhode Island 02860
P 401.272.1400 F 401.272.1403

www.shshlawfirm.com

STATE OF VERMONT

SUPERIOR COURT
ORANGE UNIT

CIVIL DIVISION
DOCKET NO:

DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS INDENTURE TRUSTEE FOR THE REGISTERED
NOTEHOLDERS OF AEGIS ASSET BACKED
SECURITIES TRUST 2006-1, MORTGAGE BACKED
NOTES
Plaintiff

v.

JAMES FENNER, et al.
Defendants

SUMMONS

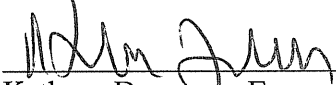
THIS SUMMONS IS DIRECTED TO: VERMONT LOTTERY COMMISSION

- 1. YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights.
- 2. YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail the Plaintiff a **written response** called an Answer within 20 days of the date on which you received this summons. You must send a copy of your Answer to the plaintiff's attorney, Kathryn Donovan, Esq. whose address is located at: 1080 Main Street, Pawtucket, RI, 02860. You must also give or mail your Answer to the Court located at **Vermont Superior Court, Orange Civil Division, 5 Court Street, Chelsea, Vermont 05038**
- 3. YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.
- 4. YOU WILL LOSE YOUR CASE IF YOU DO NOT GIVE YOUR WRITTEN ANSWER TO THE COURT.** If you do not Answer within 20 days and file it with the Court, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint.
- 5. YOU MUST MAKE ANY CLAIMS AGAINST THE PLAINTIFF IN YOUR REPLY.** Your Answer must state any related legal claims you have against the Plaintiff. Your claims against the Plaintiff are called Counterclaims. If you do not make your Counterclaims in writing in your Answer, you may not be able to bring them up at all.

Even if you have insurance and the insurance company will defend you, you must still file any Counterclaims you may have.

6. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you cannot afford a lawyer, you should ask the court clerk for information about places where you can get free legal help. **Even if you cannot get legal help, you must still give the Court a written Answer to protect your rights or you may lose the case.**

7. **NOTICE OF APPEARANCE FORM. THE COURT NEEDS TO KNOW HOW TO REACH YOU SO THAT YOU WILL BE INFORMED OF ALL MATTERS RELATING TO YOUR CASE.** If you have not hired an attorney and representing yourself, in addition to filing the required answer, it is important that you file the Notice of Appearance form attached to this summons, to give the court your name, mailing address and phone number (and email address, if you have one). You must also mail or deliver a copy of the form to the lawyer or party who sent you this paperwork, so that you will receive copies of anything else they file with the court.



Kathryn Donovan, Esq.

10-8-15

Date

Served on 10-15-15

Date



Deputy Sheriff

STATE OF VERMONT

SUPERIOR COURT
ORANGE UNIT

CIVIL DIVISION
DOCKET NO:

DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS INDENTURE TRUSTEE FOR THE REGISTERED
NOTEHOLDERS OF AEGIS ASSET BACKED
SECURITIES TRUST 2006-1, MORTGAGE BACKED
NOTES
Plaintiff

v.

JAMES FENNER, et al.
Defendants

**NOTICE OF APPEARANCE
For Self-Represented Litigant**

I am a Defendant in this case.

I will represent myself and, in addition to filing the required answer, I hereby enter my appearance with the court. If I decide to be represented by an attorney in the future, either my attorney or I will notify the court of the change.

In representing myself, I understand that I **MUST**:

4. Notify the court in writing of any changes in my address, phone number, or email address.
5. Give or send copies of any papers I file with the court to every other party in this case. If another party has an attorney, I will give or send copies to that party's attorney.
6. File a certificate of service with the court swearing that I have sent the papers I am filing to all parties. I understand that I can find that form on the Vermont Judiciary website or at the court house.

All court papers may be mailed to me by first class mail at the address below:

My Street Address (or my Mailing Address if different from my street address) is:

Town/City, State, Zip Code

Telephone Number (day): _____ Telephone Number (evening): _____

Email Address: _____

Date: _____ Signature: _____

Printed Name: _____

STATE OF VERMONT

SUPERIOR COURT
ORANGE UNIT

CIVIL DIVISION
DOCKET NO:

DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS INDENTURE TRUSTEE FOR THE REGISTERED
NOTEHOLDERS OF AEGIS ASSET BACKED
SECURITIES TRUST 2006-1, MORTGAGE BACKED
NOTES
Plaintiff

v.

JAMES FENNER;
CATHY L. FENNER;
VERMONT LOTTERY COMMISSION;
OCCUPANTS RESIDING AT: 246 ROLLIE DAY ROAD CORINTH, VT 05039
Defendants

COMPLAINT

1. Plaintiff, Deutsche Bank National Trust Company, as Indenture trustee for the Registered Noteholders of Aegis Asset Backed Securities Trust 2006-1, Mortgage Backed Notes ("Deutsche Bank"), is a national banking association with a mailing address of Ocwen Loan Servicing, LLC, 12650 Ingenuity Drive, Orlando, FL 32826.
2. Upon information and belief, Defendant James Fenner (hereinafter referred to as "Mortgagor") is a resident of Corinth, County of Orange and State of Vermont.
3. Upon information and belief, Defendant Cathy L. Fenner (together with James Fenner, hereinafter referred to as "Mortgagors") is a resident of Corinth, County of Orange and State of Vermont.
4. Upon information and belief, Defendant Vermont Lottery Commission is a Vermont Corporation with a place of business at 1311 US-302, Barre, Vermont 05641.

**COUNT I
FORECLOSURE OF REAL PROPERTY**

5. On or about September 9, 2006, the Mortgagors became the record owner of certain real property located at 246 Rollie Day Road, in Corinth, County of Orange and State of Vermont (hereinafter referred to as the "Mortgaged Premises") by virtue of a deed recorded in Volume 84 at Page 515 of the Corinth Land Records.
6. On September 9, 2006, Defendant, James Fenner (the "Borrowers"), executed a promissory note (hereinafter "the Note"), payable to the order of Aegis Lending

Corporation ("the Lender"), in the principal amount of \$100,000.00 (A copy of the Note is attached hereto as Exhibit A).

7. The Note is secured by a Mortgage on the Mortgaged Premises, dated September 9, 2006 given by the Mortgagors to Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Aegis Lending Corporation, its successors and assigns. Said Mortgage was recorded on September 15, 1006 in Volume 84 at Page 517 in the Corinth Land Records. (A copy of the Mortgage is attached hereto as Exhibit B).
8. Plaintiff is the holder of the Note by virtue of an endorsement thereon by the Lender to Aegis Mortgage Corporation, and by further endorsement from Aegis Mortgage Corporation in blank, as reflected on the Note attached hereto as Exhibit A, the original of which Note is currently in the possession of Shechtman Halperin Savage, LLP on behalf Plaintiff.
9. The Mortgage is now held by Plaintiff, by assignment of mortgage from Mortgage Electronic Registration Systems, Inc., as nominee for Aegis Lending Corporation recorded on January 11, 2010 in Volume 91 at Page 290 of the Corinth Land Records. (A copy of the Assignment is attached hereto as Exhibit C).
10. Copies of the Note and Mortgage and proof of ownership thereof, including copies of all original endorsements and assignments of the Note and Mortgage are attached to this complaint. The original of the Note and proof of ownership thereof are in the possession and control of the Plaintiff and Plaintiff is otherwise entitled to enforce the Note pursuant to the Uniform Commercial Code.
11. Pursuant to 12 V.S.A. §4933, Plaintiff has filed with the Commissioner of Financial Regulation a Notice of Foreclosure specifying the name and last known mailing address for all mortgagors, the address of the Mortgaged Premises, the name of the current mortgage holder, Plaintiff, as well as an address and telephone number for "workout negotiations" with Plaintiff, the name of the original mortgagee if other than Plaintiff, and the name and address of the servicer if applicable. (Said Notice is attached hereto as Exhibit D).
12. The real property which is the subject of this foreclosure action is described as follows:

Being all and the same lands and premises conveyed to James Fenner and Sandra Fenner by Quit Claim Deed of Sandra Fenner dated July 21, 1999 of record at Book 65, Page 483 of the Town of Corinth Land Records.

Being the north portion of a ten acre tract and more particularly described as commencing at a point on the easterly side of the Town Road sometimes called Limlaw Road leading down to Pike Hill Road, at the westerly end of the division fence between the premises herein and land of other parties, the same being the northwest corner of said ten acre tract; thence running along the north bound of said ten acre tract in an easterly direction approximately 797 feet to a point; thence turning an angle to the right and running in a southerly direction along the easterly bound of said ten acre parcel, a distance of approximately 342 feet; thence turning an angle to the right and running diagonally across said ten acre parcel to a point on the easterly side of the aforementioned Town Road approximately 192 feet southerly of the point begun at measured along the easterly side of said road; thence turning an angle to the right and running along the easterly side of said road in a northerly direction, a distance of approximately 192 feet to the point begun at. The southerly line of the premises herein is the northerly line of premises being conveyed out of said ten acre parcel to the said Tofflings.

13. The Mortgage provides that Plaintiff shall have the right to recover from Mortgagors, in the event of default, costs and expenses of enforcement, including reasonable attorney fees.
14. The Mortgage provides that Plaintiff may make payments to protect the Mortgaged Premises, including but not limited to delinquent taxes and insurance premiums and may recover the same from the makers of the Note.
15. Mortgagors failed to make the payments called for under the Note and Mortgage.
16. The failure of Mortgagors to make payments as set forth therein, constitutes a breach of the subject Note and Mortgage held by Plaintiff.
17. The following individuals may have some claim or interest in, or lien upon the Mortgaged Premises, as described in the instrument(s) hereinafter referenced, which claim interest or lien is senior and superior to that of Plaintiff:

NONE.

18. The following individuals may have some claim or interest in, or lien upon, the Mortgaged Premises, as described in the instrument(s) hereinafter referenced, which claim, interest or lien is junior and inferior to that of Plaintiff and are hereby joined in this action as Defendants under VRCP Rule 80.1(b):

Vermont Lottery Commission, by virtue of its Judgment Order in the amount of \$1,350.86, recorded on June 10, 2010 in Volume 91 at Page 716 of the Corinth Land Records.

**COUNT II
PROMISSORY NOTE**

19. Plaintiff re-alleges and incorporates paragraphs 1-18 above.
20. On September 9, 2006 the Borrower executed a Note in the principal amount of \$100,000.00 payable to the order of Aegis Lending Corporation, which Note is presently held by Plaintiff.
21. Borrowers defaulted on the obligations under said Note.

**COUNT III
DEFICIENCY JUDGMENT**

22. Plaintiff re-alleges and incorporates paragraphs 1-21 above.
23. The amounts due and owing to Plaintiff by the Borrowers may exceed the value of the Mortgaged Premises. Thus, a deficiency may be owed to the Plaintiff, if applicable by law.

WHEREFORE, Plaintiff prays that this Honorable Court:

- a. Take jurisdiction in this matter;
- b. Determine the priorities of the parties' claims and interest in the Mortgaged Premises;
- c. Order Defendants to pay to the Clerk of the Court for the benefit of Plaintiff all amounts due and to become due on the Note and Mortgage, with interest thereon, together with sums expended, reasonable attorney's fees and costs, and in default thereof order that Defendants and all persons claiming by, from or under them be forever foreclosed of all equity of redemption in the Mortgaged Premises;
- d. Upon the failure of Defendants to redeem their interest in the Mortgaged Premises, grant Plaintiff a Writ of Possession of the Mortgaged Premises;
- e. Enter a Judgment of Foreclosure By Sale or, alternatively enter a judgment of Strict Foreclosure, including a finding by the court of no substantial value in excess of the mortgage debt including in said finding a summary of the evidence upon which such finding is based;
- f. Award Plaintiff its costs of maintaining and protecting the value of the Mortgaged Premises during the pendency of this action, including, but not limited to the payment of municipal charges, taxes and insurance payments which may now be due or become due and owing during the pendency hereof;
- g. Award deficiency judgment against Borrowers for any amounts due and owing under the Note after disposition of the Mortgaged Premises and application of the proceeds from that disposition to the debt of Borrowers, if applicable by law;
- h. To the extent appropriate, award Plaintiff its costs, attorneys' fees, including attorney's fees in excess of two (2) percent, and expenses incurred in bringing this action; and
- i. Grant such other relief as is equitable and just.

NOTICE TO DEFENDANTS: YOU MUST ENTER YOUR APPEARANCE IN ORDER TO RECEIVE NOTICE OF THE FORECLOSURE JUDGMENT WHICH WILL SET FORTH THE MONEY WHICH YOU MUST DEPOSIT TO REDEEM THE PREMISES AND THE PERIOD OF TIME ALLOWED TO DEPOSIT THIS AMOUNT.

NOTICE TO OCCUPANTS: THE PROPERTY IN WHICH YOU LIVE IS BEING FORECLOSED UPON. YOU ARE NAMED AS A DEFENDANT IN THE FORECLOSURE BECAUSE YOUR RIGHT TO REMAIN ON THE PREMISES MAY END WHEN THE FORECLOSURE IS COMPLETED. YOU MUST NOTIFY THE COURT OF YOUR NAME AND ADDRESS IN ORDER TO BE KEPT INFORMED OF THE STATUS OF THE FORECLOSURE.

Dated this 8th day of October, 2015.

Deutsche Bank National Trust Company, as
Indenture trustee for the Registered Noteholders of
Aegis Asset Backed Securities Trust 2006-1,
Mortgage Backed Notes



Kathryn Donovan, Esq.
Shechtman Halperin Savage, LLP
1080 Main Street, Pawtucket, RI 02860
401-272-1400
Attorney for Plaintiff
kdonovan@shslawfirm.com

Loan No: [REDACTED]
Borrower: JAMES FENNER

EXHIBIT A

Data ID: 959

NOTE

MIN: 100055140021315045

September 9, 2006

CORINTH
[City]

VERMONT
[State]

246 ROLLIE DAY ROAD
CORINTH, VERMONT 05039
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 100,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is AEGIS LENDING CORPORATION. I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The 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 8.700%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the first day of each month beginning on **November 1, 2006**. 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 will be applied to interest before Principal. If, on **October 1, 2036**, 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 P.O. BOX 422039, HOUSTON, TX 77242-2039 or at a different place if required by the Note Holder.

VERMONT FIXED RATE NOTE - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Modified by Middleberg, Riddle & Gianna

Form 3246 1/01 (rev. 12/03)
(Page 1 of 4 Pages)

INITIALS: CLF ^{CLF} IF

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 783.13.

4. 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 the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. If this Note is not in default, 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 or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. 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 which 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.

6. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charge 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 5.00 % of my overdue payment of principal and interest. 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) Acceleration

If I am in default, the Note Holder may without notice or demand, unless otherwise required by applicable law, require me to pay immediately the full amount of Principal that has not been paid and all interest that I owe on that amount.

(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 of 15.00% of the sums due under this Note or the amount allowable under applicable state law.

INITIALS: ^{CAF} ^{JK}
[Handwritten initials: CAF, JK, ELS, JF]

7. 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.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or 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.

8. 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.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of notice of acceleration, 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.

10. 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 which might result if I do not keep the promises which 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 are described as follows:

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.

INITIALS: ^{SF} ~~CLF~~ JF

NOTICE TO CO-SIGNER

YOUR SIGNATURE ON THIS NOTE MEANS THAT YOU ARE EQUALLY LIABLE FOR REPAYMENT OF THIS LOAN. IF THE BORROWER DOES NOT PAY, THE LENDER HAS A LEGAL RIGHT TO COLLECT FROM YOU.

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

Courtney B. Asaw
Witness Only

James Fenner.....(Seal)
JAMES FENNER - Borrower
[Sign Original Only]

PAY TO THE ORDER OF
AEGIS MORTGAGE CORPORATION
WITHOUT RECOURSE
AEGIS LENDING CORPORATION
Robbie Dove
ROBBIE DOVE
ASSISTANT SECRETARY

PAY TO THE ORDER OF
WITHOUT RECOURSE
AEGIS MORTGAGE CORPORATION
Robbie Dove
ROBBIE DOVE
ASSISTANT SECRETARY

91 8/30/06

Prepared by: Leticia Arias
Owen Loan Servicing, LLC
1661 Worthington Road, Suite 100
West Palm Beach, FL 33409
Phone Number: 561-682-8835

ALLONGE

BORROWERS: JAMES FENNER AND CATHY L. FENNER

PRESENTOWNER AND HOLDER: AEGIS LENDING CORPORATION

NOTE EXECUTION DATE: SEPTEMBER 09, 2006

NOTE AMOUNT: \$100,000.00

This allonge shall be annexed to the original Note (or to a copy of the Note with a Lost Note Affidavit if the original cannot be located), referenced above for purposes of transferring same from the present Owner and Holder of the Note, AEGIS LENDING CORPORATION ("Transferor") as of the date set forth below. As a result of said transfer, AEGIS LENDING CORPORATION has no further interest in the Note.

Date: OCTOBER 02, 2009

Pay to the order of

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS INDENTURE
TRUSTEE FOR THE REGISTERED NOTEHOLDERS OF AEGIS ASSET
BACKED SECURITIES TRUST 2006-1, MORTGAGE BACKED NOTES,
without recourse, representation or warranty
express or implied this 02nd day of OCTOBER 2009.

AEGIS LENDING CORPORATION
BY ITS ATTORNEY-IN-FACT
OCWEN LOAN SERVICING, LLC

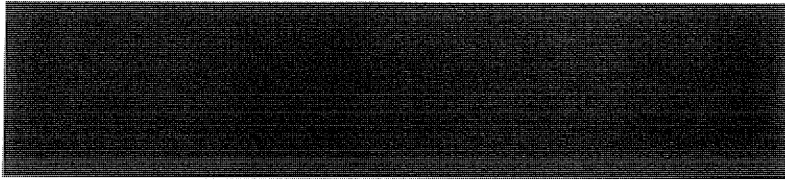
By: [Signature]
Name: Kevin M. Jackson
Title: Manager

The effective date of the allonge is AUGUST 25, 2007.



VOID

EXHIBIT B



Return to: AEGIS LENDING CORPORATION
ATTENTION: LOAN SHIPPING, REG 1
P.O. BOX 84308
BATON ROUGE, LA 70884

CORINTH TOWN CLERK'S OFFICE
RECEIVED FOR RECORD
DATE 9-15-06 TIME 11:10 AM
RECORDED IN BOOK 84 PAGE 519-528
ATTEST [Signature] TOWN CLERK

Loan No:
Borrower: JAMES FENNER

[Space Above This Line For Recording Data]

Data ID: 959

MORTGAGE

MIN: 100055140021315045

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 September 9, 2006, together with all Riders to this document.

(B) "Borrower" is JAMES FENNER AND CATHY L. FENNER. Borrower is the mortgagor under this Security Instrument.

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

(D) "Lender" is AEGIS LENDING CORPORATION. Lender is a Corporation organized and existing under the laws of the State of DELAWARE. Lender's address is 10049 NORTH REIGER ROAD, BATON ROUGE, LA 70809.

(E) "Note" means the promissory note signed by Borrower and dated September 9, 2006. The Note states that Borrower owes Lender ONE HUNDRED THOUSAND and NO/100----Dollars (U.S. \$ 100,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than October 1, 2036.

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

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

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

- Adjustable Rate Rider
- Balloon Rider
- 1-4 Family Rider
- Other(s) [specify]
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider

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

VERMONT - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Modified by Middleberg, Riddle & Glanna

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Loan No: [REDACTED]

Data ID: 959

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

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

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

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

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

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

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

(Q) "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

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 and in consideration of the debt, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property located in the Town of CORINTH, ORANGE COUNTY, Vermont:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

which currently has the address of 246 ROLLIE DAY ROAD,

[Street]

CORINTH, VERMONT

[City]

05039
[Zip Code]

("Property Address"):

VERMONT - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Modified by Middleberg, Riddle & Gianna

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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 mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

1. **Payment of Principal, 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 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 lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

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

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

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless 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 in the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees of 15.00% of the sums due under the Note or the amount allowable under applicable state law to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

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

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

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

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

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

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

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees of 15.00% of the sums due under the Note or the amount allowable under applicable state law, 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.

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.

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 of 15.00% of the sums due under the Note or the amount allowable under applicable state law, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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. Following Borrower's breach of any covenant or agreement in this Security Instrument, 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 of 15.00% of the sums due under the Note or the amount allowable under applicable state law and costs of title evidence.

If Lender or Borrower invokes the power of sale, and the Property is judicially ordered to be sold pursuant to such power, Lender shall mail a copy of a notice of sale by registered mail to Borrower at the Property Address or at any other address Borrower delivers to Lender in writing for that purpose. Lender shall publish the notice of sale for the time and in the manner required by Applicable Law and, without further demand on Borrower, the Property shall be sold at the time and under the terms designated by the court and in the notice of sale. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees of 15.00% of the sums due under the Note or the amount allowable under applicable state law; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall discharge this Security Instrument. Borrower shall pay any recordation costs if permitted by Applicable Law. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Waiver of Homestead and Other Interests. Borrower (including any co-signer) waives all rights of homestead exemption in the Property and relinquishes all statutory and common law rights in the Property in the nature of dower and curtesy.

Loan No: [REDACTED]

Data ID: 959

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.

In the presence of:

COURTNEY B. ASARO
Printed Name

Notary:

COURTNEY B. ASARO
Printed Name

Cathy L Fenner (Seal)
CATHY L. FENNER -Borrower

James Fenner (Seal)
JAMES FENNER -Borrower

[Space Below This Line For Acknowledgment]

State of VERMONT §
County of Orange §

Be it remembered that on the 17th day of Sept., A.D. 2006
personally appeared
JAMES FENNER AND CATHY L. FENNER
signer and sealer of the foregoing written instrument and acknowledged the same to be their free act and deed.

BEFORE ME,

Courtney B. Asaro
Notary
Title

My commission expires: 2/10/07

**EXHIBIT A
LEGAL DESCRIPTION**



Being all and the same lands and premises conveyed to James Fenner and Sandra Fenner by Quit Claim Deed of Sandra Fenner dated July 21, 1999 of record at Book 65, Page 483 of the Town of Corinth Land Records.

Being the north portion of a ten acre tract and more particularly described as commencing at a point on the easterly side of the Town Road sometimes called Limlaw Road leading down to Pike Hill Road, at the westerly end of the division fence between the premises herein and land of other parties, the same being the northwest corner of said ten acre tract; thence running along the north bound of said ten acre tract in an easterly direction approximately 797 feet to a point; thence turning an angle to the right and running in a southerly direction along the easterly bound of said ten acre parcel, a distance of approximately 342 feet; thence turning an angle to the right and running diagonally across said ten acre parcel to a point on the easterly side of the aforementioned Town Road approximately 192 feet southerly of the point begun at measured along the easterly side of said road; thence turning an angle to the right and running along the easterly side of said road in a northerly direction, a distance of approximately 192 feet to the point begun at. The southerly line of the premises herein is the northerly line of premises being conveyed out of said ten acre parcel to the said Tofflings.



Certified to be a true and exact copy

Return to: AEGIS LENDING CORPORATION
ATTENTION: LOAN SHIPPING, REG 1
P.O. BOX 84308
BATON ROUGE, LA 70884

Loan No: [REDACTED] [Space Above This Line For Recording Data] Data ID: 959
Borrower: JAMES FENNER

MORTGAGE

MIN: 100055140021315045

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 September 9, 2006, together with all Riders to this document.

(B) "Borrower" is JAMES FENNER AND CATHY L. FENNER . Borrower is the mortgagor under this Security Instrument.

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

(D) "Lender" is AEGIS LENDING CORPORATION. Lender is a Corporation organized and existing under the laws of the State of DELAWARE. Lender's address is 10049 NORTH REIGER ROAD, BATON ROUGE, LA 70809.

(E) "Note" means the promissory note signed by Borrower and dated September 9, 2006. The Note states that Borrower owes Lender ONE HUNDRED THOUSAND and NO/100----Dollars (U.S. \$ 100,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than October 1, 2036.

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

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

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

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

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

VERMONT - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Modified by Midcoberg, Fitts & Glavin Form 3045 1001 (rev. 12/03)

(Page 1 of 11 Pages)

Loan No: [REDACTED]

Data ID: 959

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

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

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

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

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

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

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

(Q) "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

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 and in consideration of the debt, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property located in the Town of CORINTH, ORANGE COUNTY, Vermont:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

which currently has the address of 246 ROLLIE DAY ROAD,

CORINTH, VERMONT

[Street]

05039
[Zip Code]

("Property Address"):

VERMONT - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Modified by Middleberg, Riddle & Glanna

Form 3046 1/01 (rev. 12/03) (Page 2 of 11 Pages)

Loan No: [REDACTED]
Borrower: JAMES FENNER

Data ID: 959

LEGAL DESCRIPTION

Being all and the same lands and premises conveyed to James Fenner and Cathy L. Fenner by Quit Claim Deed of Sandra Fenner of approximate even date herewith and to be recorded in the Town of Corinth Land Records.

Being all and the same lands and premises conveyed to James Fenner and Sandra Fenner by Quit Claim Deed of Sandra Fenner dated July 21, 1999 of record at Book 65, Page 483 of the Town of Corinth Land Records.

Being the north portion of a ten acre tract and more particularly described as commencing at a point on the easterly side of the Town Road sometimes called Limlaw Road leading down to Pike Hill Road, at the westerly end of the division fence between the premises herein and land of other parties, the same being the northwest corner of said ten acre tract; thence running along the north bound of said ten acre tract in an easterly direction approximately 797 feet to a point; thence turning an angle to the right and running in a southerly direction along the easterly bound of said ten acre parcel, a distance of approximately 342 feet; thence turning an angle to the right and running diagonally across said ten acre parcel to a point on the easterly side of the aforementioned Town Road approximately 192 feet southerly of the point begun at measured along the easterly side of said road; thence turning an angle to the right and running along the easterly side of said road in a northerly direction, a distance of approximately 192 feet to the point begun at. The southerly line of the premises herein is the northerly line of premises being conveyed out of said ten acre parcel to the said Tofflings.

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 mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

1. **Payment of Principal, 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 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 lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

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

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

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless 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 attorneys' fees of 15.00% of the sums due under the Note or the amount allowable under applicable state law to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

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

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

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

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

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

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

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees of 15.00% of the sums due under the Note or the amount allowable under applicable state law, 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.

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.

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 of 15.00% of the sums due under the Note or the amount allowable under applicable state law, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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.** Following Borrower's breach of any covenant or agreement in this Security Instrument, 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 of 15.00% of the sums due under the Note or the amount allowable under applicable state law and costs of title evidence.

If Lender or Borrower invokes the power of sale, and the Property is judicially ordered to be sold pursuant to such power, Lender shall mail a copy of a notice of sale by registered mail to Borrower at the Property Address or at any other address Borrower delivers to Lender in writing for that purpose. Lender shall publish the notice of sale for the time and in the manner required by Applicable Law and, without further demand on Borrower, the Property shall be sold at the time and under the terms designated by the court and in the notice of sale. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees of 15.00% of the sums due under the Note or the amount allowable under applicable state law; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. **Release.** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall discharge this Security Instrument. Borrower shall pay any recordation costs if permitted by Applicable Law. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. **Waiver of Homestead and Other Interests.** Borrower (including any co-signer) waives all rights of homestead exemption in the Property and relinquishes all statutory and common law rights in the Property in the nature of dower and curtesy.

Loan No: [REDACTED]

Data ID: 959

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.

In the presence of:

Courtney B. Asaro
Printed Name

Notary:

Courtney B. Asaro
Printed Name

Cathy L. Fenner (Seal)
CATHY L. FENNER —Borrower

James Fenner (Seal)
JAMES FENNER —Borrower

_____[Space Below This Line For Acknowledgment]_____

State of VERMONT §
County of Orange §

Be it remembered that on the 9th day of Sept., A.D. 2006,
personally appeared
JAMES FENNER AND CATHY L. FENNER
signer and sealer of the foregoing written instrument and acknowledged the same to be their free act
and deed.

BEFORE ME,

Courtney B. Asaro
Notary
_____ Title

My commission expires: 2/10/07

EXHIBIT C

211290

Prepared By: Leticia Arias
Ocwen Loan Servicing, LLC
1661 Worthington Road, Suite 100
West Palm Beach, Florida, 33409
Phone Number: 561-682-8835

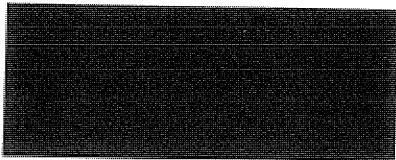
Attorney Code: 01101

ASSIGNMENT OF MORTGAGE VERMONT

This ASSIGNMENT OF MORTGAGE is made and entered into as of this 25th day of AUGUST, 2007, from MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., whose address is P.O. Box 2026, Flint, MI 48501-2026, its successors and assigns, as nominee for AEGIS LENDING CORPORATION, its successors and assigns, ("Assignor") to DEUTSCHE BANK NATIONAL TRUST COMPANY, AS INDENTURE TRUSTEE FOR THE REGISTERED NOTEHOLDERS OF AEGIS ASSET BACKED SECURITIES TRUST 2006-1, MORTGAGE BACKED NOTES, whose address is c/o Ocwen Loan Servicing, LLC, 1661 Worthington Road, Suite 100, West Palm Beach, Florida, 33409, all its rights, title and interest in and to a certain mortgage duly recorded in the Town Clerk's Office of CORINTH, State of VERMONT, as follows;

Mortgagor: JAMES FENNER AND CATHY L. FENNER
Mortgagee: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ACTING SOLELY AS NOMINEE FOR AEGIS LENDING CORPORATION
Document Date: SEPTEMBER 09, 2006
Amount: \$100,000.00
Date Recorded: SEPTEMBER 15, 2006
Book: B4
Page: 511-528
Property Address: 246 ROLLIE DAY ROAD, CORINTH, VT

Together with any and all notes and obligations therein described or referred to, the debt respectively secured thereby and all sums of money due and to become due thereon, with interest thereon, and attorney's fees and all other charges.



CORINTH TOWN CLERK'S OFFICE
RECEIVED FOR RECORDING
DATE 1-11-10 TIME 10:30 AM
RECORDED IN BOOK 91 PAGE 290-291
ATTEST [Signature] TOWN CLERK

91

291

91 / 291

This Assignment is made without recourse, representation or warranty.

Dated: OCTOBER 02, 2009

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
ACTING SOLELY AS NOMINEE FOR AEGIS LENDING CORPORATION

BY: [Signature]

NAME: Kevin M. Jackson

TITLE: Vice President

Witness:

[Signature]
Jonathan Burgess
[Signature]
Carla Tinoco

STATE OF FLORIDA }
COUNTY OF PALM BEACH } SS.

This instrument was acknowledged before me on OCTOBER 02, 2009, by Kevin M. Jackson, the Vice President, with whom I am personally acquainted, and who, upon oath acknowledged himself to be the Vice President of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR AEGIS LENDING CORPORATION, and that he as such Vice President being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the bank by himself as the Vice President.

Witness my Hand and Seal of Office, the day and year above written.

NOTARY PUBLIC-STATE OF FLORIDA
Elsie Ramirez
Commission # DD914835
Expires: AUG. 09, 2013
BONDED THRU ATLANTIC AGENDING CO, INC.

[Signature]
Notary Public Elsie Ramirez

MIN: 100055140021315045

MERS Ph.#: (888) 679 - 6377

NOTICE OF FORECLOSURE TO THE COMMISSIONER FOR FINANCIAL
REGULATION

EXHIBIT D

Case information:

Court: Orange County Superior Court
Docket Number: to be determined
Plaintiff: Deutsche Bank National Trust Company, as Indenture trustee for the Registered Noteholders of Aegis Asset Backed Securities Trust 2006-1, Mortgage Backed Notes
Defendants: James Fenner; Cathy L. Fenner; Vermont Lottery Commission and occupants residing at 246 Rollie Day Road Corinth, VT 05039

Complaint date: see below

Mortgagor(s) information:

Name & Last known address:
James Fenner, 246 Rollie Day Road, Corinth, VT 05039
Cathy L. Fenner, 246 Rollie Day Road, Corinth, VT 05039

Property information:

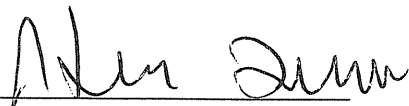
Address: 246 Rollie Day Road, Corinth, County of Orange, VT 05039

Mortgage information:

Current holder: Deutsche Bank National Trust Company, as Indenture trustee for the Registered Noteholders of Aegis Asset Backed Securities Trust 2006-1, Mortgage Backed Notes
c/o Ocwen Loan Servicing, LLC, 12650 Ingenuity Drive, Orlando, FL 32826
Loss mitigation/
Workout department: 877-596-8580
Ocwen Loan Servicing, LLC, 12650 Ingenuity Drive, Orlando, FL 32826
Original mortgagee: Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Aegis Lending Corporation, its successors and assigns
Servicer: Ocwen Loan Servicing, LLC, 12650 Ingenuity Drive, Orlando, FL 32826

Deutsche Bank National Trust Company, as
Indenture trustee for the Registered Noteholders of
Aegis Asset Backed Securities Trust 2006-1,
Mortgage Backed Notes,

Date: 10/8/15


Kathryn Donovan, Esq.
Shechtman Halperin Savage, LLP
1080 Main Street, Pawtucket, RI 02860
Telephone: 401-272-1400
Attorney for Plaintiff
kdonovan@shslawfirm.com

WASHINGTON COUNTY SHERIFF'S DEPARTMENT
P.O. BOX 678, 10 ELM STREET
MONTPELIER, VERMONT 05601
802-223-3001 - FAX: 802-8283611

RETURN OF SERVICE

DOCKET NUMBER:

Deutsche Bank v. Fenner et al

STATE OF VERMONT
WASHINGTON COUNTY, SS.

ON THE 15 DAY OF October 2015, at 0031 hrs, I MADE
SERVICE
OF THE Summons, notice of Appearance, Complaint for
Foreclosure, w/ exhibits
UPON THE DEFENDANT Vermont Lottery Commission

BY DELIVERING A COPY OF THE ABOVE WITH THE VERMONT ATTORNEY GENERAL AT
HIS OFFICE IN MONTPELIER, VERMONT

SERVICE.....\$ 50.00
TRAVEL 2 MILES@ .575\$ 1.15
POSTAGE.....\$ _____
COPIES @.50 EACH\$ _____
TOTAL.....\$ _____

Tom Knull
SHERIFF / DEPUTY
WASHINGTON COUNTY SHERIFF'S
DEPARTMENT

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

RHONDA RASCHE, DANIEL CHASTEEN,)
HOWARD ROBERT ANDERSON, EDWARD)
WASTAG, MICHAEL CHESNIAK, ALBERT)
CUNDARI, BYRON HERRERA, GEORGE)
INNISS, JOSEPH JOOST, IKEM MIKHAIL,)
LUIS IVAN MORALES, JESUS NAVARRO,)
VINCENT ORTEGA, ROBERT PITTS, DOEL)
POLANCO, JOSEPH RADDI, JOSEPH SPAIN,)
BRIAN THOMPSON, RICARDO VELEZ,)
REMICK WARE, MORGAN SHASTAL,)
individually, and on behalf of)
all others similarly situated,)

Plaintiffs,)

v.)

No. 15 cv 7918

B.R. LANE, Acting Director of the Illinois)
Department of the Lottery;)
ILLINOIS DEPARTMENT OF THE LOTTERY;)
LESLIE GEISSLER MUNGER, Illinois)
Comptroller;)
MICHAEL W. FRERICH, Illinois State Treasurer;)
ARIZONA STATE LOTTERY COMMISSION;)
TONY BOUIE, Executive Director of the Arizona)
State Lottery Commission;)
OFFICE OF THE ARKANSAS LOTTERY;)
BISHOP WOOSLEY, Director of the Office of the)
Arkansas Lottery;)
CALIFORNIA LOTTERY COMMISSION;)
NATHANIEL KIRTMAN, III, Chair of the)
California Lottery Commission;)
COLORADO LOTTERY COMMISSION;)
LAURA SOLANO, Director of the Colorado)
Lottery Commission;)
CONNECTICUT LOTTERY CORPORATION;)
ANNIE M. NOBLE, President and CEO of the)
Connecticut Lottery Corporation;)
DELAWARE LOTTERY;)
VERNON KIRK, Director of the Delaware Lottery;)
FLORIDA LOTTERY;)
TOM DELACENSERIE, Director of the Florida)
Lottery;)

Chief Judge Ruben Castillo

GEORGIA LOTTERY CORPORATION;)
DEBBIE D. ALFORD, Acting President and CEO)
of the Georgia Lottery Corporation;)
IDAHO LOTTERY COMMISSION;)
JEFFREY R. ANDERSON, Executive Director)
of the Idaho Lottery Commission;)
STATE LOTTERY COMMISSION OF INDIANA;))
SARAH M. TAYLOR, Executive Director of the)
State Lottery Commission of Indiana;)
IOWA LOTTERY BOARD;)
TERRY RICH, CEO of the Iowa Lottery Board;)
KANSAS LOTTERY COMMISSION;)
TERRY PRESTA, Executive Director of the)
Kansas Lottery Commission;)
KENTUCKY LOTTERY CORPORATION;)
ARTHUR L. GLEASOR, JR., President and CEO)
of the Kentucky Lottery Corporation;)
LOUISIANA LOTTERY CORPORATION;)
ROSE HUDSON, President of the Louisiana)
Lottery Corporation;)
MAINE STATE LIQUOR & LOTTERY)
COMMISSION;)
GREGG MINEO, Director of the Maine State)
Liquor & Lottery Commission;)
MARYLAND LOTTERY AND GAMING)
CONTROL COMMISSION;)
GORDON MEDENICA, Director of the Maryland)
Lottery and Gaming Control Commission;)
MASSACHUSETTS STATE LOTTERY;)
MICHAEL R. SWEENEY, Executive Director of)
the Massachusetts State Lottery;)
MICHIGAN BUREAU OF STATE LOTTERY;)
M. SCOTT BOWEN, Commissioner of the)
Michigan Bureau of State Lottery;)
MINNESOTA STATE LOTTERY;)
ED VAN PETTEN, Executive Director of the)
Minnesota State Lottery;)
MISSOURI LOTTERY COMMISSION;)
MAY SCHEVE REARDON, Executive Director)
of the Missouri Lottery Commission;)
MONTANA LOTTERY COMMISSION;)
ANGELA WONG, Director of the Montana)
Lottery Commission;)
NEBRASKA LOTTERY;)
JILL MARSHALL, Acting Director of the)
Nebraska Lottery;)

NEW HAMPSHIRE LOTTERY COMMISSION;)
CHARLES McINTYRE, Executive Director of)
the New Hampshire Lottery Commission;)
NEW JERSEY LOTTERY COMMISSION;)
CAROLE HEDINGER, Executive Director of the)
New Jersey Lottery Commission;)
NEW MEXICO LOTTERY AUTHORITY;)
DAVID BARDEN, CEO of the New Mexico)
Lottery Authority;)
NEW YORK LOTTERY AND GAMING)
COMMISSION;)
GARDNER GURNEY, Director of the New York)
Lottery and Gaming Commission;)
NORTH CAROLINA LOTTERY COMMISSION;)
ALICE GARLAND, Executive Director of the)
North Carolina Lottery Commission;)
NORTH DAKOTA LOTTERY;)
RANDY MILLER, Director of the North Dakota)
Lottery;)
OHIO LOTTERY COMMISSION;)
DENNIS BERG, Director of the Ohio Lottery)
Commission;)
OKLAHOMA LOTTERY COMMISSION;)
ROLLO REDBURN, Executive Director of the)
Oklahoma Lottery Commission;)
OREGON LOTTERY COMMISSION;)
JACK ROBERTS, Director of the Oregon Lottery)
Commission;)
PENNSYLVANIA LOTTERY;)
DREW SVITKO, Executive Director of the)
Pennsylvania Lottery;)
RHODE ISLAND LOTTERY;)
GERALD AUBIN, Director of the Rhode Island)
Lottery;)
SOUTH CAROLINA LOTTERY COMMISSION;)
PAULA HARPER BETHEA, Executive Director)
of the South Carolina Lottery Commission;)
SOUTH DAKOTA LOTTERY COMMISSION;)
NORM LINGLE, Executive Director of the South)
Dakota Lottery Commission;)
TENNESSEE EDUCATION LOTTERY)
CORPORATION;)
REBECCA HARGROVE, President and CEO of)
the Tennessee Education Lottery Corporation;)
TEXAS LOTTERY COMMISSION;)
GARY GRIEF, Executive Director of the Texas)

Lottery Commission;)	
VERMONT LOTTERY COMMISSION;)	
GREGORY SMITH, Executive Director of the)	
Vermont Lottery Commission;)	
VIRGINIA LOTTERY BOARD;)	
PAULA I. OTTO, Executive Director of the)	
Virginia Lottery Board;)	
WASHINGTON LOTTERY COMMISSION;)	
BILL HANSON, Director of the Washington)	
Lottery Commission;)	
WEST VIRGINIA LOTTERY COMMISSION;)	
JOHN C. MUSGRAVE, Director of the West)	
Virginia Lottery Commission;)	
WISCONSIN LOTTERY;)	
MICHAEL EDMONDS, Director of the Wisconsin)	
Lottery;)	
WYOMING LOTTERY CORPORATION;)	
JON CLONTZ, CEO of the Wyoming Lottery)	
Corporation;)	
WASHINGTON, D.C. LOTTERY AND)	
CHARITABLE GAMES CONTROL BOARD;)	
TRACY COHEN, Executive Director of the)	
Washington, D.C. Lottery and Charitable Games)	
Control Board;)	
US VIRGIN ISLANDS LOTTERY)	
COMMISSION;)	
JUAN FIGUEROA, SR., Executive Director of)	
the US Virgin Islands Lottery Commission;)	
LOTERIA ELECTRONICA DE PUERTO RICO;)	
ANTONIO PEREZ LOPEZ, Secretario Auxiliar of)	
the Lotería Electronica de Puerto Rico;)	
MULTI-STATE LOTTERY ASSOCIATION;)	
MEGA MILLIONS CONSORTIUM,)	
)	
)	
Defendants.)	Jury Trial Demanded

FIRST AMENDED CLASS ACTION COMPLAINT

All Plaintiffs (collectively, “Illinois Lottery Winners”), individually, and on behalf of all others similarly situated, by and through counsel at ZIMMERMAN LAW OFFICES, P.C., bring this action against all Defendants (collectively, the “Defendants”), and state as follows:

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NATURE OF THE CASE

1. The Illinois State Lottery offers over fifty (50) different games of chance to the general public. Many of those games are offered exclusively within the state of Illinois, such as instant “scratch-off” games and daily in-state number drawing games.

