

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**McGINN, SMITH & CO., INC.,
et al.,**

Defendants.

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10 Civ. 457 (GLS/DRH)

NOTICE OF MOTION

PLEASE TAKE NOTICE that, following a conference with the Court on June 11, 2012, and the Order dated June 13, 2012 granting leave to the SEC and Citizens Bank to file the instant motion (Dkt. 499), and upon the Memorandum of Law in Support of the Motion of Plaintiff SEC, and Citizens Bank, to Modify the Asset Freeze to Allow the Sale of the Saratoga Springs Property and to Appoint the Receiver to Oversee the Sale, dated July 11, 2012; the Declaration of Michael A. Kornstein, Esq., dated July 11, 2012, and upon all prior proceedings and filings herein, plaintiff Securities and Exchange Commission and Citizens Bank will move, on August 16, 2012, at 9:30 a.m., or at any other date convenient to the Court, before the Honorable David R. Homer, United States Magistrate Judge, United States District Court, Northern District of New York, 445 Broadway, Albany, NY, for an order modifying the asset freeze to allow for the sale of the Saratoga Springs property and appointing the Receiver to oversee the sale;

PLEASE TAKE FURTHER NOTICE that a copy of the proposed Order, as revised, is annexed hereto; and

PLEASE TAKE FURTHER NOTICE that pursuant to Local Rule 7.1(b)(2), opposition papers must be filed and served not less than seventeen days prior to the return date.

Dated: New York, NY
July 11, 2012

Respectfully submitted,

s/ David Stoelting

Attorney Bar Number: 516163
Attorney for Plaintiff
Securities and Exchange Commission
3 World Financial Center, Room 400
New York, NY 10281
Telephone: (212) 336-0174
Fax: (212) 336-1324
E-mail: stoeltingd@sec.gov

/s Michael A. Kornstein

Attorney Bar No. 103178
Attorney for RBS Citizens, N.A.
Cooper Erving & Savage LLP
39 North Pearl Street
Albany, New York 12207
Telephone: (518) 449-3900
E-mail: mkornstein@coopererving.com

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,	:	
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	:	
<i>Plaintiff,</i>	:	
v.	:	10 Civ. 457 (GLS/DRH)
	:	
McGINN, SMITH & CO., INC.,	:	
et al.,	:	
	:	
<i>Defendants.</i>	:	
	:	
	:	

**[PROPOSED] ORDER MODIFYING ASSET FREEZE
TO ALLOW THE SALE OF CERTAIN PROPERTY**

WHEREAS on April 20, 2010, the Commission filed a Complaint and an Order to Show Cause seeking emergency relief and, on that same date, the Court granted the Commission's request for a temporary restraining order that, among other things, froze the assets of the defendants and the relief defendant Lynn A. Smith (the "Freeze Order") and, on July 22, 2010, the Court entered the Preliminary Injunction Order that, among other things, continued the Freeze Order over the assets of the defendants and relief defendant; and

WHEREAS, the property located at [REDACTED], Saratoga Springs, New York (the "Property") is currently subject to the Freeze Order;

NOW, THEREFORE,

I.

IT IS ORDERED that the Court-appointed Receiver, William J. Brown (the "Receiver"), is given sole authority to take all necessary steps to effectuate a sale of the Property, including the retention of a prominently known real estate agent in the community

where the Property is located, and the Freeze Order is hereby modified to permit the Receiver or the Smiths (with the Receiver's prior written consent) to enter into a contract for the purchase and sale of the Property, and to close a sale of the Property subject to the following terms and conditions:

A. The Receiver shall provide the Commission with a copy of any contract proposed to be accepted for sale of the Property (the "Contract") within three days of its execution, along with a proposed list of distributions (the "Distribution List") to be made from the proceeds of such sale. The Distribution List may include, among other things, the mortgagee of the Property, and any usual and customary costs of closing, including broker, attorney, and recording fees, real estate taxes and transfer taxes.

B. The Commission may within one week from the delivery of the Contract and the Distribution List object to the terms of the Contract, and such objections may include the sale price or the proposed distributions. The Court will resolve such objections on motion by the Commission or the Receiver if the Commission and the Receiver do not reach agreement on such objections. The Commission and the Receiver shall not object to a request for an expedited hearing.

C. The balance of any funds remaining after payment of the Distribution List shall be paid to the Receiver, and deposited in a segregated, interest-bearing account. The Receiver shall send a copy of the statement for this account to David Stoelting, Senior Trial Counsel, Securities and Exchange Commission, 3 World Financial Center, Room 400, New York, New York 10281-1022, and to the Smiths. These funds, together with any interest and income earned thereon, shall be held by the Receiver until further order of this Court.

D. The Commission and the Receiver shall provide such documents as the purchaser of the Property may reasonably require to evidence the Commission's and the Receiver's consent and authority to convey title to the Property.

E. The Receiver shall consult with the Smiths, and the Smiths shall cooperate with the Receiver, in the listing, showing and closing of the sale of the Property

II.

IT IS FURTHER ORDERED that, except as modified herein and in the Court's prior Orders, the Preliminary Injunction Order entered July 22, 2010 remains in full force and effect.

Dated: Albany, New York
_____, 2012

DAVID R. HOMER
United State Magistrate Judge

appears unlikely that preventive maintenance is being done to the Property, which will result in a further decrease in value. Declaration of Michael A. Kornstein dated July 11, 2012, ¶ 14.

The US Court of Appeals for the Second Circuit has upheld this Court's authority to order the sale of a similarly situated property owned by the Smiths. *See Smith v. SEC*, 653 F.3d 121 (2d Cir. 2011). For the reasons adopted by the Second Circuit in *Smith v. SEC*, the sale of the Saratoga Springs property should be ordered. A proposed Order is attached to the Notice of Motion dated July 11, 2012.

ARGUMENT

THE ASSET FREEZE SHOULD BE MODIFIED TO ALLOW FOR THE SALE OF THE PROPERTY AND FOR THE RECEIVER TO BE APPOINTED TO OVERSEE THE SALE

The Property should be sold in order to preserve the substantial equity that remains. The mortgage and taxes have been unpaid for more than one year, and if the Smiths are allowed to keep control of the Property, substantial arrearages will continue to accrue, the equity will continue to diminish, and foreclosure will be the only option. Kornstein Decl. ¶¶ 10-12.

The Smiths have made an application for a loan modification with Citizens Bank. *See* Dkt. 449. However, they have failed to diligently pursue the modification and have failed to supply the Bank with documentation. Declaration of Michael A. Kornstein dated July 11, 2012, ¶¶ 17-20. In the event that the loan modification is granted under terms which preserve the equity of the Property, and the Smiths at all times continue to adhere to those terms, the SEC would consider withdrawing this motion without prejudice. However, if a loan modification is granted on inadequate terms or if the Smiths

allow the Property to deteriorate notwithstanding the modification, this motion would not be withdrawn.

The Smiths have not made mortgage payments on the Property after May 2011. Declaration of Michael A. Kornstein Decl. ¶ 5. The total amount due on the Property as of July 11, 2012, is approximately \$372,500. Kornstein Decl. ¶ 5. There is significant value in the Property. Kornstein Decl. ¶ 12.

The Court's authority to order the sale of the Property is beyond dispute. The Court has previously ordered two properties sold, and the sale of the Vero Beach property was upheld by the Second Circuit. *See Smith v. SEC*, 653 F.3d 121 (2d Cir. 2011). Like the Vero Beach property, the Saratoga Springs property is declining in value and subject to foreclosure. As the Second Circuit found, "it is clear that the magistrate judge did not abuse his discretion when he ordered the interlocutory liquidation of Lynn Smith's Florida house in light of its declining value and the diminishing equity in the property." 653 F.3d at 129.

The proposed Order would give the Receiver sole authority to effectuate the sale of the Property. The Receiver effectively managed the sale of the Timothy and Nancy McGinn property in Niskayuna and the Vero Beach property. The Saratoga Springs property should be dealt with in similar fashion.

CONCLUSION

Plaintiff and Citizens Bank respectfully request that the Court grant their motion and enter the proposed Order, in the form attached to the Notice of Motion dated July 11, 2012, to: (a) modify the asset freeze to allow for the sale of the Property; and (b) to appoint the Receiver to oversee the sale of the Property.

Dated: New York, NY
July 11, 2012

Respectfully submitted,

s/ David Stoelting

Attorney Bar Number: 516163

Attorney for Plaintiff

Securities and Exchange Commission

3 World Financial Center, Room 400

New York, NY 10281

Telephone: (212) 336-0174

Fax: (212) 336-1324

E-mail: stoeltingd@sec.gov

/s Michael A. Kornstein

Attorney Bar No. 103178

Attorney for RBS Citizens, N.A.

Cooper Erving & Savage LLP

39 North Pearl Street

Albany, New York 12207

Telephone: (518) 449-3900

E-mail: mkornstein@coopererving.com

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

McGINN, SMITH & CO., INC., et al.,

Defendants.

**DECLARATION IN SUPPORT
OF ORDER MODIFYING
ASSET FREEZE**

10 Civ. 457 (GLS/DRH)

I, MICHAEL A. KORNSTEIN, Esq., declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct:

1. I am an attorney and member of the firm of Cooper Erving & Savage LLP, attorneys for RBS Citizens, N.A. doing business as Citizens Bank.

2. I make this declaration in support of an Order modifying the asset freeze contained in the July 22, 2010 Preliminary Injunction Order of this Court (Docket No. 96) which currently prohibits creditors from taking any action against the defendants' assets without further Order of this Court (the "Asset Freeze").

3. Defendants David L. Smith and Lynn A. Smith (the "Smiths") are the current owners of real property situated at **REDACTED**, Saratoga Springs, New York (the "Property").

4. Citizens Bank as successor by merger to Charter One Bank, N.A. is the holder of a Note in the principal amount of \$600,000.00 dated August 7, 2003 executed and delivered to Charter One Bank, N.A. by the Smiths (the "Note"). The Note is secured by a first mortgage lien on the Property granted by the Smiths to Charter One Bank, N.A. (the "Mortgage"). The Mortgage was recorded on or about August 9, 2003 in

the Saratoga County Clerk's Office in Liber 3251 at page 760. Copies of the Note and Mortgage are annexed hereto as **EXHIBITS "A" and "B"**, respectively.

5. The Note is currently due for the monthly installments due on June 1, 2011 and subsequent months, and the Smiths are in default under the terms of the Note and Mortgage. The amount required to cure the defaults and reinstate the loan as of July 11, 2012 is approximately \$71,500.00. The total amount due on the Note as of July 11, 2012 including principal, interest, late charges and other items is approximately \$372,500.00.

6. Citizens Bank is also the holder of a Home Equity Credit Line Note in the original principal amount of \$115,400.00 secured by a second mortgage lien on the Property. As of March 31, 2012 the Smiths have not borrowed any principal amount from the Home Equity Credit Line Note and the total sum due from the Smiths to Citizens Bank under the terms of the Home Equity Credit Line Note and Mortgage, including annual fees for non-usage and lien release fees is approximately \$751.00.

7. Citizens Bank engaged my firm to commence foreclosure proceedings against the Property, and our foreclosure title search revealed the existence of the Asset Freeze, which currently prevents Citizens Bank from foreclosing on the Property and/or taking further action to collect the Note.

8. Citizens Bank, which is regulated by the Comptroller of Currency, has an obligation to pursue collection of its non-performing loans.

9. Upon learning of the Asset Freeze, I contacted William J. Brown, Esq. who was appointed as Receiver in this case to discuss the possibility of modifying the

Asset Freeze with respect to this Property, Mr. Brown referred me to counsel for the Securities and Exchange Commission ("SEC").

10. Proceedings under the New York Real Property and Proceedings Law to foreclose the Mortgage will take considerable time, incur additional interest, fees and costs, and would ultimately result in the Property being sold at public sale to the highest bidder. The interest of Citizens Bank in such a foreclosure sale would be merely to recover its outstanding obligations.

11. In many foreclosure sale scenarios, any equity in a foreclosed property is often lost as a byproduct of the foreclosure sale.

12. Upon information and belief, the Property may have a value substantially in excess of the amounts due Citizens Bank.

13. The foreclosure title report, a copy of which is annexed hereto as **EXHIBIT "C"**, indicates that there are unpaid tax liens in the approximate amount of \$32,000.00. The report shows judgments and/or federal tax liens docketed in Saratoga County against a David Smith d/b/a East Coast Construction, David B. Smith, Lynn Smith, Lynn M. Smith, James A. Smith, and David J. Smith, although none of these individuals appear to be the same individuals who own the Property.

14. In the absence of allowing this loan to proceed through foreclosure, the equity in the Property is likely to diminish as real estate taxes and interest continue to accrue. Furthermore, in view of the Smith's inability to pay to the mortgage loan, it would also seem unlikely that any preventive or ongoing maintenance is being done to the Property, which could also result in the Property being worth less over time.

15. As an alternative to allowing the foreclosure action to proceed, SEC counsel (with the Receiver's consent) is requesting this Court to direct the Receiver to market and sell the Property in order to preserve and maximize the equity therein for the benefit of this action.

16. Citizens Bank has no objection to the relief requested and believes that a privately negotiated sale by the Receiver would enable Citizens Bank to be repaid in full much sooner than a foreclosure proceeding would allow, and such a privately negotiated sale would be more likely to preserve and maximize the equity in the Property for this case.

17. The Smiths have submitted a loan modification application to Citizens Bank to determine if they are eligible for any loan modification programs currently offered by Citizens Bank. Even during the course of a foreclosure action, the Smiths may be afforded an opportunity under current applicable law to submit such a loan modification application and if approved, would result in having the foreclosure action discontinued. In my experience of representing Citizens Bank, I have been routinely instructed to continue to prosecute the foreclosure action until a decision regarding a loan modification application is finally determined.

18. In this instance, I am advised by Citizens Bank that the Smith's loan modification is as of this date still incomplete, rendering Citizens Bank unable to make a determination as to whether or not the Smiths may be eligible for any of the Bank's current loan modification programs.

19. I am advised that on July 2, 2012, Mr. Smith was advised by telephone that the Bank required proof in the form of bank statements or cancelled checks to

substantiate receipt of the rent amount they claim to have received for the Property. The Bank also requested clarification to determine if the Property is the Smith's primary residence or if the Property is an investment property as the lease agreement presented to the Bank indicates this property address as the rental while another document included in the application package indicates this as being the Smith's primary residence. The answer to this question could impact the type of loan modification programs available to the Smiths. Also, under current New York law, the additional requirements pertaining to foreclosure actions involving owner-occupied residential properties would not be applicable if the Property is considered investment property.

20. I am further advised by Citizens Bank that while Mr. Smith indicated in the July 2nd phone call that he would provide this information to the Bank that day, he did not do so. A further phone contact was made on July 10th, but the person answering the phone indicated the Smiths were at a function and would give them the message. Later that day the Bank was further advised by the same person that Mr. Smith said he will call the Bank yesterday afternoon or this morning. To my knowledge, the requested information has not yet been provided.

For the foregoing reasons, I request that the proposed Order Modifying the Asset Freeze be granted in all respects, and for such other and further relief as may be just and proper under the circumstances..

I declare under penalty of perjury that the foregoing is true and correct. Executed at Albany, New York on July 11, 2012.


Michael A. Kornstein

NOTE

0016078396

August 7, 2003
[Date]

ALBANY, NY
[City]

[State]

REDACTED

SARATOGA SPRINGS, New York 12866

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 600,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is CHARTER ONE BANK, N.A.

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 4.750 %.

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 October 1, 2003. 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 September 1, 2018, 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 1215 SUPERIOR AVENUE

CLEVELAND, OH 44114

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. \$ 4,667.00

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. 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.

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



5N(NY) (0035)

Form 3233 1/01

VMP MORTGAGE FORMS - (800)621-7281

Page 1 of 3

Initials: *MS*
MS



0016078396

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) 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 mailed to me or delivered by other means.

(D) No Waiver By Note Holder

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

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

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

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 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.

0016078396

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:

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

If Lender requires immediate payment in full under this Section 18, Lender will give me a notice which states this requirement. The notice will give me at least 30 days to make the required payment. The 30-day period will begin on the date the notice is given to me in the manner required by Section 15 of this Security Instrument. If I do not make the required payment during that period, Lender may act to enforce its rights under this Security Instrument without giving me any further notice or demand for payment.