2. In addition to those in-state games, the Illinois State Lottery also participates in the interstate Powerball and Mega Millions lottery games. The jackpots for the Powerball and Mega Millions games are comprised by aggregating proportional contributions from each participating jurisdiction’s department of the lottery.

3. On July 1, 2015, the Illinois Department of the Lottery and B.R. Lane adopted an official policy to cease making payments to individuals who win in excess of \$25,000 from any game offered by the Illinois State Lottery, including the interstate Powerball and Mega Millions games.

4. On or about August 28, 2015, almost two months after the Illinois Department of the Lottery stopped making disbursements to the Illinois Lottery Winners whose winnings exceed \$25,000, Steven Rossi, Communication Director of the Illinois Department of the Lottery, made the following public announcement:¹

Due to the ongoing budget situation in Springfield, some lottery winner payments have been delayed. All winners will be paid in full as soon as the Lottery and the Illinois Comptroller have the legislative authority to do so. Currently, winners may claim prizes under \$600 at any of our 8,000 retail locations, and prizes under \$25,000 may be claimed at any Lottery claims center, found at illinoislottery.com.”

¹ Gaynor Hall, *Illinois Lottery Delays Payouts of \$25,000 or More*, WGNTV.COM, Aug. 28, 2015, <http://wgntv.com/2015/08/28/illinois-lottery-gives-i-o-u-for-payouts-of-25000-or-more>.

5. As a result of the official policy adopted by the Illinois Department of the Lottery and B.R. Lane, Illinois Lottery Winners who won in excess of \$25,000 after July 1, 2015, have been unable to collect their winnings, and are indefinitely barred from obtaining their winnings.

6. Illinois Lottery Winners of the Powerball and Mega Millions games have been unable to collect any winnings, including amounts that have been contributed by Defendants in addition to the Illinois Department of the Lottery.

7. On October 15, 2015, the Illinois Department of the Lottery and B.R. Lane amended their official policy and ceased making payments to Illinois Lottery Winners who won in excess of \$600 from any game offered by the Illinois State Lottery.² According to the Illinois Department of the Lottery, the Illinois Department of the Lottery has insufficient funds in its lottery fund to pay Illinois Lottery Winners who won in excess of \$600.

8. As a result of the amended official policy adopted by the Illinois Department of the Lottery and B.R. Lane, Illinois Lottery Winners who won in excess of \$600 after October 15, 2015 have also been unable to collect their winnings, and are indefinitely barred from obtaining their winnings.

9. Accordingly, Plaintiffs bring this action for Defendants' ongoing failure to make payouts due and owing to the Illinois Lottery Winners.

THE STRUCTURE OF THE LOTTERY

10. Lotteries have long been a tool used by governments to raise revenue, dating back to early colonial period in America.³

² Erik Runge, *Illinois Lottery: Payment Delays for All Winners Over \$600*, WGN TV.COM, Oct. 14, 2015, <http://www.nbcchicago.com/blogs/ward-room/Lottery-Officials-Players-Who-Win-More-Than-600-Will-be-Delayed-Payment-332909841.html>

³ Roger Dunstan, *Gambling in California*, CALIFORNIA RESEARCH BUREAU, CALIFORNIA STATE LIBRARY, Jan. 1997, <http://www.library.ca.gov/crb/97/03/97003a.pdf>

11. A lottery generates revenue by selling lottery tickets to create a “pool” of money, awarding a portion of that “pool” to the winner, and remitting the remainder of the “pool” to the government.⁴ As such, lotteries necessarily have a positive cash-flow. For example, in 2010, American lotteries generated \$58 billion in consumer spending, resulting in a \$17 billion profit for the States.⁵

12. Since lotteries involve gambling, jurisdictions often outlaw all lotteries except those specifically authorized by the government. For example, although Illinois prohibits gambling, those who participate in lotteries authorized by the Illinois Lottery Law—20 ILCS 1605/1, *et seq.*—fall within an exception to that prohibition. 720 ILCS 5/28-1.

13. To oversee their officially sanctioned lottery games, jurisdictions create autonomous, independently funded and managed entities (“Lottery Departments”). These Lottery Departments have the sole authority to establish, conduct, and administer the lottery games that are offered in their respective jurisdictions.

14. For example, the Illinois Lottery Law establishes the Illinois Department of the Lottery as an independent entity tasked with implementing and regulating the lottery games offered within Illinois. 20 ILCS 1605/4.

15. The Illinois Department of the Lottery has the independent authority to “promulgate such rules and regulations governing the establishment and operation of a State lottery as it deems necessary” to manage the lottery games offered within the state of Illinois, which includes the ability to “issue written game rules, play instructions, directives, operations

⁴ Alicia Hansen, *How Much Implicit Tax Revenue Did Lotteries Raise in FY2010?*, THE TAX FOUNDATION, Dec. 28, 2010, <http://taxfoundation.org/blog/how-much-implicit-tax-revenue-did-lotteries-raise-fy2010>

⁵ Alicia Hansen, *How Much Implicit Tax Revenue Did Lotteries Raise in FY2010?*, THE TAX FOUNDATION, Dec. 28, 2010, <http://taxfoundation.org/blog/how-much-implicit-tax-revenue-did-lotteries-raise-fy2010>

manuals, brochures, or any other publications necessary to conduct specific games.” 20 ILCS 1605/7.1.

16. The Illinois Department of the Lottery is the sole entity permitted to offer lottery games within the state of Illinois. *See*, 720 ILCS 5/28-1.

17. B.R. Lane, as Director of the Illinois Department of the Lottery, has the independent authority to maintain an account of money separate and apart from all public moneys of the State (“Illinois Director’s Account”), and pay winners of lottery prizes up to \$25,000 from the Illinois Director’s Account. 20 ILCS 1605/20.1.

18. The Illinois Lottery Law also establishes a special fund called the “State Lottery Fund.” 20 ILCS 1605/20(a).

19. The State Lottery Fund is a separate and independent fund from the general funds of the state of Illinois. 30 ILCS 105/5.52.

20. The State Lottery Fund consists of all revenues received from (1) the sale of lottery tickets or shares, (2) application fees from licensed retailers of Illinois Lottery tickets, and (3) all other monies from any other fund or source that are credited or transferred thereto. 20 ILCS 1605/20(a). In short, all proceeds from the Illinois lottery are deposited in the State Lottery Fund. 20 ILCS 1605/9.1(d)(7).

21. Funds from the State Lottery Fund are disbursed by the Illinois Department of the Lottery, pursuant to the following order of priority: First, the funds are used to pay prizes to Illinois Lottery Winners (and to pay retailer bonuses to sellers of winning Illinois Lottery tickets). Second, the funds are used to pay costs incurred in the operation and administration of the Illinois Lottery. Finally, any residual funds are transferred to be retained by the state of

Illinois. 20 ILCS 1605/9.1(o). This order of priority is an official codification of the general structure of lotteries described in Paragraph 11.

22. When necessary, the Illinois Director's Account is replenished with, and only replenished with, funds held in the State Lottery Fund. 20 ILCS 1605/20.1. This procedure is consistent with the priority articulated by 20 ILCS 1605/9.1(o), as the Illinois Director's Account is used solely to pay Illinois Lottery Winners. 20 ILCS 1605/20.1.

23. Put simply, the Illinois Department of the Lottery is financially and legally autonomous from the state of Illinois. Financially, the Illinois Department of the Lottery raises and maintains funds independently, and is not reliant on funding or tax revenues from the state of Illinois—in fact, the state of Illinois imposes taxes on the prizes paid out by the Illinois Department of the Lottery. The liabilities of the Illinois Department of the Lottery are satisfied in full *before* any funds are remitted to the state of Illinois, and its operating budget is segregated from the general funds of the state of Illinois. Legally, the Illinois Department of the Lottery has full discretion to manage its own affairs.

24. Based upon information and belief, all other Defendant jurisdictions that offer lottery games have independent Lottery Departments that are legally and financially autonomous in the same ways as the Illinois Department of the Lottery. These Lottery Departments have substantially similar systems of administration and accounting, and are solely responsible for managing the lottery games offered in their respective jurisdictions. For clarity, this means that all other Lottery Departments segregate lottery revenues and operational expenses from the general treasuries of their jurisdictions, and only the net profits (*i.e.*, residual funds remaining after lottery winners and ongoing expenses are paid) are transferred to be retained by their respective jurisdictions' general treasuries.

25. Lottery games can be either intrastate or interstate in nature. However, regardless of whether a particular lottery game is intrastate or interstate in nature, the participating jurisdictions' Lottery Departments are responsible for managing the games.

26. In regard to intrastate lottery games, many Lottery Departments, like the Illinois Department of the Lottery, offer, administer, and manage daily numbers drawing games and "scratch-off" ticket games exclusively to in-state purchasers.

27. In addition to intrastate games, many Lottery Departments offer interstate lottery games—such as the Powerball and Mega Millions games—that are offered across multiple jurisdictions, and are administered by the offering jurisdictions' Lottery Departments collectively.

28. The Lottery Departments participating in interstate lottery games have entered into various agreements ("Lottery Agreements") to create associations and enact rules that facilitate the collective administration of various interstate lottery games. There are two (2) such associations—the Multi-State Lottery Association (MUSL) and the Mega Millions Consortium—and the Lottery Departments Defendants are members of at least one of those two (2) associations.

29. Specifically, the Powerball game is administered by the MUSL, while the Mega Millions game is administered by the Mega Millions Consortium. However, the MUSL and the Mega Millions Consortium have entered into a "Cross-Selling Agreement" that allows members of the MUSL to sell lottery tickets for the Mega Millions game, and members of the Mega Millions Consortium to sell lottery tickets for the Powerball game.

30. These interstate lottery games use the same accounting procedures and order of priority of payment as articulated above: first, lottery winners are paid; second, the ongoing

expenses of the interstate lottery games are paid; finally, any residual funds are divided between the participating jurisdictions' Lottery Departments.

31. Pursuant to the Lottery Agreements, the participating Lottery Departments use a three-step process to pay winners of interstate lottery games. First, the participating Lottery Departments each remit their proportional share of the prize money to one aggregating Lottery Department (Illinois is not one of them). Then, the aggregating Lottery Department transfers the winning funds to the Lottery Departments of the jurisdictions with the lottery winners. Finally, each Lottery Department of the jurisdiction with a lottery winner transfers the winning funds to its respective lottery winners.

32. The Lottery Agreements also provide that a Lottery Department can be held liable for any expenses and costs associated with a shortfall in prize money that the Lottery Department causes by failing to contribute its proportional share of the prize money won in an interstate lottery game.

**ILLINOIS ADOPTED A POLICY TO CEASE PAYING
ILLINOIS LOTTERY WINNERS**

33. On June 30, 2015, the Illinois State Budget for the 2015 Fiscal Year expired. Illinois has yet to adopt a budget for the 2016 Fiscal Year, which runs from July 1, 2015 through June 30, 2016.

34. On July 1, 2015, since Illinois had not (and still has not) adopted a budget for the 2016 Fiscal Year, the Illinois Department of the Lottery and B.R. Lane adopted their official policy to cease making payments to winners of the Illinois State Lottery (*i.e.*, Illinois Lottery Winners) who won in excess of \$25,000.

35. However, the Illinois Department of the Lottery and B.R. Lane did not inform the public about this official policy until August 28, 2015, almost two months after the Illinois

Department of the Lottery stopped making disbursements to the Illinois Lottery Winners whose winnings exceed \$25,000. As set forth above, on August 28, 2015, Steven Rossi, Communication Director of the Illinois Department of the Lottery, publicly announced the official policy.

36. As a result of the official policy adopted by the Illinois Department of the Lottery and B.R. Lane, Illinois Lottery Winners who won in excess of \$25,000, have been unable to collect their winnings after July 1, 2015, and are indefinitely barred from obtaining their winnings relative to both intrastate and interstate lottery games offered by the Illinois Department of the Lottery.

37. Relative to interstate lottery games, such as the Powerball and Mega Millions games, Illinois Lottery Winners have been unable to collect any winnings, including amounts that have been contributed by the other participating Defendant Lottery Departments in addition to the Illinois Department of the Lottery.

38. On October 15, 2015, the Illinois Department of the Lottery and B.R. Lane amended their official policy and ceased making payments to Illinois Lottery Winners who won in excess of \$600.⁶

39. As a result of the amended official policy adopted by the Illinois Department of the Lottery and B.R. Lane, Illinois Lottery Winners—in addition to those affected by the original Illinois Lottery policy—who won in excess of \$600 have also been unable to collect their winnings after October 15, 2015, and all Illinois Lottery Winners who won in excess of \$600 are

⁶ Erik Runge, *Illinois Lottery: Payment Delays for All Winners Over \$600*, WGNTV.COM, Oct. 14, 2015, <http://www.nbcchicago.com/blogs/ward-room/Lottery-Officials-Players-Who-Win-More-Than-600-Will-be-Delayed-Payment-332909841.html>

indefinitely barred from obtaining their winnings relative to both intrastate and interstate lottery games offered by the Illinois Department of the Lottery.

40. The Illinois Department of the Lottery's and B.R. Lane's attempts to render contingent the distribution of the Lottery winnings upon the passage of a state budget in Illinois means that it is quite realistic that the winners may never receive their money, as the budget is not close to being passed and the state of Illinois is operating under a "new normal" without a budget.⁷

41. As a result of the official policy adopted by the Illinois Department of the Lottery and B.R. Lane, many Illinois Lottery Winners have been placed in financial limbo, with no date or deadline by which the payments to which they are entitled will be disbursed. The Illinois Lottery's website highlights twenty-nine (29) prizes that have occurred since July 1, 2015, ranging from \$50,000 to a \$262 million Mega Millions jackpot split by two winners. That jackpot happens to be the second largest prize in the history of the Illinois lottery.⁸

42. Based on the information set forth on the website of the Illinois Lottery, the following constitutes the breakdown of the amounts due and owing to the winners, the grand total of which is \$288,425,000:⁹

Date of Press Release	Prize Amount	Names of Winners
August 17, 2015	\$1,050,000	John Groth
August 14, 2015	\$250,000	Doris Buchanan

⁷ Kim Geiger & Monique Garcia, *Illinois' new normal: No budget, by money still flowing*, CHICAGO TRIBUNE, Aug. 10, 2015, <http://www.chicagotribune.com/news/local/politics/ct-illinois-budget-new-normal-met-20150809-story.html>.

⁸ Aaron Smith, *Illinois lottery winners are in limbo*, CNN MONEY, Aug. 31, 2015, <http://money.cnn.com/2015/08/31/news/illinois-lottery/index.html?iid=surge-stack-dom>.

⁹ *Anything's Possible Press Releases*, ILLINOIS LOTTERY, <http://www.illinoislottery.com/en-us/press-releases.html> (last accessed September 8, 2015).

August 13, 2015	\$50,000	Rhonda Rasche
August 12, 2015	\$400,000	Tatasha Trotter
August 7, 2015	\$850,000	Andrew Burke
August 6, 2015	\$400,000	Lance Whitfield
August 5, 2015	\$15,000,000	Michelle Baymon
August 4, 2015	\$450,000	Eddie Mae Mason
August 3, 2015	\$1,000,000	Carlos Herrera
July 31, 2015	\$50,000	David Davis
July 30, 2015	\$250,000	Leon Pawlykowycz
July 29, 2015	\$500,000	Jermaine Roby
July 28, 2015	\$200,000	Narayan Dhungel
July 27, 2015	\$250,000	Danny Chasteen
July 2015	\$262,000,000	John Williams and Neal Logue
July 24, 2015	\$1,000,000	Paul Veselack
July 23, 2015	\$175,000	John Howard
July 21, 2015	\$150,000	Michael Gioppo
July 22, 2015	\$550,000	Patti Schaaake
July 17, 2015	\$50,000	Christine Kulman
July 16, 2015	\$1,000,000	Melynda Refkin
July 15, 2015	\$100,000	Jaime Prazma
July 14, 2015	\$200,000	Vivian Wilson
July 13, 2015	\$100,000	Bill King
July 9, 2015	\$300,000	Jeff Hendrix

July 8, 2015	\$600,000	Glenn Gliedt and Jeffrey Darr
July 7, 2015	\$250,000	Francisco Hernandez
July 6, 2015	\$250,000	Charles McLaughlin
July 1, 2015	\$1,000,000	Edward Casper
Total:	\$288,425,000	

43. Since August 17, 2015, the website of the Illinois Lottery inexplicably ceased publishing the Press Releases relating to the Illinois Lottery Winners, who won in excess of \$25,000.¹⁰

THE ILLINOIS LOTTERY CONTINUES TO SELL LOTTERY TICKETS

44. Despite adopting an official policy to withhold payments to Illinois Lottery Winners, the Illinois Department of the Lottery continues to sell both interstate and intrastate lottery tickets, and continues to pay the costs incurred in the operation and administration of the Illinois Lottery. Upon information and belief, this includes, without limitation, B.R. Lane's annual salary of \$142,000.

45. The Illinois Department of the Lottery's choice to continue to sell lottery tickets, despite adopting its official policy of non-payment of prize winnings, amounts to a fraud committed upon the public. Indeed, State Representative Jack Franks (D-Marengo) cited the Illinois government for committing fraud in this instance:

“Our government is committing a fraud on the taxpayers, because we're holding ourselves out as selling a good, and we're not—we're not selling anything.”¹¹

¹⁰ *Id.*

¹¹ Matthew Walberg, *Illinois lottery winners have to wait for payout due to budget impasse*, CHICAGO TRIBUNE, Aug. 28, 2015, <http://www.chicagotribune.com/news/local/breaking/ct-lottery-payments-delayed-met-0828-20150828-story.html>

46. In furtherance of the Illinois Department of the Lottery's fraudulent practices, the Illinois Department of the Lottery and B.R. Lane have established another official policy—coextensive with their official policy of non-payment—to contravene the priority of payments set forth by 20 ILCS 1605/9.1(o), as the costs incurred in the operation and administration of the Illinois Lottery are paid from the State Lottery Fund before Illinois Lottery Winners are paid their prize money.

47. The Illinois Department of the Lottery's and B.R. Lane's adoption of an official policy ignoring the priority of payments set forth by 20 ILCS 1605/9.1(o) has a deleterious effect upon existing Illinois Lottery Winners because the funds that are supposed to be used by the Illinois Department of the Lottery to pay Illinois Lottery Winners are instead being used to pay costs incurred in the operation and administration of the Illinois Lottery.

DEFENDANTS HAVE THE ABILITY TO PAY ILLINOIS LOTTERY WINNERS

48. Despite the Illinois Department of the Lottery's claims to the contrary, the Illinois Department of the Lottery necessarily has the funds to pay Illinois Lottery Winners, as the finances and accounts of the Illinois Department of the Lottery are self-sustaining, independently funded and maintained, and are not combined with any other state of Illinois funds until *after* all Illinois Lottery Winners are paid their winnings.

49. According to a letter dated July 6, 2015 from B.R. Lane to the Illinois State Treasurer, as of June 30, 2015 the cash balance in the State Lottery Fund was \$244.4 million.

50. In regard to interstate lottery games, all other participating Lottery Departments are responsible for their proportional share of the prize money won by an Illinois Lottery Winner. Therefore, the majority of the funds due to Illinois Lottery Winners of interstate lottery

games are entirely unrelated to any monetary contribution from the Illinois Department of the Lottery.

51. Despite the fact that the participating non-Illinois Lottery Departments have the segregated money to pay Illinois Lottery Winners of interstate lottery games, the non-Illinois Lottery Directors, non-Illinois Lottery Departments, MUSL, and Mega Millions Consortium have adopted official policies of either (a) transferring to the Illinois Department of the Lottery their proportional share of the interstate lottery prize money won by Illinois Lottery Winners, knowing that the Illinois Department of the Lottery and B.R. Lane will not pay out that prize money to the Illinois Lottery Winners, or (b) retaining their segregated proportional share of the interstate lottery prize money won by Illinois Lottery Winners without paying it to the Illinois Lottery Winners, knowing that the Illinois Lottery Winners have immediate and vested possessory and property rights to the money.

52. The non-Illinois Lottery Directors, non-Illinois Lottery Departments, MUSL, and Mega Millions Consortium have also adopted official policies of allowing the Illinois Department of the Lottery and B.R. Lane to continue to market, advertise and sell Powerball and Mega Millions lottery tickets, and participating in joint marketing, advertising and sales efforts in furtherance thereof, knowing that the Illinois Lottery Winners will not be paid their prize winnings.

**PLAINTIFFS AND CLASS MEMBERS HAVE A VESTED
PROPERTY RIGHT IN THEIR WINNINGS**

53. When an individual wins a prize of more than \$600 from any intrastate or interstate lottery game offered by the Illinois Department of the Lottery, that individual must redeem the winning ticket, within the established claim period, pursuant to the procedures

prescribed by the Illinois Department of the Lottery. *See, e.g.*, 20 ILCS 1605/7.1; 11 Ill.Admin.Code 1770.190.¹²

54. After a winning lottery ticket is redeemed, the Illinois Department of the Lottery validates the winning ticket, and once a lottery ticket is verified as a winning ticket, the claimant is entitled to the prize money. 11 Ill.Admin.Code 1770.190.

55. Plaintiffs and Class members have complied with all requirements and procedures prescribed by the Illinois Department of the Lottery—and, by extension, the Lottery Agreements established by all other Lottery Departments—to be entitled to their prize money.

56. Therefore, Plaintiffs and Class members have a vested right in their winnings, as they have complied with all prerequisites necessary to obtain ownership of their winnings. Indeed, the Illinois Department of the Lottery does not contest that Plaintiffs and Class members are entitled to their lottery winnings.

57. Plaintiffs and Class members have not given the Illinois Department of the Lottery, or any other Lottery Department, consent to possess, control, reappropriate, or otherwise use their winnings (*i.e.*, their property) for any other purpose than is necessary to effectuate a transfer of the money to Plaintiffs' and Class members' possession and control.

PARTIES

Illinois Intrastate Lottery Plaintiffs

58. At all relevant times, Plaintiff Rhonda Rasche (“Rasche”) was an Illinois citizen. Rasche purchased a winning Illinois Lottery ticket on or about July 28, 2015, and won \$50,000. Rasche made a valid and undisputed claim with the Illinois Department of the Lottery on or about July 30, 2015. The Illinois Department of the Lottery refused to pay Rasche’s claim.

¹² Additional information is also on the Illinois Department of the Lottery website, available at: http://www.illinoislottery.com/en-us/When_You_Win.html

59. At all relevant times, Plaintiff Danny Chasteen (“Chasteen”) was an Illinois citizen. On or about July 20, 2015, Chasteen purchased a winning Illinois Lottery ticket and won \$250,000. Chasteen made a valid and undisputed claim with the Illinois Department of the Lottery after July 1, 2015. The Illinois Department of the Lottery refused to pay Chasteen’s claim.

60. At all relevant times, Plaintiff Howard Robert Anderson (“Anderson”) was an Illinois citizen. On or about October 20, 2015, Anderson purchased a winning Illinois Lottery ticket and won \$1,000. Anderson made a valid and undisputed claim with the Illinois Department of the Lottery after July 1, 2015. The Illinois Department of the Lottery refused to pay Anderson’s claim.

61. At all relevant times, Plaintiff Edward Wastag (“Wastag”) was an Illinois citizen. Wastag purchased a winning Illinois Lottery ticket after July 1, 2015, and won \$250,000. Wastag made a valid and undisputed claim with the Illinois Department of the Lottery after July 1, 2015. The Illinois Department of the Lottery refused to pay Wastag’s claim.

62. At all relevant times, Plaintiff Morgan Shastal (“Shastal”) was an Illinois citizen. On or about October 17, 2015, Shastal purchased a winning Illinois Lottery ticket and won \$100,000. Shastal made a valid and undisputed claim with the Illinois Department of the Lottery after July 1, 2015. The Illinois Department of the Lottery refused to pay Shastal’s claim.

63. Plaintiffs Rasche, Chasteen Anderson, Wastag, and Shastal are hereinafter collectively known as the “Intrastate Plaintiffs.”

Interstate Lottery Plaintiffs

64. At all relevant times, Plaintiff Michael Chesniak (“Chesniak”) was an Illinois citizen.

65. At all relevant times, Plaintiff Albert Cundari (“Cundari”) was an Illinois citizen.

66. At all relevant times, Plaintiff Byron Herrera (“Herrera”) was an Illinois citizen.

67. At all relevant times, Plaintiff George Inniss (“Inniss”) was an Illinois citizen.

68. At all relevant times, Plaintiff Joseph Joost (“Joost”) was an Illinois citizen.

69. At all relevant times, Plaintiff Ikem Mikhail (“Mikhail”) was an Illinois citizen.

70. At all relevant times, Plaintiff Luis Ivan Morales (“Morales”) was an Illinois citizen.

71. At all relevant times, Plaintiff Jesus Navarro (“Navarro”) was an Illinois citizen.

72. At all relevant times, Plaintiff Vincent Ortega (“Ortega”) was an Illinois citizen.

73. At all relevant times, Plaintiff Robert Pitts (“Pitts”) was an Illinois citizen.

74. At all relevant times, Plaintiff Doel Polanco (“Polanco”) was an Illinois citizen.

75. At all relevant times, Plaintiff Joseph Raddi (“Raddi”) was an Illinois citizen.

76. At all relevant times, Plaintiff Joseph Spain (“Spain”) was an Illinois citizen.

77. At all relevant times, Plaintiff Brian Thompson (“Thompson”) was an Illinois citizen.

78. At all relevant times, Plaintiff Ricardo Velez (“Velez”) was an Illinois citizen.

79. At all relevant times, Plaintiff Remick Ware (“Ware”) was an Illinois citizen.

80. At all relevant times, Plaintiff Robert Clark (“Clark”) was an Illinois citizen.

81. At all relevant times, Plaintiff Richard D. Herman (“Herman”) was an Illinois citizen.

82. On or about September 8, 2015, Chesniak, Cundari, Herrera, Inniss, Joost, Mikhail, Morales, Navarro, Ortega, Pitts, Polanco, Raddi, Spain, Thompson, Velez, and Ware, together, purchased a winning Mega Millions lottery ticket and won \$1,000,000. On or about

September 10, 2015, they made a valid and undisputed claim with the Illinois Department of the Lottery. The Illinois Department of the Lottery refused to pay their claim.

83. On or about September 19, 2015, Clark and Herman, together, purchased a winning Powerball lottery ticket and won \$2,000,000. Clark and Herman made a valid and undisputed claim with the Illinois Department of the Lottery after July 1, 2015. The Illinois Department of the Lottery refused to pay their claim.

84. Plaintiffs Chesniak, Cundari, Herrera, Inness, Joost, Mikhail, Morales, Navarro, Ortega, Pitts, Polanco, Raddi, Spain, Thompson, Velez, Ware, Clark, and Herman are hereinafter collectively known as the “Interstate Plaintiffs.”

Illinois Defendants

85. At all relevant times, Defendant B.R. Lane was the Acting Director of the Illinois Department of the Lottery. Defendant Lane is being sued individually and in his official capacity.

86. At all relevant times, Defendant Illinois Department of the Lottery was an autonomous, independently funded and managed entity in the state of Illinois responsible for administering the Illinois Lottery, and is headquartered at 122 S. Michigan Ave., 19th Floor, Chicago, IL 60603.

87. At all relevant times, Defendant Leslie Geissler Munger was the Illinois Comptroller. Defendant Geissler Munger is being sued individually and in her official capacity.

88. At all relevant times, Defendant Michael W. Frerich was the Illinois State Treasurer. Defendant Frerich is being sued individually and in his official capacity.

Non-Illinois Defendants

89. At all relevant times, Defendant Arizona State Lottery Commission was an autonomous, independently funded and managed entity in the state of Arizona responsible for administering the Arizona State Lottery, and is headquartered at 4740 E. University Dr., Phoenix, AZ 85034.

90. At all relevant times, Defendant Tony Bouie was the Executive Director of the Arizona State Lottery Commission. Defendant Bouie is being sued individually and in his official capacity.

91. At all relevant times, Defendant Office of the Arkansas Lottery was an autonomous, independently funded and managed entity in the state of Arkansas responsible for administering the Arkansas Scholarship Lottery, and is headquartered at 124 W. Capitol Ave., #1400, Little Rock, AR 72203.

92. At all relevant times, Defendant Bishop Woosley was the Director of the Office of the Arkansas Lottery. Defendant Woosley is being sued individually and in his official capacity.

93. At all relevant times, Defendant California Lottery Commission was an autonomous, independently funded and managed entity in the state of California responsible for administering the California Lottery, and is headquartered at 700 N. 10th Street, Sacramento, CA 95811.

94. At all relevant times, Defendant Nathaniel Kirtman, III was the Chair of the California Lottery Commission. Defendant Kirtman is being sued individually and in his official capacity.

95. At all relevant times, Defendant Colorado Lottery Commission was an autonomous, independently funded and managed entity in the state of Colorado responsible for

administering the Colorado Lottery, and is headquartered at 225 N. Main Street, Pueblo, CO 81003.

96. At all relevant times, Defendant Laura Solano was the Director of the Colorado Lottery Commission. Defendant Solano is being sued individually and in her official capacity.

97. At all relevant times, Defendant Connecticut Lottery Corporation was an autonomous, independently funded and managed entity in the state of Connecticut responsible for administering the Connecticut Lottery, and is headquartered at 777 Brook Street, Rocky Hill, CT 06067.

98. At all relevant times, Defendant Annie M. Noble was the President and CEO of the Connecticut Lottery Corporation. Defendant Noble is being sued individually and in her official capacity.

99. At all relevant times, Defendant Delaware Lottery was an autonomous, independently funded and managed entity in the state of Delaware responsible for administering the Delaware Lottery, and is headquartered at 1575 McKee Road, Suite 102, Dover, DE 19904.

100. At all relevant times, Defendant Vernon Kirk was the Director of the Delaware Lottery. Defendant Kirk is being sued individually and in his official capacity.

101. At all relevant times, Defendant Florida Lottery was an autonomous, independently funded and managed entity in the state of Florida responsible for administering the Florida Lottery, and is headquartered at 250 Marriott Drive, Tallahassee, FL 32301.

102. At all relevant times, Defendant Tom Delacenserie was the Director of the Florida Lottery. Defendant Delacenserie is being sued individually and in his official capacity.

103. At all relevant times, Defendant Georgia Lottery Corporation was an autonomous, independently funded and managed entity in the state of Georgia responsible for administering

the Georgia Lottery, and is headquartered at 250 Williams Street, Suite 3000, Atlanta, GA 30303.

104. At all relevant times, Defendant Debbie D. Alford was the Acting President and CEO of the Georgia Lottery Corporation. Defendant Alford is being sued individually and in her official capacity.

105. At all relevant times, Defendant Idaho Lottery Commission was an autonomous, independently funded and managed entity in the state of Idaho responsible for administering the Idaho Lottery, and is headquartered at 1199 Shoreline Lane, Suite 100, Boise, ID 83702.

106. At all relevant times, Defendant Jeffrey R. Anderson was the Executive Director of the Idaho Lottery Commission. Defendant Anderson is being sued individually and in his official capacity.

107. At all relevant times, Defendant State Lottery Commission of Indiana was an autonomous, independently funded and managed entity in the state of Indiana responsible for administering the Hoosier Lottery, and is headquartered at 1302 N. Meridian Street, Indianapolis, IN 46202.

108. At all relevant times, Defendant Sarah M. Taylor was the Executive Director of the State Lottery Commission of Indiana. Defendant Taylor is being sued individually and in her official capacity.

109. At all relevant times, Defendant Iowa Lottery Board was an autonomous, independently funded and managed entity in the state of Iowa responsible for administering the Iowa Lottery, and is headquartered at 13001 University Ave., Clive, IA 50325.

110. At all relevant times, Defendant Terry Rich was the CEO of the Iowa Lottery Board. Defendant Rich is being sued individually and in his official capacity.

111. At all relevant times, Defendant Kansas Lottery Commission was an autonomous, independently funded and managed entity in the state of Kansas responsible for administering the Kansas Lottery, and is headquartered at 128 N. Kansas Ave., Topeka, KS 66603.

112. At all relevant times, Defendant Terry Presta was the Executive Director of the Kansas Lottery Commission. Defendant Presta is being sued individually and in his official capacity.

113. At all relevant times, Defendant Kentucky Lottery Corporation was an autonomous, independently funded and managed entity in the commonwealth of Kentucky responsible for administering the Kentucky Lottery, and is headquartered at 1011 W. Main Street, Louisville, KY 40202.

114. At all relevant times, Defendant Arthur L. Gleasor, Jr. was the President and CEO of the Kentucky Lottery Corporation. Defendant Gleasor is being sued individually and in his official capacity.

115. At all relevant times, Defendant Louisiana Lottery Corporation was an autonomous, independently funded and managed entity in the state of Louisiana responsible for administering the Louisiana Lottery, and is headquartered at 555 Laurel Street, Baton Rouge, LA 70801.

116. At all relevant times, Defendant Rose Hudson was the President of the Louisiana Lottery Corporation. Defendant Hudson is being sued individually and in her official capacity.

117. At all relevant times, Defendant Maine State Liquor & Lottery Commission was an autonomous, independently funded and managed entity in the state of Maine responsible for administering the Maine State Lottery, and is headquartered at 10 Water Street, Hollowell, ME 04347.

118. At all relevant times, Defendant Gregg Mineo was the Director of the Maine State Liquor & Lottery Commission. Defendant Mineo is being sued individually and in his official capacity.

119. At all relevant times, Defendant Maryland Lottery and Gaming Control Commission was an autonomous, independently funded and managed entity in the state of Maryland responsible for administering the Maryland Lottery, and is headquartered at 1800 Washington Blvd., Suite 330, Baltimore, MD 21230.

120. At all relevant times, Defendant Gordon Medenica was the Director of the Maryland Lottery and Gaming Control Commission. Defendant Medenica is being sued individually and in his official capacity.

121. At all relevant times, Defendant Massachusetts State Lottery was an autonomous, independently funded and managed entity in the commonwealth of Massachusetts responsible for administering the Massachusetts Lottery, and is headquartered at 60 Columbian Street, Braintree, MA 02184.

122. At all relevant times, Defendant Michael R. Sweeney was the Executive Director of the Massachusetts State Lottery. Defendant Sweeney is being sued individually and in his official capacity.

123. At all relevant times, Defendant Michigan Bureau of State Lottery was an autonomous, independently funded and managed entity in the state of Michigan responsible for administering the Michigan Lottery, and is headquartered at 101 E. Hillsdale Street, Lansing, MI 48909.

124. At all relevant times, Defendant M. Scott Bowen was the Commissioner of the Michigan Bureau of State Lottery. Defendant Bowen is being sued individually and in his official capacity.

125. At all relevant times, Defendant Minnesota State Lottery was an autonomous, independently funded and managed entity in the state of Minnesota responsible for administering the Minnesota Lottery, and is headquartered at 2645 Long Lake Road, Roseville, MN 55113.

126. At all relevant times, Defendant Ed Van Petten was the Executive Director of the Minnesota State Lottery. Defendant Van Petten is being sued individually and in his official capacity.

127. At all relevant times, Defendant Missouri Lottery Commission was an autonomous, independently funded and managed entity in the state of Missouri responsible for administering the Missouri Lottery, and is headquartered at 1823 Southridge Dr., Jefferson City, MO 65109.

128. At all relevant times, Defendant May Scheve Reardon was the Executive Director of the Missouri Lottery Commission. Defendant Scheve Reardon is being sued individually and in her official capacity.

129. At all relevant times, Defendant Montana Lottery Commission was an autonomous, independently funded and managed entity in the state of Montana responsible for administering the Montana Lottery, and is headquartered at 2525 N. Montana Ave., Helena, MT 59601.

130. At all relevant times, Defendant Angela Wong was the Director of the Montana Lottery Commission. Defendant Wong is being sued individually and in her official capacity.

131. At all relevant times, Defendant Nebraska Lottery was an autonomous, independently funded and managed entity in the state of Nebraska responsible for administering the Nebraska Lottery, and is headquartered at 1800 O Street, Suite 101, Lincoln, NE 68509.

132. At all relevant times, Defendant Jill Marshall was the Acting Director of the Nebraska Lottery. Defendant Marshall is being sued individually and in her official capacity.

133. At all relevant times, Defendant New Hampshire Lottery Commission was an autonomous, independently funded and managed entity in the state of New Hampshire responsible for administering the New Hampshire Lottery, and is headquartered at 14 Integra Dr., Concord, NH 03301.

134. At all relevant times, Defendant Charles McIntyre was the Executive Director of the New Hampshire Lottery Commission. Defendant McIntyre is being sued individually and in his official capacity.

135. At all relevant times, Defendant New Jersey Lottery Commission was an autonomous, independently funded and managed entity in the state of New Jersey responsible for administering the New Jersey Lottery, and is headquartered at 1333 Brunswick Avenue Cir., Trenton, NJ 08648.

136. At all relevant times, Defendant Carole Hedinger was the Executive Director of the New Jersey Lottery Commission. Defendant Hedinger is being sued individually and in her official capacity.

137. At all relevant times, Defendant New Mexico Lottery Authority was an autonomous, independently funded and managed entity in the state of New Mexico responsible for administering the New Mexico Lottery, and is headquartered at 4511 Osuna Road NE, Albuquerque, NM 87109.

138. At all relevant times, Defendant David Barden was the CEO of the New Mexico Lottery Authority. Defendant Barden is being sued individually and in his official capacity.

139. At all relevant times, Defendant New York Lottery and Gaming Commission was an autonomous, independently funded and managed entity in the state of New York responsible for administering the New York Lottery, and is headquartered at One Broadway Center, Schenectady, NY 12305.

140. At all relevant times, Defendant Gardner Gurney was the Director of the New York Lottery and Gaming Commission. Defendant Gurney is being sued individually and in his official capacity.

141. At all relevant times, Defendant North Carolina Lottery Commission was an autonomous, independently funded and managed entity in the state of North Carolina responsible for administering the North Carolina Education Lottery, and is headquartered at 2100 Yonkers Road, Raleigh, NC 27604.

142. At all relevant times, Defendant Alice Garland was the Executive Director of the North Carolina Lottery Commission. Defendant Garland is being sued individually and in her official capacity.

143. At all relevant times, Defendant North Dakota Lottery was an autonomous, independently funded and managed entity in the state of North Dakota responsible for administering the North Dakota Lottery, and is headquartered at 1050 E. Interstate Ave., Suite 200, Bismarck, ND 58503.

144. At all relevant times, Defendant Randy Miller was the Director of the North Dakota Lottery. Defendant Miller is being sued individually and in his official capacity.

145. At all relevant times, Defendant Ohio Lottery Commission was an autonomous, independently funded and managed entity in the state of Ohio responsible for administering the Ohio Lottery, and is headquartered at 1100 Resource Dr., Suite 5, Brooklyn Heights, OH 44131.

146. At all relevant times, Defendant Dennis Berg was the Director of the Ohio Lottery Commission. Defendant Berg is being sued individually and in his official capacity.

147. At all relevant times, Defendant Oklahoma Lottery Commission was an autonomous, independently funded and managed entity in the state of Oklahoma responsible for administering the Oklahoma Lottery, and is headquartered at 3817 N. Santa Fe, Oklahoma City, OK 73118.

148. At all relevant times, Defendant Rollo Redburn was the Executive Director of the Oklahoma Lottery Commission. Defendant Redburn is being sued individually and in his official capacity.

149. At all relevant times, Defendant Oregon Lottery Commission was an autonomous, independently funded and managed entity in the state of Oregon responsible for administering the Oregon Lottery, and is headquartered at 500 Airport Road SE, Salem, OR 97301.

150. At all relevant times, Defendant Jack Roberts was the Director of the Oregon Lottery Commission. Defendant Roberts is being sued individually and in his official capacity.

151. At all relevant times, Defendant Pennsylvania Lottery was an autonomous, independently funded and managed entity in the commonwealth of Pennsylvania responsible for administering the Pennsylvania Lottery, and is headquartered at 1200 Fulling Mill Road, Middleton, PA 17057.

152. At all relevant times, Defendant Drew Svitko was the Executive Director of the Pennsylvania Lottery. Defendant Svitko is being sued individually and in his official capacity.

153. At all relevant times, Defendant Rhode Island Lottery was an autonomous, independently funded and managed entity in the state of Rhode Island responsible for administering the Rhode Island Lottery, and is headquartered at 1425 Pontiac Ave., Cranston, RI 02920.

154. At all relevant times, Defendant Gerald Aubin was the Director of the Rhode Island Lottery. Defendant Aubin is being sued individually and in his official capacity.

155. At all relevant times, Defendant South Carolina Lottery Commission was an autonomous, independently funded and managed entity in the state of South Carolina responsible for administering the South Carolina Education Lottery, and is headquartered at 1333 Main Street, 4th Floor, Columbia, SC 29201.

156. At all relevant times, Defendant Paula Harper Bethea was the Executive Director of the South Carolina Lottery Commission. Defendant Harper Bethea is being sued individually and in her official capacity.

157. At all relevant times, Defendant South Dakota Lottery Commission was an autonomous, independently funded and managed entity in the state of South Dakota responsible for administering the South Dakota Lottery, and is headquartered at 711 E. Wells Ave., Pierre, SD 57501.

158. At all relevant times, Defendant Norm Lingle was the Executive Director of the South Dakota Lottery Commission. Defendant Lingle is being sued individually and in his official capacity.

159. At all relevant times, Defendant Tennessee Education Lottery Corporation was an autonomous, independently funded and managed entity in the state of Tennessee responsible for

administering the Tennessee Education Lottery, and is headquartered at 26 Century Blvd., Suite 200, Nashville, TN 37214.

160. At all relevant times, Defendant Rebecca Hargrove was the President and CEO of the Tennessee Education Lottery Corporation. Defendant Hargrove is being sued individually and in her official capacity.

161. At all relevant times, Defendant Texas Lottery Commission was an autonomous, independently funded and managed entity in the state of Texas responsible for administering the Texas Lottery, and is headquartered at 611 E. 6th Street, Austin, TX 78701.

162. At all relevant times, Defendant Gary Grief was the Executive Director of the Texas Lottery Commission. Defendant Grief is being sued individually and in his official capacity.

163. At all relevant times, Defendant Vermont Lottery Commission was an autonomous, independently funded and managed entity in the state of Vermont responsible for administering the Vermont Lottery, and is headquartered at 1311 US Route 302, Suite 100, Barre, VT 05641.

164. At all relevant times, Defendant Gregory Smith was the Executive Director of the Vermont Lottery Commission. Defendant Smith is being sued individually and in his official capacity.

165. At all relevant times, Defendant Virginia Lottery Board was an autonomous, independently funded and managed entity in the commonwealth of Virginia responsible for administering the Virginia Lottery, and is headquartered at 900 E. Main Street, Richmond, VA 23219.

166. At all relevant times, Defendant Paula I. Otto was the Executive Director of the Virginia Lottery Board. Defendant Otto is being sued individually and in her official capacity.

167. At all relevant times, Defendant Washington Lottery Commission was an autonomous, independently funded and managed entity in the state of Washington responsible for administering the Washington Lottery, and is headquartered at 814 4th Ave. E., Olympia, WA 98506.

168. At all relevant times, Defendant Bill Hanson was the Director of the Washington Lottery Commission. Defendant Hanson is being sued individually and in his official capacity.

169. At all relevant times, Defendant West Virginia Lottery Commission was an autonomous, independently funded and managed entity in the state of West Virginia responsible for administering the West Virginia Lottery, and is headquartered at 900 Pennsylvania Ave., Charleston, WV 25302.

170. At all relevant times, Defendant John C. Musgrave was the Director of the West Virginia Lottery Commission. Defendant Musgrave is being sued individually and in his official capacity.

171. At all relevant times, Defendant Wisconsin Lottery was an autonomous, independently funded and managed entity in the state of Wisconsin responsible for administering the Wisconsin Lottery, and is headquartered at 2135 Rimrock Road, Suite 231, Madison, WI 53708.

172. At all relevant times, Defendant Michael Edmonds was the Director of the Wisconsin Lottery. Defendant Edmonds is being sued individually and in his official capacity.

173. At all relevant times, Defendant Wyoming Lottery Corporation was an autonomous, independently funded and managed entity in the state of Wyoming responsible for

administering the Wyoming Lottery, and is headquartered at 1620 Central Ave., Suite 100, Cheyenne, WY 82001.

174. At all relevant times, Defendant Jon Clontz was the CEO of the Wyoming Lottery Corporation. Defendant Clontz is being sued individually and in his official capacity.

175. At all relevant times, Defendant Washington D.C. Lottery and Charitable Games Control Board was an autonomous, independently funded and managed entity in the District of Columbia responsible for administering the Washington D.C. Lottery, and is headquartered at 2235 Shannon Place, S.E., Washington, D.C. 20020.

176. At all relevant times, Defendant Tracy Cohen was the Executive Director of the Washington, D.C. Lottery and Charitable Games Control Board. Defendant Cohen is being sued individually and in her official capacity.

177. At all relevant times, Defendant US Virgin Islands Lottery Commission was an autonomous, independently funded and managed entity in the territory of the US Virgin Islands responsible for administering the Virgin Islands Lottery, and is headquartered at 5800 Krondprindsens Gade, St. Thomas, VI 00802.

178. At all relevant times, Defendant Juan Figueroa, Sr. was the Executive Director of the US Virgin Islands Lottery Commission. Defendant Figueroa is being sued individually and in his official capacity.

179. At all relevant times, Defendant Lotería Electronica de Puerto Rico was an autonomous, independently funded and managed entity in the territory of Puerto Rico responsible for administering the Puerto Rico Lottery, and is headquartered at 383 Ave. F.D. Roosevelt, Suite 110, San Juan, PR 00918.

180. At all relevant times, Defendant Antonio Perez Lopez was the Secretario Auxiliar of the Lotería Electronica de Puerto Rico. Defendant Perez Lopez is being sued individually and in his official capacity.

181. Defendants Lane, Bouie, Woosley, Kirtman, III, Solano, Noble, Kirk, Delacenserie, Alford, Anderson, Taylor, Rich, Presta, Gleasor, Jr., Hudson, Mineo, Medenica, Sweeney, Bowen, Petten, Reardon, Wong, Marshall, McIntyre, Hedinger, Barden, Gurney, Garland, Miller, Berg, Redburn, Roberts, Svitko, Aubin, Bethea, Lingle, Hargrove, Grief, Smith, Otto, Hanson, Musgrave, Edmonds, Clontz, Cohen, Figueroa, Sr., and Perez Lopez are hereinafter collectively known as the “Lottery Directors.”

182. Defendants Illinois Department of the Lottery, Arizona State Lottery Commission, Office of the Arkansas Lottery, California Lottery Commission, Colorado Lottery Commission, Connecticut Lottery Corporation, Delaware Lottery, Florida Lottery, Georgia Lottery Corporation, Idaho Lottery Commission, State Lottery Commission of Indiana, Iowa Lottery Board, Kansas Lottery Commission, Kentucky Lottery Corporation, Louisiana Lottery Corporation, Maine State Liquor & Lottery Commission, Maryland Lottery and Gaming Control Commission, Massachusetts State Lottery, Michigan Bureau of State Lottery, Minnesota State Lottery, Missouri Lottery Commission, Montana Lottery Commission, Nebraska Lottery, New Hampshire Lottery Commission, New Jersey Lottery Commission, New Mexico Lottery Authority, New York Lottery and Gaming Commission, North Carolina Lottery Commission, North Dakota Lottery, Ohio Lottery Commission, Oklahoma Lottery Commission, Oregon Lottery Commission, Pennsylvania Lottery, Rhode Island Lottery, South Carolina Lottery Commission, South Dakota Lottery Commission, Tennessee Education Lottery Corporation, Texas Lottery Commission, Vermont Lottery Commission, Virginia Lottery Board, Washington

Lottery Commission, West Virginia Lottery Commission, Wisconsin Lottery, Wyoming Lottery Corporation, Washington, D.C. Lottery and Charitable Games Control Board, US Virgin Islands Lottery Commission, and Lotería Electronica de Puerto Rico are hereinafter collectively known as the “Lottery Departments.”

183. All of the Lottery Departments (except for the Lotería Electronica de Puerto Rico) entered into an agreement to create an entity named the Mega Millions Consortium. At all relevant times, Defendant Mega Millions Consortium is an unincorporated association.

184. All of the Lottery Departments created a non-profit association named the Multi-State Lottery Association for Powerball. At all relevant times, Defendant Multi-State Lottery Association is an Iowa non-profit association, with its principal place of business located at 4400 NW Urbandale Drive, Urbandale, IA 50322.

JURISDICTION AND VENUE

185. This Court has jurisdiction over Plaintiffs’ and Class members’ constitutional and property rights claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343, in that their claims arise under 42 U.S.C. § 1983, which is an Act of Congress providing for the protection of constitutional and property rights.

186. This Court has supplemental jurisdiction over Plaintiffs’ and Class members’ state law claims pursuant to 28 U.S.C. § 1367, as Plaintiffs’ and Class members’ state law claims arise out of the same case or controversy as Plaintiffs’ and Class members’ constitutional and property rights claims.

187. Venue is proper the Northern District of Illinois, pursuant to 28 U.S.C. § 1391.

CLASS ALLEGATIONS

188. **Class Definition:** Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23 on behalf of themselves and a Class of all others similarly situated, defined as follows:

All winners of lottery games offered by the Illinois Department of the Lottery whose claim to prizes in excess of \$600 existed on or after July 1, 2015, and who have not been paid.

Excluded from the Class are: (1) Defendants, and Defendants' agents; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any person who has had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

189. The Class is composed of two distinct Subclasses, as set forth in the following Paragraphs.

190. **Subclass I Definition:** The Intrastate Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23 on behalf of themselves and a Subclass of all others similarly situated, defined as follows:

All winners of intrastate lottery games offered by the Illinois Department of the Lottery whose claim to prizes existed on or after July 1, 2015, and who have not been paid.

191. Subclass I shall be hereinafter referred to as the "Intrastate Lottery Class."

192. **Subclass II Definition:** The Interstate Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23 on behalf of themselves and a Subclass of all others similarly situated, defined as follows:

All winners of interstate lottery games offered by the Illinois Department of the Lottery whose claim to prizes existed on or after July 1, 2015, and who have not been paid.

193. Subclass II shall be hereinafter referred to as the "Interstate Lottery Class."

194. **Numerosity:** The Classes are so numerous that joinder of all individual members in one action would be impracticable. Since August 17, 2015, the website of the Illinois Lottery stopped publishing the Press Releases identifying the Illinois Lottery Winners who won prizes in excess of \$25,000. As of August 17, 2015, there were twenty-nine (29) lottery winnings that have occurred since July 1, 2015, with prizes ranging from \$50,000 to a \$262 million Mega Millions jackpot. Since then, the size of the Classes has only grown, as the Illinois Department of the Lottery and B.R. Lane adopted their amended official policy to cease payment on all winning tickets for more than \$600. Additionally, the Illinois Department of the Lottery continues to sell lottery tickets with potential winnings in excess of \$600. Thus, the number of individuals with winning tickets worth in excess of \$600 has increased, encompassing members of all Classes, which is likely comprised of thousands of individuals.

195. **Commonality and Predominance:** There are common questions of fact and law affecting members of the Classes, which common questions predominate over questions which may affect individual members. These include the following:

- a. Whether Plaintiffs and Class members have a vested property right in their lottery winnings, and the interest accrued thereon;
- b. Whether Plaintiffs and Class members have full and exclusive property rights (*i.e.*, ownership) in their winnings, and the interest accrued thereon;
- c. Whether Plaintiffs and Class members have been wrongfully deprived of their winnings in contravention of their constitutional rights;
- d. Whether Plaintiffs and Class members are entitled to equitable relief (*e.g.*, imposition of a constructive trust, and/or injunctive relief) to obtain their winnings;
- e. Whether the Defendants violated Plaintiffs' and Class members' constitutional and property rights by refusing to disburse their winnings;
- f. Whether Plaintiffs and Class members have a right to immediate possession of their winnings;

- g. Whether Defendants converted Plaintiffs' and Class members' property (*i.e.*, their lottery winnings);
- h. Whether Defendants' actions, taken pursuant to the Lottery Agreements, constitutes actions prohibited by the Racketeer Influenced and Corrupt Organizations Act;
- i. Whether Defendants' actions constitute violations of federal law;
- j. Whether Defendants were unjustly enriched due to their conduct;
- k. Whether Defendants committed fraud;
- l. Whether the Illinois Department of the Lottery is required to inform purchasers of its lottery games that they would not be paid if their winnings exceed \$600.

196. **Typicality:** Plaintiffs' claims are typical of the claims of the Class members that they represent. All are based on the same legal theories and arise from the same unlawful conduct. Plaintiffs and the Class have been similarly or identically harmed by the same unlawful conduct of Defendants. Defendants have all refused to issue any winnings to the Plaintiffs and Class.

197. **Adequacy of Representation:** Plaintiffs will fairly and adequately represent their respective Class members. Plaintiffs have no interests that conflict with the interests of the Class members that they represent, and there is no conflict between the interests of any Subclasses with one another. Furthermore, Plaintiffs have retained counsel experienced and competent in the prosecution of complex class action litigation.

198. **Superiority:** A class action is superior to other available means for the fair and efficient adjudication of the claims of the Class members. Besides the predominance of questions common to all Class members, individual Class members lack resources to undertake the burden and expense of individual prosecution of these claims against Defendants.

Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. In contrast, the class action device presents far fewer management difficulties and provides the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants' liability.

199. Furthermore, Defendants have acted and refused to act on grounds that apply generally to the Class, so that final injunctive relief and declaratory relief would apply to the Class as a whole.

200. **Ascertainability:** The members of the Class can be easily ascertained, as they necessarily have winning lottery tickets. Discerning members of the Class from members of the general public would involve the exact same process used by all Lottery Departments to ascertain winners of the lottery games that they offer.

ISSUES CONCERNING THE ELEVENTH AMENDMENT

201. Plaintiffs and Class members acknowledge that the Eleventh Amendment to the United States Constitution may be implicated by some of the causes of action set forth herein. *See*, U.S. Const. Amend. XI.

202. Due to the separation between the Lottery Departments and the governments of their respective jurisdictions, the Eleventh Amendment is not implicated in this case. Indeed, in *Burrus v. State Lottery Com'n of Ind.*, 546 F.3d 417 (7th Cir. 2008), the United States Court of Appeals for the Seventh Circuit held that such was the case with respect to Indiana's Lottery Department.

203. Nevertheless, Plaintiffs and Class members realize the Eleventh Amendment is applicable if a Lottery Department is found to be an "arm of the state," and such a determination

will affect the appropriate parties, causes of action, and types of relief that can be pled in connection with a particular claim.

204. Plaintiffs' and Class members' requests for relief can be divided into three (3) distinct categories. The first such category is Plaintiffs' and Class members' prayer for declaratory judgment, as it is applicable irrespective of whether or not the Eleventh Amendment applies. The other two categories are plead in the alternative to one another, based upon a determination of whether or not the Eleventh Amendment applies to a Defendant in this case.

205. To the extent that a prayer for relief against a Defendant who is deemed to *not* be an arm of the state would implicate the impermissible expenditure of general treasury funds, and would therefore implicate the Eleventh Amendment, Plaintiffs and Class members expressly limit such prayers for relief. For example, if Plaintiffs' and Class members' winnings have accrued interest prior to the filing of this action, and some of that accrued interest has already been transferred to the general treasury of a particular state, Plaintiffs' and Class members' prayer for accrued interest should be limited to accrued interest that has not already been transferred to the general treasury of a particular state.

206. Based upon the foregoing self-imposed limitation on Plaintiffs' and Class members' prayers for relief, Plaintiffs' and the Class members' request for preliminary injunctive relief—as set forth below—is necessary, as it will prevent accrued interest on their lottery winnings from being prematurely transferred to the general treasuries of Defendants' jurisdictions. In the event that Plaintiffs and Class members do not obtain a favorable judgment on the merits of this case, any accrued interest on funds held by the Court, pursuant to Plaintiffs' and Class members' sought-after preliminary injunctive relief, may be transferred to Defendants' jurisdictions' general treasuries without any harm to Defendants' jurisdictions.

**PLAINTIFFS' AND CLASS MEMBERS' REQUEST
FOR PRELIMINARY INJUNCTIVE RELIEF**

Legal Basis for Preliminary Injunctive Relief

207. “The purpose of a preliminary injunction is not to conclude the merits of the controversy, but merely to preserve the status quo until a more considered decision on the merits is possible.” *Lektro-Vend Corp. v. Vendo Co.*, 660 F.2d 255, 264 (7th Cir. 1981).

208. When seeking injunctive relief under the common law, the party seeking a preliminary injunction or TRO must establish facts demonstrating the traditional equitable elements that (1) it has a protected right; (2) it will suffer irreparable harm if injunctive relief is not granted; (3) its remedy at law is inadequate; and (4) there is a likelihood of success on the merits. *Houseknecht v. Zagel*, 112 Ill.App.3d 284, 291-92 (1st Dist. 1983). In either case, the party seeking relief is not required to make out its entire case that would entitle it to relief on the merits; rather, it need show only that it raises a “fair question” about the existence of its right and that the court should preserve the status quo until the case can be decided on the merits. *Buzz Barton & Associates, Inc. v. Giannone*, 108 Ill.2d 373, 382 (1985).

209. In the instant matter, Plaintiffs and Class members will be seeking preliminary injunctive relief to maintain the status quo prior to a determination on the merits relative to the causes of action pled below.

210. Plaintiffs’ and Class members’ requests for preliminary injunctive relief may be considered prior to a determination of any Eleventh Amendment issues.

211. Depending upon the Court’s determination of the subsequent issues presented by this litigation, the various forms of preliminary injunctive relief requested by Plaintiffs and Class members may ripen into prayers for permanent injunctive relief.

212. In the case at hand, all of the elements for injunctive relief are met.

The Preliminary Injunctive Relief Requested

213. Plaintiffs and Class members are seeking preliminary injunctive relief to prevent the Illinois Department of the Lottery from (1) selling lottery tickets, for both interstate and intrastate games, with potential winnings in excess of \$600, and (2) making payments to finance the operation of the Illinois Lottery until all Illinois Lottery Winners are paid.

214. To the extent that the Illinois Department of the Lottery continues to sell lottery tickets with potential winnings in excess of \$600, for both interstate and intrastate games, Plaintiffs and Class members seek preliminary injunctive relief to explicitly inform individuals presently purchasing said lottery tickets, at the point of sale, that they are not able to collect their winnings if their winnings exceed \$600.

215. Plaintiffs and Class members are also seeking preliminary injunctive relief to require Defendants to transfer all lottery winnings, and accrued interest thereon, that are due to Plaintiffs and Class members to the custody of the Court. The Court shall hold said monies, plus additional accrued interest, in trust until this case can be fully adjudicated on the merits.

Clearly Ascertainable Right

216. In order for injunctive relief to be obtained, a plaintiff must clearly establish a protectable property right. *Ording v. Springer*, 88 Ill.App.3d 243, 245 (1st Dist. 1980).

217. The Plaintiffs' and Class members' rights to their winnings have vested, and Plaintiffs and Class members have acquired full and exclusive property rights in their winnings (*i.e.*, ownership). Therefore, Plaintiffs and Class members have clearly ascertainable rights to their winnings, and the interest accrued thereon.

218. Furthermore, the individuals playing lottery games offered by the Illinois Department of the Lottery are entitled to be apprised that they will not be able to obtain winnings in excess of \$600, before making their decision to purchase lottery tickets. It is a certainty that

some of these individuals will win, and those individuals will be subjected to the Illinois Department of the Lottery's and B.R. Lane's official policy to not pay winning tickets. Every person who wins an interstate lottery game, or an intrastate lottery game with a prize greater than \$600, will automatically become a Class member. Since that policy violates the constitutional and property rights of Illinois Lottery winners—as it is doing to Plaintiffs and Class members—clearly ascertainable rights are implicated.

Irreparable Harm

219. The necessity of the temporary injunction should be made apparent by appropriate allegations showing that a change in the status quo would cause irreparable injury. *O'Brien v. Matual*, 14 Ill.App.2d 173, 187 (2nd Dist. 1957).

220. Plaintiffs and the Class members are subject to irreparable injury because each time Defendants refuse to distribute their winnings in favor of paying the ongoing expenses of interstate and intrastate lottery games, Plaintiffs' and Class members' property is being misappropriated. This misappropriation violates Plaintiffs' and Class members' full and exclusive property rights in their winnings because Plaintiffs and Class members have not given their consent to Defendants to use their property in this manner.

221. In addition, so long as Plaintiffs' and Class members' property remains in Defendants' possession, Defendants are able to use Plaintiffs' and Class members' property, against Plaintiffs' and Class members' will, to obtain accrued interest. Depending on the resolution of the Eleventh Amendment issue in this case, Plaintiffs and Class members may be unable to recover this accrued interest unless an injunction is issued relative to their improperly withheld prize winnings.

222. To the extent that Defendants are acting under color of law, their official policies violate Illinois Lottery Winners' constitutional rights, as Defendants are taking private property (*i.e.*, the Illinois Lottery Winners' winnings) for public use without *any* compensation.

223. In addition, to the extent that the Illinois Department of the Lottery and B.R. Lane are acting under the color of law, their official policy to contravene the priority of payments set forth by 20 ILCS 1605/9.1(o) repeatedly violates Plaintiffs' and Class members' statutory rights.

224. Further, the individuals who are buying tickets for lottery games offered by the Illinois Department of the Lottery without knowing about the Illinois Department of the Lottery's and B.R. Lane's official policy to not pay winning tickets are harmed because they are paying for a chance to win a prize which is not offered, and are therefore subjected to fraud. In addition, these new lottery winners will be subjected to the same harm as Plaintiffs and Class members, which can only be prevented by an injunction.

Inadequate Remedy at Law

225. There is no adequate remedy at law when the injury is continuing in nature. An injunction is proper in such a circumstance. *Fink v. Board of Trustees of Southern Ill. Univ.*, 71 Ill.App.2d 276, 281 (5th Dist. 1966).

226. In the case at hand, there is no adequate remedy at law for Defendants' misconduct, because the wrongs complained of are continuous, ongoing, and repeatedly occurring. In addition, Defendants' official policies are in contravention of established constitutional principles.

227. It is also possible that Plaintiffs and Class members will have no legal recourse to acquire any accrued interest on Plaintiffs' and Class members' property without an injunction being issued.

228. At the present time, future winners of lottery games offered by the Illinois Department of the Lottery have no ability to prevent themselves from being subjected to the Illinois Department of the Lottery's and B.R. Lane's official policy.

Likelihood of Success on the Merits

229. "The party seeking a preliminary injunction or temporary restraining order is not required to make out a case which would entitle him to relief on the merits; rather, he need only show that he raises a 'fair question' about the existence of his right and that the court should preserve the status quo until the case can be decided on the merits." *Buzz Barton & Assoc., Inc. v. Giannone*, 108 Ill.2d 373, 382 (1985).

230. Plaintiffs and Class members are likely to be successful on the merits because Defendants' repeated failures to make payments to the Plaintiffs and Class members constitute a host of legal wrongs—as set forth by the causes of action below—regardless of any determination of whether Defendants are arms of their respective states.

231. Moreover, there is no serious dispute as to the facts and liabilities in this case. Indeed, the Illinois Department of the Lottery admits that Plaintiffs and Class members are entitled to their prize winnings. Thus, the "fair question" prong is met here.

Enforcement Is Feasible

232. Enforcement is feasible because Plaintiffs' and Class members' requested relief is easily implemented, observed, and are interrelated to one another. For example, if the Court suspends the sales of tickets for all lottery games offered by the Illinois Department of the Lottery with a potential payout of more than \$600, the ongoing expenses incurred by the Illinois Department of the Lottery will drop precipitously. If the Illinois Department of the Lottery continues to sell tickets, Plaintiffs' and Class members' requested relief is similarly enforceable.

Therefore, the Court can easily ascertain whether the Illinois Department of the Lottery is in compliance with its order.

233. The Court will also supervise the deposit of the disputed funds with the Clerk of the Court, so the Court will be immediately apprised of which parties are in compliance with its order.

Balancing of Hardships

234. The hardship to the Illinois Department of the Lottery is slight compared to the hardship continuously and repeatedly experienced by winners and potential winners of lottery games offered by the Illinois Department of the Lottery. The proposed relief imposes little to no financial burden on Defendants, as the requested funds are already in Defendants' possession. In contrast, the financial burden that Plaintiffs and the Class will suffer from having their winnings frozen indefinitely, and having to apply for loans to pay their bills—as Plaintiff Chasteen has done—is great. Moreover, the financial aspects of such an injunction would be easily tolerated by all Defendants given the presence of funds in the State Lottery Fund and the similar segregated lottery funds of all other Defendants.

235. Relative to all Defendants, there is no dispute as to whether or not Plaintiffs and Class members are entitled to their winnings, and all Defendants intend to pay (or have already divested themselves of) said winnings. Therefore, there will be no burden upon Defendants.

236. In addition, the requested injunctive relief will require Defendants to deposit Plaintiffs' and Class members' winning funds with the Court. This will allow Plaintiffs' and Class members' accrued interest to be segregated from any other monies not at issue in this action. If Plaintiffs and Class members do not prevail, Defendants will receive the entirety of that money (principal and interest), placing Defendants in the identical financial position that they

would have been without the requested injunction. In contrast, if Plaintiffs and Class members prevail, and the requested injunction was not ordered, Plaintiffs and Class members may be unable to acquire said interest due to the Eleventh Amendment. Therefore, the risk of hardship is borne only by Plaintiffs and Class members.

237. Furthermore, given Defendants' knowing, intentional, and willful adoption of their official policies to deprive Plaintiffs and Class members of their property, the balance of hardships inquiry is unnecessary. *See, Nonnenmann v. Lucky Stores, Inc.*, 53 Ill.App.3d 509, 515 (3rd Dist. 1977) (noting that a court should not apply the relative hardship test where conduct by a defendant was intentional). This is especially true for the Illinois Department of the Lottery because it continued to sell lottery tickets for the potential prizes that it will not pay, while simultaneously failing to inform the public of that policy.

The Court Should Dispose of the Bond Requirements Before Entering the Injunction

238. Federal Rule of Civil Procedure 65(c) provides:

The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, its officers, and its agencies are not required to give security.

Fed.R.Civ.P. 65(c).

239. In this instance, there is a good cause for this Court to issue injunctive relief in the absence of a bond. Here, Defendants do not dispute that Plaintiffs and Class members are entitled to their winnings. Plaintiffs seek to forestall Defendants from committing continuing constitutional violations. Moreover, as described above, there is no potential harm to Defendants, as the requested injunction will require them to do something that they have already expressed the intention to do in the future.

240. In addition, the Illinois Department of the Lottery is continuing to pay its operating expenses using Plaintiffs' and the Class members' property. Given the priority granted to the prize winners under the Illinois Lottery Law, it is improper to pay the secondary operational expense of the Illinois Lottery, while leaving the actual and potential winners of the lottery without payments and without redress. *See*, 20 ILCS 1605/9.1(o). The aforementioned statutory and constitutional violations contravene public policy, and therefore, the requested injunction would be for good cause.

241. Moreover, to the extent that the Illinois Department of the Lottery continues to sell tickets to interstate and intrastate lottery games, it is perpetrating a fraud on the public, and subjecting future winners to the misappropriation of their winnings. As such, permitting the Illinois Department of the Lottery to continue to sell tickets, without informing the public of the true nature of that transaction, would allow the Illinois Department of the Lottery to continue to perpetrate the illegal acts complained of in this case upon the public (which include future Class members).

242. Finally, the facts of this case are not seriously in dispute, and there is little to no risk that a subsequent factual determination will render any injunctive relief inappropriate after it is duly granted.

243. Therefore, in light of the foregoing, Plaintiffs and Class members have demonstrated good cause for the Court to issue preliminary injunctive relief consistent with the requests herein.

COUNT I
Declaratory Judgment
On Behalf of All Plaintiffs Against All Defendants
(Regardless of Whether Defendants are Arms of the State Under the 11th Amendment)

244. Plaintiffs repeat and reallege Paragraphs 1-243 with the same force and effect as though fully set forth herein.

245. Count I is asserted irrespective of whether or not the Lottery Departments are determined to be arms of the state.

246. At all relevant times, there was in effect the Declaratory Judgment Act (“DJA”), 28 U.S.C. §2201(a), which states, in relevant part:

In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201(a)

247. Plaintiffs and Class members seek an order declaring that:

- a. Plaintiffs and Class members have full and exclusive property rights in (*i.e.*, ownership of) their lottery winnings;
- b. Plaintiffs and Class members have a vested property right in their lottery winnings; and
- c. Plaintiffs and Class members have a property interest in the accrued interest on their lottery winnings for any length of time that their lottery winnings remain due and owing.

248. The controversy presented in this case is definite and concrete, and affects the adverse legal interests of the parties. Plaintiffs’ and Class members’ legal rights in their lottery winnings, and interest accrued thereon, directly affects their ability to pursue appropriate remedies to acquire possession and control of said winnings plus interest. Defendants have an opposing tangible legal interest in the claims set forth herein, as this case will determine the legal

and constitutional scope of Defendants' obligations to Plaintiffs and Class members relative to their lottery winnings.

249. There is an actual controversy between the parties of sufficient immediacy and reality to warrant the issuance of a declaratory judgment because Defendants deprived, and continue to deprive, Plaintiffs and the Class members of their constitutional and property rights vis-à-vis the winnings and interest accrued thereon. Plaintiffs and the Class have suffered an "injury in fact" as a result of Defendants' wrongful retention, use and enjoyment, and misappropriation of their winnings.

250. Consequently, Plaintiffs and Class members have been, and will continue to be, caused significant harm in that they have been unlawfully deprived and denied possession of their property—and by extension their constitutional rights—by Defendants. Plaintiffs and Class members will continue to suffer financial harm, in addition to the deprivation of their constitutional due process rights, if the Court were to deny their request for declaratory relief.

251. If the Court were to deny Plaintiffs' and Class members' request for declaratory relief, this controversy will continue to exist, as Plaintiffs' and Class members' ability to pursue their legal remedies is contingent upon the declaration requested herein, and because Defendants refuse to fulfill their legal, constitutional, and ethical obligations to Plaintiffs and Class members.

252. Since Plaintiffs and Class members indisputably satisfied all requirements set forth by the Illinois Lottery Law and other applicable laws, and those laws do not allow for any exceptions or discretion in disbursement of properly filed claims to lottery winnings, there are no disputed legal and factual issues that the Court would have to resolve in granting Plaintiffs' and Class members' request for declaratory relief.

253. Based on the foregoing facts, the Court should declare the rights and other legal remedies of Plaintiffs and Class members vis-à-vis the winnings and interest accrued thereon.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of the Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and the Class and against Defendants;
- D. Issuing an order declaring the Plaintiffs' and Class members' full and exclusive property rights (*i.e.*, ownership) in their winnings and accrued interest thereon, and that said property rights have vested;
- E. Awarding Plaintiffs reasonable attorney's fees and costs; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT II
42 U.S.C. § 1983

**On Behalf of Interstate Lottery Plaintiffs and the
Interstate Lottery Class Against the MUSL, the Mega Millions Consortium, All Lottery
Departments, and All Lottery Directors, in Their Official Capacity and as Individuals
(Assuming Defendants are Not Arms of the State Under the 11th Amendment)**

254. Interstate Lottery Plaintiffs repeat and reallege Paragraphs 1-243 with the same force and effect as though fully set forth herein.

255. The Lottery Departments and their Lottery Directors are not arms of the state for purposes of the Eleventh Amendment because the Lottery Departments are legally and financially autonomous from their jurisdictions' governments, raise and maintain funds

independently, are not reliant on funding or tax revenues from their jurisdictions, and segregate their operating expenses from the general treasuries of their jurisdictions' governments. Any judgment against the Lottery Departments and their Lottery Directors would not be paid from the general treasuries of their respective jurisdictions' governments, as lottery funds and operating budgets are held in a separate, special account.

256. The governments of the Lottery Departments' respective jurisdictions have delegated the historic and exclusive state function of running their lotteries to their Lottery Directors vis-à-vis their Lottery Departments. Although the Lottery Departments and their Lottery Directors are not state entities or actors for the purposes of the Eleventh Amendment, the Lottery Departments' and Lottery Directors' exclusive authority to administer lotteries at the behest of their respective jurisdictions' governments means that they act under the color of state law for purposes of 42 U.S.C. § 1983.

257. At all relevant times, there was in effect 42 U.S.C. § 1983, which states, in relevant part:

Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

258. As stated above, the Lottery Departments have adopted official policies of non-payment as to Interstate Lottery Plaintiffs and Interstate Lottery Class members. Those official policies have been authorized and adopted by all Lottery Directors, respectively.

259. Each Lottery Department and Lottery Director is a member of the MUSL, the Mega Millions Consortium, or both.

260. As members of the MUSL and the Mega Millions Consortium, each Lottery Department and Lottery Director administrates and manages the Powerball and Mega Millions interstate lottery games, and each Lottery Department and Lottery Director is responsible for advertising and selling lottery tickets for those games, pursuant to the Lottery Agreements and Cross-Selling Agreement.

261. As such, the actions of each Lottery Department and Lottery Director relative to the Powerball and Mega Millions interstate lottery games were also taken on behalf of the MUSL the Mega Millions Consortium.

262. In light of the foregoing, the MUSL, the Mega Millions Consortium, each Lottery Department, and each Lottery Director is a “person” as interpreted in 42 U.S.C. § 1983.

263. The Fifth and Fourteenth Amendments to the U.S. Constitution guarantee that no State shall “deprive any person of life, liberty or property, without due process of law.” This principle is known as “Due Process.”

264. Due Process consists of two components, Substantive Due Process and Procedural Due Process. Substantive Due Process requires that state action does not impermissibly deprive a person of their fundamental rights to life, liberty, or property. Procedural Due Process requires that adequate procedures are in place before a state actor permissibly deprives (*i.e.*, Substantive Due Process is not implicated) a person of life, liberty, or property.

265. The Fifth Amendment’s “Takings Clause” of the U.S. Constitution states that “nor shall private property be taken for public use without just compensation.” The Takings Clause is made applicable to the States by way of the Fourteenth Amendment to the U.S. Constitution.

266. A “taking” is effectuated when a property owner is denied the right to use his property for all economically beneficial uses. When a taking is without just compensation, a state actor deprives a citizen of his Substantive Due Process rights.

267. When a taking is certain to occur, and a state actor does not give a citizen the opportunity to a predeprivation hearing to assert his legal interests relative to the property being subjected to a taking, a state actor deprives that citizen of his Procedural Due Process Rights.

268. In this case, Interstate Lottery Plaintiffs’ and Interstate Lottery Class members’ Substantive Due Process and Procedural Due Process rights have been violated by the Lottery Departments’ and the Lottery Directors’ official policies.

269. The Lottery Departments’ and the Lottery Directors’ official policies deprived, and continue to deprive, Interstate Lottery Plaintiffs and Interstate Lottery Class members of all beneficial uses of their property (*i.e.*, their lottery winnings).

270. The Lottery Departments’ and the Lottery Directors’ official policies do not provide Interstate Lottery Plaintiffs and Interstate Lottery Class members with any compensation whatsoever. Even if Interstate Lottery Plaintiffs’ and Interstate Lottery Class members’ property is eventually returned, the Lottery Departments and the Lottery Directors have not indicated that they will compensate Interstate Lottery Plaintiffs and Interstate Lottery Class members with the accrued interest on their lottery winnings, and therefore, that property—the accrued interest—will have been taken without just compensation.

271. Since the Lottery Departments’ and the Lottery Directors’ official policies constitute a taking, without just compensation, Interstate Lottery Plaintiffs’ and Interstate Lottery Class members’ Substantive Due Process rights (*i.e.*, constitutional rights) have been violated.

Therefore, the Lottery Departments' and the Lottery Directors' official policies are unconstitutional as applied to Interstate Lottery Plaintiffs and Interstate Lottery Class members.

272. Additionally, there is no set of circumstances in which the Lottery Departments' and the Lottery Directors' official policies of depriving Interstate Lottery Plaintiffs and Interstate Lottery Class members of the use of their property and accrued interest thereon would *not* violate the Substantive Due Process rights of any citizen subjected to those policies. Those official policies are therefore facially invalid.