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

Witness: *B.M. [Signature]*

[Signature]
 DAVID L SMITH (Seal)
 -Borrower

[Signature]
 LYNN A SMITH (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

[Sign Original Only]

767

Saratoga County
COUNTY CLERK'S RECORDING PAGE

RECEIPT NO.: 690227

INDEXED BY:

SCANNED BY:

CM
QW

BOOK OF MORTGAGES

BOOK 03251 PAGE 00760

NO. PAGES 18

INSTRUMENT CODE: MTG

INSTRUMENT NO.: 200408988

RECORDING:

Cover Sheet Fee (Rcdg MTG)	3.00
Education Fee	20.00
Mortgage Tax Fee	5,975.00
Recording Fee (MTG)	5.00
Markoffs	
Names	.50
Pages	54.00

TOTAL: 6,057.50

*****NOTICE: THIS IS NOT A BILL *****

STATE OF NEW YORK
SARATOGA COUNTY CLERK

RECORDED ON 08/19/2003 AT 15:43:00

IN BOOK OF MORTGAGES PAGE 00760 OF 03251

Kathleen A. Marchione
SARATOGA COUNTY CLERK

MORTGAGE TAX

SERIAL #: CU200408988

BASIC 3,000.00

CDTA 1,475.00

SONYMA 1,500.00

TOTAL: 5,975.00

SARATOGA COUNTY CLERK

THIS PAGE IS PART OF THE INSTRUMENT

Filed 08/19/2003 3:43 PM
Volume 03251 Page 00760
X200408998
Saratoga County Clerk

Return To:

Prepared By:

RECORD & RETURN
Cooper Erving & Savage LLP
39 North Pearl Street
Albany, New York 12207

[Space Above This Line For Recording Data]

0016078396

MORTGAGE

**This Security Instrument covers real
property improved, or to be improved,
by a one or two family dwelling only.**

WORDS USED OFTEN IN THIS DOCUMENT

(A) "Security Instrument." This document, which is dated **August 7, 2003**
together with all Riders to this document, will be called the "Security Instrument."

(B) "Borrower."

**DAVID L SMITH and
LYNN A SMITH**

whose address is **REDACTED** **CLIFTON PARK New York 12065**

sometimes will be called "Borrower" and sometimes simply "I" or "me."

(C) "Lender." **CHARTER ONE BANK, N.A.**

will be called "Lender." Lender is a corporation or association which exists under the laws of
the United States of America . Lender's address is
1215 SUPERIOR AVENUE, CLEVELAND, OH 44114

NEW YORK - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3033 1/01

VMP-6(NY) (0005).03

Page 1 of 17

Initials: *AK*

VMP MORTGAGE FORMS - (800)521-7231 *AK*



(D) "Note." The note signed by Borrower and dated August 7, 2003, will be called the "Note." The Note shows that I owe Lender

SIX HUNDRED THOUSAND & 00/100

Dollars (U.S. \$ 600,000.00) plus interest

and other amounts that may be payable. I have promised to pay this debt in Periodic Payments and to pay the debt in full by September 1, 2018

(E) "Property." The property that is described below in the section titled "Description of the Property," will be called the "Property."

(F) "Loan." The "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.

(G) "Sums Secured." The amounts described below in the section titled "Borrower's Transfer to Lender of Rights in the Property" sometimes will be called the "Sums Secured."

(H) "Riders." All Riders attached to this Security Instrument that are signed by Borrower will be called "Riders." The following Riders are to be signed 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"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) [specify]

(I) "Applicable Law." 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 will be called "Applicable Law."

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

(K) "Electronic Funds Transfer." "Electronic Funds Transfer" means any transfer of money, other than 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. Some common examples of an Electronic Funds Transfer are point-of-sale transfers (where a card such as an asset or debit card is used at a merchant), automated teller machine (or ATM) transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items." Those items that are described in Section 3 will be called "Escrow Items."

(M) "Miscellaneous Proceeds." "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than Insurance Proceeds, as defined in, and paid under the coverage 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 sale to avoid Condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property. A taking of the Property by any governmental authority by eminent domain is known as "Condemnation."

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

(O) "Periodic Payment." The regularly scheduled amount due for (i) principal and interest under the Note, and (ii) any amounts under Section 3 will be called "Periodic Payment."

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

BORROWER'S TRANSFER TO LENDER OF RIGHTS IN THE PROPERTY

I mortgage, grant and convey the Property to Lender subject to the terms of this Security Instrument. This means that, by signing this Security Instrument, I am giving Lender those rights that are stated in this Security Instrument and also those rights that Applicable Law gives to lenders who hold mortgages on real property. I am giving Lender these rights to protect Lender from possible losses that might result if I fail to:

- (A) Pay all the amounts that I owe Lender as stated in the Note including, but not limited to, all renewals, extensions and modifications of the Note;
- (B) Pay, with interest, any amounts that Lender spends under this Security Instrument to protect the value of the Property and Lender's rights in the Property; and
- (C) Keep all of my other promises and agreements under this Security Instrument and the Note.

DESCRIPTION OF THE PROPERTY

I give Lender rights in the Property described in (A) through (G) below:

- (A) The Property which is located at

REDACTED

[Street]

SARATOGA SPRINGS

[City, Town or Village], New York **12866** [Zip Code].

This Property is in **Saratoga**
description:

County. It has the following legal

All that tract or parcel of land as shown on Schedule "A" attached hereto which is incorporated herein and made a part hereof.

- (B) All buildings and other improvements that are located on the Property described in subsection (A) of this section;
- (C) All rights in other property that I have as owner of the Property described in subsection (A) of this section. These rights are known as "easements and appurtenances attached to the Property;"
- (D) All rights that I have in the land which lies in the streets or roads in front of, or next to, the Property described in subsection (A) of this section;
- (E) All fixtures that are now or in the future will be on the Property described in subsections (A) and (B) of this section;
- (F) All of the rights and property described in subsections (B) through (E) of this section that I acquire in the future; and
- (G) All replacements of or additions to the Property described in subsections (B) through (F) of this section and all Insurance Proceeds for loss or damage to, and all Miscellaneous Proceeds of the Property described in subsections (A) through (F) of this section.

BORROWER'S RIGHT TO MORTGAGE THE PROPERTY AND BORROWER'S OBLIGATION TO DEFEND OWNERSHIP OF THE PROPERTY

I promise that: (A) I lawfully own the Property; (B) I have the right to mortgage, grant and convey the Property to Lender; and (C) there are no outstanding claims or charges against the Property, except for those which are of public record.

I give a general warranty of title to Lender. This means that I will be fully responsible for any losses which Lender suffers because someone other than myself has some of the rights in the Property which I promise that I have. I promise that I will defend my ownership of the Property against any claims of such rights.

PLAIN LANGUAGE SECURITY INSTRUMENT

This Security Instrument contains promises and agreements that are used in real property security instruments all over the country. It also contains other promises and agreements that vary in different parts of the country. My promises and agreements are stated in "plain language."

COVENANTS

I promise and I agree with Lender as follows:

1. Borrower's Promise to Pay. I will pay to Lender on time principal and interest due under the Note and any prepayment, late charges and other amounts due under the Note. I will also pay all amounts for Escrow Items under Section 3 of this Security Instrument.

Payments due under the Note and this Security Instrument shall be made in U.S. currency. If any of my payments by check or other payment instrument is returned to Lender unpaid, Lender may require my payment be made by: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, 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 required in the Note, or at another location designated by Lender under Section 15 of this Security Instrument. Lender may return or accept any payment or partial payment if it is for an amount that is less than the amount that is then due. If Lender accepts a lesser payment, Lender may refuse to accept a lesser payment that I may make in the future and does not waive any of its rights. Lender is not obligated to apply such lesser payments when it accepts such payments. If interest on principal accrues as if all Periodic Payments had been paid when due, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until I make payments to bring the Loan current. If I do not do so within a reasonable period of time, Lender will either apply such funds or return them to me. In the event of foreclosure, any unapplied funds will be applied to the outstanding principal balance immediately prior to foreclosure. No offset or claim which I might have now or in the future against Lender will relieve me from making payments due under the Note and this Security Instrument or keeping all of my other promises and agreements secured by this Security Instrument.

2. Application of Borrower's Payments and Insurance Proceeds. Unless Applicable Law or this Section 2 requires otherwise, Lender will apply each of my payments that Lender accepts in the following order:

First, to pay interest due under the Note;

Next, to pay principal due under the Note; and

Next, to pay the amounts due Lender under Section 3 of this Security Instrument.

Such payments will be applied to each Periodic Payment in the order in which it became due.

Any remaining amounts will be applied as follows:

First, to pay any late charges;

Next, to pay any other amounts due under this Security Instrument; and

Next, to reduce the principal balance of the Note.

If Lender receives a payment from me for a late Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the late Periodic Payment and the late charge. If more than one Periodic Payment is due, Lender may apply any payment received from me: First, to the repayment of the Periodic Payments that are due if, and to the extent that, each payment can be paid in full; Next, 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 will be applied as follows: First, to any prepayment charges; and Next, as described in the Note.

Any application of payments, Insurance Proceeds, or Miscellaneous Proceeds to principal due under the Note will not extend or postpone the due date of the Periodic Payments or change the amount of those payments.

3. Monthly Payments For Taxes And Insurance.

(a) Borrower's Obligations.

I will pay to Lender all amounts necessary to pay for taxes, assessments, water charges, sewer rents and other similar charges, ground leasehold payments or rents (if any), hazard or property insurance covering the Property, flood insurance (if any), and any required Mortgage Insurance, or a Loss Reserve as described in Section 10 in the place of Mortgage Insurance. Each Periodic Payment will include an amount to be applied toward payment of the following items which are called "Escrow Items:"

- (1) The taxes, assessments, water charges, sewer rents and other similar charges, on the Property which under Applicable Law may be superior to this Security Instrument as a Lien on the Property. Any claim, demand or charge that is made against property because an obligation has not been fulfilled is known as a "Lien;"
- (2) The leasehold payments or ground rents on the Property (if any);
- (3) The premium for any and all insurance required by Lender under Section 5 of this Security Instrument;
- (4) The premium for Mortgage Insurance (if any);
- (5) The amount I may be required to pay Lender under Section 10 of this Security Instrument instead of the payment of the premium for Mortgage Insurance (if any); and
- (6) If required by Lender, the amount for any Community Association Dues, Fees, and Assessments.

After signing the Note, or at any time during its term, Lender may include these amounts as Escrow Items. The monthly payment I will make for Escrow Items will be based on Lender's estimate of the annual amount required.

I will pay all of these amounts to Lender unless Lender tells me, in writing, that I do not have to do so, or unless Applicable Law requires otherwise. I will make these payments on the same day that my Periodic Payments of principal and interest are due under the Note.

The amounts that I pay to Lender for Escrow Items under this Section 3 will be called "Escrow Funds." I will pay Lender the Escrow Funds for Escrow Items unless Lender waives my obligation to pay the Escrow Funds for any or all Escrow Items. Lender may waive my obligation to pay to Lender Escrow Funds for any or all Escrow Items at any time. Any such waiver must be in writing. In the event of such waiver, I will pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Escrow Funds has been waived by Lender and, if Lender requires, will promptly send to Lender receipts showing such payment within such time period as Lender may require. My obligation to make such payments and to provide receipts will be considered to be a promise and agreement contained in this Security Instrument, as the phrase "promises and agreements" is used in Section 9 of this Security Instrument. If I am obligated to pay Escrow Items directly, pursuant to a waiver, and I fail to pay the amount due for an Escrow Item, Lender may pay that amount and I will then be obligated under Section 9 of this Security Instrument to repay to Lender. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 of this Security Instrument and, upon the revocation, I will pay to Lender all Escrow Funds, and in amounts, that are then required under this Section 3.

I promise to promptly send to Lender any notices that I receive of Escrow Item amounts to be paid. Lender will estimate from time to time the amount of Escrow Funds I will have to pay by using existing assessments and bills and reasonable estimates of the amount I will have to pay for Escrow Items in the future, unless Applicable Law requires Lender to use another method for determining the amount I am to pay.

Lender may, at any time, collect and hold Escrow Funds in an amount sufficient to permit Lender to apply the Escrow Funds at the time specified under RESPA. Applicable Law puts limits on the total amount of Escrow Funds Lender can at any time collect and hold. This total amount cannot be more than the maximum amount a lender could require under RESPA. If there is another Applicable Law that imposes a lower limit on the total amount of Escrow Funds Lender can collect and hold, Lender will be limited to the lower amount.

(b) Lender's Obligations.

Lender will keep the Escrow Funds in a savings or banking institution which has its deposits insured by a federal agency, instrumentality, or entity, or in any Federal Home Loan Bank. If Lender is such a savings or banking institution, Lender may hold the Escrow Funds. Lender will use the Escrow Funds to pay the Escrow Items no later than the time allowed under RESPA or other Applicable Law. Lender will give to me, without charge, an annual accounting of the Escrow Funds. That accounting will show all additions to and deductions from the Escrow Funds and the reason for each deduction.

Lender may not charge me for holding or keeping the Escrow Funds, for using the Escrow Funds to pay Escrow Items, for making a yearly analysis of my payment of Escrow Funds or for receiving, or for verifying and totaling assessments and bills. However, Lender may charge me for these services if Lender pays me interest on the Escrow Funds and if Applicable Law permits Lender to make such a charge. Lender will not be required to pay me any interest or earnings on the Escrow Funds unless either (1) Lender and I agree in writing that Lender will pay interest on the Escrow Funds, or (2) Applicable Law requires Lender to pay interest on the Escrow Funds.

(c) Adjustments to the Escrow Funds.

Under Applicable Law, there is a limit on the amount of Escrow Funds Lender may hold. If the amount of Escrow Funds held by Lender exceeds this limit, then there will be an excess amount and RESPA requires Lender to account to me in a special manner for the excess amount of Escrow Funds.

If, at any time, Lender has not received enough Escrow Funds to make the payments of Escrow Items when the payments are due, Lender may tell me in writing that an additional amount is necessary. I will pay to Lender whatever additional amount is necessary to pay the Escrow Items when the payments are due, but the number of payments will not be more than 12.

When I have paid all of the Sums Secured, Lender will promptly refund to me any Escrow Funds that are then being held by Lender.

4. Borrower's Obligation to Pay Charges, Assessments and Claims. I will pay all taxes, assessments, water charges, sewer rents and other similar charges, and any other charges and fines that may be imposed on the Property and that may be superior to this Security Instrument. I will also make ground rents or payments due under my lease if I am a tenant on the Property and Community Association Dues, Fees, and Assessments (if any) due on the Property. If these items are Escrow Items, I will do this by making the payments as described in Section 3 of this Security Instrument. In this Security Instrument, the word "Person" means any individual, organization, governmental authority or other party.

I will promptly pay or satisfy all Liens against the Property that may be superior to this Security Instrument. However, this Security Instrument does not require me to satisfy a superior Lien if: (a) I agree, in writing, to pay the obligation which gave rise to the superior Lien and Lender approves the way in which I agree to pay that obligation, but only so long as I am performing such agreement; (b) in good faith, I argue or defend against the superior Lien in a lawsuit so that in Lender's opinion, during the lawsuit, the superior Lien may not be enforced, but only until the lawsuit ends; or (c) I secure from the holder of that other Lien an agreement, approved in writing by Lender, that the Lien of this Security Instrument is superior to the Lien

held by that Person. If Lender determines that any part of the Property is subject to a superior Lien, Lender may give Borrower a notice identifying the superior Lien. Within 10 days of the date on which the notice is given, Borrower shall pay or satisfy the superior Lien or take one or more of the actions mentioned in this Section 4.

Lender also may require me to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with the Loan, unless Applicable Law does not permit Lender to make such a charge.

5. Borrower's Obligation to Maintain Hazard Insurance or Property Insurance. I will obtain hazard or property insurance to cover all buildings and other improvements that now are, or in the future will be, located on the Property. The insurance will cover loss or damage caused by fire, hazards normally covered by "Extended Coverage" hazard insurance policies, and any other hazards for which Lender requires coverage, including, but not limited to earthquakes and floods. The insurance will be in the amounts (including, but not limited to, deductible levels) and for the periods of time required by Lender. What Lender requires under the last sentence can change during the term of the Loan. I may choose the insurance company, but my choice is subject to Lender's right to disapprove. Lender may not disapprove my choice unless the disapproval is reasonable. Lender may require me to pay 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 the flood zone determination or certification. If I disagree with the flood zone determination, I may request the Federal Emergency Management Agency to review the flood zone determination and I promise to pay any fees charged by the Federal Emergency Management Agency for its review.

If I fail to maintain any of the insurance coverages described above, Lender may obtain insurance coverage, at Lender's option and my expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage will cover Lender, but might or might not protect me, my 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. I acknowledge that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that I could have obtained. Any amounts disbursed by Lender under this Section 5 will become my additional debt secured by this Security Instrument. These amounts will bear interest at the interest rate set forth in the Note from the date of disbursement and will be payable with such interest, upon notice from Lender to me requesting payment.

All of the insurance policies and renewals of those policies will include what is known as a "Standard Mortgage Clause" to protect Lender and will name Lender as mortgagee and/or as an additional loss payee. The form of all policies and renewals will be acceptable to Lender. Lender will have the right to hold the policies and renewal certificates. If Lender requires, I will promptly give Lender all receipts of paid premiums and renewal notices that I receive.

If I obtain any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy will include a Standard Mortgage Clause and will name Lender as mortgagee and/or as an additional loss payee.

If there is a loss or damage to the Property, I will promptly notify the insurance company and Lender. If I do not promptly prove to the insurance company that the loss or damage occurred, then Lender may do so.

The amount paid by the insurance company for loss or damage to the Property is called "Insurance Proceeds." Unless Lender and I otherwise agree in writing, any Insurance Proceeds, whether or not the underlying insurance was required by Lender, will be used to repair or to restore the damaged Property unless: (a) it is not economically feasible to make the repairs or restoration; (b) the use of the Insurance Proceeds for that purpose would lessen the protection given to Lender by this Security Instrument; or (c)

Lender and I have agreed in writing not to use the Insurance Proceeds for that purpose. During the period that any repairs or restorations are being made, Lender may hold any Insurance Proceeds until it has had an opportunity to inspect the Property to verify that the repair work has been completed to Lender's satisfaction. However, this inspection will be done promptly. Lender may make payments for the repairs and restorations in a single payment or in a series of progress payments as the work is completed. Unless Lender and I agree otherwise in writing or unless Applicable Law requires otherwise, Lender is not required to pay me any interest or earnings on the Insurance Proceeds. I will pay for any public adjusters or other third parties that I hire, and their fees will not be paid out of the Insurance Proceeds. If the repair or restoration is not economically feasible or if it would lessen Lender's protection under this Security Instrument, then the Insurance Proceeds will be used to reduce the amount that I owe to Lender under this Security Instrument. Such Insurance Proceeds will be applied in the order provided for in Section 2. If any of the Insurance Proceeds remain after the amount that I owe to Lender has been paid in full, the remaining Insurance Proceeds will be paid to me.

If I abandon the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If I do not answer, within 30 days, a notice from Lender stating that the insurance company has offered to settle a claim, 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 of this Security Instrument or otherwise, I give Lender my rights to any Insurance Proceeds in an amount not greater than the amounts unpaid under the Note and this Security Instrument. I also give Lender any other of my rights (other than the right to any refund of unearned premiums that I paid) under all insurance policies covering the Property, if the 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. Borrower's Obligations to Occupy The Property. I will occupy the Property and use the Property as my principal residence within 60 days after I sign this Security Instrument. I will continue to occupy the Property and to use the Property as my principal residence for at least one year. The one-year period will begin when I first occupy the Property. However, I will not have to occupy the Property and use the Property as my principal residence within the time frames set forth above if Lender agrees in writing that I do not have to do so. Lender may not refuse to agree unless the refusal is reasonable. I also will not have to occupy the Property and use the Property as my principal residence within the time frames set forth above if extenuating circumstances exist which are beyond my control.

7. Borrower's Obligations to Maintain And Protect The Property And to Fulfill Any Lease Obligations.

(a) Maintenance and Protection of the Property.

I will not destroy, damage or harm the Property, and I will not allow the Property to deteriorate. Whether or not I am residing in the Property, I will keep the Property in good repair so that it will not deteriorate or decrease in value due to its condition. Unless it is determined under Section 5 of this Security Instrument that repair is not economically feasible, I will promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or Condemnation (as defined in the definition of Miscellaneous Proceeds) proceeds are paid because of loss or damage to, or Condemnation of, the Property, I will repair or restore the Property only if Lender has released those proceeds for such purposes. Lender may pay for the repairs and restoration out of proceeds 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, I promise to pay for the completion of such repair or restoration.

(b) Lender's Inspection of Property.

Lender, and others authorized by Lender, may enter on and inspect the Property. They will do so in a reasonable manner and at reasonable times. If it has a reasonable purpose, Lender may inspect the inside of the home or other improvements on the Property. Before or at the time an inspection is made, Lender will give me notice stating a reasonable purpose for such interior inspection.

8. Borrower's Loan Application. If, during the application process for the Loan, I, or any Person or entity acting at my direction or with my knowledge or consent, made false, misleading, or inaccurate statements to Lender about information important to Lender in determining my eligibility for the Loan (or did not provide Lender with such information), Lender will treat my actions as a default under this Security Instrument. False, misleading, or inaccurate statements about information important to Lender would include a misrepresentation of my intention to occupy the Property as a principal residence. This is just one example of a false, misleading, or inaccurate statement of important information.

9. Lender's Right to Protect Its Rights in The Property. If: (a) I do not keep my promises and agreements made in this Security Instrument; (b) someone, including me, begins a legal proceeding that may significantly affect Lender's interest in the Property or rights under this Security Instrument (such as a legal proceeding in bankruptcy, in probate, for Condemnation or Forfeiture (as defined in Section 11), proceedings which could give a Person rights which could equal or exceed Lender's interest in the Property or under this Security Instrument, proceedings for enforcement of a Lien which may become superior to this Security Instrument, or to enforce laws or regulations); or (c) I have abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and Lender's rights under this Security Instrument.

Lender's actions may include, but are not limited to: (a) protecting and/or assessing the value of the Property; (b) securing and/or repairing the Property; (c) paying sums to eliminate any Lien against the Property that may be equal or superior to this Security Instrument; (d) appearing in court; and (e) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Lender can also enter 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, have utilities turned on or off, and take any other action to secure the Property. Although Lender may take action under this Section 9, Lender does not have to do so and is under no duty to do so. I agree that Lender will not be liable for not taking any or all actions under this Section 9.

I will pay to Lender any amounts, with interest, which Lender spends under this Section 9. I will pay those amounts to Lender when Lender sends me a notice requesting that I do so. I will pay interest on those amounts at the interest rate set forth in the Note. Interest on each amount will begin on the date that the amount is spent by Lender. This Security Instrument will protect Lender in case I do not keep this promise to pay those amounts with interest.

If I do not own, but am a tenant on the Property, I will fulfill all my obligations under my lease. I also agree that, if I acquire the full title (sometimes called "Fee Title") to the Property, my lease interest and the Fee Title will 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, I will pay the premiums for the Mortgage Insurance. If, for any reason, the Mortgage Insurance coverage ceases to be available from the mortgage insurer that previously provided such insurance and Lender required me to make separate payments toward the premiums for Mortgage Insurance, I will pay the premiums for substantially equivalent Mortgage Insurance coverage from an alternate mortgage insurer. However, the cost of this Mortgage Insurance coverage will be substantially equivalent to the cost to me of the previous Mortgage Insurance coverage, and the alternate mortgage insurer will be selected by Lender.

If substantially equivalent Mortgage Insurance coverage is not available, Lender will establish a non-refundable "Loss Reserve" as a substitute for the Mortgage Insurance coverage. I will continue to pay to Lender each month an amount equal to one-twelfth of the yearly Mortgage Insurance premium (as of the time the coverage lapsed or ceased to be in effect). Lender will retain these payments, and will use these payments to pay for losses that the Mortgage Insurance would have covered. The Loss Reserve is non-refundable even if the Loan is ultimately paid in full and Lender is not required to pay me any interest on the Loss Reserve. Lender can no longer require Loss Reserve payments if: (a) Mortgage Insurance

coverage again becomes available through an insurer selected by Lender; (b) such Mortgage Insurance is obtained; (c) Lender requires separately designated payments toward the premiums for Mortgage Insurance; and (d) the Mortgage Insurance coverage is in the amount and for the period of time required by Lender.

If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separate payments toward the premiums for Mortgage Insurance, I will pay the Mortgage Insurance premiums, or the Loss Reserve payments, until the requirement for Mortgage Insurance ends according to any written agreement between Lender and me providing for such termination or until termination of Mortgage Insurance is required by Applicable Law. Lender may require me to pay the premiums, or the Loss Reserve payments, in the manner described in Section 3 of this Security Instrument. Nothing in this Section 10 will affect my obligation to pay interest at the rate provided in the Note.

A Mortgage Insurance policy pays 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 policy.

Mortgage insurers assess their total risk on all Mortgage Insurance from time to time. Mortgage insurers may enter into agreements with other parties to share or change their risk, or to reduce losses. These agreements are based 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 Mortgage Insurance premiums).

As a result of these agreements, Lender, any owner of the Note, another insurer, any reinsurer, or any other entity may receive (directly or indirectly) amounts that come from a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or changing the mortgage insurer's risk, or reducing losses. If these agreements provide 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." It also should be understood that: (a) any of these agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. These agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund; and (b) any of these agreements will not affect the rights Borrower has - if any - regarding the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right (a) to receive certain disclosures, (b) to request and obtain cancellation of the Mortgage Insurance, (c) to have the Mortgage Insurance terminated automatically, and/or (d) to receive a refund of any Mortgage Insurance premiums that were not earned at the time of such cancellation or termination.

11. Agreements About Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are assigned to and will be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds will be applied to restoration or repair of the Property, if (a) the restoration or repair is economically feasible, and (b) Lender's security given in this Security Instrument is not lessened. During such repair and restoration period, Lender will have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect the Property to verify that the work has been completed to Lender's satisfaction. However, the inspection will 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 Lender and I agree otherwise in writing or unless Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender will not be required to pay Borrower any interest or earnings on the Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security given in this Security Instrument would be lessened, the Miscellaneous Proceeds will be applied to the Sums Secured, whether or not then due. The excess, if any, will be paid to me. Such Miscellaneous Proceeds will 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 will be applied to the Sums Secured, whether or not then due. The excess, if any, will be paid to me.

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 immediately before the partial taking, destruction, or loss in

value, the Sums Secured will 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 me.

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, the Miscellaneous Proceeds will be applied to the Sums Secured whether or not the sums are then due.

If I abandon the Property, or if, after Lender sends me notice that the Opposing Party (as defined in the next sentence) offered to make an award to settle a claim for damages, I fail to respond to Lender within 30 days after the date Lender gives notice, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the Sums Secured, whether or not then due. "Opposing Party" means the third party that owes me Miscellaneous Proceeds or the party against whom I have a right of action in regard to Miscellaneous Proceeds.

I will be in default under this Security Instrument if any civil or criminal action or proceeding that Lender determines could result in a court ruling (a) that would require Forfeiture of the Property, or (b) that could damage Lender's interest in the Property or rights under this Security Instrument. "Forfeiture" is a court action to require the Property, or any part of the Property, to be given up. I may correct the default by obtaining a court ruling that dismisses the court action, if Lender determines that this court ruling prevents Forfeiture of the Property and also prevents any damage to Lender's interest in the Property or rights under this Security Instrument. If I correct the default, I will have the right to have enforcement of this Security Instrument discontinued, as provided in Section 19 of this Security Instrument, even if Lender has required Immediate Payment in Full (as defined in Section 22). The proceeds of any award or claim for damages that are attributable to the damage or reduction of Lender's interest in the Property are assigned, and will be paid, to Lender.

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

12. Continuation of Borrower's Obligations And of Lender's Rights.

(a) Borrower's Obligations.

Lender may allow me, or a Person who takes over my rights and obligations, to delay or to change the amount of the Periodic Payments. Even if Lender does this, however, I will still be fully obligated under the Note and under this Security Instrument unless Lender agrees to release me, in writing, from my obligations.

Lender may allow those delays or changes for me or a Person who takes over my rights and obligations, even if Lender is requested not to do so. Even if Lender is requested to do so, Lender will not be required to (1) bring a lawsuit against me or such a Person for not fulfilling obligations under the Note or under this Security Instrument, or (2) refuse to extend time for payment or otherwise modify amortization of the Sums Secured.

(b) Lender's Rights.

Even if Lender does not exercise or enforce any right of Lender under this Security Instrument or under Applicable Law, Lender will still have all of those rights and may exercise and enforce them in the future. Even if: (1) Lender obtains insurance, pays taxes, or pays other claims, charges or Liens against the Property; (2) Lender accepts payments from third Persons; or (3) Lender accepts payments in amounts less than the amount then due, Lender will have the right under Section 22 below to demand that I make Immediate Payment in Full of any amounts remaining due and payable to Lender under the Note and under this Security Instrument.

13. Obligations of Borrower And of Persons Taking Over Borrower's Rights or Obligations. If more than one Person signs this Security Instrument as Borrower, each of us is fully obligated to keep all of Borrower's promises and obligations contained in this Security Instrument. Lender may enforce Lender's rights under this Security Instrument against each of us individually or against all of us together. This means that any one of us may be required to pay all of the Sums Secured. However, if one of us does not sign the Note: (a) that Person is signing this Security Instrument only to give that Person's rights in the Property to Lender under the terms of this Security Instrument; (b) that Person is not personally obligated to pay the Sums Secured; and (c) that Person agrees that Lender may agree with the other Borrowers to

delay enforcing any of Lender's rights, to modify, or make any accommodations with regard to the terms of this Security Instrument or the Note without that Person's consent.

Subject to the provisions of Section 18 of this Security Instrument, any Person who takes over my rights or obligations under this Security Instrument in writing, and is approved by Lender in writing, will have all of my rights and will be obligated to keep all of my promises and agreements made in this Security Instrument. Borrower will not be released from Borrower's obligations and liabilities under this Security Instrument unless Lender agrees to such release in writing. Any Person who takes over Lender's rights or obligations under this Security Instrument will have all of Lender's rights and will be obligated to keep all of Lender's promises and agreements made in this Security Instrument except as provided under Section 20.

14. Loan Charges. Lender may charge me fees for services performed in connection with my default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. With regard to other fees, the fact that this Security Instrument does not expressly indicate that Lender may charge a certain fee does not mean that Lender cannot charge that fee. Lender may not charge fees that are prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to Applicable Law which sets maximum loan charges, and that Applicable Law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed permitted limits: (a) any such loan charge will 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. 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 (even if a prepayment charge is provided for under the Note). If I accept such a refund that is paid directly to me, I will waive any right to bring a lawsuit against Lender because of the overcharge.

15. Notices Required under this Security Instrument. All notices given by me or Lender in connection with this Security Instrument will be in writing. Any notice to me in connection with this Security Instrument is considered given to me when mailed by first class mail or when actually delivered to my notice address if sent by other means. Notice to any one Borrower will be notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address is the address of the Property unless I give notice to Lender of a different address. I will promptly notify Lender of my change of address. If Lender specifies a procedure for reporting my change of address, then I will 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 will be given by delivering it or by mailing it by first class mail to Lender's address stated on the first page of this Security Instrument unless Lender has given me notice of another address. Any notice in connection with this Security Instrument is given to Lender when it is 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. Law That Governs this Security Instrument; Word Usage. This Security Instrument is governed by federal law and the law of New York State. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might allow the parties to agree by contract or it might be silent, but such silence does not mean that Lender and I cannot agree by contract. If any term of this Security Instrument or of the Note conflicts with Applicable Law, the conflict will not affect other provisions of this Security Instrument or the Note which can operate, or be given effect, without the conflicting provision. This means that the Security Instrument or the Note will remain as if the conflicting provision did not exist.

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

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

18. Agreements about Lender's Rights if the Property Is Sold or Transferred. Lender may require Immediate Payment in Full of all Sums Secured by this Security Instrument if all or any part of the Property, or if any right in the Property, is sold or transferred without Lender's prior written permission.

If Borrower is not a natural Person and a beneficial interest in Borrower is sold or transferred without Lender's prior written permission, Lender also may require Immediate Payment in Full. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender requires Immediate Payment in Full under this Section 18, Lender will give me a notice which states this requirement. The notice will give me at least 30 days to make the required payment. The 30-day period will begin on the date the notice is given to me in the manner required by Section 15 of this Security Instrument. If I do not make the required payment during that period, Lender may act to enforce its rights under this Security Instrument without giving me any further notice or demand for payment.

19. Borrower's Right to Have Lender's Enforcement of this Security Instrument Discontinued. Even if Lender has required Immediate Payment in Full, I may have the right to have enforcement of this Security Instrument stopped. I will have this right at any time before the earliest of: (a) five days before sale of the Property under any power of sale granted by this Security Instrument; (b) another period as Applicable Law might specify for the termination of my right to have enforcement of the Loan stopped; or (c) a judgment has been entered enforcing this Security Instrument. In order to have this right, I will meet the following conditions:

- (a) I pay to Lender the full amount that then would be due under this Security Instrument and the Note as if Immediate Payment in Full had never been required;
- (b) I correct my failure to keep any of my other promises or agreements made in this Security Instrument;
- (c) I pay all of Lender's reasonable expenses in enforcing this Security Instrument including, for example, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and
- (d) I do whatever Lender reasonably requires to assure that Lender's interest in the Property and rights under this Security Instrument and my obligations under the Note and under this Security Instrument continue unchanged.

Lender may require that I pay the sums and expenses mentioned in (a) through (d) 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 drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer.

If I fulfill all of the conditions in this Section 19, then this Security Instrument will remain in full effect as if Immediate Payment in Full had never been required. However, I will not have the right to have Lender's enforcement of this Security Instrument discontinued if Lender has required Immediate Payment in Full under Section 18 of this Security Instrument.

20. Note Holder's Right to Sell the Note or an Interest in the Note; Borrower's Right to Notice of Change of Loan Servicer; Lender's and Borrower's Right to Notice of Grievance. The Note, or an interest in the Note, together with this Security Instrument, may be sold one or more times. I might not receive any prior notice of these sales.

The entity that collects the Periodic Payments and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law is called the "Loan Servicer." There may be a change of the Loan Servicer as a result of the sale of the Note. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. Applicable Law requires that I be given written notice of any change of the Loan Servicer. The notice will state the name and address of the new Loan Servicer, and also tell me the address to which I should make my payments. The notice also will contain any other information required by RESPA or Applicable Law. 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 me 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 I nor Lender may commence, join or be joined to any court action (as either an individual party 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 has not fulfilled any of its obligations under this Security Instrument, unless the other is notified (in the manner required under Section 15 of this Security Instrument) of the unfulfilled obligation and given a reasonable time period to take corrective action. If Applicable Law provides a time period which will elapse before certain action can be taken, that time period will be deemed to be reasonable for

purposes of this paragraph. The notice of acceleration and opportunity to cure given to me under Section 22 and the notice of the demand for payment in full given to me under Section 22 will be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20. All rights under this paragraph are subject to Applicable Law.