273. Even if the Lottery Departments' and the Lottery Directors' deprivation of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property did not violate their Substantive Due Process rights, the Lottery Departments' and the Lottery Directors' official policies also deprived, and continue to deprive, Interstate Lottery Plaintiffs and Interstate Lottery Class members of a fair opportunity to be heard prior to being deprived of their property (*i.e.*, their lottery winnings).

274. The Lottery Departments and the Lottery Directors were under an obligation to provide Interstate Lottery Plaintiffs and Interstate Lottery Class members with a predeprivation hearing because the Lottery Departments and the Lottery Directors knew that their official policies would effectuate a taking.

275. Therefore, the Lottery Departments' and the Lottery Directors' official policies, as applied to Interstate Lottery Plaintiffs and Interstate Lottery Class members, violate Interstate Lottery Plaintiffs' and Interstate Lottery Class members' Procedural Due Process rights (*i.e.*, their constitutional rights).

276. Additionally, there is no set of circumstances in which the Lottery Departments' and the Lottery Directors' official policies of depriving Interstate Lottery Plaintiffs and Interstate

Lottery Class members of a predeprivation hearing would *not* violate the Procedural Due Process rights of any citizen subjected to those policies. Those official policies are therefore facially invalid.

277. At all relevant times, the Lottery Departments and the Lottery Directors were, and continue to be, acting under color of law when carrying out their governmentally delegated functions in connection with operating lottery games.

278. As such, the Lottery Departments and the Lottery Directors had, and continue to have, a duty and obligation to comply with the U.S. Constitution when carrying out their governmentally delegated functions in connection with operating lottery games.

279. However, the Lottery Departments and the Lottery Directors, acting under the color of State law, denied Interstate Lottery Plaintiffs and Interstate Lottery Class members of their Substantive Due Process and Procedural Due Process rights by adopting, and continuing to enforce, their official policies to deprive Interstate Lottery Plaintiffs and Interstate Lottery Class members of their property (*i.e.*, their lottery winnings) and a predeprivation hearing.

280. The actions of the Lottery Departments and the Lottery Directors, pursuant to their official policies, constitute violations of rights guaranteed to Interstate Lottery Plaintiffs and Interstate Lottery Class members by the Fifth and Fourteenth Amendments to the U.S. Constitution.

281. The Lottery Departments and the Lottery Directors committed these acts intentionally, knowing that violations of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' Substantive Due Process and Procedural Due Process rights would be violated by their official policies.

282. To the extent that the Lottery Departments and the Lottery Directors for jurisdictions other than Illinois have already transferred Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property to the Illinois Department of the Lottery and B.R. Lane, these actions still constitute violations of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' Substantive Due Process and Procedural Due Process rights because the Lottery Departments and the Lottery Directors from jurisdictions other than Illinois knew, prior to doing so, that such actions would effectuate a taking without just compensation in light of the Illinois Department of the Lottery's and B.R. Lane's official policy to not pay out these winnings.

283. Moreover, Interstate Lottery Plaintiffs and Interstate Lottery Class members do not have any adequate state remedies because the MUSL and Mega Millions Consortium do not provide any forum for Interstate Lottery Plaintiffs and Interstate Lottery Class members to seek redress, as there is no common tribunal to adjudicate their claims against all responsible Lottery Departments and Lottery Directors.

284. Even if Interstate Lottery Plaintiffs and Interstate Lottery Class members attempted to seek redress through alternative forums, those forums would be inadequate for the following reasons. First, Interstate Lottery Plaintiffs and Interstate Lottery Class members would be required to file separate actions in each jurisdiction against each Lottery Department and Lottery Director in order to try to recover that jurisdiction's proportional share of the winnings. Second, Interstate Lottery Plaintiffs and Interstate Lottery Class members cannot possibly know which Lottery Department and Lottery Director is in possession of their lottery winnings, and how much of those winnings each Lottery Department and Lottery Director is in possession of. Third, even if Interstate Lottery Plaintiffs and Interstate Lottery Class members did have such

information, each Lottery Department and Lottery Director could subsequently transfer Interstate Lottery Plaintiffs' and Interstate Lottery Class members' lottery winnings to another Lottery Department and Lottery Director. Finally, any postdeprivation remedy offered by the Lottery Departments and Lottery Directors would be inadequate, as Interstate Lottery Plaintiffs and Interstate Lottery Class members may be precluded from recovering the accrued interest on their winnings, despite the fact that the accrued interest has also become Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property, if Eleventh Amendment prohibitions were applicable. These reasons apply even if some or all of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' lottery winnings were in possession of the Illinois Department of the Lottery and B.R. Lane.

285. In addition, any postdeprivation remedy offered by the Lottery Departments and Lottery Directors would be futile, as the Lottery Departments and Lottery Directors are *already* knowingly violating constitutional and statutory law. Despite knowing of their legal violations, the Lottery Departments and Lottery Directors continue to enforce their illegal official policies. Any postdeprivation remedy would also be futile, as the Lottery Departments and Lottery Directors would ignore it, just as they have ignored their obligations under existing statutory and constitutional law.

286. Based upon the foregoing, the MUSL, the Mega Millions Consortium, the Lottery Departments, and the Lottery Directors have acted, and continue to act, under color of law in enacting, and continuing to enforce, their official policies, which deprive Interstate Lottery Plaintiffs and Interstate Lottery Class members of their Substantive Due Process and Procedural Due Process rights.

287. As a direct and proximate result of the MUSL's, the Mega Millions Consortium's, the Lottery Departments', and the Lottery Directors' deprivation of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' Substantive Due Process and Procedural Due Process rights, Interstate Lottery Plaintiffs and Interstate Lottery Class members have suffered financial damages.

PRAYER FOR RELIEF

WHEREFORE, Interstate Lottery Plaintiffs, individually, and on behalf of the Interstate Lottery Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Interstate Lottery Class defined herein;
- B. Designating Interstate Lottery Plaintiffs as representatives of the Interstate Lottery Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Interstate Lottery Plaintiffs and the Interstate Lottery Class and against the MUSL, the Mega Millions Consortium, all Lottery Departments, and all Lottery Directors;
- D. Issuing an order enjoining the MUSL, the Mega Millions Consortium, all Lottery Departments, and all Lottery Directors from implementing their official policies;
- E. Awarding Interstate Lottery Plaintiffs and the Interstate Lottery Class members their lottery winnings and all accrued interest thereon;
- F. Issuing an order to (1) prevent the Illinois Department of the Lottery from selling lottery tickets, for both interstate and intrastate games, with potential winnings in excess of \$600, (2) prevent the Illinois Department of the Lottery from making payments to finance the operation of the Illinois Lottery until all Illinois Lottery Winners are paid, (3) post a notice at the point of sale to inform individuals that they will not be able to collect winnings in excess of \$600, to the extent the Illinois Department of the Lottery continues to sell lottery tickets, and (4) require Defendants to transfer all unpaid lottery winnings and accrued interest thereon to the custody of the Court;

- G. Awarding Interstate Lottery Plaintiffs reasonable attorney's fees and costs; and
- H. Granting all such further and other relief as the Court deems just and appropriate.

COUNT III
42 U.S.C. § 1983

**On Behalf of all Plaintiffs and the Class Against the Illinois Department of the Lottery, and
B.R. Lane, in His Official Capacity and as an Individual
(Assuming These Defendants are Not Arms of the State Under the 11th Amendment)**

288. Plaintiffs repeat and reallege Paragraphs 1-243 with the same force and effect as though fully set forth herein.

289. The Illinois Department of the Lottery and B.R. Lane are not arms of the state of Illinois for purposes of the Eleventh Amendment because they are legally and financially autonomous from the Illinois government, raise and maintain funds independently, are not reliant on funding or tax revenues from the state of Illinois, and segregate their operating expenses from the general treasuries of the state of Illinois. Any judgment against the Illinois Department of the Lottery and B.R. Lane would not be paid from the general treasury of the state of Illinois, as lottery funds and operating budgets are held in a separate, special account.

290. The state of Illinois delegated the historic and exclusive state function of running its lottery games to the Illinois Department of the Lottery and B.R. Lane. Although the Illinois Department of the Lottery and B.R. Lane are not state entities or actors for the purposes of the Eleventh Amendment, Illinois Department of the Lottery's and B.R. Lane's exclusive authority to administer lotteries at the behest of the Illinois government means that they act under the color of state law for purposes of 42 U.S.C. § 1983.

291. At all relevant times, there was in effect 42 U.S.C. § 1983, which states, in relevant part:

Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

292. As stated above, the Illinois Department of the Lottery and B.R. Lane have adopted an official policy of non-payment as to Plaintiffs and Class members. That official policy has been authorized and adopted by B.R. Lane.

293. In light of the foregoing, the Illinois Department of the Lottery and B.R. Lane are each a “person” as interpreted in 42 U.S.C. § 1983.

294. The Fifth and Fourteenth Amendments to the U.S. Constitution guarantee that no State shall “deprive any person of life, liberty or property, without due process of law.” This principle is known as “Due Process.”

295. Due Process consists of two components, Substantive Due Process and Procedural Due Process. Substantive Due Process requires that state action does not impermissibly deprive a person of their fundamental rights to life, liberty, or property. Procedural Due Process requires that adequate procedures are in place before a state actor permissibly deprives (*i.e.*, Substantive Due Process is not implicated) a person of life, liberty, or property.

296. The Fifth Amendment’s “Takings Clause” of the U.S. Constitution states that “nor shall private property be taken for public use without just compensation.” The Takings Clause is made applicable to the States by way of the Fourteenth Amendment to the U.S. Constitution.

297. A “taking” is effectuated when a property owner is denied the right to use his property for all economically beneficial uses. When a taking is without just compensation, a state actor deprives a citizen of his Substantive Due Process rights.

298. When a taking is certain to occur, and a state actor does not give a citizen the opportunity to predeprivation hearing to assert his legal interests relative to the property being subjected to a taking, a state actor deprives that citizen of his Procedural Due Process Rights.

299. In this case, Plaintiffs' and Class members' Substantive Due Process and Procedural Due Process rights have been violated by the Illinois Department of the Lottery's and B.R. Lane's official policy.

300. The Illinois Department of the Lottery's and B.R. Lane's official policy deprived, and continues to deprive, Plaintiffs and Class members of all beneficial uses of their property (*i.e.*, their lottery winnings).

301. The Illinois Department of the Lottery's and B.R. Lane's official policy does not provide Plaintiffs and Class members with any compensation whatsoever. Even if Plaintiffs' and Class members' property is eventually returned, the Illinois Department of the Lottery and B.R. Lane have not indicated that they will compensate Plaintiffs and Class members with the accrued interest on their lottery winnings, and therefore, that property—the accrued interest—will have been taken without just compensation.

302. Since the Illinois Department of the Lottery's and B.R. Lane's official policy constitutes a taking, without just compensation, Plaintiffs' and Class members' Substantive Due Process rights (*i.e.*, constitutional rights) have been violated. Therefore, the Illinois Department of the Lottery's and B.R. Lane's official policy is unconstitutional as applied to Plaintiffs and Class members.

303. Additionally, there is no set of circumstances in which the Illinois Department of the Lottery's and B.R. Lane's official policy of depriving Plaintiffs and Class members of the

use of their property and accrued interest thereon would *not* violate the Substantive Due Process rights of any citizen subjected to it. That official policy is therefore facially invalid.

304. Even if the Illinois Department of the Lottery's and B.R. Lane's deprivation of Plaintiffs' and Class members' property did not violate their Substantive Due Process rights, the Illinois Department of the Lottery's and B.R. Lane's official policy also deprived, and continues to deprive, Plaintiffs and Class members of a fair opportunity to be heard prior to being deprived of their property (*i.e.*, their lottery winnings).

305. The Illinois Department of the Lottery and B.R. Lane were under an obligation to provide Plaintiffs and Class members with a predeprivation hearing because the Illinois Department of the Lottery and B.R. Lane knew that their official policy would effectuate a taking.

306. Therefore, the Illinois Department of the Lottery's and B.R. Lane's official policy, as applied to Plaintiffs and Class members, violates Plaintiffs' and Class members' Procedural Due Process rights (*i.e.*, their constitutional rights).

307. Additionally, there is no set of circumstances in which the Illinois Department of the Lottery's and B.R. Lane's official policy of depriving Plaintiffs and Class members of a predeprivation hearing would *not* violate the Procedural Due Process rights of any citizen subjected to it. That official policy is therefore facially invalid.

308. At all relevant times, The Illinois Department of the Lottery and B.R. Lane were, and continue to be, acting under color of law when carrying out their governmentally delegated functions in connection with operating lottery games offered in Illinois.

309. As such, the Illinois Department of the Lottery and B.R. Lane had, and continue to have, a duty and obligation to comply with the U.S. Constitution when carrying out their

governmentally delegated functions in connection with operating lottery games offered in Illinois.

310. However, the Illinois Department of the Lottery and B.R. Lane, acting under the color of State law, denied Plaintiffs and Class members of their Substantive Due Process and Procedural Due Process rights by adopting, and continuing to enforce, their official policy to deprive Plaintiffs and Class members of their property (*i.e.*, their lottery winnings) and a predeprivation hearing.

311. The actions of the Illinois Department of the Lottery and B.R. Lane, pursuant to their official policy, constitute violations of rights guaranteed to Plaintiffs and Class members by the Fifth and Fourteenth Amendments to the U.S. Constitution.

312. The Illinois Department of the Lottery and B.R. Lane committed these acts intentionally, knowing that violations of Plaintiffs' and Class members' Substantive Due Process and Procedural Due Process rights would be violated by their official policy.

313. Any postdeprivation remedy offered by the Illinois Department of the Lottery and B.R. Lane would be futile, as the Illinois Department of the Lottery and B.R. Lane are *already* knowingly violating constitutional and statutory law. Despite knowing of their legal violations, the Illinois Department of the Lottery and B.R. Lane continue to enforce their illegal official policy. Any postdeprivation remedy would also be futile, as the Illinois Department of the Lottery and B.R. Lane would ignore it, just as they have ignored their obligations under existing statutory and constitutional law.

314. Any postdeprivation remedy offered by the Illinois Department of the Lottery and B.R. Lane would be inadequate as Plaintiffs and Class members may be precluded from

recovering the accrued interest on their winnings, despite the fact that the accrued interest has also become Plaintiffs' and Class members' property.

315. In regard to Interstate Lottery Plaintiffs and Interstate Lottery Class members, any postdeprivation remedy offered by the Illinois Department of the Lottery and B.R. Lane would be also be inadequate because Interstate Lottery Plaintiffs and Interstate Lottery Class members could not recover lottery winnings that are being held by other Lottery Departments and Lottery Directors, as the MUSL, Mega Millions Consortium, and Illinois do not provide any common tribunal to adjudicate their claims against all Lottery Departments and Lottery Directors.

316. Based upon the foregoing, the Illinois Department of the Lottery and B.R. Lane have acted, and continue to act, under color of law in enacting, and continuing to enforce, their official policy, which deprives Plaintiffs and Class members of their Substantive Due Process and Procedural Due Process rights.

317. As a direct and proximate result of the Illinois Department of the Lottery's and B.R. Lane's deprivation of Plaintiffs' and Class members' Substantive Due Process and Procedural Due Process rights, Plaintiffs and Class members have suffered financial damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of the Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and the Class and against the Illinois Department of the Lottery and B.R. Lane;

- D. Issuing an order enjoining the Illinois Department of the Lottery and B.R. Lane from implementing their official policies;
- E. Awarding Plaintiffs and the Class members their lottery winnings and all accrued interest thereon;
- F. Issuing an order to (1) prevent the Illinois Department of the Lottery from selling lottery tickets, for both interstate and intrastate games, with potential winnings in excess of \$600, (2) prevent the Illinois Department of the Lottery from making payments to finance the operation of the Illinois Lottery until all Illinois Lottery Winners are paid, (3) post a notice at the point of sale to inform individuals that they will not be able to collect winnings in excess of \$600, to the extent the Illinois Department of the Lottery continues to sell lottery tickets, and (4) require Defendants to transfer all unpaid lottery winnings and accrued interest thereon to the custody of the Court;
- G. Awarding Plaintiffs reasonable attorney's fees and costs; and
- H. Granting all such further and other relief as the Court deems just and appropriate.

COUNT IV
18 U.S.C. § 1961

**On Behalf of Interstate Lottery Plaintiffs and the Interstate Lottery Class Against the MUSL, the Mega Millions Consortium, All Lottery Departments, and All Lottery Directors, in Their Official Capacity and as Individuals
(Assuming Defendants are Not Arms of the State Under the 11th Amendment)**

318. Interstate Lottery Plaintiffs repeat and reallege Paragraphs 1-243 with the same force and effect as though fully set forth herein.

319. At all relevant times, there was in full force and effect 18 U.S.C. § 1961, *et seq.*, the Racketeer Influenced and Corrupt Organizations Act ("RICO"), which states, in relevant part, as follows:

(1) 'racketeering activity' means . . . (B) any act which is indictable under any of the following provisions of title 18, United States Code: . . . section 1343 (relating to wire fraud)

18 U.S.C. § 1961(1)(B).

320. At all relevant times, there was in effect a certain statute relating to wire fraud: Fraud by Wire, Radio, or Television, 18 U.S.C. § 1343; which made it unlawful for persons to use the wires of interstate commerce to defraud persons of money, as follows:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both

18 U.S.C. § 1343.

321. At all relevant times, § 1962 of RICO stated, in pertinent part, as follows:

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce

* * *

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a) . . . or (c) of this section.

18 U.S.C. § 1962(a), (c), and (d).

322. At all relevant times, § 1964(c) of RICO stated, in pertinent part, as follows:

Any person injured in his business or property by reason of a violation of Section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee

18 U.S.C. § 1964(c).

323. The Lottery Departments and their Lottery Directors are not arms of the state for purposes of the Eleventh Amendment because the Lottery Departments are legally and financially autonomous from their jurisdictions' governments, raise and maintain funds

independently, are not reliant on funding or tax revenues from their jurisdictions, and segregate their operating expenses from the general treasuries of their jurisdictions' governments. Any judgment against the Lottery Departments and their Lottery Directors would not be paid from the general treasuries of their respective jurisdictions' governments, as lottery funds and operating budgets are held in a separate, special account.

324. Each Lottery Department and Lottery Director is a person, as set forth by 18 U.S.C. § 1961.

325. Each Lottery Department and Lottery Director is a member of the MUSL, the Mega Millions Consortium, or both. Each Lottery Department and Lottery Director is a signatory to Lottery Agreements establishing their membership in the MUSL or the Mega Millions Consortium.

326. All Lottery Departments and Lottery Directors, collectively, through the MUSL and the Mega Millions Consortium, administer and manage the Powerball and Mega Millions interstate lottery games, and are responsible for advertising and selling lottery tickets for those games, pursuant to the Cross-Selling Agreement.

327. The MUSL and the Mega Millions Consortium, individually, and in concert, pursuant to the Cross-Selling Agreement, are "enterprises," as set forth by 18 U.S.C. § 1961.

328. The Lottery Departments, Lottery Directors, MUSL, and Mega Millions Consortium committed wire fraud as defined in 18 U.S.C. § 1343, and thereby violated RICO, by creating a scheme to intentionally defraud Interstate Lottery Plaintiffs and Interstate Class members. This scheme consisted of selling Mega Millions and Powerball lottery tickets, and promising and advertising that a winning ticket would entitle the winner to payment of a prize—including winners from the state of Illinois. In spite of these promises and representations, the

Lottery Departments and Lottery Directors knew that prize payments would not be disbursed to winners in the state of Illinois. The Lottery Departments and Lottery Directors used telephone, email, and other electronic means of communication to communicate with each other to conspire in furtherance of the scheme, to advertise their false promises to Interstate Lottery Plaintiffs and Interstate Class members, and to induce Interstate Lottery Plaintiffs and Interstate Class members into purchasing lottery tickets.

329. The Lottery Departments, Lottery Directors, MUSL, and Mega Millions Consortium obtained Interstate Lottery Plaintiffs' and Interstate Lottery Class members' money used to purchase lottery tickets, and Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property (*i.e.*, their winnings), through false and fraudulent advertisements and promises that Interstate Lottery Plaintiffs and Interstate Lottery Class members could win money by playing the Mega Millions and Powerball lottery games, and that they would pay those lottery winnings to Interstate Lottery Plaintiffs and Interstate Lottery Class members.

330. The Lottery Departments, Lottery Directors, MUSL, and Mega Millions Consortium unlawfully received or acquired interests in Interstate Lottery Plaintiffs' and Interstate Lottery Class members' money—both the proceeds derived from the sale of lottery tickets as well as Interstate Lottery Plaintiffs' and Interstate Lottery Class members' winnings.

331. The Lottery Departments, Lottery Directors, MUSL, and Mega Millions Consortium invested that money to further their scheme by using the income derived from the their fraudulent sale of Mega Millions and Powerball tickets to finance the continuing operations of the MUSL and Mega Millions Consortium enterprises, and sell additional fraudulent lottery tickets.

332. The Lottery Departments, Lottery Directors, MUSL, and Mega Millions Consortium continue to operate the scheme by advertising and selling tickets for the Mega Millions and Powerball lottery games, which will not be paid—just as they have done, and continue to do, to Interstate Lottery Plaintiffs and Interstate Lottery Class members.

333. As a direct and proximate cause of the foregoing, Interstate Lottery Plaintiffs and Interstate Lottery Class members have suffered financial damages.

PRAYER FOR RELIEF

WHEREFORE, Interstate Lottery Plaintiffs, individually, and on behalf of the Interstate Lottery Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Interstate Lottery Class defined herein;
- B. Designating Interstate Lottery Plaintiffs as representatives of the Interstate Lottery Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Interstate Lottery Plaintiffs and the Interstate Lottery Class and against the MUSL, the Mega Millions Consortium, all Lottery Departments, and all Lottery Directors;
- D. Issuing an order enjoining the MUSL, the Mega Millions Consortium, all Lottery Departments, and all Lottery Directors from implementing their official policies;
- E. Awarding Interstate Lottery Plaintiffs and the Interstate Lottery Class members their lottery winnings and all accrued interest thereon;
- F. Issuing an order to (1) prevent the Illinois Department of the Lottery from selling lottery tickets, for both interstate and intrastate games, with potential winnings in excess of \$600, (2) prevent the Illinois Department of the Lottery from making payments to finance the operation of the Illinois Lottery until all Illinois Lottery Winners are paid, (3) post a notice at the point of sale to inform individuals that they will not be able to collect winnings in excess of \$600, to the extent the Illinois Department of the Lottery continues to sell lottery tickets, and (4) require Defendants to transfer all unpaid lottery winnings and accrued interest thereon to the custody of the Court;

- G. Awarding Interstate Lottery Plaintiffs reasonable attorney's fees and costs; and
- H. Granting all such further and other relief as the Court deems just and appropriate.

COUNT V
Civil Conspiracy

On Behalf of Interstate Lottery Plaintiffs and the Interstate Lottery Class Against the MUSL, the Mega Millions Consortium, All Lottery Departments, and All Lottery Directors, in Their Official Capacity and as Individuals (Assuming Defendants are Not Arms of the State Under the 11th Amendment)

334. Interstate Lottery Plaintiffs repeat and reallege Paragraphs 1-243 with the same force and effect as though fully set forth herein.

335. The Lottery Departments and their Lottery Directors are not arms of the state for purposes of the Eleventh Amendment because the Lottery Departments are legally and financially autonomous from their jurisdictions' governments, raise and maintain funds independently, are not reliant on funding or tax revenues from their jurisdictions, and segregate their operating expenses from the general treasuries of their jurisdictions' governments. Any judgment against the Lottery Departments and their Lottery Directors would not be paid from the general treasuries of their respective jurisdictions' governments, as lottery funds and operating budgets are held in a separate, special account.

336. Each Lottery Department and Lottery Director is a member of the MUSL, the Mega Millions Consortium, or both. Each Lottery Department and Lottery Director is a signatory to Lottery Agreements establishing their membership in the MUSL or the Mega Millions Consortium.

337. All Lottery Departments and Lottery Directors, collectively, through the MUSL and the Mega Millions Consortium, administer and manage the Powerball and Mega Millions

interstate lottery games, and are responsible for advertising and selling lottery tickets for those games, pursuant to the Cross-Selling Agreement.

338. As members of the MUSL or the Mega Millions Consortium, and as signatories to the Cross-Selling Agreement, the Lottery Departments and Lottery Directors participated in a common scheme to obtain Interstate Lottery Plaintiffs' and Interstate Lottery Class members' money and property.

339. The Lottery Departments and Lottery Directors—though their association with the MUSL and Mega Millions Consortium—knowingly and voluntarily agreed to participate in, and participated in, a common scheme to commit an unlawful act (*e.g.*, conversion) and common scheme to commit a lawful act in an unlawful manner (*e.g.*, fraudulently inducing Interstate Lottery Plaintiffs and Interstate Lottery Class members to purchase lottery tickets).

340. The Lottery Departments, Lottery Directors, MUSL, and Mega Millions Consortium all conspired to convert Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property by retaining, misappropriating, and otherwise failing to transfer possession of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' lottery prize money to Interstate Lottery Plaintiffs and Interstate Lottery Class members, and using Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property to accrue interest thereon, which also was to be, and was, converted.

341. In furtherance of that common scheme, the Lottery Departments, Lottery Directors, MUSL, and Mega Millions Consortium sold Mega Millions and Powerball lottery tickets to Illinois residents, including Interstate Lottery Plaintiffs and Interstate Lottery Class members, even though they knew that no Illinois resident would be paid their winnings.

342. The Lottery Departments, Lottery Directors, MUSL, and Mega Millions Consortium, or some combination of the foregoing, did convert Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property by retaining, misappropriating, and otherwise failing to transfer possession of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' lottery prize money to Interstate Lottery Plaintiffs and Interstate Lottery Class members.

343. The Lottery Departments, Lottery Directors, MUSL, and Mega Millions Consortium, or some combination of the foregoing, did convert, and continue to convert, accrued interest on Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property.

344. The Lottery Departments, Lottery Directors, MUSL, and Mega Millions Consortium also conspired to acquire Interstate Lottery Plaintiffs' and Interstate Lottery Class members' money through fraudulent means by offering, promising, and advertising that the winner of the Mega Millions and Powerball lottery games would be entitled to payment of a jackpot (*i.e.*, a large sum of money reserved for the winner), even though they knew that they would not be paid their jackpot.

345. In furtherance of that common scheme, the Lottery Departments, Lottery Directors, MUSL, and Mega Millions Consortium advertised and represented that the winner of the Mega Millions and Powerball lottery games would be entitled to payment of a jackpot.

346. The Lottery Departments, Lottery Directors, MUSL, and Mega Millions Consortium, or some combination of the foregoing, did acquire Interstate Lottery Plaintiffs' and Interstate Lottery Class members' money through fraudulent means by offering, promising, and advertising that the winner of the Mega Millions and Powerball lottery games would be entitled to payment of a jackpot, and then not paying such a jackpot.

347. The aforementioned tortious and fraudulent acts were committed by the Lottery Departments, Lottery Directors, MUSL, and Mega Millions Consortium in furtherance and pursuance of their conspiratorial agreement to deprive Interstate Lottery Plaintiffs and Interstate Lottery Class members of their money and property, and the accrued interest thereon.

348. All Lottery Departments and Lottery Directors, the MUSL, and the Mega Millions Consortium are jointly liable for the tortious and fraudulent conduct of one another because they (a) performed the tortious acts in concert with the others and pursuant to a common design, (b) knew that the other parties' conduct constituted tortious and fraudulent conduct, and (c) gave substantial assistance and/or encouragement to the other parties in carrying out the tortious and fraudulent acts.

349. All Lottery Departments' and Lottery Directors', the MUSL's, and the Mega Millions Consortium's acts, separately considered, constituted tortious and fraudulent conduct towards Interstate Lottery Plaintiffs and Interstate Lottery Class members.

350. As a direct and proximate result of the foregoing, Interstate Lottery Plaintiffs and Interstate Lottery Class members have suffered financial damages.

PRAYER FOR RELIEF

WHEREFORE, Interstate Lottery Plaintiffs, individually, and on behalf of the Interstate Lottery Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Interstate Lottery Class defined herein;
- B. Designating Interstate Lottery Plaintiffs as representatives of the Interstate Lottery Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Interstate Lottery Plaintiffs and the Interstate Lottery Class and against the MUSL, the Mega Millions Consortium, all Lottery Departments, and all Lottery Directors;

- D. Issuing an order enjoining the MUSL, the Mega Millions Consortium, all Lottery Departments, and all Lottery Directors from implementing their official policies;
- E. Awarding Interstate Lottery Plaintiffs and the Interstate Lottery Class members their lottery winnings and all accrued interest thereon;
- F. Issuing an order to (1) prevent the Illinois Department of the Lottery from selling lottery tickets, for both interstate and intrastate games, with potential winnings in excess of \$600, (2) prevent the Illinois Department of the Lottery from making payments to finance the operation of the Illinois Lottery until all Illinois Lottery Winners are paid, (3) post a notice at the point of sale to inform individuals that they will not be able to collect winnings in excess of \$600, to the extent the Illinois Department of the Lottery continues to sell lottery tickets, and (4) require Defendants to transfer all unpaid lottery winnings and accrued interest thereon to the custody of the Court;
- G. Awarding Interstate Lottery Plaintiffs reasonable attorney's fees and costs; and
- H. Granting all such further and other relief as the Court deems just and appropriate.

COUNT VI
Conversion

**On Behalf of Interstate Lottery Plaintiffs and the Interstate Lottery Class Against the
MUSL, the Mega Millions Consortium, All Lottery Departments, and All Lottery
Directors, in Their Official Capacity and as Individuals
(Assuming Defendants are Not Arms of the State Under the 11th Amendment)**

351. Interstate Lottery Plaintiffs repeat and reallege Paragraphs 1-243 with the same force and effect as though fully set forth herein.

352. The Lottery Departments and their Lottery Directors are not arms of the state for purposes of the Eleventh Amendment because the Lottery Departments are legally and financially autonomous from their jurisdictions' governments, raise and maintain funds independently, are not reliant on funding or tax revenues from their jurisdictions, and segregate their operating expenses from the general treasuries of their jurisdictions' governments. Any judgment against the Lottery Departments and their Lottery Directors would not be paid from the

general treasuries of their respective jurisdictions' governments, as lottery funds and operating budgets are held in a separate, special account.

353. Each Lottery Department and Lottery Director is a member of the MUSL, the Mega Millions Consortium, or both. Each Lottery Department and Lottery Director is a signatory to Lottery Agreements establishing their membership in the MUSL or the Mega Millions Consortium.

354. All Lottery Departments and Lottery Directors, collectively, through the MUSL and the Mega Millions Consortium, administer and manage the Powerball and Mega Millions interstate lottery games, and are responsible for advertising and selling lottery tickets for those games, pursuant to the Cross-Selling Agreement.

355. All Lottery Departments and Lottery Directors, the MUSL, and the Mega Millions Consortium—aside from the Illinois Department of the Lottery and B.R. Lane—are obligated by their respective Lottery Agreements, and the principles of equity and law, to transmit lottery money to the Illinois Department of the Lottery and B.R. Lane so that the Illinois Department of the Lottery and B.R. Lane can pay Interstate Lottery Plaintiffs and Interstate Lottery Class members their lottery winnings.

356. The Illinois Department of the Lottery and B.R. Lane are obligated by their respective Lottery Agreements, and the principles of equity and law, to transfer possession of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' lottery winnings to Interstate Lottery Plaintiffs and Interstate Lottery Class members.

357. Therefore, all Lottery Departments and Lottery Directors, the MUSL, and the Mega Millions Consortium are obligated by the principles of equity and law to transfer

possession of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' lottery winnings to Interstate Lottery Plaintiffs and Interstate Lottery Class members.

358. Interstate Lottery Plaintiffs and Interstate Lottery Class members had, and continue to have, full and exclusive property rights in the winnings (*i.e.*, ownership) because they met all of the requirements of the Illinois Lottery Law, which entitled Interstate Lottery Plaintiffs and Interstate Lottery Class members to the winnings based on their respective lottery purchases.

359. Interstate Lottery Plaintiffs and Interstate Lottery Class members had, and continue to have, immediate rights to possession of the winnings because their full and exclusive property rights in the winnings (*i.e.*, ownership) have vested.

360. By extension, Interstate Lottery Plaintiffs and Interstate Lottery Class members had, and continue to have, full and exclusive property rights (*i.e.*, ownership) to any accrued interest on their winnings.

361. The Lottery Departments and Lottery Directors—aside from the Illinois Department of the Lottery and B.R. Lane—the MUSL, and the Mega Millions Consortium, or some combination of the foregoing, unlawfully converted Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property when they failed to transmit the lottery money to the Illinois Department of the Lottery and B.R. Lane.

362. The Illinois Department of the Lottery and B.R. Lane, unlawfully converted Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property when they failed to transfer possession of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' lottery winnings to Interstate Lottery Plaintiffs and Interstate Lottery Class members.

363. Therefore, all Lottery Departments and Lottery Directors, the MUSL, and the Mega Millions Consortium, or some combination of the foregoing, unlawfully retained,

controlled, and possessed Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property when Interstate Lottery Plaintiffs and Interstate Lottery Class members failed to receive their property (*i.e.*, their lottery winnings).

364. All Lottery Departments and Lottery Directors, the MUSL, and the Mega Millions Consortium, or some combination of the foregoing, unlawfully retained, controlled, and possessed—and continue to unlawfully retain, control, and possess—Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property by retaining accrued interest on Interstate Lottery Plaintiffs' and Interstate Lottery Class members' lottery winnings.

365. Interstate Lottery Plaintiffs and Interstate Lottery Class members have demanded, and continue to demand, that the Illinois Department of the Lottery and B.R. Lane—and by extension, all Lottery Departments and Lottery Directors, the MUSL, and the Mega Millions Consortium—transfer possession of their property, which includes their winnings and interest accrued thereon, to Interstate Lottery Plaintiffs and Interstate Lottery Class members.

366. To the extent that the Lottery Departments and Lottery Directors—aside from the Illinois Department of the Lottery and B.R. Lane—the MUSL, and the Mega Millions Consortium, or some combination of the foregoing, have possession of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property, it would be futile for Interstate Lottery Plaintiffs and Interstate Lottery Class members to demand that those entities transfer Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property to the Illinois Department of the Lottery and B.R. Lane because those entities are already bound to transfer said property, pursuant to the Lottery Agreements, but refuse to do so.

367. As a direct and proximate result of the foregoing, Interstate Lottery Plaintiffs and Interstate Lottery Class members have suffered financial damages.

PRAYER FOR RELIEF

WHEREFORE, Interstate Lottery Plaintiffs, individually, and on behalf of the Interstate Lottery Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Interstate Lottery Class defined herein;
- B. Designating Interstate Lottery Plaintiffs as representatives of the Interstate Lottery Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Interstate Lottery Plaintiffs and the Interstate Lottery Class and against the MUSL, the Mega Millions Consortium, all Lottery Departments, and all Lottery Directors;
- D. Issuing an order enjoining the MUSL, the Mega Millions Consortium, all Lottery Departments, and all Lottery Directors from implementing their official policies;
- E. Awarding Interstate Lottery Plaintiffs and the Interstate Lottery Class members their lottery winnings and all accrued interest thereon;
- F. Issuing an order to (1) prevent the Illinois Department of the Lottery from selling lottery tickets, for both interstate and intrastate games, with potential winnings in excess of \$600, (2) prevent the Illinois Department of the Lottery from making payments to finance the operation of the Illinois Lottery until all Illinois Lottery Winners are paid, (3) post a notice at the point of sale to inform individuals that they will not be able to collect winnings in excess of \$600, to the extent the Illinois Department of the Lottery continues to sell lottery tickets, and (4) require Defendants to transfer all unpaid lottery winnings and accrued interest thereon to the custody of the Court;
- G. Awarding Interstate Lottery Plaintiffs reasonable attorney's fees and costs; and
- H. Granting all such further and other relief as the Court deems just and appropriate.

COUNT VII
Conversion

**On Behalf of all Plaintiffs and the Class Against the Illinois Department of the Lottery, and
B.R. Lane, in His Official Capacity and as an Individual
(Assuming These Defendants are Not Arms of the State Under the 11th Amendment)**

368. Plaintiffs repeat and reallege Paragraphs 1-243 with the same force and effect as though fully set forth herein.

369. The Illinois Department of the Lottery and B.R. Lane are not arms of the state of Illinois for purposes of the Eleventh Amendment because they are legally and financially autonomous from the Illinois government, raise and maintain funds independently, are not reliant on funding or tax revenues from the state of Illinois, and segregate their operating expenses from the general treasuries of the state of Illinois. Any judgment against the Illinois Department of the Lottery and B.R. Lane would not be paid from the general treasury of the state of Illinois, as lottery funds and operating budgets are held in a separate, special account.

370. The Illinois Department of the Lottery and B.R. Lane are obligated by the principles of equity and law to transfer possession of Plaintiffs' and Class members' lottery winnings to Plaintiffs and Class members.

371. Plaintiffs and Class members had, and continue to have, full and exclusive property rights in the winnings (*i.e.*, ownership) because they met all of the requirements of the Illinois Lottery Law, which entitled Plaintiffs and Class members to the winnings based on their respective lottery purchases.

372. Plaintiffs and Class members had, and continue to have, immediate rights to possession of the winnings because their full and exclusive property rights in the winnings (*i.e.*, ownership) have vested.

373. By extension, Plaintiffs and Class members had, and continue to have, full and exclusive property rights (*i.e.*, ownership) to any accrued interest on their winnings.

374. The Illinois Department of the Lottery and B.R. Lane unlawfully converted Plaintiffs' and Class members' property when they failed to transfer possession of Plaintiffs' and Class members' lottery winnings to Plaintiffs and Class members.

375. The Illinois Department of the Lottery and B.R. Lane unlawfully converted, and continue to unlawfully convert, Plaintiffs' and Class members' property when they failed to transfer possession of interest accrued on Plaintiffs' and Class members' lottery winnings to Plaintiffs and Class members.

376. Plaintiffs and Class members have demanded, and continue to demand, that the Illinois Department of the Lottery and B.R. Lane transfer possession of their property, which includes their winnings and interest accrued thereon, to Plaintiffs and Class members.

377. As a direct and proximate result of the foregoing, Plaintiffs and Class members have suffered financial damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of the Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and Class and against the Illinois Department of the Lottery and B.R. Lane;
- D. Issuing an order enjoining the Illinois Department of the Lottery and B.R. Lane from implementing their official policies;

- E. Awarding Plaintiffs and Class members their lottery winnings and all accrued interest thereon;
- F. Issuing an order to (1) prevent the Illinois Department of the Lottery from selling lottery tickets, for both interstate and intrastate games, with potential winnings in excess of \$600, (2) prevent the Illinois Department of the Lottery from making payments to finance the operation of the Illinois Lottery until all Illinois Lottery Winners are paid, (3) post a notice at the point of sale to inform individuals that they will not be able to collect winnings in excess of \$600, to the extent the Illinois Department of the Lottery continues to sell lottery tickets, and (4) require Defendants to transfer all unpaid lottery winnings and accrued interest thereon to the custody of the Court;
- G. Awarding Plaintiffs reasonable attorney's fees and costs; and
- H. Granting all such further and other relief as the Court deems just and appropriate.

COUNT VIII

Unjust Enrichment

**On Behalf of Interstate Lottery Plaintiffs and the Interstate Lottery Class Against the MUSL, the Mega Millions Consortium, All Lottery Departments, and All Lottery Directors, in Their Official Capacity and as Individuals
(Assuming Defendants are Not Arms of the State Under the 11th Amendment)**

378. Interstate Lottery Plaintiffs repeat and reallege Paragraphs 1-243 with the same force and effect as though fully set forth herein.