21. Continuation of Borrower's Obligations to Maintain and Protect the Property. The federal laws and the laws of New York State that relate to health, safety or environmental protection are called "Environmental Law." Environmental Law classifies certain substances as toxic or hazardous. There are other substances that are considered hazardous for purposes of this Section 21. These substances are gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. The substances defined as toxic or hazardous by Environmental Law and the substances considered hazardous for purposes of this Section 21 are called "Hazardous Substances." "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law. An "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not do anything affecting the Property that violates Environmental Law, and I will not allow anyone else to do so. I will not cause or permit Hazardous Substances to be present on the Property. I will not use or store Hazardous Substances on the Property. I also will not dispose of Hazardous Substances on the Property, or release any Hazardous Substance on the Property, and I will not allow anyone else to do so. I also will not do, nor allow anyone else to do, anything affecting the Property that: (a) is in violation of any Environmental Law; (b) 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 promises in this paragraph do not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized as appropriate for normal residential use and maintenance of the Property (including, but not limited to, Hazardous Substances in consumer products). I may use or store these small quantities on the Property. In addition, unless Environmental Law requires removal or other action, the buildings, the improvements and the fixtures on the Property are permitted to contain asbestos and asbestos-containing materials if the asbestos and asbestos-containing materials are undisturbed and "non-friable" (that is, not easily crumbled by hand pressure).

I will 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 I have 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 I learn, or any governmental or regulatory authority, or any private party, notifies me that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I will promptly take all necessary remedial actions in accordance with Environmental Law.

Nothing in this Security Instrument creates an obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS

I also promise and agree with Lender as follows:

22. Lender's Rights If Borrower Fails to Keep Promises and Agreements. Except as provided in Section 18 of this Security Instrument, if all of the conditions stated in subsections (a), (b) and (c) of this Section 22 are met, Lender may require that I pay immediately the entire amount then remaining unpaid under the Note and under this Security Instrument. Lender may do this without making any further demand for payment. This requirement is called "Immediate Payment in Full."

If Lender requires Immediate Payment in Full, Lender may bring a lawsuit to take away all of my remaining rights in the Property and have the Property sold. At this sale Lender or another Person may acquire the Property. This is known as "Foreclosure and Sale." In any lawsuit for Foreclosure and Sale, Lender will have the right to collect all costs and disbursements and additional allowances allowed by Applicable Law and will have the right to add all reasonable attorneys' fees to

the amount I owe Lender, which fees shall become part of the Sums Secured.

Lender may require Immediate Payment in Full under this Section 22 only if all of the following conditions are met:

(a) I fail to keep any promise or agreement made in this Security Instrument or the Note, including, but not limited to, the promises to pay the Sums Secured when due, or if another default occurs under this Security Instrument;

(b) Lender sends to me, in the manner described in Section 15 of this Security Instrument, a notice that states:

- (1) The promise or agreement that I failed to keep or the default that has occurred;
- (2) The action that I must take to correct that default;
- (3) A date by which I must correct the default. That date will be at least 30 days from the date on which the notice is given;
- (4) That if I do not correct the default by the date stated in the notice, Lender may require Immediate Payment in Full, and Lender or another Person may acquire the Property by means of Foreclosure and Sale;
- (5) That if I meet the conditions stated in Section 19 of this Security Instrument, I will have the right to have Lender's enforcement of this Security Instrument stopped and to have the Note and this Security Instrument remain fully effective as if Immediate Payment in Full had never been required; and
- (6) That I have the right in any lawsuit for Foreclosure and Sale to argue that I did keep my promises and agreements under the Note and under this Security Instrument, and to present any other defenses that I may have; and

(c) I do not correct the default stated in the notice from Lender by the date stated in that notice.

23. Lender's Obligation to Discharge this Security Instrument. When Lender has been paid all amounts due under the Note and under this Security Instrument, Lender will discharge this Security Instrument by delivering a certificate stating that this Security Instrument has been satisfied. I will pay all costs of recording the discharge in the proper official records. I agree to pay a fee for the discharge of this Security Instrument, if Lender so requires. Lender may require that I pay such a fee, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted by Applicable Law.

24. Agreements about New York Lien Law. I will receive all amounts lent to me by Lender subject to the trust fund provisions of Section 13 of the New York Lien Law. This means that I will: (a) hold all amounts which I receive and which I have a right to receive from Lender under the Note as a trust fund; and (b) use those amounts to pay for "Cost of Improvement" (as defined in Section 13 of the New York Lien Law) before I use them for any other purpose. The fact that I am holding those amounts as a trust fund means that for any building or other improvement located on the Property I have a special responsibility under the law to use the amount in the manner described in this Section 24.

25. Borrower's Statement Regarding the Property [check box as applicable].

- ☒ This Security Instrument covers real property improved, or to be improved, by a one or two family dwelling only.
- ☐ This Security Instrument covers real property principally improved, or to be improved, by one or more structures containing, in the aggregate, not more than six residential dwelling units with each dwelling unit having its own separate cooking facilities.
- ☐ This Security Instrument does not cover real property improved as described above.

BY SIGNING BELOW, I accept and agree to the promises and agreements contained in pages 1 through 17 of this Security Instrument and in any Rider signed by me and recorded with it.

Witnesses:

Bm

David L. Smith (Seal)
DAVID L SMITH
-Borrower

_____ (Seal)
-Borrower

Bm (Seal)
-Borrower

Lynn A. Smith (Seal)
LYNN A SMITH
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

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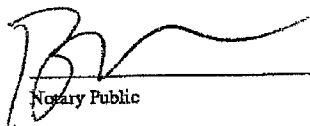
STATE OF NEW YORK, ALBANY

County ss:

On the 7th day of August, 2003
public in and for said state, personally appeared
DAVID L SMITH and
LYNN A SMITH

before me, the undersigned, a notary

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


Notary Public

Tax Map Information:

BRYAN M. CLENAHAN
Notary Public, State of New York
No. 02CL6026904
Qualified in Albany County
Commission Expires 06-18-2017

SCHEDULE A

All that certain tract, piece or parcel of land situate, lying and being in the Outside District of the City of Saratoga Springs, County of Saratoga and State of New York being shown and designated as Lot No. 30 known as **REDACTED** *on a map entitled* **REDACTED** *made by ABD Engineers and Surveyors, dated May 20, 1987, and filed in the Saratoga County Clerk's Office April 1, 1988 in Drawer M, Map No. 157C.*

Being the same premises conveyed to David L. Smith and Lynn A. Smith by deed from James E. Ryman and Debra J. Ryman duly recorded in the Albany County Clerk's Office.

The real property covered by this mortgage is improved, or to be improved, by a one (1) or two (2) family residence or dwelling only. Exemption is requested pursuant to Section 253(2) of the New York State Tax Law.



CHICAGO TITLE INSURANCE SERVICES, LLC

80 STATE STREET, ALBANY, NY 12207

PHONE: 518-436-9711 FAX: 518-436-0891

**Thank you for placing this order with Chicago Title Insurance Services, LLC.
Let us know of any changes that need to be made.**

Applicant:
Michael A. Kornstein, Esq.
Cooper Erving & Savage
39 North Pearl Street
Albany, NY 12207
Phone: 518-449-3900 Fax: 518-432-3111
e-mail:

Title Number: CT12-30185-ALB
Date of Application: March 6, 2012
Sales Representative: Joseph Culella
Phone Number: 518-436-9711
Customer Reference Number:

Transaction type: Foreclosure/TSG
Mortgage Liability: \$0.00

Purchaser/Borrower:
Seller: David L Smith and Lynn A. Smith
Lender:

Premises: REDACTED
County: Saratoga **Municipality:** Saratoga Springs
Property Type: 1-4 Family Residential

Additional Copies:

Additional Searches Ordered:

Additional Remarks:

**CHICAGO TITLE INSURANCE COMPANY
MORTGAGE FORECLOSURE GUARANTEE**

AMOUNT OF INSURANCE: \$10,000.00

GUARANTEE NO.: CT12-30185-ALB
TITLE NO.: CT12-30185-ALB

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

**CHICAGO TITLE INSURANCE COMPANY,
a Nebraska corporation, herein called the Company,
GUARANTEES**

Cooper Erving & Savage

herein called the Assured, against loss not exceeding the liability amount stated above which the Assured shall sustain by reasons of any incorrectness in the assurance which the Company hereby gives that, according to the public records, on the date stated below:

- (1) Title to the land is vested of record in:

David L. Smith and Lynn A. Smith

Title acquired by virtue of a certain deed from James E. Ryman and Debra J. Ryman, dated July 30, 2003, and recorded in the Saratoga County Clerk's Office on August 4, 2003, in Liber 1652 page 769.

- (2) The necessary parties defendant to foreclose the mortgage set forth in Schedule "B" are those set forth in Schedule "C".
- (3) All liens or encumbrances affecting the land subsequent to the recording of the mortgage to be foreclosed, which are filed or recorded in those records in the County Clerk's Office, and in counties having a Register in the Register's Office, established by state statute for the purpose of imparting constructive notice of matters relating to real property to purchaser for value and without knowledge are listed in Schedule "D".
- (4) The records of the taxing authority show that all taxes and assessments which are a lien against the land have been paid as of the date herein, except for those taxes and assessments which are shown as open on the Tax Search.

Annexed to this Guarantee are the following schedules:

Schedule A: Description of the Mortgaged Land
Schedule B: Mortgage(s) to be foreclosed and any consolidations, modifications and assignments thereof of record
Schedule C: Necessary Parties Defendant
Schedule D: Exceptions to title subsequent to the recording of the mortgage to be foreclosed and other information.
Schedule E: Tax Search

CHICAGO TITLE INSURANCE COMPANY

Dated: March 1, 2012

By: _____
Authorized Signatory



By:

A handwritten signature in black ink, appearing to read "Raymond R. Quirk".

Raymond R. Quirk
President

By:

A handwritten signature in black ink, appearing to read "Michael L. Gravelle".

Michael L. Gravelle
Secretary

MORTGAGE FORECLOSURE GUARANTEE

Guarantee No. CT12-30185-ALB

EXCLUSIONS, CONDITIONS, STIPULATIONS AND MISCELLANEOUS PROVISIONS

1. Definition of Terms

The following terms when used in this Guarantee mean:

- (a) "land": the land described, specifically or by reference, in the Guarantee and improvements affixed thereto which by law constitute real property;
- (b) "date": the effective date;
- (c) "the Assured": the party or parties named as the Assured in this Guarantee, or in a supplemental writing executed by the Company;
- (d) "mortgage": mortgage, deed of trust, trust deed, or other security instrument;
- (e) "necessary party defendant": Those persons or entities who are necessary parties defendant pursuant to New York State Real Property Actions and Proceedings Law, Section 1311, except that searches have not been made for, and this Guarantee does not cover, General Assignments, Orders Appointing Receivers, and Petitions in Bankruptcy against judgment creditors and minor lienors. Searches for Financing Statements under the Uniform Commercial Code have been made only in the office of the Recording Officer of the County in which the land is situated, and only for those indexed against the land.

2. Exclusions from Coverage of This Guarantee

The Company assumes no liability for loss or damage by reason of the following:

- (a) Defects, liens, encumbrances, adverse claims against the title or other matters (1) created, suffered, assumed or agreed to by one or more of the Assured; or (2) resulting in no loss to the Assured;
- (b) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property, and taxes shown as paid on the Tax Search which, subsequent to the date hereof, are reinstated due to non collection of funds or otherwise;
- (c) Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water, land under water; and land lying in the bed of streets;
- (d) Title to any property beyond the lines of the land expressly described in Schedule A, or title to streets, roads, avenues, lanes, ways or waterways on which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any other structure or improvement; or any rights or easements therein;
- (e) Any federal, state, or municipal lien or charge which may be filed in an office of the federal government, state government, or local municipal government, or any department, agency, or division of them, other than the office of the taxing authority, unless the lien or charge is also filed or recorded in the County Clerk's office, and in counties having a Register, in the Register's office;
- (f) Any person or entity whose interest in the land may be disclosed by an accurate survey of the land or by an inspection of the premises;
- (g) No searches for deaths of any necessary parties defendant have been made, except as to those listed on Schedule "C" as "Record Owner", and as to such persons, searches have only been made in the office of the Clerk of the Surrogate Court in which the land is located.

3. Prosecution of Actions

- (a) The Company shall have the right to institute and prosecute any action or proceeding or do any other act which, in its opinion, may be necessary or desirable to establish or confirm the matters herein guaranteed; and the Company may take any appropriate action under the terms of this guarantee whether or not it shall be liable thereunder and shall not thereby concede liability or waive any provision hereof.
- (b) In all cases where the Company does so institute and prosecute any action or proceeding, the Assured shall permit the Company to use, at its option, the name of the Assured for such purpose. Whenever requested by the Company, the Assured shall give the Company all reasonable aid in prosecuting such action or proceeding, and the Company shall reimburse the Assured for any expense so incurred.

4. Notice of Loss – Limitation of Action

A statement in writing of any loss or damage for which it is claimed the Company is liable under this Guarantee shall be furnished to the Company within sixty days after such loss or damage shall have been determined, and no right shall accrue to the Assured under this Guarantee until thirty days after such statement shall have been furnished, and no recovery shall be had by the Assured under this Guarantee unless action shall be commenced thereon within two years after expiration of said thirty day period. Failure to furnish such statement of loss or damage or to commence such action within the time hereinbefore specified, shall be a conclusive bar against maintenance by the Assured of any action under this Guarantee.

5. Option to Pay, Settle or Compromise Claims

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage, the Company shall have the option to purchase the indebtedness secured by said mortgage. Such purchase, payment or tender of payment of the full amount of the guarantee shall terminate all liability of the Company hereunder. In the event, after notice of claim has been given to the Company by the Assured, the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness and the mortgage securing the same to the Company upon payment of the purchase price.

MORTGAGE FORECLOSURE GUARANTEE

Guarantee No. CT12-30185-ALB

6. Limitation of Liability - Payment of Loss

(a) The liability of the Company under this Guarantee shall be limited to the amount of actual loss sustained by the Assured because of reliance upon the assurances herein set forth, but in no event shall such liability exceed the amount of the liability stated on the face page hereof.

(b) The Company will pay all costs imposed upon the Assured in litigation carried on by the Company for the Assured, and all costs and attorney's fees in litigation carried on by the Assured with the written authorization of the Company, but in no event shall such liability exceed the amount of liability stated on the face page hereof.

(c) No claim for damages shall arise or be maintainable under this Guarantee (1) if the Company after having received notice of an alleged additional necessary party defendant, removes the defect, lien or encumbrance on the land held by the additional necessary party defendant within a reasonable time after receipt of such notice, or (2) if the Company after having received notice of an alleged additional necessary party defendant, takes such steps that it deems proper for the purpose of perfecting the title, whether by foreclosure, re-foreclosure, strict foreclosure or otherwise, and in such action or actions to plead subrogation whenever the Company deems it necessary, or (3) for liability voluntarily assumed by the Assured in settling any claim or suit without written consent of the Company.

(d) All payments under this Guarantee, including attorney's fees as provided for in paragraph 6(b) hereof, shall reduce the amount of the liability hereunder pro tanto, and no payment shall be made without producing this Guarantee for endorsement of such payment unless the Guarantee be lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

(e) When liability has been definitely fixed in accordance with the conditions of this Guarantee, the loss or damage shall be payable within thirty days thereafter.

7. Subrogation Upon Payment or Settlement

Whenever the Company shall have settled a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured, and the Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to such claim had this Guarantee not been issued. If the payment does not cover the loss of the Assured, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss. The Assured, if requested by the Company, shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect such right of subrogation, and shall permit the Company to use the name of the Assured in any transaction or litigation involving such rights or remedies.

8. Guarantee Entire Contract

Any action or actions or rights of action that the Assured may have or may bring against the Company arising out of the subject matter hereof must be based on the provisions of this Guarantee. No provision or condition of this Guarantee can be waived or changed except by a writing endorsed or attached hereto signed by the President, or a Vice President of the Company.

9. Notices, Where Sent

All notices required to be given by the Company and any statement in writing required to be furnished the Company shall be addressed to it at:

**Chicago Title Insurance Company
PO Box 45023
Jacksonville, FL 32232-5023**

10. Failure to Disclose

This Guarantee shall be null and void if the Assured, its attorney or agent makes any untrue statement with respect to any material fact or suppresses or fails to disclose any material fact or if any untrue answers are given to the Company to material inquiries before the issuance of this Guarantee.

11. Purpose of Guarantee

(a) This Guarantee is made for and accepted by the Assured upon the express understanding that it is to be used only for the foreclosure of the mortgage(s) described in Schedule "B" or for the taking of a deed in lieu of foreclosure.

(b) If a deed in lieu of foreclosure is taken, the Company shall not be liable should the deed be attacked by the grantor, his successors or creditors, for inadequacy of consideration or as to the capacity of the record owner to execute such a deed or for any other reason.

12. Miscellaneous Provisions

(a) Other than for purposes of establishing the vested owner of record of the land and for setting forth liens against a purchase money mortgagor, no search for defects in title, liens, restrictive covenants or any other encumbrance existing or created prior to the date of the mortgage has been made.

(b) No report on streets or searches for violations in Municipal or other governmental departments have been made; nor have searches been made for corporation franchise taxes or license fees, Federal and State inheritance, transfer or estate taxes. Upon request, the Company will obtain a report from the State Tax Commission on corporation franchise taxes and license fees upon payment of an additional fee, but no responsibility for the correctness of such reports will be assumed by the Company.

(c) The premium herein includes one continuation of title, which shall be done solely for the purpose of establishing additional necessary parties defendant. The tax search shall not be updated except for an additional charge.

Title Number: CT12-30185-ALB

SCHEDULE A DESCRIPTION

All that certain tract, piece or parcel of land situate, lying and being in the Outside District of the Saratoga Springs, County of Saratoga and State of New York being shown and designated as Lot 30 known as **REDACTED** on a map entitled **REDACTED** made by ABD Engineers and Surveyors dated May 20, 1987, and filed in the Saratoga County Clerk's Office April 1, 1988 in Drawer M, Map No. 157C.

**SCHEDULE B
MORTGAGES AND ASSIGNMENTS THEREOF OF RECORD**

Guarantee No. CT12-30185-ALB

Mortgage To Be Foreclosed

Mortgage in the amount of \$600,000.00 and interest made by David L. Smith and Lynn A. Smith to Charter One Bank, NA, dated August 7, 2003 and recorded August 19, 2003 in the Saratoga County Clerk's Office in Liber 3251 page 760.

Junior Mortgage

Credit Line Mortgage in the amount of \$115,400.00 and interest made by David L. Smith and Lynn A. Smith to Charter One Bank, NA, dated August 7, 2003 and recorded September 19, 2003 in the Saratoga County Clerk's Office in Liber 3291 page 246.

If it is the intent to foreclose on both mortgages listed above company must be notified and this foreclosure certificate will be amended.

**SCHEDULE C
NECESSARY PARTIES DEFENDANT**

Guarantee No. CT12-30185-ALB

This certification is made on the assumption that all parties are to be personally served in the proposed action. If any of the persons hereinafter named be dead, their legal representatives and successors in interest should be made parties defendant after search has been amended. If investigation by applicant discloses that there are other persons having an interest in the property whose rights are subordinate to the mortgage to be foreclosed, such persons should also be made parties defendant after search has been amended. If any leases, mortgages or other liens recorded prior to the period covered by this search, but which, by reason of subordination clauses contained therein or otherwise, are in fact subordinate to the lien of the mortgage to be foreclosed, all persons interested in said leases, mortgages or other liens should also be made parties defendant after search has been amended. If the United States of America or the State of New York acquires by assignment, or otherwise, an interest in, or a lien on, the premises even after lis pendens, consideration should be given to the desirability of bringing in the United States of America or the People of the State of New York as a party defendant.

If the United States of America or the People of the State of New York are made parties, the complaint must set forth the reason thereof in detail. (See R.P.A.P.L. Sec. 202 and 202A U.S.C.A 2410).

The addresses of parties and names of officers of corporations herein given were obtained from the record and are not represented to be the present addresses of the parties, nor the present officers of the corporation.

Consideration should be given to the desirability as defendants the obligor named in the bond or in any extension, assumption or guaranty agreement.

All occupants of the premises herein described should be made parties defendant.

The Company should be requested to continue searches to the date of filing lis pendens. Upon any continuation no examination will be made of the lis pendens or any other papers filed in the action.

The following should be made parties defendant in an action to foreclose the mortgage referred to on page one hereof.

1. Any party who by bond, note, extension agreement or otherwise may be liable for deficiency judgment, if such deficiency judgment is desired.
2. Any party in possession of any part of the mortgaged premises whose interest plaintiff desires to bar.
3. **David L. Smith** **Fee Interest**
4. **Lynn A. Smith** **Fee Interest**
5. **Charter One Bank, NA** **Junior Mortgagee**
6. **Commissioner of Taxation and Finance** **Judgment Creditor**
7. **David P. Barlow** **Judgment Creditor**
8. **Velocity Investments, LLC** **Judgment Creditor**

**SCHEDULE C
NECESSARY PARTIES DEFENDANT
(Continued)**

Guarantee No. CT12-30185-ALB

- | | | |
|-----|-----------------------------------|--------------------------|
| 9. | Capital One Bank (USA), NA | Judgment Creditor |
| 10. | United States of America | Judgment Creditor |

**SCHEDULE D
EXCEPTIONS, OBJECTIONS AND OTHER MATTERS**

Guarantee No. CT12-30185-ALB

COMPLIANCE WITH THE SERVICEMEMBERS CIVIL RELIEF ACT (50 U.S.C. App. Sec. 501 et seq.) effective December 19, 2003, is required.

The above-mentioned act replaces the Soldiers' and sailors' Relief Act of 1940 and provides protective rights to men and women serving in the armed forces of the United States as well as to any U.S. citizen serving in the armed forces of another nation with which the United States is allied in the prosecution of a war or military action, with respect to actions to foreclose mortgages on real property.

Attention is called to the provisions of the Act (Sec. 517) which provide that a servicemember can waive his or her rights under the Act, but only if made pursuant to written agreement. These rights cannot be waived prior to entry into military service as that term is defined in the statute.

In addition, an affidavit of non-military service (which had been required under the previous Act), must state whether or not the defendant is in military service and showing the necessary facts to support the affidavit or, if it cannot be determined whether or not the defendant is in military service, said affidavit should state that the affiant is unable to determine whether or not the defendant is in military service.

If, based upon the affidavit, the court is unable to determine whether the defendant is in military service, it may require the plaintiff to file a bond in an amount approved by the Court prior to the entry of judgment.

Finally, a period of military service may not be included in computing any period provided by the law for the redemption of real property sold or forfeited to enforce an obligation, tax or assessment

Rights of tenants, if any.

Lien of street vault charges, if any.

1. As to Covenants, Restrictions and Easements: None were found of record since the date of the mortgage under foreclosure except as set forth herein.
2. Bankruptcy searches against David Smith and Lynn Smith in New York State disclosed no returns.
3. Unpaid Taxes as detailed on Tax Schedule annexed hereto.
4. Order To Show Cause, Temporary Restraining Order, Order Freezing Assets and Granting Other Relief Instrument #2010-012667.
5. Order To Show Cause, Temporary Restraining Order, Order Freezing Assets and Granting Other Relief Instrument #2010-013630.

6.

REDACTED

**SCHEDULE D
EXCEPTIONS, OBJECTIONS AND OTHER MATTERS
(Continued)**

Guarantee No. CT12-30185-ALB

7.

REDACTED

8.

REDACTED

9.

REDACTED

10.

REDACTED

11.

REDACTED

12.

REDACTED

13.

REDACTED

14.

REDACTED

15.

REDACTED

16.

REDACTED

**SCHEDULE D
EXCEPTIONS, OBJECTIONS AND OTHER MATTERS
(Continued)**

Guarantee No. CT12-30185-ALB

17.

REDACTED

18.

REDACTED

19.

REDACTED

20.

REDACTED

Title No. CT12-30185-ALB

TAX SEARCH**RETURNS**

Our policy does not insure against taxes, water rates, assessments and other matters relating to taxes which have not become a lien up to the date of the policy or installments due after the date of the policy. Neither our tax search nor our policy covers any part of the streets on which the premises to be insured abut. For information only, we set forth the assessed valuation for the current year. Taxes, assessments, water rates and sewer charges which are liens on the real property:

1. SECTION/BLOCK/LOT	167-435
CITY:	Saratoga Springs
PREMISES:	REDACTED
ASSESSED TO:	David and Lynn Smith
LAND VALUE	
Assessed:	\$194,800.00
Full:	\$772,700.00
EXEMPTION Type:	Star
Amount:	\$32,770.00
SCHOOL DISTRICT:	Saratoga Springs
PROPERTY CLASS CODE:	210
2012 City Tax	Total: \$6,862.88
1st Payment Due 03-01-2012:	\$1,715.72 -open + penalty- (\$1,818.66 due by 3/31/12)
2nd Payment Due 06-01-2012:	\$1,715.72 -lien, not yet due-
3rd Payment Due 09-01-2012:	\$1,715.72 -lien, not yet due-
4th Payment Due 12-01-2012:	\$1,715.72 -lien, not yet due-
2011-2012 School Tax:	Total: \$11,012.26 (\$11,452.26 w/o exemption)
1st Half Due 10-04-2011:	\$5,506.13 -open + penalty-
2nd Half Due 02-04-2012:	\$5,506.13 -open + penalty-
2011 City Tax:	Total: \$6,853.87 -open + penalty- (\$7,808.41 due by 3/31/12)
2010-2011 School Tax:	Total: \$5,529.54 (\$6,226.01 due by 3/31/12)
Water Account #:	03-1576
Water to 2/15/2012	\$111.18 -paid- SUBJECT TO FINAL READING

NOTE: Any unpaid water, sewer, or special assessments or housing code violations are not included or guaranteed in this search.

CTIC BK: 1652 PG: 769 Q8/04/2003 DESD Image: 1 of 3

NYC BR 1862 PG: 789 DED 09/04/2003 TIME 04:04

RECEIVED
COUNTY CLERK'S OFFICE
RECEIVED

1997年12月15日 星期三

[illegible]

THE UNIVERSITY OF CHICAGO

2025年1月1日 星期三 10:00

SENTS OF NEW YORK
SARATOGA COUNTY CLERK
RECORDED ON 08/06/2002 AT 12:53:02
IN BOOK OF MARRIAGE PAGE 375 OF 418

2000年12月22日 星期一

THE NAME IS THAT OF THE SUBJECT

[illegible]

CTIC BK: 1652 PG: 769 08/04/2003 DEED Image: 3 of 3

CTIC BK: 3291 PG: 246 09/19/2003 MORTGAGE Image: 1 of 6

SECOND, that said parties of the first part will forever WARRANT title to said premises.

THIRD, in compliance with Sec. 13 of the Lien Law, the grantors will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals the day and year first above written.

IN PRESENCE OF

STATE OF NEW YORK :
COUNTY OF SARATOGA:

On this 30th day of July, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared JAMES RYMAN personally known to me, provided hereon the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or person on behalf of which the individual acted, executed the instrument.

STATE OF NEW YORK :
COUNTY OF SARATOGA:

On this 30th day of July, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared DEBRA J. RYMAN personally known to me, provided hereon the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or person on behalf of which the individual acted, executed the instrument.

R & R:
Mary Ann McGinn, Esq.
1750 State Street
Albany, NY 12207

1652 769 0779

Saratoga County
County Clerk's Receivable Page
RECEIPT NO. 704623

BOOK OF MORTGAGES
BOOK 01251 PAGE 00246
NO. PAGES 5
INSTRUMENT CODE: MTS
INSTRUMENT NO.: 200410918
SCANNED BY:

RECORDING:
Cover Sheet Fee (Indy MTD) 3.00
Mortgage Tax Fee 20.00
Mortgage Fee (MTD) 1,172.50
Notary Fee (MTD) 5.00
Miscellaneous 15.00
Fees 15.00
TOTAL: 1,172.50

SERIAL #: C7200410918

RECORDING TAX 577.00
COUNTY 243.50
SARATOGA 246.50
TOTAL: 1,123.00
SARATOGA COUNTY CLERK

STATE OF NEW YORK
SARATOGA COUNTY CLERK
RECORDED ON 09/13/2003 AT 09:40:00
IN BOOK OF MORTGAGES PAGE 00246 OF 01251

Kathleen A. Marchione
SARATOGA COUNTY CLERK

THIS PAGE IS PART OF THE INSTRUMENT

SCHEDULE A

[illegible]

Being the same premises conveyed to David L. Smith and Lynn A. Smith by deed from
 Joseph E. Ryman and Debra J. Ryman fully recorded in the Albany County Clerk's
 Office.

The real property covered by this mortgage is improved, or to be improved, by a one (1) or two (2) family residence or dwelling only. Exemption is requested pursuant to Section 233(2) of the New York State Tax Law.

1000-0000/00/0000-0000\$10.00/0

REDACTED

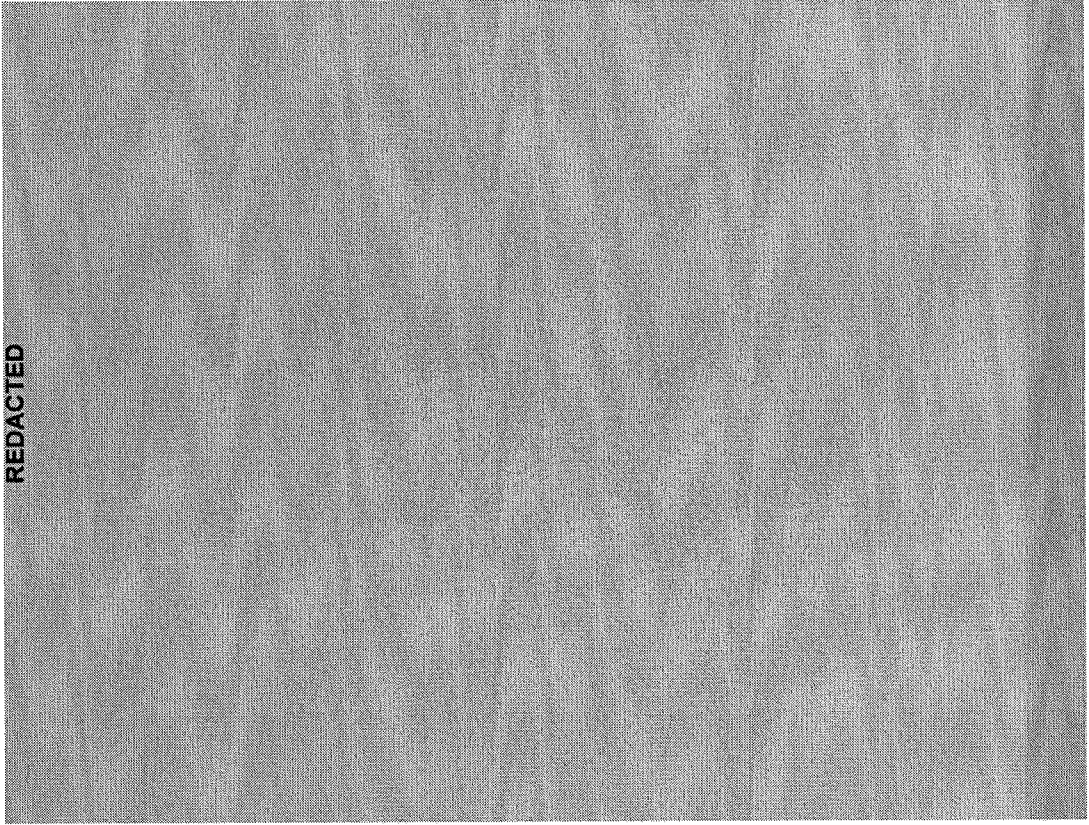
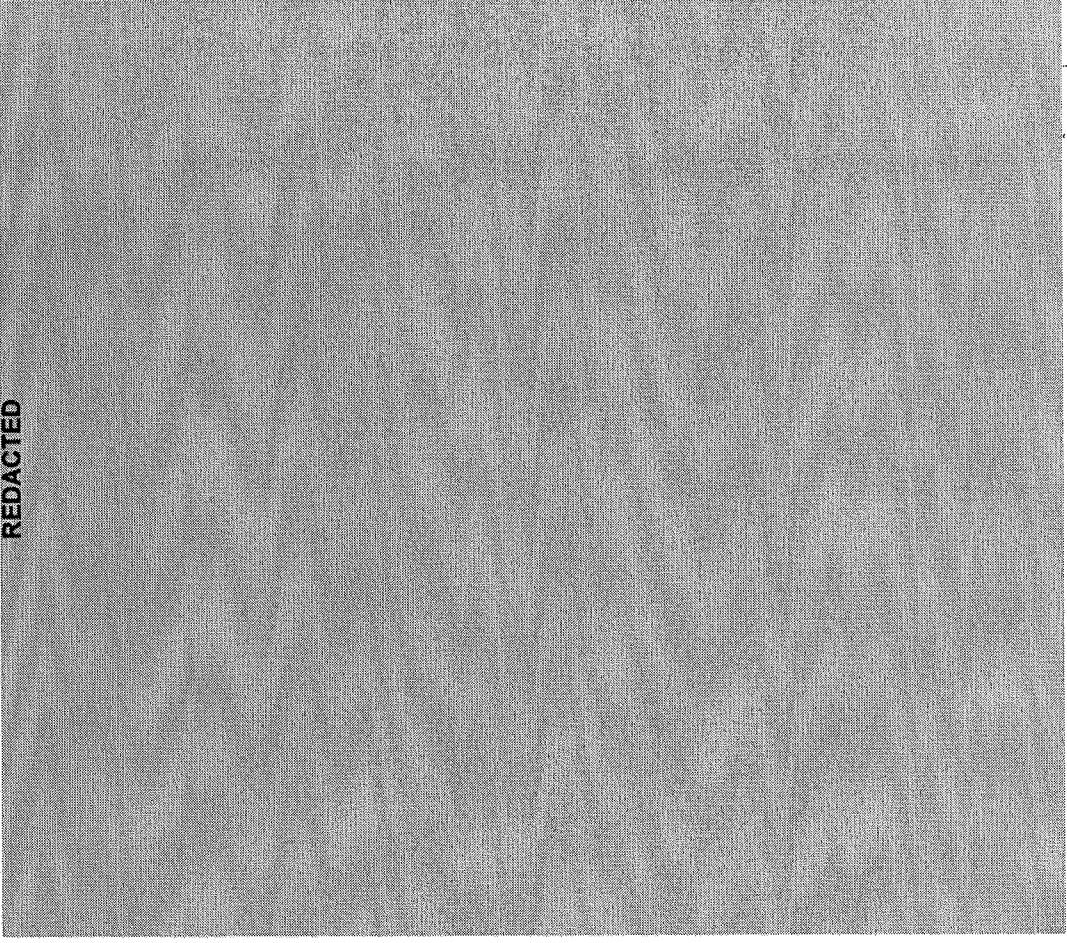
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12/10/2003 TRANSCRIPT, Image: 1 of 1