379. The Lottery Departments and their Lottery Directors are not arms of the state for purposes of the Eleventh Amendment because the Lottery Departments are legally and financially autonomous from their jurisdictions' governments, raise and maintain funds independently, are not reliant on funding or tax revenues from their jurisdictions, and segregate their operating expenses from the general treasuries of their jurisdictions' governments. Any judgment against the Lottery Departments and their Lottery Directors would not be paid from the general treasuries of their respective jurisdictions' governments, as lottery funds and operating budgets are held in a separate, special account.

380. Each Lottery Department and Lottery Director is a member of the MUSL, the Mega Millions Consortium, or both. Each Lottery Department and Lottery Director is a signatory to Lottery Agreements establishing their membership in the MUSL or the Mega Millions Consortium.

381. All Lottery Departments and Lottery Directors, collectively, through the MUSL and the Mega Millions Consortium, administer and manage the Powerball and Mega Millions interstate lottery games, and are responsible for advertising and selling lottery tickets for those games, pursuant to the Cross-Selling Agreement.

382. All Lottery Departments and Lottery Directors, the MUSL, and the Mega Millions Consortium—aside from the Illinois Department of the Lottery and B.R. Lane—are obligated by their respective Lottery Agreements, and the principles of equity and law, to transmit lottery money to the Illinois Department of the Lottery and B.R. Lane so that the Illinois Department of the Lottery and B.R. Lane can pay Interstate Lottery Plaintiffs and Interstate Lottery Class members their lottery winnings.

383. The Illinois Department of the Lottery and B.R. Lane are obligated by their respective Lottery Agreements, and the principles of equity and law, to transfer possession of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' lottery winnings to Interstate Lottery Plaintiffs and Interstate Lottery Class members.

384. Therefore, all Lottery Departments and Lottery Directors, the MUSL, and the Mega Millions Consortium are obligated by the principles of equity and law to transfer possession of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' lottery winnings to Interstate Lottery Plaintiffs and Interstate Lottery Class members.

385. Interstate Lottery Plaintiffs and Interstate Lottery Class members had, and continue to have, full and exclusive property rights in the winnings (*i.e.*, ownership) because they met all of the requirements of the Illinois Lottery Law, which entitled Interstate Lottery Plaintiffs and Interstate Lottery Class members to the winnings based on their respective lottery purchases.

386. Interstate Lottery Plaintiffs and Interstate Lottery Class members had, and continue to have, immediate rights to possession of the winnings because their full and exclusive property rights in the winnings (*i.e.*, ownership) have vested.

387. By extension, Interstate Lottery Plaintiffs and Interstate Lottery Class members had, and continue to have, full and exclusive property rights (*i.e.*, ownership) to any accrued interest on their winnings.

388. The Lottery Departments and Lottery Directors—aside from the Illinois Department of the Lottery and B.R. Lane—the MUSL, and the Mega Millions Consortium, or some combination of the foregoing, unlawfully retained Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property when they failed to transmit the lottery money to the Illinois Department of the Lottery and B.R. Lane.

389. The Illinois Department of the Lottery and B.R. Lane, unlawfully retained Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property when they failed to transfer possession of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' lottery winnings to Interstate Lottery Plaintiffs and Interstate Lottery Class members.

390. Therefore, all Lottery Departments and Lottery Directors, the MUSL, and the Mega Millions Consortium, or some combination of the foregoing, unlawfully retained, controlled, and possessed Interstate Lottery Plaintiffs' and Interstate Lottery Class members'

property when Interstate Lottery Plaintiffs and Interstate Lottery Class members failed to receive their property (*i.e.*, their lottery winnings).

391. All Lottery Departments and Lottery Directors, the MUSL, and the Mega Millions Consortium, or some combination of the foregoing, unlawfully retained, controlled, and possessed—and continue to unlawfully retain, control, and possess—Interstate Lottery Plaintiffs’ and Interstate Lottery Class members’ property by retaining accrued interest on Lottery Plaintiffs’ and Interstate Lottery Class members’ lottery winnings.

392. In light of the foregoing, all Lottery Departments and Lottery Directors, the MUSL, and the Mega Millions Consortium, or some combination of the foregoing, have unjustly retained a benefit—Interstate Lottery Plaintiffs’ and Interstate Lottery Class members’ winnings, and the interest accrued thereon—to the detriment of Interstate Lottery Plaintiffs and the Interstate Lottery Class members, as they have deprived Interstate Lottery Plaintiffs and the Interstate Lottery Class members of their rights to use and enjoy their property, and accrue interest thereon.

393. All Lottery Departments and Lottery Directors, the MUSL, and the Mega Millions Consortium, or some combination of the foregoing, know of and appreciate that benefit.

394. All Lottery Departments’ and Lottery Directors’, the MUSL’s, and the Mega Millions Consortium’s, or some combination of the foregoing, retention of that benefit violates the fundamental principles of justice, equity, and good conscience.

395. Since all Lottery Departments and Lottery Directors, the MUSL, and the Mega Millions Consortium, or some combination of the foregoing, have retained money to which they are not entitled, the principles of equity and good conscience require that they deliver that money to its rightful owners—Interstate Lottery Plaintiffs and the Interstate Lottery Class members.

PRAYER FOR RELIEF

WHEREFORE, Interstate Lottery Plaintiffs, individually, and on behalf of the Interstate Lottery Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Interstate Lottery Class defined herein;
- B. Designating Interstate Lottery Plaintiffs as representatives of the Interstate Lottery Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Interstate Lottery Plaintiffs and the Interstate Lottery Class and against the MUSL, the Mega Millions Consortium, all Lottery Departments, and all Lottery Directors;
- D. Issuing an order enjoining the MUSL, the Mega Millions Consortium, all Lottery Departments, and all Lottery Directors from implementing their official policies;
- E. Awarding Interstate Lottery Plaintiffs and the Interstate Lottery Class members their lottery winnings and all accrued interest thereon;
- F. Issuing an order to (1) prevent the Illinois Department of the Lottery from selling lottery tickets, for both interstate and intrastate games, with potential winnings in excess of \$600, (2) prevent the Illinois Department of the Lottery from making payments to finance the operation of the Illinois Lottery until all Illinois Lottery Winners are paid, (3) post a notice at the point of sale to inform individuals that they will not be able to collect winnings in excess of \$600, to the extent the Illinois Department of the Lottery continues to sell lottery tickets, and (4) require Defendants to transfer all unpaid lottery winnings and accrued interest thereon to the custody of the Court;
- G. Awarding Interstate Lottery Plaintiffs reasonable attorney's fees and costs; and
- H. Granting all such further and other relief as the Court deems just and appropriate.

COUNT IX
Unjust Enrichment

**On Behalf of all Plaintiffs and the Class Against the Illinois Department of the Lottery, and
B.R. Lane, in His Official Capacity and as an Individual
(Assuming These Defendants are Not Arms of the State Under the 11th Amendment)**

396. Plaintiffs repeat and reallege Paragraphs 1-243 with the same force and effect as though fully set forth herein.

397. The Illinois Department of the Lottery and B.R. Lane are not arms of the state of Illinois for purposes of the Eleventh Amendment because they are legally and financially autonomous from the Illinois government, raise and maintain funds independently, are not reliant on funding or tax revenues from the state of Illinois, and segregate their operating expenses from the general treasuries of the state of Illinois. Any judgment against the Illinois Department of the Lottery and B.R. Lane would not be paid from the general treasury of the state of Illinois, as lottery funds and operating budgets are held in a separate, special account.

398. The Illinois Department of the Lottery and B.R. Lane are obligated by the principles of equity and law to transfer possession of Plaintiffs' and Class members' lottery winnings to Plaintiffs and Class members.

399. Plaintiffs and Class members had, and continue to have, full and exclusive property rights in the winnings (*i.e.*, ownership) because they met all of the requirements of the Illinois Lottery Law, which entitled Plaintiffs and Class members to the winnings based on their respective lottery purchases.

400. Plaintiffs and Class members had, and continue to have, immediate rights to possession of the winnings because their full and exclusive property rights in the winnings (*i.e.*, ownership) have vested.

401. By extension, Plaintiffs and Class members had, and continue to have, full and exclusive property rights (*i.e.*, ownership) to any accrued interest on their winnings.

402. The Illinois Department of the Lottery and B.R. Lane unlawfully retained Plaintiffs' and Class members' property when they failed to transfer possession of Plaintiffs' and Class members' lottery winnings to Plaintiffs and Class members.

403. The Illinois Department of the Lottery and B.R. Lane unlawfully retained Plaintiffs' and Class members' property when they failed to transfer possession of interest accrued on Plaintiffs' and Class members' lottery winnings to Plaintiffs and Class members.

404. In light of the foregoing, the Illinois Department of the Lottery and B.R. Lane have unjustly retained a benefit—Plaintiffs' and Class members' winnings, and the interest accrued thereon—to the detriment of Plaintiffs and the Class members, as they have deprived Plaintiffs and the Class members of their rights to use and enjoy their property, and accrue interest thereon.

405. The Illinois Department of the Lottery and B.R. Lane know of and appreciate that benefit.

406. The Illinois Department of the Lottery's and B.R. Lane's retention of that benefit violates the fundamental principles of justice, equity, and good conscience.

407. Since the Illinois Department of the Lottery and B.R. Lane have retained money to which they are not entitled, the principles of equity and good conscience require that they deliver that money to its rightful owners—Plaintiffs and the Class members.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of the Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and Class and against the Illinois Department of the Lottery and B.R. Lane;
- D. Issuing an order enjoining the Illinois Department of the Lottery and B.R. Lane from implementing their official policies;
- E. Awarding Plaintiffs and Class members their lottery winnings and all accrued interest thereon;
- F. Issuing an order to (1) prevent the Illinois Department of the Lottery from selling lottery tickets, for both interstate and intrastate games, with potential winnings in excess of \$600, (2) prevent the Illinois Department of the Lottery from making payments to finance the operation of the Illinois Lottery until all Illinois Lottery Winners are paid, (3) post a notice at the point of sale to inform individuals that they will not be able to collect winnings in excess of \$600, to the extent the Illinois Department of the Lottery continues to sell lottery tickets, and (4) require Defendants to transfer all unpaid lottery winnings and accrued interest thereon to the custody of the Court;
- G. Awarding Plaintiffs reasonable attorney's fees and costs; and
- H. Granting all such further and other relief as the Court deems just and appropriate.

COUNT X

Pled in the Alternative to Count II

42 U.S.C. § 1983

**On Behalf of Interstate Lottery Plaintiffs and the
Interstate Lottery Class Against All Lottery Directors, in Their Official Capacities
and as Individuals**

(Assuming These Defendants Are Arms of the State Under the 11th Amendment)

408. Interstate Lottery Plaintiffs repeat and reallege Paragraphs 1-243 with the same force and effect as though fully set forth herein.

409. To the extent the Court determines that the Lottery Departments and their Lottery Directors are arms of the state for purposes of the Eleventh Amendment, Interstate Lottery Plaintiffs and Interstate Lottery Class members bring this Count against all Lottery Directors in the alternative to Count II.

410. Despite being considered arms of the state, any judgment against the Lottery Directors would not be paid from the general treasuries of their respective jurisdictions' governments, as lottery funds and operating budgets are held in a separate, special account.

411. Since the Lottery Directors' unconstitutional conduct is ongoing, any relief granted will be prospective in nature.

412. At all relevant times, there was in effect 42 U.S.C. § 1983, which states, in relevant part:

Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

413. As stated above, the Lottery Directors have adopted and authorized official policies of non-payment as to Interstate Lottery Plaintiffs and Interstate Lottery Class members.

414. Each Lottery Director is a "person" as interpreted in 42 U.S.C. § 1983.

415. The Fifth and Fourteenth Amendments to the U.S. Constitution guarantee that no State shall "deprive any person of life, liberty or property, without due process of law." This principle is known as "Due Process."

416. Due Process consists of two components, Substantive Due Process and Procedural Due Process. Substantive Due Process requires that state action does not impermissibly deprive a person of their fundamental rights to life, liberty, or property. Procedural Due Process requires

that adequate procedures are in place before a state actor permissibly deprives (*i.e.*, Substantive Due Process is not implicated) a person of life, liberty, or property.

417. The Fifth Amendment’s “Takings Clause” of the U.S. Constitution states that “nor shall private property be taken for public use without just compensation.” The Takings Clause is made applicable to the States by way of the Fourteenth Amendment to the U.S. Constitution.

418. A “taking” is effectuated when a property owner is denied the right to use his property for all economically beneficial uses. When a taking is without just compensation, a state actor deprives a citizen of his Substantive Due Process rights.

419. When a taking is certain to occur, and a state actor does not give a citizen the opportunity to a predeprivation hearing to assert his legal interests relative to the property being subjected to a taking, a state actor deprives that citizen of his Procedural Due Process Rights.

420. In this case, Interstate Lottery Plaintiffs’ and Interstate Lottery Class members’ Substantive Due Process and Procedural Due Process rights have been violated by the Lottery Directors’ official policies.

421. The Lottery Directors’ official policies deprived, and continue to deprive, Interstate Lottery Plaintiffs and Interstate Lottery Class members of all beneficial uses of their property (*i.e.*, their lottery winnings).

422. The Lottery Directors’ official policies do not provide Interstate Lottery Plaintiffs and Interstate Lottery Class members with any compensation whatsoever. Even if Interstate Lottery Plaintiffs’ and Interstate Lottery Class members’ property is eventually returned, the Lottery Directors have not indicated that they will compensate Interstate Lottery Plaintiffs and

Interstate Lottery Class members with the accrued interest on their lottery winnings, and therefore, that property—the accrued interest—will have been taken without just compensation.

423. Since the Lottery Directors' official policies constitute a taking, without just compensation, Interstate Lottery Plaintiffs' and Interstate Lottery Class members' Substantive Due Process rights (*i.e.*, constitutional rights) have been violated. Therefore, the Lottery Directors' official policies are unconstitutional as applied to Interstate Lottery Plaintiffs and Interstate Lottery Class members.

424. Additionally, there is no set of circumstances in which the Lottery Directors' official policies of depriving Interstate Lottery Plaintiffs and Interstate Lottery Class members of the use of their property and accrued interest thereon would *not* violate the Substantive Due Process rights of any citizen subjected to those policies. Those official policies are therefore facially invalid.

425. Even if the Lottery Directors' deprivation of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property did not violate their Substantive Due Process rights, the Lottery Directors' official policies also deprived, and continue to deprive, Interstate Lottery Plaintiffs and Interstate Lottery Class members of a fair opportunity to be heard prior to being deprived of their property (*i.e.*, their lottery winnings).

426. The Lottery Directors were under an obligation to provide Interstate Lottery Plaintiffs and Interstate Lottery Class members with a predeprivation hearing because the Lottery Directors knew that their official policies would effectuate a taking.

427. Therefore, the Lottery Directors' official policies, as applied to Interstate Lottery Plaintiffs and Interstate Lottery Class members, violate Interstate Lottery Plaintiffs' and Interstate Lottery Class members' Procedural Due Process rights (*i.e.*, their constitutional rights).

428. Additionally, there is no set of circumstances in which the Lottery Directors' official policies of depriving Interstate Lottery Plaintiffs and Interstate Lottery Class members of a predeprivation hearing would *not* violate the Procedural Due Process rights of any citizen subjected to those policies. Those official policies are therefore facially invalid.

429. At all relevant times, the Lottery Directors were, and continue to be, acting under color of law when carrying out their governmentally delegated functions in connection with operating lottery games.

430. As such, the Lottery Directors had, and continue to have, a duty and obligation to comply with the U.S. Constitution when carrying out their governmentally delegated functions in connection with operating lottery games.

431. However, the Lottery Directors, acting under the color of State law, denied Interstate Lottery Plaintiffs and Interstate Lottery Class members of their Substantive Due Process and Procedural Due Process rights by adopting, and continuing to enforce, their official policies to deprive Interstate Lottery Plaintiffs and Interstate Lottery Class members of their property (*i.e.*, their lottery winnings) and a predeprivation hearing.

432. The actions of the Lottery Directors, pursuant to their official policies, constitute violations of rights guaranteed to Interstate Lottery Plaintiffs and Interstate Lottery Class members by the Fifth and Fourteenth Amendments to the U.S. Constitution.

433. The Lottery Directors committed these acts intentionally, knowing that violations of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' Substantive Due Process and Procedural Due Process rights would be violated by their official policies.

434. To the extent that the Lottery Directors for jurisdictions other than Illinois have already transferred Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property

to the possession of the Illinois Department of the Lottery and B.R. Lane, these actions still constitute violations of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' Substantive Due Process and Procedural Due Process rights because the Lottery Directors from jurisdictions other than Illinois knew, prior to doing so, that said actions would effectuate a taking without just compensation in light of the Illinois Department of the Lottery's and B.R. Lane's official policy to not pay out these winnings.

435. Moreover, Interstate Lottery Plaintiffs and Interstate Lottery Class members do not have any adequate state remedies because the MUSL and Mega Millions Consortium do not provide any forum for Interstate Lottery Plaintiffs and Interstate Lottery Class members to seek redress, as there is no common tribunal to adjudicate their claims against all responsible Lottery Directors.

436. Even if Interstate Lottery Plaintiffs and Interstate Lottery Class members attempted to seek redress through alternative forums, those forums would be inadequate for the following reasons. First, Interstate Lottery Plaintiffs and Interstate Lottery Class members would be required to file separate actions in each jurisdiction against each Lottery Director in order to try to recover that jurisdiction's proportional share of the winnings. Second, Interstate Lottery Plaintiffs and Interstate Lottery Class members cannot possibly know which Lottery Director is in possession of their lottery winnings, and how much of those winnings each Lottery Director is in possession of. Third, even if Interstate Lottery Plaintiffs and Interstate Lottery Class members did have such information, each Lottery Director could subsequently transfer Interstate Lottery Plaintiffs' and Interstate Lottery Class members' lottery winnings to another Lottery Director. Finally, any postdeprivation remedy offered by the Lottery Directors would be inadequate, as Interstate Lottery Plaintiffs and Interstate Lottery Class members may be precluded from

recovering the accrued interest on their winnings, despite the fact that the accrued interest has also become Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property, if Eleventh Amendment prohibitions were applicable. These reasons apply even if some or all of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' lottery winnings were in possession of B.R. Lane.

437. In addition, any postdeprivation remedy offered by the Lottery Directors would be futile, as the Lottery Directors are *already* knowingly violating constitutional and statutory law. Despite knowing of their legal violations, the Lottery Directors continue to enforce their illegal official policies. Therefore, any postdeprivation remedy would be futile, as the Lottery Directors would ignore it, just as they have ignored their obligations under existing statutory and constitutional law.

438. Based upon the foregoing, the Lottery Directors have acted, and continue to act, under color of law in enacting, and continuing to enforce, their official policies, which deprive Interstate Lottery Plaintiffs and Interstate Lottery Class members of their Substantive Due Process and Procedural Due Process rights.

439. As a direct and proximate result of the Lottery Directors' deprivation of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' Substantive Due Process and Procedural Due Process rights, Interstate Lottery Plaintiffs and Interstate Lottery Class members have been, and continue to be, damaged.

PRAYER FOR RELIEF

WHEREFORE, Interstate Lottery Plaintiffs, individually, and on behalf of the Interstate Lottery Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Interstate Lottery Class defined herein;
- B. Designating Interstate Lottery Plaintiffs as representatives of the Interstate Lottery Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Interstate Lottery Plaintiffs and the Interstate Lottery Class and against all Lottery Directors;
- D. Issuing an order enjoining all Lottery Directors from implementing their official policies;
- E. Awarding Interstate Lottery Plaintiffs and Interstate Lottery Class members their lottery winnings;
- F. Issuing an order to (1) prevent the Illinois Department of the Lottery from selling lottery tickets, for both interstate and intrastate games, with potential winnings in excess of \$600, (2) prevent the Illinois Department of the Lottery from making payments to finance the operation of the Illinois Lottery until all Illinois Lottery Winners are paid, (3) post a notice at the point of sale to inform individuals that they will not be able to collect winnings in excess of \$600, to the extent the Illinois Department of the Lottery continues to sell lottery tickets, and (4) require Defendants to transfer all unpaid lottery winnings and accrued interest thereon to the custody of the Court;
- G. Awarding Interstate Lottery Plaintiffs reasonable attorney's fees and costs; and
- H. Granting all such further and other relief as the Court deems just and appropriate.

COUNT XI

Plead in the Alternative to Count III

42 U.S.C. § 1983

**On Behalf of all Plaintiffs and the Class Against B.R. Lane, the Illinois Comptroller, and the Illinois Treasurer, in Their Official Capacities and as Individuals
(Assuming These Defendants Are Arms of the State Under the 11th Amendment)**

440. Plaintiffs repeat and reallege Paragraphs 1-243 with the same force and effect as though fully set forth herein.

441. To the extent the Court determines that the Illinois Department of the Lottery and B.R. Lane are arms of the state for purposes of the Eleventh Amendment, Plaintiffs and Class members bring this Count against B.R. Lane, the Illinois Comptroller, and the Illinois Treasurer in the alternative to Count III.

442. Despite being considered arms of the state, any judgment against B.R. Lane, the Illinois Comptroller, and the Illinois Treasurer would not be paid from the general treasuries of the Illinois government, as lottery funds and operating budgets are held in a separate, special account.

443. Since the B.R. Lane's, the Illinois Comptroller's, and the Illinois Treasurer's unconstitutional conduct is ongoing, any relief granted will be prospective in nature.

444. At all relevant times, there was in effect 42 U.S.C. § 1983, which states, in relevant part:

Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

445. The Illinois Comptroller and the Illinois Treasurer adopted the Illinois B.R. Lane's official policy of non-payment as to Plaintiffs and Class members.

446. The Illinois Comptroller, the Illinois Treasurer, and B.R. Lane are each a "person" as interpreted in 42 U.S.C. § 1983.

447. The Fifth and Fourteenth Amendments to the U.S. Constitution guarantee that no State shall "deprive any person of life, liberty or property, without due process of law." This principle is known as "Due Process."

448. Due Process consists of two components, Substantive Due Process and Procedural Due Process. Substantive Due Process requires that state action does not impermissibly deprive a person of their fundamental rights to life, liberty, or property. Procedural Due Process requires that adequate procedures are in place before a state actor permissibly deprives (*i.e.*, Substantive Due Process is not implicated) a person of life, liberty, or property.

449. The Fifth Amendment's "Takings Clause" of the U.S. Constitution states that "nor shall private property be taken for public use without just compensation." The Takings Clause is made applicable to the States by way of the Fourteenth Amendment to the U.S. Constitution.

450. A "taking" is effectuated when a property owner is denied the right to use his property for all economically beneficial uses. When a taking is without just compensation, a state actor deprives a citizen of his Substantive Due Process rights.

451. When a taking is certain to occur, and a state actor does not give a citizen the opportunity to a predeprivation hearing to assert his legal interests relative to the property being subjected to a taking, a state actor deprives that citizen of his Procedural Due Process Rights.

452. In this case, Plaintiffs' and Class members' Substantive Due Process and Procedural Due Process rights have been violated by the Illinois Comptroller's, the Illinois Treasurer's and B.R. Lane's official policy.

453. The Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policy deprived, and continues to deprive, Plaintiffs and Class members of all beneficial uses of their property (*i.e.*, their lottery winnings).

454. The Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policy does not provide Plaintiffs and Class members with any compensation whatsoever. Even if

Plaintiffs' and Class members' property is eventually returned, the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane have not indicated that they will compensate Plaintiffs and Class members with the accrued interest on their lottery winnings, and therefore, that property—the accrued interest—will have been taken without just compensation.

455. Since the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policy constitutes a taking, without just compensation, Plaintiffs' and Class members' Substantive Due Process rights (*i.e.*, constitutional rights) have been violated. Therefore, the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policy is unconstitutional as applied to Plaintiffs and Class members.

456. Additionally, there is no set of circumstances in which the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policy of depriving Plaintiffs and Class members of the use of their property and accrued interest thereon would *not* violate the Substantive Due Process rights of any citizen subjected to it. That official policy is therefore facially invalid.

457. Even if the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's deprivation of Plaintiffs' and Class members' property did not violate their Substantive Due Process rights, the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policy also deprived, and continues to deprive, Plaintiffs and Class members of a fair opportunity to be heard prior to being deprived of their property (*i.e.*, their lottery winnings).

458. The Illinois Comptroller, the Illinois Treasurer, and B.R. Lane were under an obligation to provide Plaintiffs and Class members with a predeprivation hearing because the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane knew that their official policy would effectuate a taking.

459. Therefore, the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policy, as applied to Plaintiffs and Class members, violates Plaintiffs' and Class members' Procedural Due Process rights (*i.e.*, their constitutional rights).

460. Additionally, there is no set of circumstances in which the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policy of depriving Plaintiffs and Class members of a predeprivation hearing would *not* violate the Procedural Due Process rights of any citizen subjected to it. That official policy is therefore facially invalid.

461. At all relevant times, The Illinois Comptroller, the Illinois Treasurer, and B.R. Lane were, and continue to be, acting under color of law when carrying out their governmentally delegated functions in connection with operating lottery games offered in Illinois.

462. As such, the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane had, and continue to have, a duty and obligation to comply with the U.S. Constitution when carrying out their governmentally delegated functions in connection with operating lottery games offered in Illinois.

463. However, the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane, acting under the color of State law, denied Plaintiffs and Class members of their Substantive Due Process and Procedural Due Process rights by adopting, and continuing to enforce, their official policy to deprive Plaintiffs and Class members of their property (*i.e.*, their lottery winnings) and a predeprivation hearing.

464. The actions of the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane, pursuant to their official policy, constitute violations of rights guaranteed to Plaintiffs and Class members by the Fifth and Fourteenth Amendments to the U.S. Constitution.

465. The Illinois Comptroller, the Illinois Treasurer, and B.R. Lane committed these acts intentionally, knowing that violations of Plaintiffs' and Class members' Substantive Due Process and Procedural Due Process rights would be violated by their official policy.

466. Any postdeprivation remedy offered by the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane would be futile, as the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane are *already* knowingly violating constitutional and statutory law. Despite knowing of their legal violations, the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane continue to enforce their illegal official policy. Therefore, any postdeprivation remedy would be futile, as the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane would ignore it, just as they have ignored their obligations under existing statutory and constitutional law.

467. In addition, any postdeprivation remedy offered by the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane would be inadequate, as Plaintiffs and Class members may be precluded from recovering the accrued interest on their winnings, despite the fact that the accrued interest has also become Plaintiffs' and Class members' property.

468. In regard to Interstate Lottery Plaintiffs and Interstate Lottery Class members, any postdeprivation remedy offered by the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane would be also be inadequate because Interstate Lottery Plaintiffs and Interstate Lottery Class members could not recover lottery winnings that are being held by other Lottery Directors, as the MUSL, Mega Millions Consortium, and Illinois do not provide any common tribunal to adjudicate their claims against all Lottery Directors.

469. Based upon the foregoing, the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane have acted, and continue to act, under color of law in enacting, and continuing to

enforce, their official policy, which deprives Plaintiffs and Class members of their Substantive Due Process and Procedural Due Process rights.

470. As a direct and proximate result of the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's deprivation of Plaintiffs' and Class members' Substantive Due Process and Procedural Due Process rights, Plaintiffs and Class members have been, and continue to be, damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of the Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and Class and against B.R. Lane, the Illinois Comptroller, and the Illinois Treasurer;
- D. Issuing an order enjoining B.R. Lane, the Illinois Comptroller, and the Illinois Treasurer from implementing their official policies;
- E. Awarding Plaintiffs and Class members their lottery winnings and all accrued interest thereon;
- F. Issuing an order to (1) prevent the Illinois Department of the Lottery from selling lottery tickets, for both interstate and intrastate games, with potential winnings in excess of \$600, (2) prevent the Illinois Department of the Lottery from making payments to finance the operation of the Illinois Lottery until all Illinois Lottery Winners are paid, (3) post a notice at the point of sale to inform individuals that they will not be able to collect winnings in excess of \$600, to the extent the Illinois Department of the Lottery continues to sell lottery tickets, and (4) require Defendants to transfer all unpaid lottery winnings and accrued interest thereon to the custody of the Court;
- G. Awarding Plaintiffs reasonable attorney's fees and costs; and

H. Granting all such further and other relief as the Court deems just and appropriate.

COUNT XII

Pled in the Alternative to Counts IV through IX

Mandatory Injunction

**On Behalf of Interstate Lottery Plaintiffs and the
Interstate Lottery Class Against All Lottery Directors, in Their Official Capacities
and as Individuals
(Assuming These Defendants Are Arms of the State Under the 11th Amendment)**

471. Interstate Lottery Plaintiffs repeat and reallege Paragraphs 1-243 with the same force and effect as though fully set forth herein.

472. To the extent the Court determines that the Lottery Departments and their Lottery Directors are arms of the state for purposes of the Eleventh Amendment, Interstate Lottery Plaintiffs and Interstate Lottery Class members bring this Count against all Lottery Directors in the alternative to Counts IV through IX.

473. Despite being considered arms of the state, any judgment against the Lottery Directors would not be paid from the general treasuries of their respective jurisdictions' governments, as lottery funds and operating budgets are held in a separate, special account.

474. Since the Lottery Directors' unconstitutional conduct is ongoing, any relief granted will be prospective in nature.

475. As stated above, the Lottery Directors have adopted and authorized official policies of non-payment as to Interstate Lottery Plaintiffs and Interstate Lottery Class members.

476. The Fifth and Fourteenth Amendments to the U.S. Constitution guarantee that no State shall "deprive any person of life, liberty or property, without due process of law." This principle is known as "Due Process."

477. Due Process consists of two components, Substantive Due Process and Procedural Due Process. Substantive Due Process requires that state action does not impermissibly deprive a person of their fundamental rights to life, liberty, or property. Procedural Due Process requires that adequate procedures are in place before a state actor permissibly deprives (*i.e.*, Substantive Due Process is not implicated) a person of life, liberty, or property.

478. The Fifth Amendment's "Takings Clause" of the U.S. Constitution states that "nor shall private property be taken for public use without just compensation." The Takings Clause is made applicable to the States by way of the Fourteenth Amendment to the U.S. Constitution.

479. A "taking" is effectuated when a property owner is denied the right to use his property for all economically beneficial uses. When a taking is without just compensation, a state actor deprives a citizen of his Substantive Due Process rights.

480. When a taking is certain to occur, and a state actor does not give a citizen the opportunity to a predeprivation hearing to assert his legal interests relative to the property being subjected to a taking, a state actor deprives that citizen of his Procedural Due Process Rights.

481. In this case, Interstate Lottery Plaintiffs' and Interstate Lottery Class members' Substantive Due Process and Procedural Due Process rights have been violated by the Lottery Directors' official policies.

482. The Lottery Directors' official policies deprived, and continue to deprive, Interstate Lottery Plaintiffs and Interstate Lottery Class members of all beneficial uses of their property (*i.e.*, their lottery winnings).

483. The Lottery Directors' official policies do not provide Interstate Lottery Plaintiffs and Interstate Lottery Class members with any compensation whatsoever. Even if Interstate

Lottery Plaintiffs' and Interstate Lottery Class members' property is eventually returned, the Lottery Directors have not indicated that they will compensate Interstate Lottery Plaintiffs and Interstate Lottery Class members with the accrued interest on their lottery winnings, and therefore, that property—the accrued interest—will have been taken without just compensation.

484. Since the Lottery Directors' official policies constitute a taking, without just compensation, Interstate Lottery Plaintiffs' and Interstate Lottery Class members' Substantive Due Process rights (*i.e.*, constitutional rights) have been violated. Therefore, the Lottery Directors' official policies are unconstitutional as applied to Interstate Lottery Plaintiffs and Interstate Lottery Class members.

485. Additionally, there is no set of circumstances in which the Lottery Directors' official policies of depriving Interstate Lottery Plaintiffs and Interstate Lottery Class members of the use of their property and accrued interest thereon would *not* violate the Substantive Due Process rights of any citizen subjected to those policies. Those official policies are therefore facially invalid.

486. Even if the Lottery Directors' deprivation of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property did not violate their Substantive Due Process rights, the Lottery Directors' official policies also deprived, and continue to deprive, Interstate Lottery Plaintiffs and Interstate Lottery Class members of a fair opportunity to be heard prior to being deprived of their property (*i.e.*, their lottery winnings).

487. The Lottery Directors were under an obligation to provide Interstate Lottery Plaintiffs and Interstate Lottery Class members with a predeprivation hearing because the Lottery Directors knew that their official policies would effectuate a taking.

488. Therefore, the Lottery Directors' official policies, as applied to Interstate Lottery Plaintiffs and Interstate Lottery Class members, violate Interstate Lottery Plaintiffs' and Interstate Lottery Class members' Procedural Due Process rights (*i.e.*, their constitutional rights).

489. Additionally, there is no set of circumstances in which the Lottery Directors' official policies of depriving Interstate Lottery Plaintiffs and Interstate Lottery Class members of a predeprivation hearing would *not* violate the Procedural Due Process rights of any citizen subjected to those policies. Those official policies are therefore facially invalid.

490. At all relevant times, the Lottery Directors were, and continue to be, arms of the state when carrying out their governmentally delegated functions in connection with operating lottery games.

491. As such, the Lottery Directors had, and continue to have, a duty and obligation to comply with the U.S. Constitution when carrying out their governmentally delegated functions in connection with operating lottery games.

492. However, the Lottery Directors, as arms of the state, denied, and continue to deny, Interstate Lottery Plaintiffs and Interstate Lottery Class members of their Substantive Due Process and Procedural Due Process rights by adopting, and continuing to enforce, their official policies to deprive Interstate Lottery Plaintiffs and Interstate Lottery Class members of their property (*i.e.*, their lottery winnings) and a predeprivation hearing.

493. The actions of the Lottery Directors, pursuant to their official policies, constitute violations of rights guaranteed to Interstate Lottery Plaintiffs and Interstate Lottery Class members by the Fifth and Fourteenth Amendments to the U.S. Constitution.

494. The Lottery Directors committed these acts intentionally, knowing that violations of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' Substantive Due Process and Procedural Due Process rights would be violated by their official policies.

495. To the extent that the Lottery Directors for jurisdictions other than Illinois have already transferred Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property to the possession of the Illinois Department of the Lottery and B.R. Lane, these actions still constitute violations of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' Substantive Due Process and Procedural Due Process rights because the Lottery Directors from jurisdictions other than Illinois knew, prior to doing so, that said actions would effectuate a taking without just compensation in light of the Illinois Department of the Lottery's and B.R. Lane's official policy to not pay out these winnings.

496. Moreover, Interstate Lottery Plaintiffs and Interstate Lottery Class members do not have any adequate state remedies because the MUSL and Mega Millions Consortium do not provide any forum for Interstate Lottery Plaintiffs and Interstate Lottery Class members to seek redress, as there is no common tribunal to adjudicate their claims against all responsible Lottery Directors.

497. Even if Interstate Lottery Plaintiffs and Interstate Lottery Class members attempted to seek redress through alternative forums, those forums would be inadequate for the following reasons. First, Interstate Lottery Plaintiffs and Interstate Lottery Class members would be required to file separate actions in each jurisdiction against each Lottery Director in order to try to recover that jurisdiction's proportional share of the winnings. Second, Interstate Lottery Plaintiffs and Interstate Lottery Class members cannot possibly know which Lottery Director is in possession of their lottery winnings, and how much of those winnings each Lottery Director is

in possession of. Third, even if Interstate Lottery Plaintiffs and Interstate Lottery Class members did have such information, each Lottery Director could subsequently transfer Interstate Lottery Plaintiffs' and Interstate Lottery Class members' lottery winnings to another Lottery Director. Finally, any postdeprivation remedy offered by the Lottery Directors would be inadequate, as Interstate Lottery Plaintiffs and Interstate Lottery Class members may be precluded from recovering the accrued interest on their winnings, despite the fact that the accrued interest has also become Interstate Lottery Plaintiffs' and Interstate Lottery Class members' property, if Eleventh Amendment prohibitions were applicable. These reasons apply even if some or all of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' lottery winnings were in possession of B.R. Lane.

498. In addition, any postdeprivation remedy offered by the Lottery Directors would be futile, as the Lottery Directors are *already* knowingly violating constitutional and statutory law. Despite knowing of their legal violations, the Lottery Directors continue to enforce their illegal official policies. Therefore, any postdeprivation remedy would be futile, as the Lottery Directors would ignore it, just as they have ignored their obligations under existing statutory and constitutional law.

499. Based upon the foregoing, the Lottery Directors have acted, and continue to act, as arms of the state, in enacting, and continuing to enforce, their official policies, which deprive Interstate Lottery Plaintiffs and Interstate Lottery Class members of their Substantive Due Process and Procedural Due Process rights.

500. As a direct and proximate result of the Lottery Directors' deprivation of Interstate Lottery Plaintiffs' and Interstate Lottery Class members' Substantive Due Process and

Procedural Due Process rights, Plaintiffs and Class members have been, and continue to be, damaged.

PRAYER FOR RELIEF

WHEREFORE, Interstate Lottery Plaintiffs, individually, and on behalf of the Interstate Lottery Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Interstate Lottery Class defined herein;
- B. Designating Interstate Lottery Plaintiffs as representatives of the Interstate Lottery Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Interstate Lottery Plaintiffs and the Interstate Lottery Class and all Lottery Directors;
- D. Issuing an order enjoining all Lottery Directors from implementing their official policies;
- E. Awarding Interstate Lottery Plaintiffs and Interstate Lottery Class members their lottery winnings and all accrued interest thereon;
- F. Issuing an order to (1) prevent the Illinois Department of the Lottery from selling lottery tickets, for both interstate and intrastate games, with potential winnings in excess of \$600, (2) prevent the Illinois Department of the Lottery from making payments to finance the operation of the Illinois Lottery until all Illinois Lottery Winners are paid, (3) post a notice at the point of sale to inform individuals that they will not be able to collect winnings in excess of \$600, to the extent the Illinois Department of the Lottery continues to sell lottery tickets, and (4) require Defendants to transfer all unpaid lottery winnings and accrued interest thereon to the custody of the Court;
- G. Awarding Interstate Lottery Plaintiffs reasonable attorney's fees and costs; and
- H. Granting all such further and other relief as the Court deems just and appropriate.

COUNT XIII

Pled in the Alternative to Counts IV through IX

Mandatory Injunction

On Behalf of all Plaintiffs and the Class Against B.R. Lane, the Illinois Comptroller, and the Illinois Treasurer, in Their Official Capacities and as Individuals (Assuming These Defendants Are Arms of the State Under the 11th Amendment)

501. Plaintiffs repeat and reallege Paragraphs 1-243 with the same force and effect as though fully set forth herein.

502. To the extent the Court determines that the Illinois Department of the Lottery and B.R. Lane are arms of the state for purposes of the Eleventh Amendment, Plaintiffs and Class members bring this Count against B.R. Lane, the Illinois Comptroller, and the Illinois Treasurer in the alternative to Counts IV through IX.

503. Since the B.R. Lane's, the Illinois Comptroller's, and the Illinois Treasurer's unconstitutional conduct is ongoing, any relief granted will be prospective in nature.

504. Despite being considered arms of the state, any judgment against B.R. Lane, the Illinois Comptroller, and the Illinois Treasurer would not be paid from the general treasuries of the Illinois government, as lottery funds and operating budgets are held in a separate, special account.

505. As stated above, the Illinois Comptroller and the Illinois Treasurer adopted B.R. Lane's official policies of non-payment as to Plaintiffs and Class members.