REDACTED

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REDACTED



REDACTED

06/11/2009 TRANSCRIPT Image: 1 of 1

REDACTED

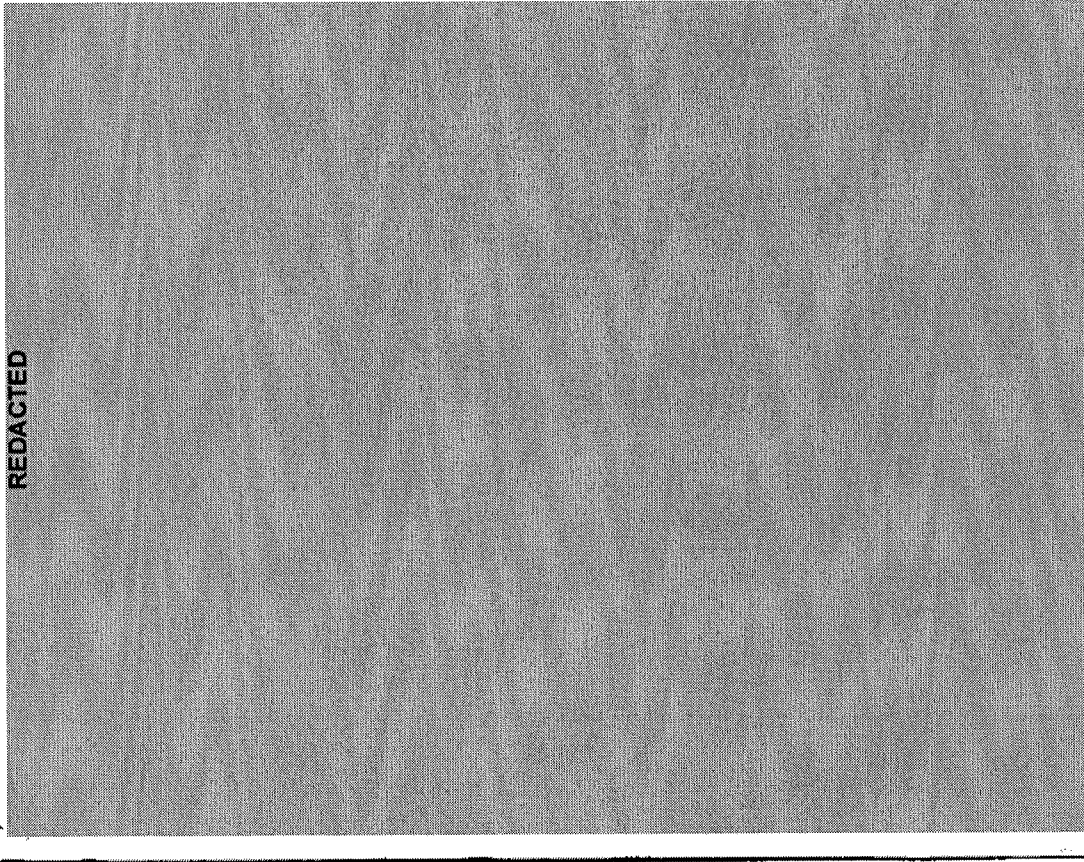
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08/27/2008 REDACTED (NY STATE TAX) Image: 1 of 1

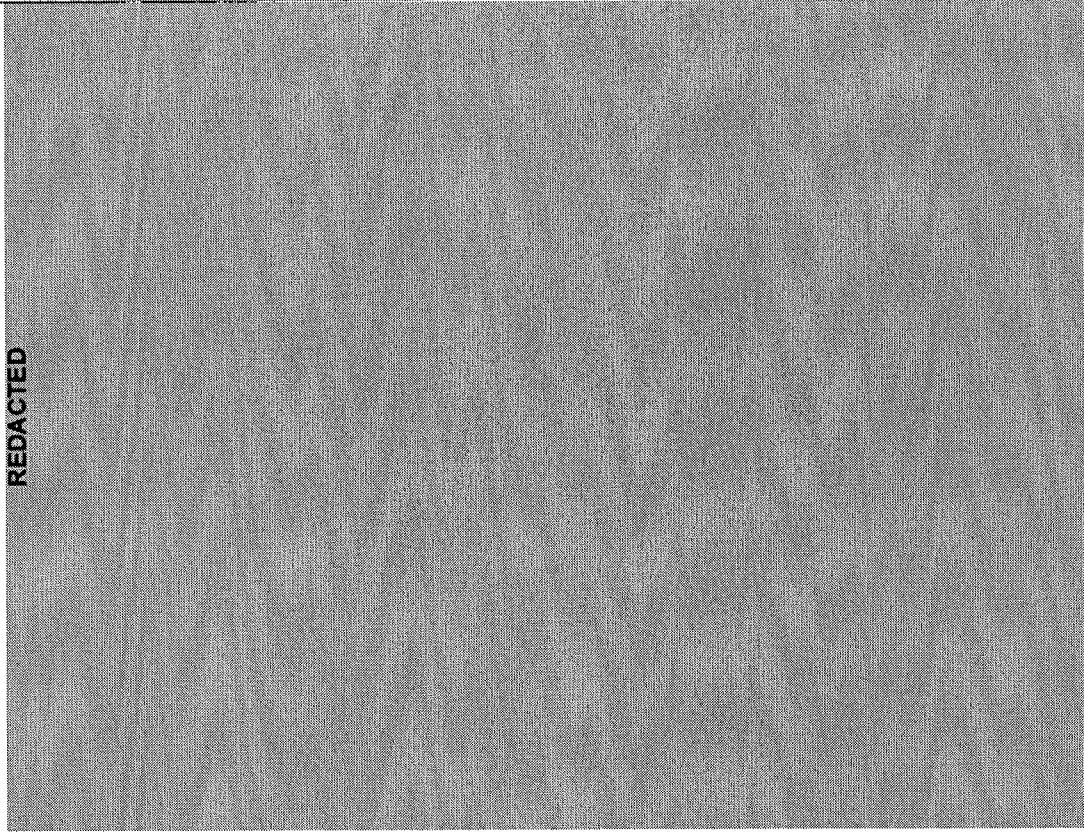
REDACTED

REDACTED

REDACTED 06/01/2005 Image 1 of 1



REDACTED 05/02/2006 Image 1 of 1

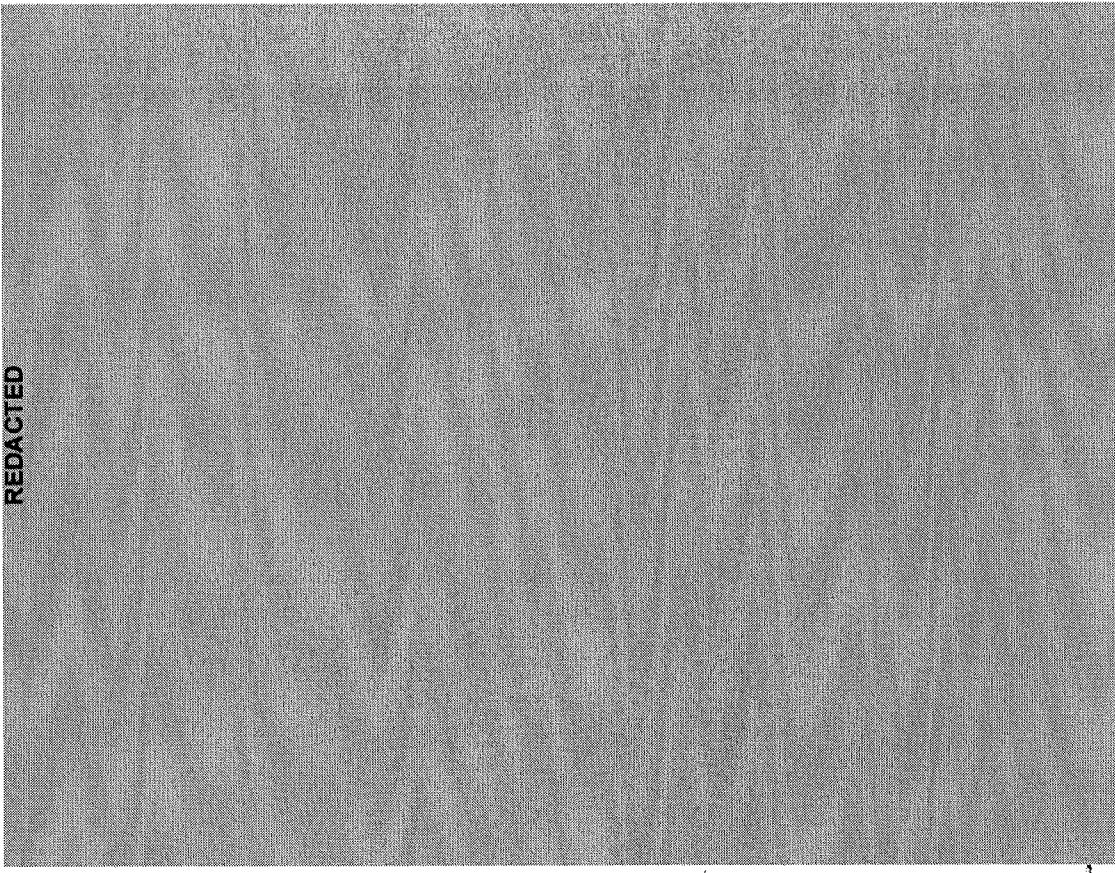


REDACTED 09/24/2007 Image: 1 of 1

REDACTED

REDACTED 03/30/2008 Image: 1 of 1

REDACTED



REDACTED

CTLC INSTR#4: 2010012667 04/23/2010 MISC RECORDING Image: 2 of 32

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U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

APR 20 2010

LAWRENCE K. BAERMAN, CLERK
ALBANY

10-cv-457 (LKB/RT)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

MCGINN, SMITH & CO., INC.;
MCGINN, SMITH ADVISORS LLC;
MCGINN, SMITH CAPITAL HOLDINGS CORP.;
FIRST ADVISORY INCOME NOTES, LLC;
FIRST EXCELLENCE INCOME NOTES, LLC;
FIRST INDEPENDENT INCOME NOTES, LLC;
THIRD ALBANY INCOME NOTES, LLC;
TIMOTHY M. MCGINN; AND
DAVID L. SMITH,

Defendants, and

LYNN A. SMITH,

Relief Defendant.

ORDER TO SHOW CAUSE,
TEMPORARY RESTRAINING ORDER,
AND ORDER FREEZING ASSETS AND GRANTING OTHER RELIEF

On the Application of Plaintiff Securities and Exchange Commission (the "Commission")

for an Order:

- (1) freezing defendants McGinn, Smith & Co., Inc. ("MS & Co."); McGinn, Smith
Advisors LLC ("MS Advisors"); McGinn, Smith Capital Holdings Corp. ("MS Capital"); First
Advisory Income Notes, LLC ("FAIN"); First Excellence Income Notes, LLC ("FEIN"); First
Independent Income Notes, LLC ("FIN"); Third Albany Income Notes, LLC ("TAIN");

Timothy M. McGinn; David L. Smith (collectively, the "Defendants") to show cause why an
Order should not be entered, pending a final disposition of this Emergency matter. This is a printed
copy of a document which was
electronically filed with the
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK.
LAWRENCE K. BAERMAN, CLERK

Dated: 4/22/2010
By: [Signature] Deputy Clerk

2010012667
04/22/2010 03:32:24 PM
32 Pages
MISC RECORDING

William A. Matthews Forensic Co. Clerk

Record and Return To:

WILLIAM J. BROWN
PHILLIPS LYDLE LLP
3400 HSBC CENTER
BUFFALO NY 14203-2887

CTIC INSTR# : 2010012667 04/23/2010 MISC RECORDING Image: 3 of 32

CTIC INSTR# : 2010012667 04/23/2010 MISC RECORDING Image: 4 of 32

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(a) preliminarily enjoining:

- (i) MS & Co., MS Capital, FAIN, FEIN, FEIN, TAIN, McGinn and Smith from violating Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77(a) and 77(c);
- (ii) MS & Co., MS Advisors, MS Capital, McGinn and Smith from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77(a) and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78(b) and Exchange Act Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5;
- (iii) MS & Co., MS Advisors, McGinn and Smith from violating Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-2(1) and (2), and Rule 206(d)-3 thereunder, 17 C.F.R. § 275.206(d)-3;
- (iv) MS & Co. from violating Section 15(o)(1)(A) of the Exchange Act, 15 U.S.C. § 78(o)(1), and Smith and McGinn from aiding and abetting this violation; and,
- (v) FAIN, FEIN, FEIN and TAIN from violating Section 7(a) of the Investment Company Act of 1940 ("Company Act"), 15 U.S.C. § 80a-7.
- (b) freezing the Defendants' and Lynn Smith's (the "Relief Defendant") assets;
- (c) directing McGinn and Smith (the "Individual Defendants") to provide verified accountings for themselves and MS & Co., MS Advisors, MS

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- Capital, FAIN, FEIN, FEIN and TAIN (the "Entity Defendants"), and the Relief Defendant to provide a verified accounting for herself;
- (d) appointing a receiver for the Entity Defendants and all other entities McGinn and/or Smith control or have an ownership interest in (collectively the "MS Entities"); and
- (e) prohibiting the destruction, alteration or concealment of documents pending adjudication of the foregoing, an Order:
- (4) temporarily restraining the Defendants from violating the aforementioned statutes and rules;
- (b) freezing the Defendants' and Relief Defendant's assets;
- (c) directing each of the Individual Defendants to immediately provide the verified accountings for themselves and the Entity Defendants, and the Relief Defendant to provide the verified accountings for herself;
- (d) appointing a temporary receiver for the MS Entities;
- (e) prohibiting the destruction, alteration or concealment of documents by the Defendants; and
- (f) providing that the parties may take expedited discovery in preparation for a preliminary injunction hearing on this Order to Show Cause.

This Court has considered: (1) the Complaint filed by the Commission, dated April 20, 2010; (2) the Declaration of Israel Mays, executed on April 20, 2010, and the exhibits thereto; (3) the Declaration of Lara Shalov-Mehrabian, executed on April 20, 2010, and the exhibits thereto; and (4) the memorandum of law in support of Plaintiff Commission's application, dated April 20, 2010.

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Based upon the foregoing documents, the Court finds that a proper showing, as required by Section 206(b) of the Securities Act, Section 21(c) of the Exchange Act, Section 209(d) of the Advisers Act, and Section 42(b) of the Company Act, has been made for the relief granted herein, for the following reasons:

1. It appears from the evidence presented that, unless temporarily restrained, (1) Defendant MS & Co. has violated, and will continue to violate, Sections 5(e) and 5(c) of the Securities Act, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act and Rule 10b-5, Section 206(1), 206(2), and 206(4) of the Advisers Act and Adviser Act Rule 206(4)-8, and Section 15(c)(e)(1) of the Exchange Act; (2) Defendant MS Advisers has violated, and will continue to violate, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act and Rule 10b-5, Section 206(1), 206(2), and 206(4) of the Advisers Act and Adviser Act Rule 206(4)-8; (3) Defendant MS Capital has violated, and will continue to violate, Sections 5(e) and 5(c) of the Securities Act, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act and Rule 10b-5; (4) Defendants FAD, FEIN, FIN and TADN have violated, and will continue to violate, Section 7(e) of the Company Act; and (5) Defendants McChen and Smith have violated, and will continue to violate Sections 5(e) and 5(c) of the Securities Act, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act and Rule 10b-5, and Section 206(1), 206(2), and 206(4) of the Advisers Act and Adviser Act Rule 206(4)-8, and Defendants McChen and Smith have aided and abetted, and will continue to aid and abet MS & Co.'s violation of Section 15(c)(e)(1) of the Exchange Act.

2. It appears that the Defendants and Relief Defendant may attempt to dissipate, deplete, or transfer from the jurisdiction of this Court, funds, property and other assets that could

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be subject to an order of disgorgement or an order imposing civil penalties. It appears that an order freezing the Defendants' and Relief Defendant's assets, as specified herein, is necessary to preserve the *status quo*, to protect investors and clients of the Defendants from further transfers of funds and misappropriation, to protect this Court's ability to award equitable relief in the form of disgorgement of illegal profits from fraud and civil penalties, and to preserve the Court's ability to approve a fair distribution for victims of the fraud.

3. It appears that an order requiring each of the Individual Defendants and Relief Defendant to provide a verified accounting of their assets, money and property held directly or indirectly by the Defendants and Relief Defendant, or by others for the direct and indirect beneficial interest of the Defendants and Relief Defendant, is necessary to effectuate and ensure compliance with the freeze imposed on the Defendants' and Relief Defendant's assets.

4. It appears that the Defendants may attempt to destroy, alter or conceal documents.

5. It appears that the appointment of a receiver for the MS Entities is necessary to (i) preserve the *status quo*; (ii) ascertain the extent of commingling of funds among the MS Entities; (iii) ascertain the true financial condition of the MS Entities and the disposition of investor funds; (iv) prevent further dissipation of the property and assets of the MS Entities; (v) prevent the encumbrance or disposal of property or assets of the MS Entities and the investors; (vi) preserve the books, records and documents of the MS Entities; (vii) be available to respond to investor inquiries; (viii) protect investors' assets; and (ix) determine whether the MS Entities should undertake bankruptcy filings.

6. Good and sufficient reasons have been shown why procedure other than by notice of motion is necessary.

7. This Court has jurisdiction over the subject matter of this action and over the

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Defendants and Relief Defendant, and venue properly lies in this District.

NOW, THEREFORE,

I.

IT IS HEREBY ORDERED that the Defendants show cause, if there be any, to this Court at 3:00 p.m. on the 3rd day of May, 2010, in Room 6 of the James T. Foley United States Courthouse, 445 Broadway, Albany, NY 12207-2924, why this Court should not enter an Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, Section 20 of the Securities Act, and Section 21 of the Exchange Act, Section 209(b) of the Advisers Act, and Section 42 of the Company Act preliminarily enjoining:

- (1) MS & Co., MS Capital, FAIN, FEIN, FIN, McGinn and Smith from violating Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77f(4) and 77d(4);
- (2) MS & Co., MS Advisers, MS Capital, McGinn and Smith from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77(a) and Section 10(b) of the Exchange Act, 15 U.S.C. § 78(b) and Exchange Act Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5;
- (3) MS & Co., MS Advisers, McGinn and Smith from violating Sections 206(1), 206(2), and 206(4) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and (2), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8;
- (4) MS & Co., from violating Section 15(c)(1)(A) of the Exchange Act, 15 U.S.C. § 78(o)(1), and Smith and McGinn from aiding and abetting this violation; and,
- (5) FAIN, FEIN, FIN and TAIN from violating Section 7(e) of the Company Act, 15 U.S.C. § 80a-7.

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II.

IT IS FURTHER ORDERED that the Defendants show cause at that time why this Court should not also enter an Order directing that, pending a final disposition of this action, the Defendants, the Relief Defendant, and each of their financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, disposition, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the direct or indirect control of the Defendants and Relief Defendant, including but not limited to, the MS Entities, including but not limited to, those entities listed on Exhibit A, whether held in any of their names or for any of their direct or indirect beneficial interest whenever situated, in whatever form such assets may presently exist and wherever located within the territorial jurisdiction of the United States courts, and directing each of the financial or brokerage institutions, debtors and bailees, or any other person or entity holding such assets, funds or other property of the Defendants and Relief Defendant to hold or retain within its or his control and prohibit the withdrawal, removal, transfer or other disposal of any such assets, funds or other properties including but not limited to, all assets, funds, or other properties held in the accounts listed on Exhibit B, as well as each real estate parcel owned directly or indirectly by the MS Entities, including but not limited to, those entities listed on Exhibit A.

III.

IT IS FURTHER ORDERED that the Defendants show cause at that time why this

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Court should not also enter an Order enjoining and restricting them, and any person or entity acting at their direction or on their behalf, or any other person, from destroying, altering, concealing or otherwise interfering with the access of Plaintiff Commission and the receiver to any and all documents, books and records, that are in the possession, custody or control of the Defendants, and each of their officers, agents, employees, servants, accountants, financial or brokerage institutions, attorneys-in-fact, subsidiaries, affiliates, predecessors, successors and related entities, including but not limited to, the MS Entities, including but not limited to, those entities listed on Exhibit A, that refer, reflect or relate to the allegations in the Complaint, including, without limitation, documents, books, and records reflecting, reflecting or relating to the Defendants' finances or business operations.

IV.

IT IS FURTHER ORDERED that the Defendants show cause at that time why this Court should not also enter an Order directing each of the Individual Defendants to serve upon Plaintiff Commission, within three (3) business days, or within such extension of time as the Commission agrees to, a verified written accounting each signed by Defendants McGinn and Smith and also signed by the officers or employees of the Entity Defendants who are most knowledgeable about the assets, liabilities and general financial condition of each of the Defendants, and verified accountings signed by each of the Individual Defendants and the Relief Defendant identifying their own assets, liabilities and general financial condition, if any, under penalty of perjury. Each of the Defendants and Relief Defendant shall serve such sworn updated written accountings by hand delivery, facsimile transmission to (212) 336-1324 or overnight courier service on the Commission's counsel, David Stelling, Esq., Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281.

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V.

IT IS FURTHER ORDERED that Individual Defendants and Relief Defendant shall file with the Court and serve on the Commission, within three (3) business days following service of this Order, a list of all accounts at all banks, brokerage firms or financial institutions (including the name of the financial institution and the name and number on the account), tax identification numbers, telephone or facsimile transmission numbers (including numbers of pagers and mobile telephones), electronic mail addresses, World Wide Web sites or Universal Records Locations, Internet bulletin board sites, online interactive conversational spaces or chat rooms, Internet or electronic mail service providers, street addresses, postal box numbers, safety deposit boxes, and storage facilities used or maintained by them or under their direct or indirect control, at any time from January 1, 2005 to the present including but not limited to information concerning the MS Entities, including but not limited to, those entities listed on Exhibit A.

VI.

IT IS FURTHER ORDERED that the Defendants show cause at that time why this Court should not also enter an Order appointing or continuing the appointment of a receiver for the MS Entities and all entities they control or have an ownership interest in including but not limited to, those entities listed on Exhibit A, to (i) preserve the *status quo*, (ii) ascertain the extent of commingling of funds among the MS Entities; (iii) ascertain the true financial condition of the MS Entities and the disposition of investor funds; (iv) prevent further dissipation of the property and assets of the MS Entities and all entities they control or have an ownership interest in; (v) prevent the encumbrance or disposal of property or assets of the MS Entities and the investors; (vi) preserve the books, records and documents of the MS Entities; (vii) be available to respond to investor inquiries; (viii) protect the assets of the MS Entities from further

disipation; and (ix) determine whether the MS Entities should undertake bankruptcy filings.

To effectuate the foregoing, the receiver would be empowered to:

- (a) Take and retain immediate possession and control of all of the assets and property, and all books, records and documents of the MS Entities including but not limited to, the entities listed on Exhibit A, and the rights and powers of it with respect thereto including the powers set forth in the management agreements and LLC agreements and/or operating agreements applicable to any LLCs or other property or entities owned or controlled by the Defendants;
- (b) Have exclusive control of, and be made the sole authorized signatory for, all accounts at any bank, brokerage firm or financial institution that has possession or control of any assets or funds of the MS Entities including but not limited to, the entities listed on Exhibit A;
- (c) Pay from available funds necessary business expenses required to preserve the assets and property of the MS Entities including but not limited to, the entities listed on Exhibit A, including the books, records, and documents of the MS Entities and all entities they control or have an ownership interest in, notwithstanding the asset freeze imposed by paragraph II, above;
- (d) Take preliminary steps to locate assets that may have been conveyed to third parties or otherwise concealed;
- (e) Take preliminary steps to ascertain the disposition and use of funds obtained by the Defendants resulting from the sale of securities issued by MS Entities including but not limited to, the entities listed on Exhibit A;
- (f) Engage and employ persons, including accountants, attorneys and experts, to

assist in the carrying out of the receiver's duties and responsibilities hereunder;

- (g) Report to the Court and the parties within 45 days from the date of the entry of this Order, subject to such reasonable extensions as the Court may grant, the following information:

1. All assets, money, funds, securities, and real or personal property then held directly or indirectly by or for the benefit of the MS Entities and all entities they control or have an ownership interest in, including but not limited to, real property, bank accounts, brokerage accounts, investments, business interests, personal property, wherever situated, identifying and describing each asset, its current location and value;
2. A list of secured creditor and other financial institutions with an interest in the receivership assets;
3. To the extent practicable, a list of investors in the MS Entities including but not limited to, the entities listed on Exhibit A;
- (h) The receiver's preliminary plan for the administration of the assets of the receivership, including a recommendation regarding whether bankruptcy cases should be filed for all of a portion of the assets subject to the receivership and a recommendation whether litigation against third parties should be commenced on a contingent fee basis to recover assets for the benefit of the receivership.

VII.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, MS & Co, MS Capital, FAIN, FEIN, FIN, TARN, McGinn and Smith and each of them, their agents, servants, employees, and

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attorney-in-fact, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from, directly or indirectly, singly or in concert, in the offer or sale of any security, by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails to offer or sell securities through the use or medium of a prospectus or otherwise when no registration statement has been filed or is in effect as to such securities and when no exemption from registration is available in violation of Sections 5(a) and 5(c) of the Securities Act.

VIII.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, MS & Co., MS Advisors, MS Capital, and each of their financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service, or otherwise, and each of them, are temporarily restrained from violating, directly or indirectly, Section 10(b) of the Exchange Act, 15 U.S.C. § 78(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

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- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IX.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, MS & Co., MS Advisors, MS Capital, and each of their financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service, or otherwise, and each of them, who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77(a), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

X.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, MS & Co., and each of its officers,

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agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from violating Section 15(c) of the Exchange Act, 15 U.S.C. § 78(o)(6), and 17 C.F.R. § 240.10b-3, by while acting as a broker or dealer, directly or indirectly, making use of the mails or any instrumentality of interstate commerce, or any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of any security otherwise than on a national exchange of which it is a member, by means of any manipulative, deceptive or other fraudulent device or contrivance, or to use or employ, in connection with the purchase or sale of any security otherwise than on a national securities exchange, any act, practice, or course of business defined by the Commission to be included within the term "manipulative, deceptive or other fraudulent device or contrivance" as such term is used in Section 15(c)(1) of the Exchange Act.

XI.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, the Individual Defendants, and each of their financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from aiding and abetting any broker's or dealer's violations of Section 15(c) of the Exchange Act, 15 U.S.C. § 78(o)(6), by providing substantial assistance

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to an individual or entity, which, while acting as a broker or dealer, directly or indirectly, makes use of the mails or any instrumentality of interstate commerce or any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of any security otherwise than on a national exchange of which it is a member, by means of any manipulative, deceptive or other fraudulent device or contrivance, or to use or employ, in connection with the purchase or sale of any security otherwise than on a national securities exchange, any act, practice, or course of business defined by the Commission to be included within the term "manipulative, deceptive or other fraudulent device or contrivance" as such term is used in Section 15(c)(1) of the Exchange Act.

XII.

IT IS FURTHER ORDERED that pending a hearing and determination of the Commission's Application for Preliminary Injunction, MS & Co., MS Advisors and each of their officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from violating Sections 206(1), 206(2) and 206(4) of the Advisers Act, 15 U.S.C. §§ 80b-4(1) and (2), and Rule 206(q)-8 thereunder, 17 C.F.R. § 275.206(4)-8, while acting as an investment adviser, by the use of the mails or any means or instrumentality of interstate commerce, directly or indirectly to employ any device, scheme or artifice to defraud any client or prospective client; to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client; to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.

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XIII.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, FAIN, FEIN, FIN, and TAIN and each of their officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from violating Section 7(a) of the Company Act, 15 U.S.C. § 80a-7, while acting as an investment company, shall directly or indirectly, offer for sale, sell, or deliver after sale, by the use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person, or offer for sale, sell, or deliver after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by use of the mails or any means or instrumentality of interstate commerce; purchase, redeem, retire, or otherwise acquire or attempt to acquire, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; control any investment company which does any of the acts enumerated above; engage in any business in interstate commerce, or control any company which is engaged in any business in interstate commerce.

XIV.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for a Preliminary Injunction, the Defendants, and each of their

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financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the direct or indirect control of the Defendants, including but not limited to, entities owned or controlled by, related to, or associated or affiliated with the MS Entities including but not limited to, those entities listed on Exhibit A, whether held in any of their names or for any of their direct or indirect beneficial interest wherever situated, in whatever form such assets may presently exist and wherever located within the territorial jurisdiction of the United States courts, and directing each of the financial or brokerage institutions, debtors and bullies, or any other person or entity holding such assets, funds or other property of the Defendants to hold or retain within its or his control and prohibit the withdrawal, removal, transfer or other disposal of any such assets, funds or other properties including but not limited to, all assets, funds or other properties held in the accounts listed in Exhibit B, as well as each real estate parcel owned directly or indirectly by the MS Entities including but not limited to, those entities listed on Exhibit A.

XV.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for a Preliminary Injunction, the Defendants, any person or entity acting at their direction or on their behalf, and any other third party including but not limited to any investor, be and hereby are enjoined and restrained from destroying, altering, concealing or

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otherwise interfering with the access of Plaintiff Commission and the receiver to any and all documents, books, and records that are in the possession, custody or control of the Defendants and each of their respective officers, agents, employees, servants, accountants, financial or brokerage institutions, or attorneys-in-fact, subsidiaries, affiliates, predecessors, successors and related entities, including but not limited to, the MS Entities, that refer, reflect or relate to the allegations in the Complaint, including, without limitation, documents, books and records referring, reflecting or relating to the Defendants' finances or business operations, or the offer, purchase or sale of securities and the use of proceeds therefrom; and (2) ordered to provide all reasonable cooperation to the receiver in carrying out his duties set forth herein.

XVI.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for a Preliminary Injunction, each of the Defendants shall file with this Court and serve upon Plaintiff Commission, within three (3) business days, or within such extension of time as the Commission agrees to, a verified written accounting signed by each of the Individual Defendants, and the officers or employees of the MS Entities who are most knowledgeable about the assets, liabilities and general financial condition of the each of the Defendants, if any, under penalty of perjury, of:

- (1) All assets, liabilities and property currently held, directly or indirectly, by or for the benefit of each Defendant, including, without limitation, bank accounts, brokerage accounts, investments, business interests, loans, lines of credit, and real and personal property wherever situated, describing each asset and liability, its current location and amount;
- (2) All money, property, assets and income received by each such Defendant for his

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direct or indirect benefit from the other Defendants, at any time from January 1, 2005 through the date of such accounting, describing the amount, disposition and current location of each of the items listed;

- (3) The names and last known addresses of all bailees, debtors, and other persons and entities that currently are holding the assets, funds or property of each Defendant; and
- (4) All assets, funds, securities and real or personal property invested by each such Defendant, or any other person controlled by them, and the disposition of such assets, funds, securities, real or personal property.

Each Individual Defendant and the officers or employees of the Entity Defendants who are most knowledgeable about the assets, liabilities and general financial condition of the Defendants, if any, shall verify the Entity Defendant's accounting and serve such sworn statements of asset identifying information by hand delivery, facsimile transmission to (212) 336-1324 or overnight courier service on the Commission's counsel, David Stuebeling, Esq., Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281. Each of the Individual Defendants is required to provide the Commission with an accounting for his own personal assets, liabilities and general financial condition, and also provide an accounting for each of the Entity Defendants. The Reiter Defendant is required to provide the Commission with an accounting for her own personal assets, liabilities and general financial condition.

XVII.

IT IS FURTHER ORDERED that William T. Stuebeling, pending further order of this Court, be and hereby is appointed to act as receiver for the MS Entities including

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- (e) Take preliminary steps to locate assets that may have been conveyed to third parties or otherwise concealed;
- (f) Take preliminary steps to ascertain the disposition and use of funds obtained by the Defendants resulting from the sale of securities issued by the Defendants and the entities they control;
- (g) Engage and employ persons, including accountants, attorneys and experts, to assist in the carrying out of this receiver's duties and responsibilities hereunder;
- (h) Take all necessary steps to gain control of the Defendants' interests in assets in foreign jurisdictions, including but not limited to taking steps necessary to repatriate foreign assets; and
- (i) Take such further action as the Court shall deem equitable, just and appropriate under the circumstances upon proper application of the receiver.

XVIII.

IT IS FURTHER ORDERED that no person or entity, including any creditor or claimant against any of the Defendants, or any person acting on behalf of such creditor or claimant, shall take any action without further order of this Court to interfere with the taking control, possession, or management of the assets, including but not limited to the filing of any lawsuits, liens or circumstances or bankruptcy cases to impact the property and assets subject to this order.

XIX.

IT IS FURTHER ORDERED that the Defendants shall pay the reasonable costs, fees and expenses of the receiver incurred in connection with the performance of his duties described

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herein, including but not limited to the reasonable costs, fees and expenses of all persons who may be engaged or employed by the receiver to assist him in carrying out his duties and obligations. All applications for costs, fees and expenses of the receiver and those employed by him shall be made by application to the Court setting forth in reasonable detail the nature of such costs, fees and expenses and shall conform to the Fee Guidelines that will be supplied by the U.S. Securities and Exchange Commission.

XX.

IT IS FURTHER ORDERED that discovery is expedited as follows: pursuant to Rules 26, 30, 31, 33, 34, 36 and 45 of the Federal Rules of Civil Procedure, and without the requirement of a meeting pursuant to Fed. R. Civ. P. 26(f), the parties and the receiver may:

- (1) Take depositions, subject to two (2) calendar days' notice by facsimile or otherwise;
- (2) Obtain the production of documents, within three (3) calendar days from service by facsimile or otherwise of a request or subpoena from any persons or entities, including non-party witnesses; and
- (3) Service of any discovery requests, notices, or subpoenas may be made by personal service, facsimile, overnight courier, or first-class mail on an individual, entity or the individual's or entity's attorney; and
- (4) The receiver may take discovery in this action without further order of the Court.