506. The Fifth and Fourteenth Amendments to the U.S. Constitution guarantee that no State shall "deprive any person of life, liberty or property, without due process of law." This principle is known as "Due Process."

507. Due Process consists of two components, Substantive Due Process and Procedural Due Process. Substantive Due Process requires that state action does not impermissibly deprive a person of their fundamental rights to life, liberty, or property. Procedural Due Process requires

that adequate procedures are in place before a state actor permissibly deprives (*i.e.*, Substantive Due Process is not implicated) a person of life, liberty, or property.

508. The Fifth Amendment's "Takings Clause" of the U.S. Constitution states that "nor shall private property be taken for public use without just compensation." The Takings Clause is made applicable to the States by way of the Fourteenth Amendment to the U.S. Constitution.

509. A "taking" is effectuated when a property owner is denied the right to use his property for all economically beneficial uses. When a taking is without just compensation, a state actor deprives a citizen of his Substantive Due Process rights.

510. When a taking is certain to occur, and a state actor does not give a citizen the opportunity to a predeprivation hearing to assert his legal interests relative to the property being subjected to a taking, a state actor deprives that citizen of his Procedural Due Process Rights.

511. In this case, Plaintiffs' and Class members' Substantive Due Process and Procedural Due Process rights have been violated by the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policies.

512. The Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policies deprived, and continue to deprive, Plaintiffs and Class members of all beneficial uses of their property (*i.e.*, their lottery winnings).

513. The Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policies do not provide Plaintiffs and Class members with any compensation whatsoever. Even if Plaintiffs' and Class members' property is eventually returned, the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane have not indicated that they will compensate Plaintiffs and

Class members with the accrued interest on their lottery winnings, and therefore, that property—the accrued interest—will have been taken without just compensation.

514. Since the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policies constitute a taking, without just compensation, Plaintiffs' and Class members' Substantive Due Process rights (*i.e.*, constitutional rights) have been violated. Therefore, the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policies are unconstitutional as applied to Plaintiffs and Class members.

515. Additionally, there is no set of circumstances in which the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policies of depriving Plaintiffs and Class members of the use of their property and accrued interest thereon would *not* violate the Substantive Due Process rights of any citizen subjected to those policies. Those official policies are therefore facially invalid.

516. Even if the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's deprivation of Plaintiffs' and Class members' property did not violate their Substantive Due Process rights, the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policies also deprived, and continue to deprive, Plaintiffs and Class members of a fair opportunity to be heard prior to being deprived of their property (*i.e.*, their lottery winnings).

517. The Illinois Comptroller, the Illinois Treasurer, and B.R. Lane were under an obligation to provide Plaintiffs and Class members with a predeprivation hearing because the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane knew that their official policies would effectuate a taking.

518. Therefore, the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policies, as applied to Plaintiffs and Class members, violate Plaintiffs' and Class members' Procedural Due Process rights (*i.e.*, their constitutional rights).

519. Additionally, there is no set of circumstances in which the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's official policies of depriving Plaintiffs and Class members of a predeprivation hearing would *not* violate the Procedural Due Process rights of any citizen subjected to those policies. Those official policies are therefore facially invalid.

520. At all relevant times, the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane were, and continue to be, arms of the state when carrying out their governmentally delegated functions in connection with operating lottery games.

521. As such, the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane had, and continue to have, a duty and obligation to comply with the U.S. Constitution when carrying out their governmentally delegated functions in connection with operating lottery games.

522. However, the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane, as arms of the state, denied, and continue to deny, Plaintiffs and Class members of their Substantive Due Process and Procedural Due Process rights by adopting, and continuing to enforce, their official policies to deprive Plaintiffs and Class members of their property (*i.e.*, their lottery winnings) and a predeprivation hearing.

523. The actions of the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane, pursuant to their official policies, constitute violations of rights guaranteed to Plaintiffs and Class members by the Fifth and Fourteenth Amendments to the U.S. Constitution.

524. The Illinois Comptroller, the Illinois Treasurer, and B.R. Lane committed these acts intentionally, knowing that violations of Plaintiffs' and Class members' Substantive Due Process and Procedural Due Process rights would be violated by their official policies.

525. Any postdeprivation remedy offered by the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane would be futile, as the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane are *already* knowingly violating constitutional and statutory law. Despite knowing of their legal violations, the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane continue to enforce their illegal official policy. Therefore, any postdeprivation remedy would be futile, as the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane would ignore it, just as they have ignored their obligations under existing statutory and constitutional law.

526. In addition, any postdeprivation remedy offered by the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane would be inadequate as Plaintiffs and Class members may be precluded from recovering the accrued interest on their winnings, despite the fact that the accrued interest has also become Plaintiffs' and Class members' property.

527. In regard to Interstate Lottery Plaintiffs and Interstate Lottery Class members, any postdeprivation remedy offered by the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane would be also be inadequate because Interstate Lottery Plaintiffs and Interstate Lottery Class members could not recover lottery winnings that are being held by other Lottery Directors, as the MUSL, Mega Millions Consortium, and Illinois do not provide any common tribunal to adjudicate their claims against all Lottery Directors.

528. Based upon the foregoing, the Illinois Comptroller, the Illinois Treasurer, and B.R. Lane have acted, and continue to act, as arms of the state, in enacting, and continuing to

enforce, their official policies, which deprive Plaintiffs and Class members of their Substantive Due Process and Procedural Due Process rights.

529. As a direct and proximate result of the Illinois Comptroller's, the Illinois Treasurer's, and B.R. Lane's deprivation of Plaintiffs' and Class members' Substantive Due Process and Procedural Due Process rights, Plaintiffs and Class members have been, and continue to be, damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of the Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and Class and against B.R. Lane, the Illinois Comptroller, and the Illinois Treasurer;
- D. Issuing an order enjoining B.R. Lane, the Illinois Comptroller, and the Illinois Treasurer from implementing their official policies;
- E. Awarding Plaintiffs and Class members their lottery winnings and all accrued interest thereon;
- F. Issuing an order to (1) prevent the Illinois Department of the Lottery from selling lottery tickets, for both interstate and intrastate games, with potential winnings in excess of \$600, (2) prevent the Illinois Department of the Lottery from making payments to finance the operation of the Illinois Lottery until all Illinois Lottery Winners are paid, (3) post a notice at the point of sale to inform individuals that they will not be able to collect winnings in excess of \$600, to the extent the Illinois Department of the Lottery continues to sell lottery tickets, and (4) require Defendants to transfer all unpaid lottery winnings and accrued interest thereon to the custody of the Court;
- G. Awarding Plaintiffs reasonable attorney's fees and costs; and

H. Granting all such further and other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiffs demand trial by jury on all issues so triable.

All Plaintiffs, individually, and on behalf of all others similarly situated,

By: s/Thomas A. Zimmerman, Jr.
Thomas A. Zimmerman, Jr. (IL #6231944)
tom@attorneyzim.com
Amelia S. Newton (IL #6190594)
amy@attorneyzim.com
Matthew C. De Re (IL #6317913)
matt@attorneyzim.com
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(312) 440-4180 facsimile
www.attorneyzim.com

Counsel for the Plaintiffs and Class

STATE OF VERMONT
ADDISON UNIT, CIVIL DIVISION

VERMONT SUPERIOR COURT
DOCKET NO:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

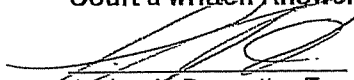
v.

JAMES M. LAWRENCE
PATTY LAWRENCE AKA PATRICIA L. LAWRENCE
NATIONAL BANK OF MIDDLEBURY
VERMONT LOTTERY COMMISSION
VERMONT DEPARTMENT OF TAXES
OCCUPANTS OF 687 JERUSALEM ROAD, STARKSBORO, VT

SUMMONS

THIS SUMMONS IS DIRECTED TO: Vermont Department of Taxes

- 1. YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights.
- 2. YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail the Plaintiff a **written response** called an Answer within 20 days of the date on which you received this summons. You must send a copy of your Answer to the plaintiff's attorney, Amber L. Doucette, Esq. whose address is located at: 270 Farmington Ave., Ste. 151, Farmington CT 06032. You must also give or mail your Answer to the Court located at: Addison Unit Civil Division, 7 Mahady Court, Middlebury, Vermont 05753.
- 3. YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.
- 4. YOU WILL LOSE YOUR CASE IF YOU DO NOT GIVE YOUR WRITTEN ANSWER TO THE COURT.** If you do not Answer within 20 days and file it with the Court, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint.
- 5. YOU MUST MAKE ANY CLAIMS AGAINST THE PLAINTIFF IN YOUR REPLY.** Your Answer must state any related legal claims you have against the Plaintiff. Your claims against the Plaintiff are called Counterclaims. If you do not make your Counterclaims in writing in your Answer, you may not be able to bring them up at all. Even if you have insurance and the insurance company will defend you, you must still file any Counterclaims you may have.
- 6. LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you cannot afford a lawyer, you should ask the court clerk for information about places where you can get free legal help. **Even if you cannot get legal help, you must still give the Court a written Answer to protect your rights or you may lose the case.**


Amber L. Doucette, Esq.

9/12/12
Date

Served on 09-17-12
Date


Deputy Sheriff

STATE OF VERMONT
ADDISON UNIT, CIVIL DIVISION

VERMONT SUPERIOR COURT
DOCKET NO:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

v.

JAMES M. LAWRENCE
PATTY LAWRENCE AKA PATRICIA L. LAWRENCE
NATIONAL BANK OF MIDDLEBURY
VERMONT LOTTERY COMMISSION
VERMONT DEPARTMENT OF TAXES
OCCUPANTS OF 687 JERUSALEM ROAD, STARKSBORO, VT

NOTICE TO DEFENDANTS: YOU MUST ENTER YOUR APPEARANCE IN ORDER TO RECEIVE NOTICE OF THE FORECLOSURE JUDGMENT WHICH WILL SET FORTH THE MONEY WHICH YOU MUST DEPOSIT TO REDEEM THE PREMISES AND THE PERIOD OF TIME ALLOWED TO DEPOSIT THIS AMOUNT.

COMPLAINT

1. JPMorgan Chase Bank, National Association, ("Plaintiff") has a place of business at 10790 Rancho Bernardo Road, San Diego, CA 92127.
2. Upon information and belief, Defendant James M. Lawrence is a resident of the Town of Starksboro, County of Addison, and State of Vermont.
3. Upon information and belief, Defendant Patty Lawrence aka Patricia L. Lawrence (together with James M. Lawrence, hereinafter collectively referred to as "Defendants") is a resident of the Town of Starksboro, County of Addison, and State of Vermont.
4. Upon information and belief, Defendant National Bank of Middlebury has a principal place of business at 30 Main Street, Middlebury, VT 05753.
5. Upon information and belief, Defendant Vermont Lottery Commission has a principal place of business at 1311 US Route 302, Suite 100, Barre, VT 05641.
6. Upon information and belief, Defendant Vermont Department of Taxes has a principal place of business at 133 State Street, Montpelier, VT 05601.
7. On or about August 20, 1999, Defendant James M. Lawrence purchased and acquired certain real property located at 687 Jerusalem Road, in the Town of Starksboro, County of Addison, and State of Vermont (hereinafter referred to

as the "Mortgaged Premises.") by deed recorded at Volume 61 at Page 257 of the Town of Starksboro Land Records.

8. On September 11, 2006, Defendant James M. Lawrence executed a Note (hereinafter "the Note"), in favor of CTX Mortgage Company, LLC, with a principal amount of \$133,472.00. A copy of the original Note is attached hereto as Exhibit A.
9. The Note is secured by a Mortgage Deed (hereinafter "the Mortgage") dated September 11, 2006 from the Defendants to Mortgage Electronic Registration Systems, Inc as nominee for CTX Mortgage Company, LLC, its successors and assigns. Said mortgage was recorded on September 16, 2006 in Volume 86 at Page 91 with the Land Records of the Town of Starksboro. A copy of the original Mortgage is attached hereto as Exhibit B.
10. Plaintiff is the current mortgagee by assignment dated August 11, 2012. A copy of the original Assignment of Mortgage is attached hereto as Exhibit C.
11. Plaintiff is the current holder of the Note by special endorsement and endorsement in blank.
12. The original documents of the Note, Mortgage, and Assignment are in the possession and control of the Plaintiff.
13. The real property, which is the subject of this foreclosure action, is described as follows:

SCHEDULE A

Being all and the same lands and premises conveyed to James M. Lawrence by Warranty Deed of John Rublee, Jr. dated August 20, 1999 and recorded on August 24, 1999 in Volume 61 at Page 257 of the Town of Starksboro Land Records.

Being two parcels of land together with all buildings and improvements thereon and being more particularly described as follows:

Parcel 1: A lot of land situated on the South Starksboro, so-called, on the northerly side of the highway leading in an easterly direction from Elliott Corners, so-called, to Downingville, so-called, said parcel further described and bounded as follows:

Beginning at the intersection of the so-called Baldwin Creek and the so-called Little Brook, thence in a westerly direction along Baldwin Creek 208 feet, thence in a northerly direction at approximately right angles 208 feet to an iron stake, thence in an easterly direction 208 feet to an iron stake, thence in a southeasterly direction about 248 feet to the point of beginning.

Included herein is a 12 foot right of way from the highway just westerly of the small bridge to the southwesterly portion of said above described parcel.

Parcel 2: A parcel of land containing about one-half acre, be the same more or less, situated on the northerly side of said highway leading easterly from Elliott Corners, so-called, in South Starksboro, so-called through Downingville, so-called, to Lincoln, said parcel further described and bounded as follows:

Beginning at the corner of land above described, thence in an extended line of the northerly line thereof in an easterly direction 190 feet to the so-called Little Brook, thence in a southwesterly direction along said brook about 240 feet to a post and the southeasterly corner of said Fischer land, thence northerly along the easterly line of said Fischer land 208 feet to the point of beginning. Meaning to describe a triangular parcel.

Reference is hereby made to the above instruments and to the records and references contained therein in further aid of this description.

14. The Mortgage, which is the subject of this action, provides that Plaintiff shall have the right to recover, in the event of default, from mortgagor, the costs and expenses of enforcement, including reasonable attorneys fees.
15. The mortgage provides that Plaintiff may make payment to protect the subject Property, including but not limited to delinquent taxes and insurance premiums and may recover the same from the mortgagee.
16. Defendant James M. Lawrence has failed to make the payments called for under the Note and Mortgage.
17. The failure of Defendant James M. Lawrence to make payments as set forth herein, constitutes a breach of the subject Note and Mortgage held by Plaintiff.
18. The following individuals may have some claim or interest or lien upon the Mortgaged Premises, as described in the mortgages, which interest is senior and superior to that of the Plaintiff JPMorgan Chase Bank, National Association:

None.

19. The following individuals may have some claim or interest or lien upon the Mortgaged Premises, as described in the judgment order, which interest is junior and inferior to that of the Plaintiff and are hereby joined in this action as Defendants under VRCP Rule 80.1(b):

National Bank of Middlebury, by virtue of a mortgage deed in the amount of \$40,000.00, recorded October 2, 2008 in Volume 92 at Page 571 of the Town of Starksboro Land Records. Said mortgage was modified by a Loan Modification Agreement increasing the amount of the mortgage to \$52,694.45, recorded December 19, 2009 in Volume 97 at Page 57 of the Town of Starksboro Land Records.

Vermont Lottery Commission, by virtue of a judgment against Defendants in the amount of \$1,813.36, recorded June 10, 2010 in Volume 98 at Page 217 of the Town of Starksboro Land Records.

Vermont Department of Taxes, by virtue of a tax lien against Lawrence Retails LLC in the amount of \$45,609.73, recorded April 28, 2011 in Volume 100 at Page 314 of the Town of Starksboro Land Records.

Vermont Department of Taxes, by virtue of a tax lien against Lawrence Retails LLC in the amount \$12,080.39, recorded October 14, 2009 in Volume 96 at Page 289 of the Town of Starksboro Land Records.

**COUNT I
FOECLOSURE OF REAL PROPERTY**

20. Plaintiff re-alleges and incorporates paragraphs 1-19 above.
21. Pursuant to the Note and Mortgage, Plaintiff has the right and is exercising its right to foreclose the Defendants' interest in the property due to the default.

**COUNT II
BREACH OF CONTRACT**

22. Plaintiff re-alleges and incorporates paragraphs 1-21 above.
23. As of the date of this Complaint, the principal balance due to Plaintiff under the terms of the Note and Mortgage is \$138,700.64 in addition to accrued interest, and other fees/expenses as allowed thereunder, plus attorneys' fees and costs that are allowed under the Note and/or Mortgage.

**COUNT III
DEFICIENCY JUDGMENT**

24. Plaintiff re-alleges and incorporates paragraphs 1-23 above.
25. The amounts due and owing to the Plaintiff by the Defendant James M. Lawrence may exceed the value of the Mortgaged Property. Thus, a deficiency may be owed to the Plaintiff after a foreclosure sale, if applicable by law.


WHEREFORE, plaintiff prays that this Honorable Court:

- a. Take jurisdiction in this matter;
- b. Determine the priorities of the parties' claims and interest in the collateral pledged to Plaintiff;

- c. Order Defendant James M. Lawrence to pay to the Clerk of the Court for the benefit of plaintiff all amounts due and to become due on the Note and Mortgage, with interest thereon, together with sums expended, reasonable attorney's fees and costs, and in default thereof order that the Defendants and all persons claiming by and from and under them be forever foreclosed of all equity of redemption in the Mortgaged Premises;
- d. Order that upon the Defendants' failure to redeem, that their equity of redemption in the Mortgaged Premises is foreclosed;
- e. Grant Plaintiff a Writ of Possession of the Mortgaged Premises;
- f. Enter a Judgment of Foreclosure By Sale;
- g. Award Plaintiff its costs of maintaining and protecting the value of the Mortgaged Premises during the pendency of this action, including, but not limited to the payment of municipal charges, taxes and insurance payments which may now be due or become due and owing;
- h. Award deficiency judgment against Defendant James M. Lawrence for any amounts due and owing under the Note after disposition of the property and application of the proceeds from that disposition to the debt of Defendant James M. Lawrence, if applicable by law;
- i. To the extent appropriate, award Plaintiff its costs, attorneys' fees, including attorney's fees in excess of 2 percent, and expenses incurred in bringing this action
- j. Grant such other relief as is equitable and just.

Dated this 12 day of September, 2012 in Farmington, CT.

By:


Amber L. Doucette, Esq., Bar# 4789
Bendett and McHugh, P.C
270 Farmington Ave., Ste. 151
Farmington, CT 06032
860-677-2868 x 1090
Fax 860-409-0626

STATE OF VERMONT
ADDISON UNIT, CIVIL DIVISION

VERMONT SUPERIOR COURT
DOCKET NO:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

v.

JAMES M. LAWRENCE
PATTY LAWRENCE AKA PATRICIA L. LAWRENCE
NATIONAL BANK OF MIDDLEBURY
VERMONT LOTTERY COMMISSION
VERMONT DEPARTMENT OF TAXES
OCCUPANTS OF 687 JERUSALEM ROAD, STARKSBORO, VT

CERTIFICATION OF COMPLIANCE

12 V.S.A. § 4532a

NOW COMES Amber L. Doucette and hereby certifies that Notice of Foreclosure was sent to the Vermont Department of Banking, Insurance, Securities and Health Care Administration on even date herewith.

DATED at Farmington, Connecticut this 12 day of September 20 12

By:



Amber L. Doucette, Esq., Bar# 4789
Bendett and McHugh, P.C.
270 Farmington Ave., Ste. 151
Farmington, CT 06032
860-677-2868
Fax 860-409-0626
Direct Line 860-606-1090

SEPTEMBER 11, 2006

[Date]

687 JERUSALEM ROAD, STARKSBORO, VT 05487

[Property Address]

Exhibit A

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means

CTX MORTGAGE COMPANY, LLC

and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of

ONE HUNDRED THIRTY THREE THOUSAND FOUR HUNDRED SEVENTY TWO & 00/100 Dollars (U.S. \$ 133,472.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of SEVEN AND 000/1000 percent (7.000 %) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on NOVEMBER 1, 2006. Any principal and interest remaining on the first day of OCTOBER 2036, will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at P.O. BOX 650269, DALLAS, TX 75265-0269 or at such place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. \$ 888.00. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this Note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

Graduated Payment Allonge Growing Equity Allonge Other [specify]

5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that borrower pays interest on the amount prepaid for the



remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

6. BORROWER'S FAILURE TO PAY

(A) Late Charge for Overdue Payments

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of **FOUR & 00/100** percent (**4.00** %) of the overdue amount of each payment.

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(C) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. WAIVERS

Borrower 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 Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is 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. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

NOTICE TO CO-SIGNER

Your signature on this Note means that you are equally liable for repayment of this loan. If the Borrower does not pay, the Lender has a legal right to collect from you.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

 9-11-06 (Seal)

JAMES M. LAWRENCE -Borrower

(Seal)
-Borrower

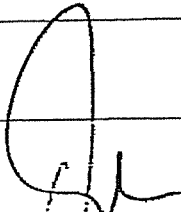
(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

 (Seal)
-Borrower

Witness to Borrower

WITHOUT RECOURSE
PAY TO THE ORDER OF

JPMorgan Chase Bank NA

CTX MORTGAGE COMPANY, LLC

BY *[Signature]*

RELI LOONEY
DOCUMENT SIGNER

Pay to the Order of:
Without Recourse
JPMorgan Chase Bank, N A

By: *[Signature]*
A. Young/Assistant Treasurer

Return To:

CTX MORTGAGE COMPANY, LLC
P.O. Box 199113, FINAL DOCS
Dallas, TX 75219

TOWN CLERK'S OFFICE
STARKSBORO, VERMONT
Sept 16 2006
at 10 o'clock 00 minutes AM
received this instrument for record
Vol. 86 Page 91
Attest: Christy Estay
Town Clerk

Prepared By:


KELLI LOONEY
CTX MORTGAGE COMPANY, LLC
P.O. Box 199113, FINAL DOCS
Dallas, TX 75219

Exhibit B

[Space Above This Line For Recording Data]

400004643
State of Vermont

MORTGAGE

FHA Case No. 

MIN 100015904000046437
9/11/2006

THIS MORTGAGE ("Security Instrument") is given on
The Mortgagor is
JAMES M. LAWRENCE AND
PATTY LAWRENCE

("Borrower"). This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns), as mortgagee. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

CTX MORTGAGE COMPANY, LLC
("Lender") is organized and existing under the laws of THE STATE OF DELAWARE, and has an address of 2828 NORTH HARWOOD
DALLAS, TX 75201-1516

Borrower owes Lender the principal sum of
ONE HUNDRED THIRTY THREE THOUSAND FOUR HUNDRED SEVENTY TWO & 00/100
Dollars (U.S. \$ 133,472.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides



P + 4 0 0 0 0 4 6 4 3 + C F 0 0 1 + 0 1 + 0 9 + 0 9 0 8 0 6 1 2 4 1

Handwritten initials: JL, PL

for monthly payments, with the full debt, if not paid earlier, due and payable on

10/01/2036 . This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose and in consideration of the debt, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns), and to the successors and assigns of MERS, with power of sale, the following described property located in

CHITTENDEN

County, Vermont:

All that tract or parcel of land as shown on Schedule "A" attached hereto which is incorporated herein and made a part hereof.

Parcel ID Number:

which has the address of 687 JERUSALEM ROAD [Street]
STARKSBORO [City], Vermont 05487 [Zip Code] ("Property Address");

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns), and to the successors and assigns of MERS, forever, 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 or canceling this Security Instrument.

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

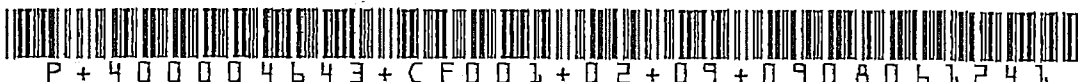
THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary,



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SCHEDULE A

Being all and the same lands and premises conveyed to James M. Lawrence by Warranty Deed of John Rublee, Jr. dated August 20, 1999 and recorded on August 24, 1999 in Volume 61 at Page 257 of the Town of Starksboro Land Records.

Being two parcels of land together with all buildings and improvements thereon and being more particularly described as follows:

Parcel 1: A lot of land situated on the South Starksboro, so-called, on the northerly side of the highway leading in an easterly direction from Elliott Corners, so-called, to Downingville, so-called, said parcel further described and bounded as follows:

Beginning at the intersection of the so-called Baldwin Creek and the so-called Little Brook, thence in a westerly direction along Baldwin Creek 208 feet, thence in a northerly direction at approximately right angles 208 feet to an iron stake, thence in an easterly direction 208 feet to an iron stake, thence in a southeasterly direction about 248 feet to the point of beginning.

Included herein is a 12 foot right of way from the highway just westerly of the small bridge to the southwesterly portion of said above described parcel.

Parcel 2: A parcel of land containing about one-half acre, be the same more or less, situated on the northerly side of said highway leading easterly from Elliott Corners, so-called, in South Starksboro, so-called through Downingville, so-called, to Lincoln, said parcel further described and bounded as follows:

Beginning at the corner of land above described, thence in an extended line of the northerly line thereof in an easterly direction 190 feet to the so-called Little Brook, thence in a southwesterly direction along said brook about 240 feet to a post and the south-easterly corner of said Fischer land, thence northerly along the easterly line of said Fischer land 208 feet to the point of beginning. Meaning to describe a triangular parcel.

Reference is hereby made to the above instruments and to the records and references contained therein in further aid of this description.

[REDACTED]

or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

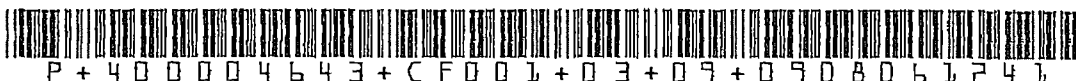
Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.



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[REDACTED]

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

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



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8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) **Default.** Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) **Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and
- (ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) **No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) **Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) **Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. **Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

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



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JL

12. **Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

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

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

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

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

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

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

17. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.



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If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender or Borrower invokes the power of sale, and the Property is judicially ordered to be sold pursuant to such power, Lender shall mail a copy of a notice of sale by registered mail to Borrower at the Property Address or at any other address Borrower delivers to Lender in writing for that purpose. Lender shall publish the notice of sale for the time and in the manner required by applicable law and, without further demand on Borrower, the Property shall be sold at the time and under the terms designated by the court and in the notice of sale. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

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

- Condominium Rider
 - Growing Equity Rider
 - Other [specify]
 - Planned Unit Development Rider
 - Graduated Payment Rider
- LEGAL DESCRIPTION



52

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

Witnesses:

[Signature]
Witness As to Borrower

~~XXXXXXXXXX~~
[Signature] 9-11-06

JAMES M. LAWRENCE (Seal)
-Borrower

[Signature]

PATTY LAWRENCE (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower



[Signature] 9-11-06

STATE OF VERMONT,

On this

11th

day of

September

Chittenden

County ss:

2006

, personally appeared

JAMES LAWRENCE AND PASTY LAWRENCE

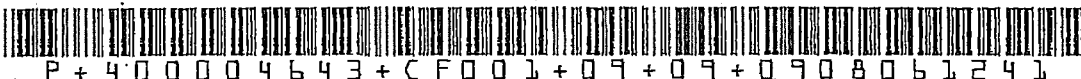
and sealer(s) of the foregoing written instrument and acknowledged the same to be his/her/their free act and deed. Before me:

My Commission Expires:

2/10/07

Notary Public

[Signature]
DANIEL N. LAWRENCE



[Handwritten mark]
SH

Record & Return to:
Bendett & McHugh, P.C.
270 Farmington Avenue, Suite 151
Farmington, CT 06032
0328FC-201122458

rec-9/1/12
Exhibit C

ASSIGNMENT OF MORTGAGE

Know all men by these presents, that Mortgage Electronic Registration Systems, Inc as nominee for CTX Mortgage Company, LLC, its successors and/or assigns, with a mailing address of P.O. Box 2026, Flint, MI 48501 does hereby grant, bargain, sell, assign, transfer, and set over to JPMorgan Chase Bank, N.A. with a mailing address of 10790 Rancho Bernardo Road, San Diego, CA 92127 and its successors and assigns, all interest under that certain mortgage to Mortgage Electronic Registration Systems, Inc as nominee for CTX Mortgage Company, LLC, its successors and/or assigns, from James M. Lawrence and Patty Lawrence, dated September 11, 2006 and recorded in Volume 86 at Page 91 of the Town of Starksboro Registry of Deeds.

In Witness Whereof, the Assignor has duly executed this instrument this 11th day of August, 2012

Signed, Sealed and Delivered
in the Presence of:

Michael T. Wolf
Witness MICHAEL T. WOLF

Mortgage Electronic Registration Systems, Inc
as nominee for CTX Mortgage Company, LLC,
its successors and/or assigns

By Lena Waugh
Lena Waugh

Donna J. Gilkerson
Witness Donna J Gilkerson

Its Assistant Secretary
(Title)

STATE OF OHIO:
COUNTY OF FRANKLIN:

Date: 8-11-2012 J.S.W.

On this 11th day of August, 2012, personally appeared Lena Waugh, who is known to me to be the person who executed the foregoing instrument as the Assistant Secretary (title), of the Corporation that executed the foregoing instrument, and acknowledged the same to be the free act and deed of said Corporation, before me.



Karen Campbell
Notary Public, State of Ohio
My Commission Expires 8-30-2012

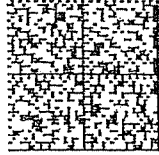
Karen Campbell
Notary Public
My Commission Expires: 8-30-2012


MIN# 100015904000046437 J.S.W.
(888) 689-6377 J.S.W.

BENDETT & McHUGH
ATTORNEYS AT LAW

270 FARMINGTON AVENUE, SUITE 151
FARMINGTON, CT 06032

Bendett & McHugh, P.C.
Attorneys at Law
270 Farmington Avenue, Suite 151
Farmington, CT 06032



U.S. POSTAGE  PITNEY BOWES
ACCOUNTS RECEIVABLE
POSTAGE METER
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STATE OF VERMONT

SUPERIOR COURT
ADDISON UNIT

CIVIL DIVISION
DOCKET NO. _____

SHANNON MCLAMB,
Plaintiff

v.

SUMMONS

INTRALOT, INC. and
VERMONT LOTTERY COMMISSION,
Defendant(s).

THIS SUMMONS IS DIRECTED TO VERMONT LOTTERY COMMISSION.

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail the Plaintiff a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the Plaintiff's attorney, Mario B. Hankerson, Esq., whose address is located at: 1538, VT Route 66, Suite C-205, P.O. Box 355, Randolph, Vermont 05060. You must also give or mail your Answer to the Court located at: Vermont Superior Court, Addison Unit, Civil Division, 7 Mahady Court, Middlebury, VT 05753.
3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.
4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT GIVE YOUR WRITTEN ANSWER TO THE COURT.** If you do not Answer within 20 days and file it with the Court, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint.
5. **YOU MUST MAKE ANY CLAIMS AGAINST THE PLAINTIFFS IN YOUR REPLY.** Your answer must state any related legal claims you have against the

Plaintiff. Your claims against the Plaintiff are called Counterclaims. If you do not make your Counterclaims in writing in your Answer, you may not be able to bring them up at all. Even if you have insurance and the insurance company will defend you, you must still file any Counterclaims you may have.

- 6. LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you cannot afford a lawyer, you should ask the court clerk for information about places where you can get free legal help. **Even if you cannot get legal help, you must still give the Court a written Answer to protect your rights or you may lose the case.**

DATED: Randolph, Vermont
July 26, 2012

Hankerson Law Group, PLLC

By: 

Mario B. Hankerson, Esq.
Attorney for Plaintiff
P.O. Box 355
Randolph, VT 05060

Served on 09-2572
Date

By: 

Sheriff

STATE OF VERMONT

**SUPERIOR COURT
ADDISON UNIT**

**CIVIL DIVISION
DOCKET NO. 174-7-12 Ancr**

SHANNON MCLAMB,
Plaintiff

v.

INTRALOT, INC. and
VERMONT LOTTERY COMMISSION,
Defendants.

AMENDED COMPLAINT

NOW COMES Shannon McLamb, by and through his attorneys, Hankerson Law Group, PLLC and make their complaint against the Defendants, as follows:

1. That Plaintiff, Shannon McLamb, was and is at all times relevant herein, an adult resident of Whiting, County of Addison and State of Vermont.
2. That Plaintiff, Shannon McLamb, is black.
3. Based upon information and belief, Defendant, Intralot, Inc., was and is at all times relevant herein, a foreign corporation organized and existing pursuant to the laws of Georgia, with its headquarters located at 11360 Technology Circle, Duluth, Georgia, and is duly registered with the Vermont Secretary of State. Intralot, Inc. has an office in Vermont with a usual place of business at 50 Packard Road, East Montpelier, Vermont.
4. Based on information and belief, Defendant, Vermont Lottery Commission, was and is at all times relevant herein, a state agency (*see* 31 V.S.A. Chapter 14)

organized and existing pursuant to the laws of Vermont with a usual place of business at 1311 US Route 302, Suite 100, Barre, Vermont.

5. That Defendant, Vermont Lottery Commission, executed a contract for services with Defendant, Intralot, Inc., on or about June 14, 2010.
6. That Defendant, Vermont Lottery Commission, was and is at all times relevant herein, contracting with Intralot, Inc. to provide gaming system services supporting games offered in Vermont.
7. That Defendant, Vermont Lottery Commission, pursuant to its contract with Defendant, Intralot, Inc. "reserves the right to review and if necessary, disapprove any employee of the Contractor who is assigned to the Contract, either at Contract inception or during the term or any extension thereof."
- ~~8. That Defendant, Intralot, Inc. hired the Plaintiff as a Customer Service Technician on or about July 26, 2010.~~
9. Plaintiff executed an employment contract with Intralot, Inc. on July 26, 2010.
10. At all times material, Plaintiff performed his duties in a satisfactory manner.
11. Plaintiff was the lone black employee among similarly situated white employees at Intralot, Inc. and Vermont Lottery Commission.
12. Intralot, Inc., at the direction of the Vermont Lottery Commission and/or its representatives, terminated on or about November 30, 2011, Plaintiff's employment.
13. The Equal Employment Opportunity Commission ("EEOC") issued Plaintiff a right to sue letter on April 26, 2012. Plaintiff filed the instant action within 90 days of his receipt of the EEOC's notice of right to sue.

COUNT I

WRONGFUL TERMINATION

14. Plaintiff realleges and incorporates by reference herein all Paragraphs numbered 1 through 13 as though fully set forth here.
15. Plaintiff was wrongfully terminated from his employment even though his Intralot, Inc. supervisor frequently informed him that he was doing a good job and he had received positive performance reviews.
16. Intralot, Inc. terminated plaintiff at the direction of the Vermont Lottery Commission without sufficient notice or due process.
17. That Defendant, Vermont Lottery Commission failed to properly review or obtain the Plaintiff's resume from Intralot, Inc. to determine his degree of knowledge or skill regarding jobs of the type he was employed to perform.
-
- a. Defendant, Vermont Lottery Commission, failed to properly, competently and adequately review the Plaintiff's years of technical experience outlined on his resume, including his A+ certification.
- b. Defendant, Vermont Lottery Commission, failed to properly, competently and adequately review the Plaintiff's employment history with the Defendant, Intralot, Inc.
18. That Defendant, Vermont Lottery Commission, failed to inform or provide Plaintiff with notice of complaints from agents regarding his alleged behavior.
19. That Defendant, Intralot, Inc., failed to inform or provide Plaintiff with notice of complaints from agents regarding his alleged behavior.

20. That Plaintiff, Shannon McLamb, was not afforded an opportunity to dispute or refute the findings of the background check with either the Vermont Lottery Commission or Intralot, Inc.
21. That Plaintiff, Shannon McLamb, was not confronted by his supervisor or management about alleged complaints regarding his behavior, which appears to be part of the investigative process implied in the Defendant, Intralot, Inc.'s, employee handbook.
22. That at all times relevant hereto, the Defendants had an implied covenant of good faith and fair dealing to the Plaintiff, Shannon McLamb.
23. That at all times relevant hereto, the Plaintiff relied on Intralot, Inc.'s employee handbook, at the time of hiring and throughout his employment, creating a contractual obligation, estopping Intralot, Inc. from terminating his employment contract.
24. Vermont Lottery Commission's contract for services with Defendant, Intralot, Inc., created an implied covenant of good faith and fair dealing regarding Plaintiff, whose desire was to work with Intralot, Inc. and the Vermont Lottery Commission until he retired.
25. Plaintiff was terminated without cause.
26. As a direct and proximate result of Vermont Lottery Commission and Intralot, Inc's actions, Plaintiff has substantial pain and suffering, a loss of income, and incurred a variety of related expenses.

27. As a result of Defendants' wrongful termination, Plaintiff has suffered and continues to suffer severe and lasting losses for which he is entitled to recover damages.

28. Defendants' conduct was wanton, willful and outrageous, and was undertaken with actual malice and/or reckless disregard for Plaintiff's rights, such that an award of punitive damages is warranted.

COUNT II

BREACH OF CONTRACT

29. Plaintiff realleges and incorporates by reference herein all Paragraphs numbered 1 through 28 as though fully set forth here.

30. Plaintiff entered into an employment agreement with Intralot, Inc. on July 26, 2010. Intralot, Inc. offered Plaintiff the employment contract for valuable consideration, which Plaintiff accepted.

31. Intralot, Inc. approved Plaintiff's employment contract. Plaintiff worked for Intralot, Inc. for more than a year in exchange for compensation and benefits.

32. That, Defendant, Intralot, Inc., breached its employment contract with Plaintiff even though he performed all of its obligations and his duties as outlined under the contract and the Employee Handbook. And, Plaintiff was ordered by his supervisor to complete tasks that were not part of his job description that may have been illegal, such as maintaining, installing and re-pointing VSAT dishes, which Plaintiff accomplished out of fear of losing his job.

33. Plaintiff performed his job and modeled his behavior in accordance with the Employee Handbook, and his employment contract.

34. Intralot, Inc.'s Employee Handbook creates a contractual obligation estopping Intralot, Inc. from terminating Plaintiff's employment because he was in reliance on it and his mutual employment promise with Intralot, Inc.

35. Intralot, Inc. breached the express terms of plaintiff's written employment contract by:

- a. Terminating Plaintiff's employment immediately, and/or
- b. preventing Plaintiff from continuing to perform under the contract and/or
- c. failing and refusing to continue to provide Plaintiff with medical, dental and vision coverage, and/or
- d. failing and refusing to continue to provide Plaintiff with short term and long term disability insurance, and life insurance.

~~36. That, Defendant, Intralot, Inc., breached its employment contract with Plaintiff even though he performed all of its obligations and his duties as outlined under the contract. In addition, Plaintiff frequently asked his supervisor for feedback on how he was performing his job and was told that he was doing fine.~~

37. That, Plaintiff, Shannon McLamb relied on his employment contract with Intralot, Inc. to his detriment. Plaintiff was dependent on his employment with Intralot, Inc. for his income and benefits.

38. Based on promissory estoppel, Intralot, Inc. is estopped from terminating Plaintiff's employment contract.

39. Intralot, Inc. breached the implied contractual obligations arising out of Intralot, Inc.'s written policies and procedures, which encouraged Plaintiff to report

concerns about harassment and discrimination practices or acts without fear of reprisal.

40. Intralot, Inc. breached the covenant of good faith and fair dealing that is an implied term of all contracts, including Plaintiff's. Plaintiff frequently asked his supervisor for feedback on how he was performing his job and was told that he was doing a good job. Presumably, if Intralot, Inc. had issues with Plaintiff's job performance it should have informed him and acted in good faith and fair dealing.

41. As a result of Intralot, Inc.'s breach of contract, Plaintiff has suffered and continues to suffer severe and lasting losses for which he is entitled to recover damages.

42. Intralot Inc.'s conduct was wanton, willful and outrageous, and was undertaken with actual malice and/or reckless disregard for Plaintiff's rights, such that an award for punitive damages is warranted.

COUNT III

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

43. Plaintiff realleges and incorporates by reference herein all Paragraphs numbered 1 through 42 as though fully set forth here.

44. That, Defendants', Intralot, Inc., and Vermont Lottery Commission, conduct was outrageous.

45. That, Defendants', Intralot, Inc., and Vermont Lottery Commission, conduct went beyond all possible bounds of decent and tolerable conduct.

46. That, Defendants', Intralot, Inc., and Vermont Lottery Commission, acted intentionally or with reckless disregard to the probability of actually or proximately causing Plaintiff's emotional distress.

47. That, Defendants', Intralot, Inc., and Vermont Lottery Commission, actions resulted in Plaintiff suffering extreme emotional distress.
48. That, Plaintiff's injuries were proximately caused by the outrageous conduct of Defendants', Intralot, Inc. and the Vermont Lottery Commission.
49. That, Plaintiff, Shannon McLamb relied on his employment contract with Intralot, Inc. to his detriment.
50. The actions of each of the Defendants were willful and malicious. They demonstrate a callous, reckless or wanton disregard of the rights of Plaintiff.
51. Plaintiff's right to be free of intentional infliction of emotional distress has been denied by each of the Defendants.
52. As a result of Defendants' unlawful intentional infliction of emotional distress, Plaintiff has suffered and continues to suffer severe and lasting losses for which he is entitled to recover damages.
53. Defendants' conduct was wanton, willful and outrageous, and was undertaken with actual malice and/or reckless disregard for Plaintiff's rights, such that an award of punitive damages is warranted.

COUNT IV

TORTIOUS INTERFERENCE WITH CONTRACT

54. Plaintiff realleges and incorporates by reference herein all Paragraphs numbered 1 through 53 as though fully set forth here.
55. Defendant, Vermont Lottery Commission interfered with business relations existing between the Plaintiff and Intralot, Inc. either with the sole purpose of harming the plaintiff or by means that are dishonest, unfair, or improper.

56. Defendant, Vermont Lottery Commission had knowledge of the business relationship between Plaintiff, Shannon McLamb, and Defendant, Intralot, Inc.

57. Defendant, Vermont Lottery Commission, intentionally and improperly induced or caused Defendant, Intralot, Inc., who it was contracting with to provide gaming system services, to break its contract with Plaintiff, Shannon McLamb, causing damage to the relationship between Intralot, Inc. and Shannon McLamb.

58. That, Plaintiff, Shannon McLamb had a reasonable expectation of economic advantage had his employment contract with Defendant, Intralot, Inc. not been wrongfully and unlawfully interfered with by Defendant, Vermont Lottery Commission.

59. Vermont Lottery Commission and/or its representatives requested the termination of Plaintiff's employment contract.

60. There was no acceptable purpose behind the interference by Defendant, Vermont Lottery Commission.

61. Vermont Lottery Commission's acts caused the nonperformance of the Plaintiff's contract with Intralot, Inc.

62. Vermont Lottery Commission's interference caused Plaintiff harm, including but not limited to lost past and future wages, pain and suffering, and economic hardship.

63. As a result of Defendant's unlawful tortious interference with contract, Plaintiff has suffered and continues to suffer severe and lasting losses for which he is entitled to recover damages.

64. Defendant's conduct was wanton, willful and outrageous, and was undertaken with actual malice and/or reckless disregard for Plaintiff's rights, such that an award of punitive damages is warranted.

COUNT V

RESPONDEAT SUPERIOR

65. Plaintiff realleges and incorporates by reference herein all Paragraphs numbered 1 through 64 as though fully set forth here.

66. That, Defendant, Vermont Lottery Commission, was and is at all times relevant herein legally responsible for the actions of Intralot, Inc.

67. Vermont Lottery Commission and/or its representatives were the actual perpetrator that terminated Plaintiff's employment with Intralot, Inc.

68. Vermont Lottery Commission demanded Intralot, Inc. terminate the employment contract of Plaintiff wrongfully and unlawfully.

69. Vermont Lottery Commission's actions played a substantial or motivating role in the dishonest, improper and illegal termination of the employment contract of Plaintiff by Intralot, Inc., causing either Defendant, Vermont Lottery Commission or Intralot, Inc. to be held legally liable.

70. Plaintiff was at all times an employee of Intralot, Inc., which was responsible for his hiring and for supervising him.

71. Intralot, Inc. terminated Plaintiff's employment at the request of Vermont Lottery Commission.

72. Plaintiff was at all times a de facto or quasi licensed customer service technician authorized or permitted by Vermont Lottery Commission which was responsible

for de facto or quasi licensing Plaintiff and for supervising and/or monitoring Plaintiff's work.

73. At all times relevant hereto Plaintiff, Shannon McLamb, was a de facto or quasi licensed customer service technician by Defendant, Vermont Lottery Commission to service lottery gaming equipment and systems of the Vermont Lottery Commission.

74. Without Vermont Lottery Commission's approval, Plaintiff could perform no customer service technician services or serve as a de facto or quasi licensed customer service technician in any manner whatsoever at Intralot, Inc. or anywhere in Vermont.

75. At all times and in all matters relevant hereto, Plaintiff, Shannon McLamb, was the ~~agent of the Vermont Lottery Commission and Intralot Inc., who were his~~ principals. These Defendants manifested and intended that Plaintiff, Shannon McLamb, become their agent and act on their behalf. Plaintiff, Shannon McLamb, accepted and consented to serve and act on their behalf as their agent. Plaintiff consented to be subject to Defendants' control. Plaintiff acted at the behest of the Defendants, jointly and severally, in accordance with his employment contract and the contract for services between the Vermont Lottery Commission and Intralot, Inc.

76. Defendants gave Plaintiff the power to act on their behalf and to produce changes in legal relations by performing or not performing legal acts. Defendants conferred on Plaintiff the authority (express, implied, apparent or inherent) to affect their

legal relations by performing acts in accordance with their manifestations of consent. At all times Plaintiff acted within the scope of that consent.

77. All acts, if any, initially done outside the scope of that consent were ratified, sanctioned, approved, affirmed, adopted or acquiesced in by Vermont Lottery Commission and Intralot, Inc. Such acts were enabled by the agency relationship.

78. At all times and in all matters relevant hereto, Intralot, Inc. and Plaintiff were agents of Vermont Lottery Commission. They were empowered by Vermont Lottery Commission to perform gaming system services, duties and functions undertaken on behalf of Vermont Lottery Commission. They accepted and consented to serve and act on Vermont Lottery Commission's behalf as its agents.

79. Vermont Lottery Commission gave Intralot, Inc. and Plaintiff the power to act on ~~its behalf and to produce changes in legal relations by performing or not~~ performing legal acts. Vermont Lottery Commission conferred upon them the authority (express, implied, apparent or inherent) to affect the legal relations of Vermont Lottery Commission by performing acts in accordance with Vermont Lottery Commission's manifestations of consent. At all times, they acted within the scope of that consent.

80. All acts, if any, initially done outside the scope of that consent were ratified, sanctioned, approved, affirmed, adopted or acquiesced in by Vermont Lottery Commission. Such acts were enabled by the agency relationship.

81. Intralot, Inc.'s actions were of the kind Vermont Lottery Commission expected Intralot, Inc. to perform. Intralot Inc.'s conduct was not unexpected by the Vermont Lottery Commission. Intralot Inc.'s actions occurred substantially within the

authorized time and space limits placed upon it by Intralot, Inc. and Vermont Lottery Commission. Intralot, Inc. was actuated at least in part by a purpose to serve the Vermont Lottery Commission.

82. Plaintiff's actions were of the kind Intralot, Inc. and Vermont Lottery Commission expected Plaintiff to perform. Plaintiff's conduct was neither unexpected by Intralot, Inc. nor the Vermont Lottery Commission. His actions occurred substantially within the authorized time and space limits placed upon him by Intralot, Inc. and Vermont Lottery Commission. Plaintiff was actuated at least in part by a purpose to serve Intralot, Inc. and Vermont Lottery Commission.

83. Vermont Lottery Commission's actions also were willful, malicious, and negligent or reckless in its supervision of itself and Intralot, Inc. Vermont Lottery Commission was aware or should have known of its misconduct and about Intralot, Inc.'s misconduct in terminating the employment of Plaintiff and failed to stop it.

84. Vermont Lottery Commission was aided in accomplishing the torts committed upon Plaintiff by the existence of Plaintiff's agency relationship with Intralot, Inc. and Vermont Lottery Commission.

85. As a result of Defendants' illegal actions, Plaintiff has suffered and continues to suffer severe and lasting losses for which he is entitled to recover damages.

86. Defendants' conduct was wanton, willful and outrageous, and was undertaken with actual malice and/or reckless disregard for Plaintiff's rights, such that an award of punitive damages is warranted.

COUNT VI

VIOLATION OF VERMONT FAIR EMPLOYMENT PRACTICES ACT

87. Plaintiff realleges and incorporates by reference herein all Paragraphs numbered 1 through 86 as though fully set forth here.

88. Plaintiff was discriminated against because of his race in violation of the Vermont Employment Practices Act, 21 V.S.A §495 by Intralot, Inc. and Vermont Lottery Commission.

89. Intralot, Inc. and Vermont Lottery Commission terminated Plaintiff's employment because of his race.

90. Plaintiff repeatedly reported and complained to his supervisor at Intralot, Inc. of racial epithets he was subjected to at Intralot, Inc. and while servicing gaming equipment in the field for and on behalf of Vermont Lottery Commission.

91. The Plaintiff's concerns regarding the racial epithets were not addressed by Plaintiff's supervisor, Intralot, Inc. or Vermont Lottery Commission and did not cease.

92. Intralot, Inc. and Vermont Lottery Commission terminated Plaintiff's employment because he lodged complaints of discriminatory acts or practices.

93. Plaintiff was told by his supervisor at Intralot, Inc. not to come to the warehouse because it was better for everyone else, implying it was because of his race, unlike similarly situated white employees.

94. Plaintiff was not provided with supplies necessary to perform his job function unlike similarly situated white employees at Intralot, Inc. Plaintiff was forced to

use his own money to purchase necessary supplies to perform his job unlike similarly situated white employees at Intralot, Inc.

95. Plaintiff was ordered by his supervisor at Intralot, Inc. to complete tasks without Intralot, Inc. providing the proper tools and accessories required to perform the job unlike similarly situated white employees.

96. Plaintiff received a used vehicle from Intralot, Inc. while similarly situated white employees received new vehicles and was told by his supervisor that the vehicle was good enough for him, implying that because he is black he is accustomed to lower quality or used vehicles, causing Plaintiff humiliation, degradation, emotional harm, pain and suffering. Intralot, Inc. refused to replace the rear shocks or fix the rear door of his company van. Plaintiff had to use his own money to repair the air conditioner in his company vehicle when it failed; however, he was eventually repaid.

97. Intralot, Inc. and Vermont Lottery Commission treated Plaintiff differently from white employees because he is black.

98. Intralot, Inc. and Vermont Lottery Commission treated Plaintiff differently from similarly situated white employees because he is black.

99. Plaintiff was deliberately told on multiple instances by his Intralot, Inc., supervisor to come to company events, such as barbecues or outings, at the wrong time. The Plaintiff would arrive after the event was over or people were cleaning up, the inference and implication was to avoid Plaintiff from being around white employees. This caused Plaintiff humiliation, degradation, emotional distress, pain and suffering.

100. Intralot, Inc. and Vermont Lottery Commission's actions and/or omissions created a hostile work environment based on the accretion of seemingly small incidents because they treated Plaintiff differently from similarly situated white employees because he is black.

101. Plaintiff was retaliated against for complaining of discriminatory acts or practices by Intralot, Inc. and Vermont Lottery Commission.

102. Plaintiff was subjected to ethnic slurs, racial and offensive statements by employees of Intralot, Inc., which he reported to his supervisor without remedy. Intralot, Inc. condoned the actions of its discriminating employees. In addition, because Plaintiff's wife is white and older than him, Intralot Inc.'s employees made racial slurs and offensive statements regarding his family. For example, an employee once stated: "let Shannon go home to his mama," suggesting that he is not a man, but a boy. And, Plaintiff endured ethnic slurs, racial and offensive statements while servicing gaming equipment for or on behalf of Vermont Lottery Commission, which was reported to his supervisor. For example, plaintiff was called "boy" by a retailer, which he reported to his Intralot, Inc. supervisor to no avail. The Vermont Lottery Commission and Intralot, Inc. condoned ethnic slurs, racial and offensive statements made by its employees and/or retailers.

103. Plaintiff was harassed because he is black.

104. As a result of Defendants' violation of the Vermont Fair Employment Practices Act, Plaintiff has suffered and continues to suffer severe and lasting losses for which he is entitled to recover damages.

105. Defendants' conduct was wanton, willful and outrageous, and was undertaken with actual malice and/or reckless disregard for Plaintiff's rights, such that an award of punitive damages is warranted.

COUNT VII

VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED

106. Plaintiff realleges and incorporates by reference herein all Paragraphs numbered 1 through 105 as though fully set forth here.

107. Plaintiff was harassed and discriminated against because of his race in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 USC § 2000e et seq., by Intralot, Inc. and Vermont Lottery Commission.

108. Intralot, Inc. and Vermont Lottery Commission terminated Plaintiff's employment because of his race.

109. Plaintiff repeatedly reported and complained to his supervisor at Intralot, Inc. of racial epithets he was subjected to at Intralot, Inc. and while servicing gaming equipment in the field for and on behalf of Vermont Lottery Commission.

110. The Plaintiff's concerns regarding the racial epithets were not addressed by Plaintiff's supervisor, Intralot, Inc. or Vermont Lottery Commission and did not cease.

111. Intralot, Inc. and Vermont Lottery Commission terminated Plaintiff's employment because he lodged complaints of discriminatory acts or practices.

112. Plaintiff was told by his supervisor at Intralot, Inc. not to come to the warehouse because it was better for everyone else, implying it was because of his race, unlike similarly situated white employees.

113. Plaintiff was not provided with supplies necessary to perform his job function unlike similarly situated white employees at Intralot, Inc. Plaintiff was forced to use his own money to purchase necessary supplies to perform his job unlike similarly situated white employees at Intralot, Inc.

114. Plaintiff was ordered by his supervisor at Intralot, Inc. to complete tasks without Intralot, Inc. providing the proper tools and accessories required to perform the job unlike similarly situated white employees.

115. Plaintiff received a used vehicle from Intralot, Inc. while similarly situated white employees received new vehicles and was told by his supervisor that the vehicle was good enough for him, implying that because he is black he is accustomed to lower quality or used vehicles, causing Plaintiff humiliation, degradation, emotional harm, pain and suffering. Intralot, Inc. refused to replace the rear shocks or fix the rear door of his company van. Plaintiff had to use his own money to repair the air conditioner in his company vehicle when it failed; however, he was eventually repaid.

116. Intralot, Inc. and Vermont Lottery Commission treated Plaintiff differently from white employees because he is black.

117. Intralot, Inc. and Vermont Lottery Commission treated Plaintiff differently from similarly situated white employees because he is black.

118. Plaintiff was deliberately told on multiple instances by his Intralot, Inc., supervisor to come to company events, such as barbecues or outings, at the wrong time. The Plaintiff would arrive after the event was over or people were cleaning up, the inference and implication was to avoid Plaintiff from being around white

employees. This caused Plaintiff humiliation, degradation, emotional distress, pain and suffering.

119. Intralot, Inc. and Vermont Lottery Commission's actions and/or omissions created a hostile work environment based on the accretion of seemingly small incidents because they treated Plaintiff differently from similarly situated white employees because he is black.

120. Plaintiff was retaliated against for complaining of discriminatory acts or practices by Intralot, Inc. and Vermont Lottery Commission.

121. Plaintiff was subjected to ethnic slurs, racial and offensive statements by employees of Intralot, Inc., which he reported to his supervisor without remedy. Intralot, Inc. condoned the actions of its discriminating employees. In addition, ~~because Plaintiff's wife is white and older than him, Intralot Inc.'s employees made~~ racial slurs and offensive statements regarding his family. For example, an employee once stated: "let Shannon go home to his mama," suggesting that he is not a man, but a boy. And, Plaintiff endured ethnic slurs, racial and offensive statements while servicing gaming equipment for or on behalf of Vermont Lottery Commission, which was reported to his supervisor. For example, plaintiff was called "boy" by a retailer, which he reported to his Intralot, Inc. supervisor to no avail. The Vermont Lottery Commission and Intralot, Inc. condoned ethnic slurs, racial and offensive statements made by its employees and/or retailers.

122. Plaintiff was harassed because he is black.

123. As a result of Defendants' violation of Title VII of the Civil Rights Act of 1964, as amended, Plaintiff has suffered and continues to suffer severe and lasting losses for which he is entitled to recover damages.

124. Defendants' conduct was wanton, willful and outrageous, and was undertaken with actual malice and/or reckless disregard for Plaintiff's rights, such that an award of punitive damages is warranted.

COUNT VIII

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

125. Plaintiff realleges and incorporates by reference herein all Paragraphs numbered 1 through 124 as though fully set forth here.

126. Plaintiff's actions as described above were authorized and required by Intralot, Inc.'s own employment policies and procedures, by the Vermont Fair Employment Practices Act, and by Title VII of the Civil Rights Act of 1964, as Amended.

127. As such, Plaintiff was engaged in legally protected activity.

128. Defendants' terminated Plaintiff's employment because of Plaintiff's protected activities.

129. As a result of Defendants' wrongful termination, Plaintiff has suffered and continues to suffer severe and lasting losses for which he is entitled to recover damages.

130. Defendants' conduct was wanton, willful and outrageous, and was undertaken with actual malice and/or reckless disregard for Plaintiff's rights, such that an award of punitive damages is warranted.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that the Court:

1. Enter judgment against the defendants, jointly and severally.
2. Enter judgment against the defendants, jointly and severally, for compensatory and punitive damages.
3. Enter judgment against the defendants, jointly and severally, for costs and pre and post judgment interest and attorney's fees.
4. Enter judgment against the defendants, jointly and severally, for mental and emotional suffering.
5. Enter judgment against the defendants, jointly and severally, for loss of enjoyment of life.
6. ~~Require such other and further relief as the Court deems is just and proper under~~
the circumstances.

DEMAND FOR JURY TRIAL

The Plaintiff in the above-styled cause hereby demands a trial by jury of all issues triable by right.

Dated at Randolph, county of Orange, Vermont, this 23rd day of September 2012.

SHANNON MCLAMB

By: /s/Mario B. Hankerson
Mario B. Hankerson, Esq.
License # 4631
Hankerson Law Group, PLLC
P.O. Box 355
Randolph, VT 05060
Ph: (802) 728-5549
Fax: (802) 728-5572
mario@hankersonlawgroup.com
Attorney for Plaintiff

STATE OF VERMONT

SUPERIOR COURT
ADDISION UNIT

CIVIL DIVISION
DOCKET # 174-7-12 Ancr

SHANNON MCLAMB,
Plaintiff

v.

INTRALOT, INC. and
VERMONT LOTTERY COMMISSION,
Defendant(s).

MOTION TO ENLARGE TIME

NOW COMES the Plaintiff, Shannon McLamb, in the above-captioned action, by and through his attorney, Mario B. Hankerson, Esq., of Hankerson Law Group, PLLC, and hereby moves this Honorable Court pursuant to V.R.C.P. 6(b) to grant an extension enlarging the time for service under the provision of V.R.C.P. 3, requiring service of summons and complaint upon defendant within 60 days after filing of the complaint.

WHEREFORE, Plaintiff requests an extension pursuant to V.R.C.P. 6(b) enlarging the time for service. The enlarging of time for service will enable service to be completed. As a result, we request the Court grant an extension for service for 20 days.

DATED: Randolph, Vermont
September 23, 2012

Hankerson Law Group, PLLC

By: /s/Mario B. Hankerson

Mario B. Hankerson, Esq.
Attorney for Plaintiff
P.O. Box 355
Randolph, VT 05060
Ph: (802) 728-5549
Fax: (802) 728-5572

U.S. Equal Employment Opportunity Commission

EEOC

PERSON FILING CHARGE

VERMONT LOTTERY
 1311 Us Route 302, Suite 100
 Barre, VT 05643
 Attn. HR Director

Shannon L. McLamb

THIS PERSON (check one or both)

Claims To Be Aggrieved

Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

523-2012-00671

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

Title VII of the Civil Rights Act (Title VII) The Equal Pay Act (EPA) The Americans with Disabilities Act (ADA)

The Age Discrimination in Employment Act (ADEA) The Genetic Information Nondiscrimination Act (GINA)

The boxes checked below apply to our handling of this charge:

1. No action is required by you at this time.
2. Please call the EEOC Representative listed below concerning the further handling of this charge.
3. Please provide by **30-MAR-12** a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4. Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5. EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by To If you **DO NOT** wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Feng K. An,
 Supervisory Investigator

EEOC Representative

Telephone **(617) 565-3192**

Boston Area Office
John F. Kennedy Fed Bldg
Government Ctr, Room 475
Boston, MA 02203
Fax: (617) 565-3196

Enclosure(s): Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

Race Color Sex Religion National Origin Age Disability Retaliation Genetic Information Other

See enclosed copy of charge of discrimination.

Date March 15, 2012	Name / Title of Authorized Official Robert L. Sanders, Area Office Director	Signature
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<h2 style="margin: 0;">CHARGE OF DISCRIMINATION</h2> <p style="font-size: small; margin: 0;">This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</p>		Charge Presented To: Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC 523-2012-00671	
Civil Rights Unit, VT Attorney General's Office and EEOC <i>State or local Agency, if any</i>			
Name (indicate Mr., Ms., Mrs.) Mr. Shannon L. McLamb		Home Phone (Incl. Area Code) [REDACTED]	Date of Birth [REDACTED]
Street Address City, State and ZIP Code [REDACTED] Whiting, VT 05778			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name VERMONT LOTTERY		No. Employees, Members Unknown	Phone No. (Include Area Code)
Street Address City, State and ZIP Code 1311 Us Route 302, Suite 100, Barre, VT 05641			
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es).)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest	
<input type="checkbox"/> RACE <input checked="" type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		11-23-2011 11-23-2011 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			
Please see attached two page statement of complaint. I believe I was subjected to employment discrimination including retaliation due to my race, black, in violation of Title VII of the Civil Rights Act of 1964, as amended.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY -- When necessary for State and Local Agency Requirements	
I declare, under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
_____ Date Charging Party Signature		_____ SIGNATURE OF COMPLAINANT	
_____ Date Charging Party Signature		_____ SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	

The following is my account of my "discharge" from Intralot as a Field Service Technician for the VT Lottery.

On Nov 23 at about 5pm I received a call from Vlad my supervisor. He stated he had bad news, I said what's wrong,

He stated "where do I begin"

I said "what do you mean."

He first started to say something about a complaint from Hannafords (he did not explain nor did he identify which Hannafords)

I asked "Which Hannafords?, "What did I do?"

He said "never mind that, remember about a year ago when VT lottery didn't want you to work , Something they found in your background."

"Yeah, I thought that was all cleared up."

"Well they are really pushing now and I have to ... we have to comply with them because they hold the contract and ultimately have the say who works for us in the state. "

"So you are saying that I did something wrong?"

"VT lottery says they want you gone. We are waiting for some paperwork and in the mean time you will be on administrative leave. "

"But what did I do? What complaint? There is nothing IN MY BACKGROUD!!! You guys ran a background check and I came up squeaky clean, what could they have found on me?!?! I have never even been arrested before!!!!"

"I know, I know, my hands are tied. It looks bad though"

"What do you mean BAD?"

"I think we may give you some kind of exit package, I am not sure."

"But I did nothing wrong. "

"We will just have to wait for the paperwork. Until then you clock in on your shift as you normally would."

"OK Vlad."

On the Following Monday I spoke with Bruce the general manager (I called him).

He gave me the same VT lottery has the contract speech. But when I asked about Vlad saying something about a complaint at Hannafords he was vague, claiming he didn't have any details. I also brought up Vlad bringing up the background check VT Lottery did on me over a year before. Again he was vague on any details.

The next day Vlad called

Said he had bad news.

I believe he read the letter I was given verbatim. We made arrangements to have him pick up the company van.

The next day Vlad and Lester came and got the van Vlad handed me the letter.

Sir, I have no complaints on file from any retailers in fact quite the opposite, I have received a better than "just doing you job" (exceeded expectations)review, no complaints from staff at Intralot (In fact it was noted in my yearly review that I got along well with others and was very professional) or VT Lottery. Received a raise. I did all assigned tasks, as ordered, on time consistently. I even participated in further training and volunteered to do other tasks (helping to setup ITVMs, writing a setup instruction sheet for the Photon, fairground tech, fill in on days others were unavailable. I did all this and more while suffering from [REDACTED] (my supervisor knew before I was even hired) The only thing that truly stands out is that I was the ONLY BLACK MAN representing VT lottery in the field in any capacity. It is also odd that this happened shortly after I logged a complaint about a retailer calling me a racially charged name, to which nothing has happened, not even an apology on any level.

I believe that this "discharge" is either due to discrimination or, since the call to have me

"discharged" came from ALAN YANDOW, the head of VT Lottery, because I believe he or someone directly connected with him, has some connection with my past associations with ACTR (Addison County Transit Resources), whom I turned in for Medicaid/medicare fraud, who in turn retaliated against myself and my wife. (at least tried with her). They, ACTR, refused to provide any kind of reference during my background check. I almost didn't get the job because of their delay and almost had to go to court to get them to comply. After my termination by ACTR I was unable to get employment, termed a "disgruntled employee" by various lawyers. Not until I removed the reference to their organization from my resume did I even get this job. Based on my record, and a lack of any good since to discard a perfectly good employee, it raises just one question. WHY?. Sir, I submit that it was due to an illegal decision, namely saying I had done something wrong (no documentation to back it up) and or my race that cause both my supervisor and his to deny anything other than... "VT Lottery has the ultimate choice as to who works for us in this state, and we must contractually comply" Why else give me an "exit package" or let me get unemployment, why the change in story, why was my complaint about a retailer ignored. Why was the ONLY BLACK MAN, who was for all intents and purposes worked for VT LOTTERY, "Discharged". I submit it was either Racism or collusion to retaliate. I know VT is a hire at will/work at will state. They did not just "let me go", they did not "find a better employee", nor had I done something to get released from my job. All could have been legal and I would have no recourse but to accept things and move on. But that is not the case. They gave a reason. That reason MUST be held in scrutiny as I believe that NO ONE HAD ANY REASON TO DISCHARGE ME and my RIGHTS HAVE BEEN VIOLATED.

Thank you for your time to consider this issue

 3-5-12

Shannon McLamb

INFORMATION ON CHARGES OF DISCRIMINATION

EEOC RULES AND REGULATIONS

Section 1601.15 of EEOC's regulations provides that persons or organizations charged with employment discrimination may submit a statement of position or evidence regarding the issues covered by this charge.

EEOC's recordkeeping and reporting requirements are found at Title 29, Code of Federal Regulations (29 CFR): 29 CFR Part 1602 (see particularly Sec. 1602.14 below) for Title VII and the ADA; 29 CFR Part 1620 for the EPA; and 29 CFR Part 1627, for the ADEA. These regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. (For ADEA charges, this notice is the written requirement described in Part 1627, Sec. 1627.3(b)(3), .4(a)(2) or .5(c), for respondents to preserve records relevant to the charge – the records to be retained, and for how long, are as described in Sec. 1602.14, as set out below). Parts 1602, 1620 and 1627 also prescribe record retention periods – generally, three years for basic payroll records and one year for personnel records. Questions about retention periods and the types of records to be retained should be resolved by referring to the regulations.

Section 1602.14 Preservation of records made or kept. Where a charge . . . has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII or the ADA, the respondent . . . shall preserve all personnel records relevant to the charge or the action until final disposition of the charge or action. The term *personnel records relevant to the charge*, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates or the same position as that for which the aggrieved person applied and was rejected. The date of *final disposition of the charge or the action* means the date of expiration of the statutory period within which the aggrieved person may bring [a lawsuit] or, where an action is brought against an employer either by the aggrieved person, the Commission, or the Attorney General, the date on which such litigation is terminated.

NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of Title VII, Section 207(f) of GINA, Section 4(d) of the ADEA, and Section 503(a) of the ADA provide that it is an unlawful employment practice for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against any individual, or for a union to discriminate against its members or applicants for membership, because they have opposed any practice made an unlawful employment practice by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the statutes. The Equal Pay Act contains similar provisions. Additionally, Section 503(b) of the ADA prohibits coercion, intimidation, threats, or interference with anyone because they have exercised or enjoyed, or aided or encouraged others in their exercise or enjoyment, of rights under the Act.

Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please give us your attorney's name, address and phone number, and ask your attorney to write us confirming such representation.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Boston Area Office

Internet: www.eeoc.gov
Email: info@eeoc.gov

John F. Kennedy Federal Building
Government Center, Room 475
Boston, MA 02203-0506
Toll Free Number: (866) 408-8075
Boston Direct Dial: (617) 565-4805
Boston Direct Line: (617) 565-3200
TTY: (617) 565-3204
FAX: (617) 565-3196

WHAT A POSITION STATEMENT SHOULD INCLUDE

PART I- GENERAL INFORMATION

1. Name and Address of Organization

State the correct name and address of the specific installation charges. If the address is a post office box, include the street address as well.

2. Representative of Organization

State the name, title, business address, and business telephone number of the person with, or through whom, there should be communications relating to this matter.

3. Kind of Business

Briefly identify the primary function of the establishment charged (e.g. automobile assembly, retail sales of men's clothing, banking and trust services, etc.).

4. Number of Employees

State the number of persons (including supervisors and managers) employed at the specific installation charged and by the organization as a whole on the most recent payroll date. If the total number of employees is over 50, approximations are acceptable.

PART II- RESPONSE TO THE CHARGE

- I. Provide an "answer" to the charge by telling your versions of the facts. Provide relevant background history to help the reader understand your point of view, including who, what, when, where, why & how.
- II. Explain and provide copies of any policies and procedures that apply to the situation. E.g., if the charging party claims harassment based on national origin, and wage discrimination, provide copies of any policies you have on national origin discrimination, and your wage/compensation guidelines.
- III. If the action you took was not consistent with your policy, explain why you deviated from your policy in this instance.
- IV. Provide sufficient information to illustrate why you did what you did. E.g., if you failed to promote charging party, tell us what the promotion criteria was for the job(s) in question, and specifically how the charging party failed to meet the criteria, or was less suitable than other applicants and/or the person(s) promoted.
- V. If applicable, provide comparative data on similarly-situated employees. For example, if charging party claims she was not promoted because of her national origin, provide the national origin of those selected and of those who applied (or were eligible) who were not selected.
- VI. Explain in detail all electronic data maintained by the Respondent. You should include references that include but not be limited to the location of the data, how the data are stored, and name(s) of the person who manage the data. Explain in detail how the electronic data are maintained.
- VII. Provide any other information you think will help explain your position.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Boston Area Office

INFORMATION ON CHARGES OF DISCRIMINATION
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Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

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STATE OF VERMONT
WASHINGTON COUNTY, SS.

WASHINGTON SUPERIOR COURT
DOCKET NO.

SCIENTIFIC GAMES)
INTERNATIONAL, INC.,)
Plaintiff)
v.)
VERMONT LOTTERY COMMISSION,)
ALAN YANDOW, Executive Director,)
Vermont Lottery Commission, and)
WILLIAM H. SORRELL,)
Attorney General,)
Defendants)

**EXPEDITED TREATMENT
REQUESTED UNDER 1 V.S.A. § 319(B)**

COMPLAINT

Plaintiff Scientific Games International, Inc. (“Scientific Games”) complains against Defendants, the Vermont Lottery Commission, Alan Yandow, Hadley Melendy, Neale Lunderville, and William H. Sorrell, as follows:

NATURE OF ACTION

1. This is an action against the Vermont Lottery Commission (“the Commission”), its agents, and William H. Sorrell tasked with implementing the contracting process for the Vermont State Lottery’s Lottery Gaming System to obtain access to public records and to preserve the fair bidding process for contracts with Vermont state agencies.

2. To protect taxpayers from government waste and insure that businesses can compete freely and fairly for state business, Vermont statutes and regulations require state agencies, including the Commission, to provide free and open examination of records underlying

a contract award decision. In June 2009, the Commission announced that it would pursue contract negotiations with Intralot, Inc. (“Intralot”) to provide the sales and communications systems used to administer popular games such as Powerball and Tri-State Megabucks. Now, almost a year later, the Commission still has not released Intralot’s bid or other key procurement documents, despite repeated requests that it do so.

3. The Commission’s failure to comply with the law threatens to conceal a fundamental deficiency in Intralot’s bid. In bidding on similar contracts to implement lottery gaming systems in other states, Intralot proposed to use a communications system that, as a technical matter, cannot reliably link the approximately 700 statewide locations where lottery tickets are sold to the standard required in the Commission’s Request for Proposals. Intralot is scheduled to begin managing Vermont’s lottery systems on June 30, 2010. If it proposed to use the same communications system here, the flaws in that communication system could cost the state millions of dollars in lost revenue. But the other bidders for the contract, including Scientific Games, have been unable to challenge the Commission’s decision to award the contract to Intralot because they have been denied access to the basic information about Intralot’s bid they would need to mount such a challenge.

4. The Commission has justified its unlawful rejection of requests for contract documents by asserting that the Commission has not yet signed a contract with Intralot. Regardless of whether that factual claim – that there is no contract -- is accurate, it is not a valid legal basis to withhold documents, and the Commission cannot use it as an excuse to deny the public – and aggrieved bidders – the chance to evaluate and contest a potentially improper contract award before any performance begins. This Court should order the Commission to release the RFP, vendor responses, contract documents and all related records immediately and

to allow time for an assessment of the propriety of the contract award before Intralot begins work.

PARTIES

5. Scientific Games is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located in Alpharetta, Georgia. Scientific Games is currently under contract to provide and operate Vermont's lottery gaming system through June 30, 2010. It responded to a Request for Proposals (the "RFP") for a contract to continue providing lottery gaming services after June 30 (Exhibit 1).

6. The Commission is the Vermont agency given authority from the State of Vermont to run the Vermont lottery. It issued the RFP on December 16, 2008.

7. Alan Yandow is the Executive Director for the Commission and the contracting officer for the RFP. RFP § 1.4. He is a resident of the State of Vermont.

8. William H. Sorrell is the Attorney General for the State of Vermont and is required to approve any contract negotiated as a result of the RFP. RFP § 5.8. He is a resident of the State of Vermont.

GENERAL ALLEGATIONS

A. The Commission Accepted a Potentially Deficient Bid for a Critical Public Contract.

9. The Vermont Lottery provides important income to the State of Vermont Education Fund. In 2009, it supplied in excess of \$20 million to the Education Fund.

10. Even a brief technical failure in the lottery gaming system could have a substantial impact on the Vermont Lottery's ability to generate revenue. Because of the nature of interstate lottery games and the frequent yet unpredictable large jackpots, the loss of a few days of lottery ticket purchases can have a disproportionate impact on sales. This is due to the dramatic increased buying that occurs when there is a large jackpot in multi-state games.

(Exhibit 6 at 13.)

11. The contractor hired to implement the lottery gaming system is responsible for, among other things, structuring the system's central network configuration (RFP § 3.1), supplying the terminals used by retailers to manage lottery ticket sales (RFP § 3.2), and designing a telecommunications network to permit instant transfer of information about ticket purchases from retailers to the central network (RFP § 3.3). To limit the chances of a technical failure, the RFP required contractor bids to comply with comprehensive reliability standards. (RFP § 3.0 *et seq.*)

12. With respect to the telecommunications network, each offeror was required to propose a technical approach that would guarantee "[n]etwork availability from the retailer's perspective" during "a minimum of 99.7% of games operation hours." RFP §3.3.4(6). Offerors were permitted "to commit to a higher level of monthly availability, and that is desirable in this RFP." *Id.*

13. Several contractors, including Scientific Games and Intralot, submitted final proposals in response to the RFP on or about March 18, 2009. The only other potential bidder cited fatal flaws in the RFP and decided not to pursue this once-in-a-decade business opportunity in Vermont.

14. When bidding for contracts to manage other lottery systems, Intralot has proposed to use a satellite communication system. Based on its experience in the industry, Scientific Games believes that a satellite-based system cannot provide a reliable communications network in Vermont. Michigan and Connecticut, for example, have experienced significant problems with satellite communications in their lottery systems because of their cold climates, foliage, and wintery precipitation. If Intralot proposed to use the same system here that it proposed to use in other states, there are serious questions about its ability to satisfy the 99.7% reliability requirement of RFP § 3.3.4(6). Intralot's bid would be non-compliant, and Intralot would be ineligible for the contract award, if the system Intralot proposed could not satisfy the 99.7% requirement. The New Hampshire Lottery Commission judged a similar proposal as "not appropriate."

15. In 2009, the State of New Hampshire awarded Intralot a contract to manage its online lottery system based on a Request for Proposals nearly identical to the Commission's RFP. After award, the New Hampshire Lottery encouraged the successful bidder to replace its proposed satellite telecommunication system with a system that could achieve its reliability requirements. Because New Hampshire and Vermont issued similar Requests for Proposals and have similar geography, this experience strongly suggests that a satellite communication system would not meet the bid requirements from the Commission's RFP.

16. Because the Commission has refused requests to release Intralot's bid, Scientific Games cannot confirm that Intralot proposed to use a satellite communication system here as it did for other contracts.

17. The Commission informed bidders on or about May 29, 2009 that it had selected Intralot and publicly announced on June 22, 2009, that it would "begin contract negotiations with Intralot, Inc. for a new lottery gaming system." (Exhibit 9.) By the plain terms of the RFP, contract negotiations do not begin until after the bids are received and a Notice of Award is issued. "Subject to approval by the Commission the Lottery will issue a Notice of Contract award and begin Contract negotiations." RFP § 5.8.

B. The Commission Has Failed to Comply With Its Legal Obligation to Release Bid Documents to the Public, Despite Repeated Requests.

18. The Vermont Public Records Act, 1 V.S.A. §§ 315-320, requires state agencies "to *provide free and open examination of records* consistent with Chapter I, Article 6 of the Vermont Constitution." *Id.* § 315 (emphasis added). As the statute explains, "[o]fficers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience and embarrassment." *Id.*

19. To enforce that policy of openness, the statute mandates that "[a]ny person may inspect or copy any public record or document of a public agency," *id.* § 316(a), unless it falls within a specifically articulated exception, *id.* § 317(c).

20. None of the exceptions to public disclosure listed in 1 V.S.A. § 317(c) applies. In particular, the provision exempting "records relating specifically to negotiation of contracts including but not limited to collective bargaining agreements with public employees" does not apply because, among other reasons, a contractor's bid on a public contract does not "relat[e]

specifically to negotiation” of a contract, but rather relates to the process of selecting a contractor with whom to negotiate.

21. State regulations make clear that contract bid documents are not exempt from disclosure under Section 317(c) or otherwise. State of Vermont Agency of Administration Bulletin No. 3.5: Contracting Procedures (“Bulletin”), which has the governing force of a regulation, “establishes the general policy and minimum standards for soliciting services and products from vendors outside of state government, processing the related contract(s), and overseeing established contracts through their conclusion.” (Exhibit 2 § I.)

22. The Bulletin states that “[a] public bid opening and reading of bids should be the norm and is required for contracts over \$100,000.” (Exhibit 2 §VI.A.5.) The contract to implement a lottery gaming system is for over \$100,000.

23. The Bulletin also requires that the relevant agency “must *maintain an up-to-date contract file that is an official public record.*” (Exhibit 2 §VIII.C.) (emphasis added) The agency must keep a file of the following documents: “For contracts greater than \$100,000, the documents described in subsection 3 above, the bid documents, *vendor bids*, any adjustments to or written interpretations of the bid documents, any staff analyses and/or recommendations regarding the bid.” (Exhibit 2 §VIII.C.4.) (emphasis added).

24. The RFP specified a procedure through which a contractor could propose to keep proprietary information, trade secrets, and security-related information confidential when its bid is made public. RFP § 1.21. The RFP expressly forbade an attempt to use the procedure to conceal any additional material that fell outside those narrow categories, stating: “An entire page or paragraph in which such information appears must not be marked CONFIDENTIAL unless the entire page or paragraph consists of such confidential information.” *Id.*

25. On May 29, 2009, Scientific Games submitted a public records request to the Commission for “a copy of *all scoring documents, correspondence, proposals, and evaluation notes relating to competitor bids* for the Online Vermont Bid” (“Requested Documents”). (Exhibit 3.)

26. On June 2, 2009, the Commission rejected the request, alleging that the Requested Documents were exempt from disclosure under 1 V.S.A. § 317(c)(15). (Exhibit 4.)

27. On April 16, 2010, Scientific Games made a public records request of the Office of the Attorney General of Vermont. (Exhibit 7.)

28. On April 21, 2010, the Office of the Attorney General rejected the request, again alleging that the Requested Documents were exempt from disclosure under 1 V.S.A. § 317(c)(15). (Exhibit 8.)

29. As of the date of this Complaint, Scientific Games still has not been given access to the Requested Documents, including Interlot’s bid.

C. The Commission’s Unlawful Refusal to Release Documents Has Prevented a Meaningful Assessment of and Challenge to the Contract Award Decision.

30. The RFP sets forth procedures under which an aggrieved bidder can challenge the Commission’s award decision:

As a condition for the right to submit a Proposal in response to this RFP, the Vendor agrees that any and all administrative clarifications, protests, and related proceedings of whatever nature arising from or related to the Notice of Award to a Successful Vendor must be filed or commenced by submission of a Letter of Protest to the Contracting Officer (Section 1.4) within fifteen (15) business days following the Notice of Award. The Letter must *define the Vendor’s specific grounds for protesting the Notice of Award*. This opportunity shall be available only to Vendors that have submitted a Proposal in response to the RFP. The Protest will be reviewed by the Contracting Officer and a Letter of Determination returned to the protesting Vendor. The Letter of Determination will specify one of several courses of action that the Lottery will take in response to the protest. The Letter of Determination is final and will conclude the administrative protest opportunity for a protesting Vendor. Failure to submit a protest within the time prescribed will constitute a waiver of proceedings.

RFP § 1.9 (emphasis added).

31. In compliance with the timeliness requirements of Section 1.9, on June 17, 2009, Scientific Games wrote to Lunderville and advised him it had “reason to believe that the apparent successful vendor’s telecommunications proposal will be unable to meet the RFP’s requirement (RFP Section 3.3.4.6 page 64) that the network functions fully at 99.7 percent and therefore its bid would be non-compliant.” (Exhibit 5.) Based on its industry knowledge, Scientific Games stated, if the apparently successful bidder had “proposed a low-cost satellite communications system,” that would “pose[] real and substantial risks to the Lottery’s ability to meet its revenue generating obligations” because the system “will very likely experience performance difficulties in Vermont due to the unique weather and foliage challenges.” *Id.*

32. Without the competing vendor bids or other information related to the procurement requested from the Commission, however, Scientific Games cannot make a formal protest to the Commission pursuant to the RFP because it cannot “define specific grounds for protesting the Notice of Award.” Neither Scientific Games nor the people of Vermont can determine whether the procurement was in fact properly undertaken absent this information.

33. Scientific Games’s current contract with the State of Vermont to provide a Lottery Gaming System to the State of Vermont expires on June 30, 2010. The contract requires 30 calendar days notice of an extension beyond June 30, 2010. Thus, by its terms, the contract will expire on June 30, 2010 unless Scientific Games receives notice on or before June 1, 2010. Scientific Games has not received notice.

COUNT I – VERMONT PUBLIC RECORDS ACT

34. Plaintiff repeats and alleges as if fully set forth herein each and every part related in paragraphs 1 through 33, above.

35. The Requested Documents are “public record[s]” under 1 V.S.A. § 317(a).

36. The Commission is a “public agency” under 1 V.S.A. § 317(a).

37. No exemption from disclosure under 1 V.S.A. § 317(c) applies. Specifically, Defendants’ claimed exemption from disclosure is not applicable because the Requested Documents are not related to negotiations.

38. Scientific Games is entitled to disclosure of the Requested Documents under 1 V.S.A. §§ 315-320.

COUNT II – AGENCY REGULATIONS

39. Plaintiff repeats and alleges as if fully set forth herein each and every part related in paragraphs 1 through 38, above.

40. Defendants are bound by the State of Vermont Agency of Administration Bulletin No. 3.5: Contracting Procedures. The Bulletin creates obligations above and beyond those in the Public Records Act, 1 V.S.A. § 317.

41. The Bulletin requires that the Requested Documents be available and open to the public.

42. Scientific Games is entitled to disclosure of the Requested Documents pursuant to the Bulletin.

COUNT III – DUE PROCESS

43. Plaintiff repeats and alleges as if fully set forth herein each and every part related in paragraphs 1 through 42, above.

44. The RFP creates a system of procedures for making a bid protest for the current RFP.

45. Defendants have denied Plaintiff a meaningful opportunity to be heard in a meaningful time and place because Plaintiff does not have access to the Requested Documents and therefore cannot determine whether there is a basis to conclude Intralot's apparently successful bid is deficient.

46. Defendants' actions have prevented Plaintiff from having a meaningful opportunity to challenge the contract, in violation of Plaintiff's due process rights.

CLAIMS FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter the following relief:

A Immediate production of the documents requested in Scientific Games' public record requests to the Lottery Commission and the Attorney General;

B. A Temporary Restraining Order and Preliminary and Permanent Injunctions, pursuant to Rule 65 of the Vermont Rules of Civil Procedure, enjoining Defendants from:

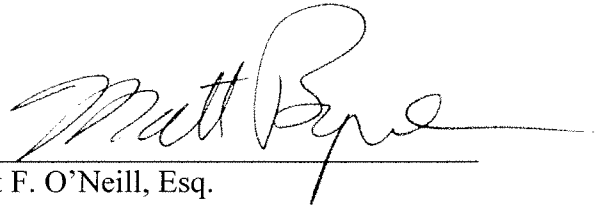
- i. signing any contract with any bidder for the Lottery Gaming System until the later of 15 days after the Lottery Commission releases the Requested Documents or a ruling on a bid protest, if one is filed;
- ii. approving any contracts with the successful bidder until the later of 15 days after the Lottery Commission releases the Requested Documents or a ruling on a bid protest, if one is filed; and

- iii. delaying for even a day the release of Requested Documents;
- C. An award of reasonable attorneys' fees;
- D. Costs;
- E. Such other relief available under the law that may be considered appropriate under the circumstances, including other fees and costs of this action to the extent allowed by the law.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: Burlington, Vermont
June 2, 2010



Robert F. O'Neill, Esq.
Matthew B. Byrne, Esq.
Gravel and Shea, A Professional Corporation
76 St. Paul Street, 7th Floor, P. O. Box 369
Burlington, VT 05402-0369
(802) 658-0220
For Plaintiff

STATE OF VERMONT
CALEDONIA COUNTY, SS

Vermont Housing Finance Agency,
Plaintiff

Caledonia Superior Court
Docket Number 06 Cav

v.

Garth G. Greenwood,
Georgia Greenwood
State of Vermont,
Department of Taxes and
Vermont Lottery Commission
Defendants

S U M M O N S

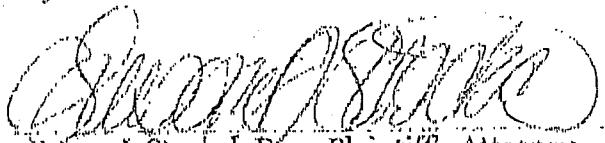
To the above named Defendant: Vermont Lottery Commission

TO ALL NAMED DEFENDANTS: YOU MUST ENTER YOUR APPEARANCE IN ORDER TO RECEIVE NOTICE OF THE FORECLOSURE JUDGMENT, WHICH WILL SET FORTH THE AMOUNT OF MONEY YOU MUST DEPOSIT TO REDEEM THE PREMISES AND THE PERIOD OF TIME ALLOWED FOR THIS DEPOSIT.

You are hereby summoned and required to serve upon Susan J. Steckel, Esq., Steckel Law Office, plaintiff's attorney, whose address is P. O. Box 247, Marshfield, Vermont, 05658-0247, an answer to the complaint which is herewith served upon you, within twenty (20) days of service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default can be taken against you for the relief demanded in the complaint. Your answer must also be filed with the court. Unless otherwise provided in rule 13(a), your answer must state as a counterclaim any related claim which you may have against the plaintiff, or you will thereafter be barred from making such claim in any other action.

YOUR ANSWER MUST STATE SUCH A COUNTERCLAIM WHETHER OR NOT THE RELIEF DEMANDED IN THE COMPLAINT IS FOR DAMAGE COVERED BY A LIABILITY INSURANCE POLICY UNDER WHICH THE INSURER HAS THE RIGHT OR OBLIGATION TO CONDUCT THE DEFENSE. If you believe that the plaintiff is not entitled to all or part of the claim set forth in the complaint, or if you believe that you have a counterclaim against the plaintiff, you may wish to consult an attorney. If you feel that you cannot afford to pay an attorney's fee, you may ask the clerk of the court for information about places where you may seek legal assistance.

February 11, 2006
Dated


Susan J. Steckel, Esq., Plaintiff's Attorney

Served on: 02-15-06 (Date)

Served by: Lon Rosella Deputy Sheriff

Steckel Law Office
P.O. Box 247
Marshfield, VT 05658
802-479-4294

STATE OF VERMONT
CALEDONIA COUNTY, SS

Vermont Housing Finance Agency,)
Plaintiff)
)
v.)
)
Garth G. Greenwood,)
Georgia L. Greenwood)
State of Vermont,)
Department of Taxes and)
Vermont Lottery Commission)
Defendants)

Caledonia Superior Court
Docket Number _____ 06 Cacv

COMPLAINT OF FORECLOSURE

TO ALL NAMED DEFENDANTS: YOU MUST ENTER YOUR APPEARANCE IN ORDER TO RECEIVE NOTICE OF THE FORECLOSURE JUDGMENT, WHICH WILL SET FORTH THE AMOUNT OF MONEY YOU MUST DEPOSIT TO REDEEM THE PREMISES (DESCRIBED AND DEFINED BELOW AS THE MORTGAGED PROPERTY) AND THE PERIOD OF TIME ALLOWED FOR THIS DEPOSIT.

NOTICE IS HEREBY GIVEN TO ALL DEFENDANTS WHO ARE OCCUPANTS OF THE MORTGAGED PROPERTY that if they do not redeem the Mortgaged Property (as that term is defined herein), they must remove all personal property from the Mortgaged Property by the end of the redemption period. If the Defendants do not redeem the Mortgaged Property and items are left on the Mortgaged Property at the end of the redemption period, the Plaintiff will assume that the Defendants no longer want to keep the items of personal property and will treat the personal property as abandoned. If the Defendants do not redeem the Mortgaged Property and have not removed all items of personal property from the Mortgaged Property by the expiration of the redemption period, Plaintiff will dispose of all such personal property without further notice to any of the Defendants.

NOW COMES Plaintiff, Vermont Housing Finance Agency, by and through its attorneys, Steckel Law Office, and pursuant to V.R.C.P. 80.1 and 12 V.S.A §4523, Et seq., hereby states its complaint of foreclosure of a real estate mortgage as follows:

1. Vermont Housing Finance Agency ("VHFA") is a body politic and corporate and an instrumentality of the State of Vermont with a principal place of business in the City of Burlington, County of Chittenden and State of Vermont.
2. VHFA holds a first mortgage lien in and on the Mortgaged Property defined below.
3. Upon information and belief, Defendants Garth G. Greenwood and Georgia L. Greenwood are residents of the Town of St. Johnsbury, County of Caledonia and State of Vermont.
4. The following entities have or may claim an interest in the Mortgaged Property inferior and subordinate to VHFA's mortgage and are therefore named as party defendants pursuant to V.R.C.P. 80.1(b)(1):

(a) The State of Vermont, Department of Taxes by virtue of a Notice of Tax Lien Case Number 130441 against Garth G. Greenwood dated September 24, 2004 and of record in Book 297 at Page 614 of the Town of St. Johnsbury Land Records and a Notice of Tax Lien Case Number 130441 against Georgia. Greenwood dated September 24, 2004 and of record in Book 297 at Page 615 of the Town of St. Johnsbury Land Records.

Complaint of Foreclosure
Vermont Housing Finance Agency v. Garth G. Greenwood, Et al.
Caledonia Superior Court
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(b) The Vermont Lottery Commission by virtue of a Small Claims Judgment Order in the matter of Vermont Lottery Commission v. Garth Greenwood and Georgia L. Greenwood, Washington Superior Court Docket Number 271-5-05 Wnsc dated July 26, 2005 and of record as of September 8, 2005 in Book 308 at Pages 206-207 of the Town of St. Johnsbury Land Records.

CLAIM FOR RELIEF

5. On August 19, 1993, Garth G. Greenwood and Georgia L. Greenwood executed and delivered to Passumpsic Savings Bank a residential Mortgage, 1-4 Family Rider and Vermont Housing Finance Agency Uniform Mortgage Rider ("Mortgage"), which is of record in Book 222 at Pages 400-410 of the Town of St. Johnsbury Land Records, in and on certain land and premises located in the Town of St. Johnsbury, County of Caledonia, State of Vermont, which has an address of or is commonly known as 176 Spring Street (formerly 17 Spring Street), St. Johnsbury, Vermont 05819 ("Mortgaged Property") and is more particularly described as follows:

Being a lot of land with dwelling house and other improvements on the easterly side of Spring Street and being all and the same land and premises conveyed to Garth G. Greenwood and Georgia L. Greenwood by Warranty Deed of Walter F. Chace and Mildred R. Chace dated August 19, 1993 and of record in Book 222 at Page 399 of the Town of St. Johnsbury Land Records.

Being all and the same lands and premises conveyed to Walter F. Chace and Mildred R. Chace by Warranty Deed of Robert M. Pollack and Karen Brown Pollack dated September 23, 1986 and of record in Book 188 at page 602 of the Town of St. Johnsbury Land Records.

Reference is hereby made to the above mentioned instruments, the records thereof, the references therein made, and their respective records and references, in further aid of this description.

A copy of the Mortgage is attached hereto as Exhibit 'A' and is incorporated herein by reference.

6. The Mortgaged Property lies within the County of Caledonia and therefore, venue lies in the Caledonia County Superior Court pursuant to 12 V.S.A. §4523(a).

7. The Mortgage was assigned to VHFA by an Assignment dated August 19, 1993, which is of record as of August 25, 1993 in Book 222 at Page 411 of the Town of St. Johnsbury Land Records. A copy of the Assignment is attached hereto as Exhibit 'B' and is incorporated herein by reference.

8. The Mortgage secures, and is conditioned upon, the repayment to VHFA of the indebtedness evidenced by, and the performance of the obligations set forth in, a Note dated August 19, 1993 in the original principal amount of \$64,000.00 and assigned to VHFA on August 19, 1993 ("Mortgage Note"). A copy of the Mortgage Note is attached hereto as Exhibit 'C' and is incorporated herein by reference.

9. Defendants/Mortgagors have breached the conditions of the Mortgage by defaulting, among other things, in making payments of principal and interest when due under the Mortgage Note described above.

10. As a result of the default, VHFA has given notice to Garth G. Greenwood and Georgia L. Greenwood of its intent to accelerate the sums secured by the Mortgage and foreclose the Mortgaged Property as required by the Mortgage. VHFA has performed all other conditions precedent.

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Vermont Housing Finance Agency v. Garth G. Greenwood, Et al.
Caledonia Superior Court
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11. Because of the breach of Defendants/Mortgagors, Garth G. Greenwood and Georgia L. Greenwood, and their failure to cure said breach, VHFA has declared the entire amount of the indebtedness, pursuant to the Mortgage and Mortgage Note, fully due and payable under the terms and conditions thereof.

12. The terms and conditions of the Mortgage and Mortgage Note entitle VHFA to collect all reasonable costs and expenses of the foreclosure proceedings, including but not limited to, taxes, assessments, other charges against the Mortgaged Property, and reasonable attorneys' fees. In order to protect its interest under the Mortgage, VHFA may also be required to pay property taxes or insurance premiums for hazard insurance relative to the Mortgaged Property or to make other payments necessary to protect its security, and for any and all such amounts, VHFA is entitled to reimbursement pursuant to the terms of the Mortgage in addition to all other amounts due by reason of the default of Defendants/Mortgagors, Garth G. Greenwood and Georgia L. Greenwood.

13. The unpaid balance of the indebtedness evidenced by the Mortgage Note, exclusive of attorneys' fees, as of January 4, 2006, is \$53,802.52 in principal, \$1,746.78 in accrued interest, \$95.96 in late charges, \$862.34 in insurance paid by VHFA, and \$4,638.07 in taxes paid by VHFA, for a total amount due of \$60,498.67. Interest continues to accrue at the rate of \$12.16 per day.

WHEREFORE, Vermont Housing Finance Agency demands judgment as follows:

- (a) Awarding the sums now due and to become due to VHFA under the Mortgage Note and Mortgage, together with any costs, taxes, assessments, insurance, appraisal fees or other charges which have been paid or which it may become necessary for VHFA to pay during the pendency of this action;
- (b) That the equity of redemption of each of the Defendants be forever foreclosed according to law;
- (c) That the Court award VHFA its reasonable attorneys' fees pursuant to 12 V.S.A. §4527 and V.R.C.P. 80.1(f), and that the amount awarded for attorneys' fees shall exceed two percent of the sums due, upon Plaintiff filing an Affidavit and Request for Attorneys' Fees;
- (d) That the Court enter a Judgment and Decree of Foreclosure providing that if the Mortgaged Property is not redeemed by the Defendants within the time provided by this Court, then possession and legal and equitable title shall pass to VHFA free and clear of the interests of all of the Defendants and all those claiming under them, and the Court shall issue a Certificate of Non-redemption and Writ of Possession to that effect as provided by 12 V.S.A. §4528;
- (e) That the Court order Defendants/Mortgagors to remove all personal property from the Mortgaged Property before the expiration of the redemption period, and that the Court further order that any and all personal property remaining at the Mortgaged Property after expiration of the redemption period shall be deemed to be abandoned and Plaintiff may immediately dispose of the same in any manner Plaintiff deems appropriate, without further notice to any of the Defendants;
- (f) That the Court order a judicial sale of the Mortgaged Property upon request of any party hereto;
- (g) That the Court order a shortened redemption period for the reasons set forth in plaintiff's Motion for Shortened Redemption period filed herewith; and
- (h) For such other and further relief as the Court deems just and equitable.

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Dated at Cabot, Vermont, this 11th day of February, 2006.

Vermont Housing Finance Agency

By: Steckel Law Office



By:

By: Susan J. Steckel, Esq.

P. O. Box 247

Marshfield, Vermont 05658-0247

802-563-4400

C:\OFFICE\VFHA\GREG\FORECLOSURE COMPLAINT.DOC

28-012-93

St. Johnsbury, Vermont, Town Clerk's Office.
Received for record August 25, 1993 at 10:00
A.M., recorded in Land Record Book 222, pages

400-406

Attest: W.D. Wass, Clerk, Town Clerk

RECEIVED

SEP 23 1993

VHFA

[Space Above This Line For Recording Data]

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on August 19, 1993. The mortgagor is GARTH G. GREENWOOD and GEORGIA L. GREENWOOD

("Borrower"). This Security Instrument is given to Passumpsic Savings Bank, which is organized and existing under the laws of Vermont, and whose address is 124 Railroad Street, St. Johnsbury, VT 05819

("Lender"). Borrower owes Lender the principal sum of Sixty Four Thousand and no/100ths Dollars (U.S. \$ 64,000.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on September 1, 2023. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose and in consideration of the debt, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in St. Johnsbury Caledonia County, Vermont:

See Exhibit A

which has the address of 17 Spring Street, St. Johnsbury, Vermont 05819 ("Property Address");
[Street] [City] [Zip Code]

- EXHIBIT 'A' -

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT A

Being a lot of land with the dwelling house and other improvements thereon known and numbered as 17 Spring Street situated on the easterly side of Spring Street and being all and the same land and premises conveyed to Garth G. Greenwood and Georgia L. Greenwood by Warranty Deed of Walter F. Chace and Mildred R. Chace, of even or near date herewith and to be recorded in the St. Johnsbury Land Records; being all and the same land and premises conveyed to Walter F. Chace and Mildred R. Chace by Warranty Deed of Robert M. Pollack and Karen M. Brown Pollack, dated September 23, 1986 and recorded in Book 188 at Page 602 of the St. Johnsbury Land Records.

Reference is hereby made to said deeds and to their records and to the deeds and records therein referred to in further aid of of this description.

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

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

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application or proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

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

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

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

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

coverage (in the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

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

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

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

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

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

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

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

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

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

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

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

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay 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.

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

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

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

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

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

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

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

If Lender or Borrower invokes the power of sale, and the Property is judicially ordered to be sold pursuant to such power, Lender shall mail a copy of a notice of sale by registered mail to Borrower at the Property Address or at any other address Borrower delivers to Lender in writing for that purpose. Lender shall publish the notice of sale for

Form 3048 9/90 (page 5 of 6 pages)

the time and in the manner required by applicable law, and without further demand on Borrower, the Property shall be sold at the time and under the term designated by the court and in the notice of sale. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order; (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

22. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

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

- Adjustable Rate Rider
- Graduated Payment Rider
- Balloon Rider
- Other(s) [specify] **VHFA Rider & Assignment**
- Condominium Rider
- Planned Unit Development Rider
- Rate Improvement Rider
- 1-4 Family Rider
- Biweekly Payment Rider
- Second Home Rider

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

Witnesses:

Mark S. Clough

Garth G. Greenwood
Garth G. Greenwood

(Seal)
-Borrower

Social Security Number 008-46-0614

Patricia A. Green

Georgia L. Greenwood
Georgia L. Greenwood

(Seal)
-Borrower

Social Security Number 009-58-9430

[Space Below This Line For Acknowledgment]

State of Vermont, Caledonia County ss:
On this 19th day of August, 1999, personally
appeared GARTH G. GREENWOOD and GEORGIA L. GREENWOOD,
signer(s) and sealer(s) of the foregoing written instrument and acknowledged the same to be their
free act and deed.

Before me: Mark S. Clough

Mark S. Clough

Notary Public

My Commission expires: 2/10/95

KX

1-4 FAMILY RIDER Assignment of Rents

THIS 1-4 FAMILY RIDER is made this 19th day of August 1993 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 (the "Borrower") to secure Borrower's Note to

PASSUMPSIC SAVINGS BANK

(the "Lender")

of the same date and covering the Property described in the Security Instrument and located at:

17 SPRING STREET ST JOHNSBURY, VT 05819

[Property Address]

1-4 FAMILY COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT. In addition to the Property described in the Security Instrument, the following items are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, panelling and attached floor coverings now or hereafter attached to the Property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

B. USE OF PROPERTY; COMPLIANCE WITH LAW. Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

C. SUBORDINATE LIENS. Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

D. RENT LOSS INSURANCE. Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Uniform Covenant 5.

E. "BORROWER'S RIGHT TO REINSTATE" DELETED. Uniform Covenant 18 is deleted.

F. BORROWER'S OCCUPANCY. Unless Lender and Borrower otherwise agree in writing, the first sentence in Uniform Covenant 6 concerning Borrower's occupancy of the Property is deleted. All remaining covenants and agreements set forth in Uniform Covenant 6 shall remain in effect.

G. ASSIGNMENT OF LEASES. Upon Lender's request, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the

Rents until (i) Lender has given Borrower notice of default pursuant to paragraph 21 of the Security Instrument and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Uniform Covenant 7.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

I. CROSS-DEFAULT PROVISION. Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this 1-4 Family Rider.

Garth G. Greenwood (Seal)
-Borrower

Georgia R. Greenwood (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

St. Johnsbury, Vermont, Town Clerk's Office.
Received for record August 25, 1993 at 10:00
A.M., recorded in Land Record Book 222, pages
409-410.

Attest: W.D. Hand, Clerk, Town Clerk

NOTICE TO BORROWERS: THIS RIDER ADDS SUBSTANTIALLY TO THE TERMS OF THE MORTGAGE. DO NOT SIGN IT UNTIL YOU HAVE READ AND UNDERSTOOD IT.

VERMONT HOUSING FINANCE AGENCY UNIFORM MORTGAGE RIDER

RECEIVED

This is a two-sided form. Please be sure both sides are completed and executed, as required.

VHFA

This Uniform Mortgage Rider is made this 19th day of August, 1993, and is incorporated into and amends and supplements a Mortgage dated of even date herewith, given by Robert C. Greenwood and Patricia Greenwood (herein the "Borrower") to secure Borrower's Note to Passumpsic Savings Bank (herein the "Lender"), and covering the Property described in the Mortgage and located at 17 Spring Street, St. Johnsbury, VT 05819.

The Borrower and Lender acknowledge that the Mortgage and Note are expected to be assigned to the Vermont Housing Finance Agency (herein "VHFA").

1. The Borrower and the Lender acknowledge and agree that the Mortgage is being made in conformity with the requirements without limitation of Title 10, Chapter 25, Vermont Statutes Annotated, as amended, and the regulations adopted pursuant thereto, Section 143 of the Internal Revenue Code of 1986 (herein "Section 143"), and the procedures and regulations promulgated thereunder which shall include the Procedural Guide of VHFA (herein the "Requirements"). In the event that the Borrower has misrepresented or omitted a material fact in the loan application of the Borrower, or other documents submitted in support thereof, or does not comply with the requirements of the loan commitment to the Borrower, the Mortgage, or the Note which it secures, VHFA may not be in compliance with the foregoing Requirements. Such noncompliance may adversely affect the tax-exempt status of the bonds issued by VHFA (herein the "Bonds"), and the ability of VHFA to issue tax-exempt bonds necessary to raise money to continue its Mortgage Purchase Program, under which the Mortgage is being made.

2. Borrower further acknowledges that the Mortgage Purchase Program of VHFA provides, among other things, that the Property will be the principal residence of the Borrower. In consideration of the granting of this loan to Borrower, the Requirements, and to prevent waste, impairment or deterioration of the Property secured by this Mortgage, Borrower agrees and undertakes that for so long as this Mortgage is in force and effect and has not been discharged, Borrower shall occupy the subject premises as Borrower's principal residence. Furthermore, Borrower shall not sell, convey or transfer or agree to sell, convey or transfer the property or any part thereof or interest therein on terms or under circumstances where the subject premises cease to be the principal residence of the Borrower.

3. Borrower further acknowledges and agrees that the granting of the loan secured by the Mortgage and the interest rate in the Note are contingent upon the inclusion of this Uniform Mortgage Rider in the Mortgage and, that in the absence of the provisions contained herein, the Lender would not be able to grant the loan to Borrower on the terms and conditions set forth and upon the interest rate established for the loan.

Borrower acknowledges and agrees that the terms herein are necessary to protect lender against impairment or deterioration in its security and against the risk of default and to protect the tax-exempt status of the Bonds.

Complete #4 only if applicable:

4. A written lease between the Borrower and [redacted] dated [redacted] 19[redacted], and a VHFA Mobile Home Park Lease Agreement Amendment dated [redacted] 19[redacted] has been signed by the Borrower and the lessor under the lease and have been recorded in the [redacted] land records. (Together the lease and amendment are referred to herein as the "Lease"). Borrower hereby grants, transfers and assigns the lease to VHFA as additional security under the Mortgage.

5. In recognition of the foregoing, and as a condition to the making of the Mortgage Loan, the Borrower covenants and agrees that the Lender, or VHFA as the assignee of the Lender, may declare all sums secured by the Mortgage to be immediately due and payable upon the occurrence of any of the following:

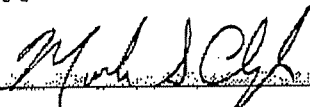
- a. If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's or VHFA's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to the Mortgage, (b) the creation of a purchase-money security interest for household appliances, or (c) transfer by devise, descent or by operation of law upon the death of a joint tenant, or
b. If the Borrower does not occupy the Property as the Borrower's principal residence within sixty (60) days after the date hereof and continue to occupy the Property as such principal residence throughout the term of the Mortgage.
c. If the Borrower fails to supply any information or document to the Lender or VHFA within ten (10) days after written request, therefore provided such information or document has been requested in order to verify whether or not the Mortgage complies with the Requirements and such other conditions of VHFA's Mortgage Purchase Program under which this Mortgage is being financed.
d. If the Borrower violates any provision of the Lease or is in default of the Lease.

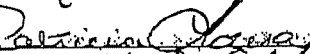
6. The Borrower acknowledges that the Lender and VHFA have relied upon the information, statements and representations contained in the loan application, the Mortgagor Affidavit and other documents submitted in support of the loan application, in the processing, financing and granting of the Mortgage and in determining that the Requirements will be met. THE BORROWER REPRESENTS THAT THE INFORMATION, STATEMENTS AND REPRESENTATIONS CONTAINED WITHIN THE LOAN APPLICATION AND THE MORTGAGOR AFFIDAVIT ARE TRUE AND COMPLETE AS OF THE DATE HEREOF AND THAT THERE HAVE BEEN NO MATERIAL CHANGES THEREIN. The loan application, the Mortgagor Affidavit and all other documents submitted in support of the loan application are incorporated herein and made a part hereof. Any misstatement or omission of a material fact in such documents will constitute a default under the Mortgage, and the Note which it secures, and may result in the Lender's or VHFA's declaring all sums secured by the Mortgage to be immediately due and payable. The Borrower agrees to hold the Lender and VHFA harmless from any loss, cost or damages, actions or claims arising out of or related to a misstatement or omission of a material fact in the above described documents.


7. Upon request of the Borrower, prior to the release of the Mortgage and this Uniform Mortgage Rider, VHFA, as the assignee of the Lender, at VHFA's sole option, may make Future Advances to the Borrower. Such Future Advances, with interest thereon, shall be secured by the Mortgage, as amended and supplemented by this Uniform Mortgage Rider, when evidenced by promissory notes stating that said promissory notes are secured thereby and hereby.

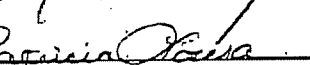
8. In the event of any conflict between the provisions hereof and the provisions of the Mortgage, or the Note which it secures, the provisions of this Uniform Mortgage Rider shall control.

9. The term Borrower used herein shall include any reference to Mortgagor, Grantor, Debtor, or any party so described and defined in the mortgage loan documents.





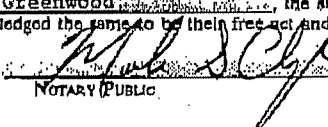
 WITNESS


 WITNESS


 WITNESS


 WITNESS


 _____ (L.S.)
 BORROWER

 _____ (L.S.)
 BORROWER

STATE OF VERMONT
 COUNTY OF Caledonia, ss.
 At St. Johnsbury, in said County, this 19th day of August, 1993, personally appeared Garth G. Greenwood and Georgia L. Greenwood, the signers and sealers of the foregoing instrument, and being duly sworn in accordance with law, acknowledged the same to be their free act and deed, and affirmed the truth of the representations of the Borrower contained therein.
 Before Me, 

 NOTARY PUBLIC

St. Johnsbury, Vermont, Town Clerk's Office.
 Received for record August 25, 1993 at 10:00
 A.M., recorded in Land Record Book 222, pages
407-408.

Attest: W.D. Vane Ant., Town Clerk

VERMONT HOUSING FINANCE AGENCY ASSIGNMENT OF MORTGAGE

RECEIVED

Including Vermont Housing Finance Agency Uniform Mortgage Rider SEP 20 1993

VHFA

Know all Persons by these Presents:

THAT PASSUMPSIC SAVINGS BANK the principal place of business of which is located at 124 Railroad Street in the Town/City of St. Johnsbury in the County of Calderon and State of Vermont (herein designated as the "Assignor"), for and in consideration of the sum of TEN AND MORE DOLLARS and other good and valuable consideration, the receipt whereof is hereby acknowledged, does by these presents assign to the Vermont Housing Finance Agency, an instrumentality of the State of Vermont with its principal office at Burlington, in the County of Chittenden and State of Vermont (the "Assignee"), a certain Mortgage dated August 19, 1993, made by George Greenwood and George Greenwood on lands located in the Town/City of St. Johnsbury in the County of Calderon and State of Vermont, to secure payment of a Mortgage recorded in Book 222 Pages 400-406, of the St. Johnsbury Land Records, and which includes a fully executed Vermont Housing Finance Agency Uniform Mortgage Rider.

TOGETHER with the Note, and Additional Security, if any, therein described, and the principal thereof and interest thereon, To HAVE AND To HOLD, the same unto the Assignee, its successors and assigns, forever, subject only to all the provisions contained in the said Mortgage and the Note. The Assignor covenants with the Assignee, its successors and assigns, that the Assignor has good right and lawful authority to assign said Mortgage Note, and Additional Security Agreement (if any), and that there are no set-offs, counter-claims or defenses against the same, in law or in equity, nor have there been any modifications or other changes in the original terms thereof.

IN WITNESS WHEREOF, the Assignor has caused these presents to be signed by its proper corporate officers and its corporate seal to be hereto affixed.

IN THE PRESENCE OF:

Karen E. Thompson

[Signature]

ASSIGNOR:

[Signature]
BY:

ITS DULY AUTHORIZED AGENT

August 20, 1993

DATE SIGNED

STATE OF VERMONT

COUNTY OF Calderon ss.

At St. Johnsbury in said County this 20th day of August, 1993, personally appeared Robert P. Crosby known to me to be the duly authorized agent of PASSUMPSIC SAVINGS BANK, and acknowledged the foregoing Assignment of Mortgage to be his free act and deed and the free act and deed of the said PASSUMPSIC SAVINGS BANK.

BEFORE ME, Karen E. Thompson

- EXHIBIT 'B' -

St. Johnsbury, Vermont, Town Clerk's Office.
Received for record August 25, 1993 at 10:00
A.M., recorded in Land Record Book 222, page

411.
Attest: *W.D. King, Clerk*, Town Clerk

VERMONT HOUSING FINANCE AGENCY
ONE YEAR INTEREST RATE REDUCTION NOTE

7010013745
GREENWOOD, Garth
GREENWOOD, Georgi

August 19 19 93 St. Johnsbury Vermont
(City) **RECEIVED**
17 SPRING STREET ST JOHNSBURY, VT 05819
(Property Address) 1 AUG 28 1993

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$64,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is PASSUMPSIC SAVINGS BANK

I understand that the Lender may transfer the Note. The 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 7.250 % for the first year, and 8.250 % for years two through thirty.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on October 1, 1993. 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. My monthly payments will be applied to interest before principal. If, on September 1, 2023, 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 124 Railroad Street St. Johnsbury, VT 05819 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 436.60 for the first year, and \$ 479.98 for year two through thirty.

4. 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 make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. 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: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which 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.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of ten 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 5.0 % of my overdue payment of principal and interest. 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 which 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 delivered or mailed to me.

(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.

7. 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.

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.

EXHIBIT C

8. 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.

9. 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.

10. 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 which might result if I do not keep the promises which 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 are described as follows:

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

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay 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.

NOTICE TO CO-SIGNER

Your signature on this Note means that you are equally liable for repayment of this loan. If the Borrower does not pay, the Lender has a legal right to collect from you.

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

Karen E Thompson
witness
A. Louaine Perkins
witness

witness

Janet G Greenwood (Seal)
SNN: [redacted] -Borrower
Herigia L. Greenwood (Seal)
SNN: [redacted] -Borrower

(Seal)
SNN: _____ -Borrower

[Sign Original Only]

August 20, 1993

Pay to the order of Vermont Housing Finance Agency its successors and/or assigns without recourse.

PASSUMPSIC SAVINGS BANK
BY: [Signature]
Pert F. Crosby, Vice President

STATE OF VERMONT
CALEDONIA COUNTY, SS

Vermont Housing Finance Agency,
Plaintiff

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Caledonia Superior Court

Docket Number _____ 06 Cctv

v.

Garth G. Greenwood,
Georgia Greenwood
State of Vermont,
Department of Taxes and
Vermont Lottery Commission
Defendants

MOTION FOR SHORTENED REDEMPTION PERIOD

NOW COMES Plaintiff, Vermont Housing Finance Agency, by and through its attorneys Steckel Law Office, and moves pursuant to V.R.C.P. 80.1(e) for a shortened redemption period of sixty days in this matter. In support of this motion, Plaintiff states as follows:

- 1. There is no equity in the Mortgaged Property. The 2005 Town of St. Jonsbury Grand List indicates that the assessed value of the Mortgaged Property is \$41,700.00. The obligations secured by Plaintiff's Mortgage exceed \$60,000.00 and there are subordinate liens in favor of the Vermont Department of Taxes and the Vermont Lottery Commission in the amounts of \$16,757.23 and \$3,534.67 respectively.
- 2. The most significant factor the court looks at in deciding [a request to shorten the redemption period] is whether there is, in fact, equity to redeem. October 31, 2000 Entry Order in Chittenden Trust Company, d/b/a Chittenden Bank v. Dana B. Smith and Pamela J. Smith, Washington County, Vermont Superior Court Docket Number S-639-10-00Wncv. In Smith, the Court determined that the realtor's commission (typically six percent) would "...eat up even the theoretical equity [of defendants]" and consequently granted a shortened redemption period. A copy of the Entry Order is attached hereto. Similarly in the case at bar, there is no equity to redeem.
- 3. Defendant/Mortgagors are not paying real property taxes, insurance, or other expenses associated with the Mortgaged Property when due and Plaintiff has been compelled to pay these expenses in order to protect its security in the Mortgaged Property.
- 4. Water bills for the Mortgaged property are delinquent in the amount of \$1,231.08 and the Town of St. Johnsbury has issued a shut-off notice..

WHEREFORE, Vermont Housing Finance Agency requests that the Court grant a shortened redemption period of sixty days in this matter.

Dated at Cabot, Vermont, this 11th day of February, 2006.

Vermont Housing Finance Agency

By: Steckel Law Office

By: Susan J. Steckel, Esq.

P. O. Box 247
Marshfield, Vermont 05658-0247
802-563-4400

Steckel Law Office
P. O. Box 247
Marshfield, Vermont
05658-0247
802-563-4400

FILED

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STATE OF VERMONT
Washington County, ss.:

SUPERIOR COURT

SUPERIOR COURT Docket No. 639-00 Wn Civ
WASHINGTON COUNTY

CHITTENDEN TRUST

v.

SMITH

ENTRY

Foreclosing bank seeks to shorten period of redemption, defendant homeowner objects. The most significant factor the court looks at in deciding such a dispute is whether there is, in fact, equity to redeem. Here, by homeowner's own estimate, the property is worth \$57,000. The bank asserts it is owed \$55,000, and homeowner is not paying taxes on the property. Were homeowner to sell the property, she would typically have to engage a realtor, at a six per cent commission. That commission would eat up even the theoretical equity defendant asserts.

Because we find there is no real equity to redeem, this is an appropriate case for shortening the period of redemption, which we hereby do, to 60 days.

Dated at Montpelier, Vermont, October 31, 2000.