XXI.

IT IS FURTHER ORDERED that a copy of this Order and the papers supporting the Commission's Application be served upon the Defendants and Relief Defendant on or before Wednesday, April 11, 2010, by personal delivery, facsimile, overnight courier, or first-class

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mail.

XXII.

IT IS FURTHER ORDERED that the Defendants and Relief Defendant shall deliver any opposing papers in response to the Order to Show Cause above no later than Thursday, April 15, 2010, at 4:00 p.m. Service shall be made by delivering the papers, using the most expeditious means available, by that date and time, to the New York Regional Office of the Commission at 3 World Financial Center, Room 4300, New York, New York 10281, Attn: David Stoelting Esq., or such other place as counsel for the Commission may direct in writing. The Commission shall have until Thursday, April 22, 2010, at 5:00 p.m., to serve, by the most expeditious means available, any reply papers upon the Defendants and Relief Defendants, or upon their counsel, if counsel shall have made an appearance in this action.

XXIII.

IT IS FURTHER ORDERED that this Order shall be, and is, binding upon the Defendants and Relief Defendants and each of their respective officers, agents, servants, employees, attorneys-in-fact, subsidiaries, affiliates and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, or otherwise.

Issued at: 2:00 p.m.
April 24, 2010
Albany, New York

UNITED STATES DISTRICT JUDGE

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EXHIBIT A

A

Exhibit A
List of Keywa Entities Controlled By McGinn and/or Smith

107th Associates LLC Trust 07
107th Associates LLC
74 State Street Capital LP
Acquisition Trust 03
Capital Center Credit Corporation
CMB Financial Services
Cruise Charter Ventures LLC dba YOLO Cruises
Cruise Charter Ventures Trust 08
First Advisory Income Notes LLC
First Commercial Capital Corp.
First Explorer Income Notes LLC
First Independent Income Notes LLC
FirstLine Junior Trust 07
FirstLine Senior Trust 07
Fortress Trust 08
Integrated Excellence Junior Trust
Integrated Excellence Junior Trust 08
Integrated Excellence Senior Trust
Integrated Excellence Senior Trust 08
IP Investors
James J. Carroll Charitable Fund
JGC Trust 09
K&G Acquisition Corp.
K&B Cable Holdings LLC
Luxury Cruise Center, Inc.
Luxury Cruise Holdings, LLC
Luxury Cruise Receivables, LLC
M & S Partners
McGinn, Smith & Co.
McGinn, Smith Acceptance Corp.
McGinn, Smith Advisors
McGinn, Smith Asset Management Corp.
McGinn, Smith Asset Management
McGinn, Smith Capital Holdings
McGinn, Smith Capital Management LLC
McGinn, Smith Financial Services Corp.
McGinn, Smith FirstLine Funding LLC
McGinn, Smith Funding LLC
McGinn, Smith Group LLC
McGinn, Smith Holdings LLC
McGinn, Smith Independent Services Corp.
McGinn, Smith Licensing Co.

McGinn, Smith Transaction Funding Corp.
Mr. Cranberry LLC
MS Partners
MSFC Security Holdings LLC
NHI Capital LLC
Pacific Trust 02
Pine Street Capital Management LLC
Pine Street Capital Partners LP
Point Capital LLC
Prime Vision Communications LLC
Prime Vision Communications Management Keys Cove LLC
Prime Vision Communications of Outer Cove LLC
Prime Vision Funding of Outer Cove LLC
Prime Vision Funding of Key Cove LLC
RTC Trust 02
SAI Trust 00
SAI Trust 03
Security Participation Trust I
Security Participation Trust II
Security Participation Trust III
Security Participation Trust IV
Seton Hall Associates
TDM Cable Funding LLC
TDM Cable Trust 06
TDM Luxury Cruise Trust 07
TDM Verifier Trust 07
TDM Verifier Trust 07R
TDM Verifier Trust 08
TDM Verifier Trust 08R
TDM Verifier Trust 09
TDM Verifier Trust 11
TDMAM Benchmark Trust 09
TDMAM Cable Funding LLC
TDMAM Cable Jr Trust 09
TDMAM Cable Sr Trust 09
Third Albany Income Notes LLC
Travel Liquidators, LLC
White Glove Cruises LLC
White Glove LLC

EXHIBIT B

[illegible]

Exhibit B
Known Bank Accounts

[illegible]

Exhibit B
Known Bank Accounts

[illegible]

Exhibit B
Crown Bank Accounts

Institution	Account Number	Name of Account Holder	Account Name 2
NECS/SLING	██████████ 521	██████████ TITUS David L Smith & Lynn A Smith, Trustees	██████████

Exhibit B
Known Bank Accounts

[illegible]

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SARATOGA COUNTY - STATE OF NEW YORK
KATHLEEN A. MARSHOME, COUNTY CLERK
40 NICHOLAS STREET, BALLSTON SPA, NY 12020

COUNTY CLERK'S RECORDING PAGE
THIS PAGE IS PART OF THE DOCUMENT - DO NOT DETACH



RECEIPT NO. : 2010211623992

Clerk: GCM
Instr #: 2010013630
Rec Date: 05/03/2010 03:23:52 PM
Doc Typ: MISC RECORDING
Num Pgs: 33
Party1: SECURITIES AND EXCHANGE
COMMISSION
Party2: MCGINN SMITH AND CO INC

Recording:
Pages 160.00
Court Sheet Fee 5.00
Recording Fee 20.00
Names 4.00
Education Fee 20.00
Sub Total: 209.00
Total: 209.00
**** NOTICE: THIS IS NOT A BILL ****

Record and Return To:

WILLIAM J BROWN
PHILLIPS LITTLE LLP
300 N. STATE STREET
BUFFALO NY 14203-2887

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff

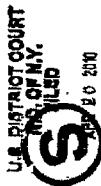
-vs-
Defendant

MCGINN, SMITH & CO, INC;
MCGINN, SMITH ADVISORS LLC;
MCGINN, SMITH CAPITAL HOLDINGS CORP;
FIRST ADVISORY INCOME NOTES, LLC;
FIRST EXCELerator INCOME NOTES, LLC;
FIRST INDEPENDANT INCOME NOTES, LLC;
THIRD ALBANY INCOME NOTES, LLC;
TIMOTHY M. MCGINN, AND
DAVID L. SMITH,

Defendants and

LYNN A. SMITH,

Next Defendant



LAWRENCE K. BAERMAN, CLERK
ALBANY

1:10-cv-457-GLS(RF)

FILED
I certify that this is a printed
electronic document which
has been filed with the
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
Date: 4/29/2010
by: [Signature] Deputy Clerk

ORDER TO SHOW CAUSE,
TEMPORARY RESTRAINING ORDER,
AND ORDER FREEZING ASSETS AND GRANTING OTHER RELIEF

On the Application of Plaintiff Securities and Exchange Commission (the "Commission")
for an Order:

- (1) directing defendants McGinn, Smith & Co., Inc. ("MS & Co."); McGinn, Smith
Advisors LLC ("MS Advisors"); McGinn, Smith Capital Holdings Corp. ("MS Capital"); First
Advisory Income Notes, LLC ("FAIN"); First Exclerator Income Notes, LLC ("FEIN"); First
Independent Income Notes, LLC ("IIN"); Third Albany Income Notes, LLC ("TAIN");
Timothy M. McGinn; David L. Smith (collectively the "Defendants") to show cause why an
Order should not be entered, granting a final disposition of this action:

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04/20/2010 02:25:52 PM
33 Pages
MISC RECORDING
RECORDED

Kathleen A. Marshome, Saratoga Co. Clerk

CTIC INSTR#: 2010013630 05/03/2010 MISC RECORDING Image: 3 of 33

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(a) preliminarily enjoining:

- (i) MS & Co., MS Capital, FAIN, FERN, FIN, TAIN, McGinn and Smith from violating Sections 5(d) and 5(e) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77d(e) and 77e(e);
- (ii) MS & Co., MS Advisors, MS Capital, McGinn and Smith from violating Section 17(e) of the Securities Act, 15 U.S.C. § 77e(e) and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and Exchange Act Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5;
- (iii) MS & Co., MS Advisors, McGinn and Smith from violating Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1) and (2), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8;
- (iv) MS & Co. from violating Section 15(c)(1)(A) of the Exchange Act, 15 U.S.C. § 78(o)(1), and Smith and McGinn from aiding and abetting the violation; and,
- (v) FAIN, FERN, FIN and TAIN from violating Section 7(e) of the Investment Company Act of 1940 ("Company Act"), 15 U.S.C. § 80a-7.
- (b) Freezing the Defendants' and Lynn Smith's (the "Relief Defendant") assets;
- (c) directing McGinn and Smith (the "Individual Defendants") to provide verified accountings for themselves and MS & Co., MS Advisors, MS

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- Capital, FAIN, FERN, FIN and TAIN (the "Entity Defendants"), and the Relief Defendant to provide a verified accounting for herself;
 - (d) appointing a receiver for the Entity Defendants and all other entities McGinn and/or Smith control or have an ownership interest in (collectively the "MS Entities"); and
 - (e) prohibiting the destruction, alteration or concealment of documents
- (2) pending adjudication of this foregoing, an Order:
- (a) temporarily restraining the Defendants from violating the aforementioned statutes and rules;
 - (b) freezing the Defendants' and Relief Defendant's assets;
 - (c) directing each of the Individual Defendants to immediately provide the verified accounts for themselves and the Entity Defendants, and the Relief Defendant to provide the verified accounts for herself;
 - (d) appointing a temporary receiver for the MS Entities;
 - (e) prohibiting the destruction, alteration or concealment of documents by the Defendants; and
 - (f) providing that the parties may take expedited discovery in preparation for a preliminary injunction hearing on this Order to Show Cause.

This Court has considered: (1) the Complaint filed by the Commission, dated April 20, 2010; (2) the Declaration of Janet Moya, executed on April 20, 2010, and the exhibits thereto; (3) the Declaration of Law Shalov McInnis, executed on April 20, 2010, and the exhibits thereto; and (4) the memorandum of law in support of Plaintiff Commission's application, dated April 20, 2010.

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Based upon the foregoing documents, the Court finds that a proper showing, as required by Section 20(b) of the Securities Act, Section 21(d) of the Exchange Act, Section 206(3) of the Advisers Act, and Section 42(d) of the Company Act, has been made for the relief granted herein, for the following reasons:

1. It appears from the evidence presented that, unless temporarily restrained, (1) Defendant MS & Co. has violated, and will continue to violate, Sections 5(a) and 5(c) of the Securities Act, Section 17(e) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act and Rule 10b-5, Section 206(1), 206(2), and 206(4) of the Advisers Act and Adviser Act Rule 206(4)-8, and Section 15(c)(6)(1) of the Exchange Act; (2) Defendant MS Advisers has violated, and will continue to violate, Section 17(e) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act and Rule 10b-5, Section 206(1), 206(2), and 206(4) of the Advisers Act and Adviser Act Rule 206(4)-8; (3) Defendant MS Capital has violated, and will continue to violate, Sections 5(a) and 5(c) of the Securities Act, Section 17(e) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act and Rule 10b-5, Section 206(1), 206(2), and 206(4) of the Advisers Act and Adviser Act Rule 206(4)-8; and (4) Defendant MS Capital has violated, and will continue to violate, Sections 5(a) and 5(c) of the Securities Act, Section 17(e) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act and Rule 10b-5, Section 206(1), 206(2), and 206(4) of the Advisers Act and Adviser Act Rule 206(4)-8, and Defendant McGinn and Smith have aided and abetted, and will continue to aid and abet MS & Co.'s violation of Section 15(c)(6)(1) of the Exchange Act.

2. It appears that the Defendants and Relief Defendant may attempt to dissipate, deplete, or transfer from the jurisdiction of this Court, funds, property and other assets that could

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be subject to an order of disgorgement or an order imposing civil penalties. It appears that an order freezing the Defendants' and Relief Defendant's assets, as specified herein, is necessary to preserve the status quo, to protect investors and clients of the Defendants from further transfers of funds and misappropriation, to protect this Court's ability to award equitable relief in the form of disgorgement of illegal profits from fraud and civil penalties, and to preserve the Court's ability to approve a fair distribution for victims of the fraud.

3. It appears that an order requiring each of the individual Defendants and Relief Defendant to provide a verified accounting of their assets, money and property held directly or indirectly by the Defendants and Relief Defendant, or by others for the direct and indirect beneficial interest of the Defendants and Relief Defendant, is necessary to effectuate and ensure compliance with the freeze imposed on the Defendants' and Relief Defendant's assets.
4. It appears that the Defendants may attempt to destroy, alter or conceal documents.
5. It appears that the appointment of a receiver for the MS Entities is necessary to (i) preserve the status quo; (ii) ascertain the extent of commingling of funds among the MS Entities; (iii) ascertain the true financial condition of the MS Entities and the disposition of investor funds; (iv) prevent further dissipation of the property and assets of the MS Entities; (v) prevent the encumbrance or disposal of property or assets of the MS Entities and the investors; (vi) preserve the books, records and documents of the MS Entities; (vii) be available to respond to investor inquiries; (viii) protect investors' assets; and (ix) determine whether the MS Entities should undertake bankruptcy filings.
6. Good and sufficient reasons have been shown why procedure other than by notice of motion is necessary.
7. This Court has jurisdiction over the subject matter of this action and over the

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Defendants and Relief Defendant, and venue properly lies in this District.

NOW, THEREFORE,

1.

IT IS HEREBY ORDERED that the Defendants show cause, if there be any, to this Court at 3:00 p.m. on the 3rd day of May, 2010, in Room 6 of the James T. Foley United States Courthouse, 445 Broadway, Albany, NY 12207-2924, why this Court should not enter an Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, Section 20 of the Securities Act, and Section 21 of the Exchange Act, Section 209(d) of the Advisers Act, and Section 42 of the Company Act preliminarily enjoining:

- (1) MS & Co., MS Capital, FAIN, FEIN, FIIN, TAIN, McGinn and Smith from violating Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c);
- (2) MS & Co., MS Advisers, MS Capital, McGinn and Smith from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77f(a) and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Exchange Act Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5;
- (3) MS & Co., MS Advisers, McGinn and Smith from violating Sections 206(1), 206(2), and 206(4) of the Advisers Act, 15 U.S.C. §§ 805-6(1) and (2), and Rule 206(f)-3 thereunder, 17 C.F.R. § 275.206(f)-3;
- (4) MS & Co. from violating Section 15(c)(1)(A) of the Exchange Act, 15 U.S.C. § 78(c)(1), and Smith and McGinn from aiding and abetting this violation; and,
- (5) FAIN, FEIN, FIIN and TAIN from violating Section 7(e) of the Company Act, 15 U.S.C. § 80a-7.

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II.

IT IS FURTHER ORDERED that the Defendants show cause at that time why this Court should not also enter an Order directing that, pending a final disposition of this action, the Defendants, the Relief Defendant, and each of their financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, disposition, concealment or other deposit of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the direct or indirect control of the Defendants and Relief Defendant, including but not limited to, the MS Entities, including but not limited to, those entities listed on Exhibit A, whether held in any of their names or for any of their direct or indirect beneficial interest wherever situated, in whatever form such assets may presently exist and wherever located within the territorial jurisdiction of the United States courts, and directing each of the financial or brokerage institutions, debtors and trustees, or any other person or entity holding such assets, funds or other property of the Defendants and Relief Defendant to hold or retain within its or his control and prohibit the withdrawal, removal, transfer or other disposal of any such assets, funds or other properties including but not limited to, all assets, funds, or other properties held in the accounts listed on Exhibit B, as well as each real estate parcel owned directly or indirectly by the MS Entities, including but not limited to, those entities listed on Exhibit A.

III.

IT IS FURTHER ORDERED that the Defendants show cause at that time why this

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Court should not also enter an Order enjoining and restraining them, and any person or entity acting at their direction or on their behalf, or any other person, from destroying, altering, concealing or otherwise interfering with the access of Plaintiff Commission and the receiver to any and all documents, books and records, that are in the possession, custody or control of the Defendants, and each of their officers, agents, employees, servants, accountants, financial or brokerage institutions, attorneys-in-fact, subsidiaries, affiliates, predecessors, successors and related entities, including but not limited to, the MS Entities, including but not limited to, those entities listed on Exhibit A, that refer, reflect or relate to the allegations in the Complaint, including, without limitation, documents, books, and records referring, reflecting or relating to the Defendants' finances or business operations.

IV.

IT IS FURTHER ORDERED that the Defendants show cause at that time why this Court should not also enter an Order directing each of the Individual Defendants to serve upon Plaintiff Commission, within three (3) business days, or within such extension of time as the Commission agrees to, a verified written accounting each signed by Defendants McGinn and Smith and also signed by the officer or employees of the Entity Defendants who are most knowledgeable about the assets, liabilities and general financial condition of each of the Defendants, and verified accountings signed by each of the Individual Defendants and the Relief Defendant identifying their own assets, liabilities and general financial condition, if any, under penalty of perjury. Each of the Defendants and Relief Defendant shall serve such sworn updated written accountings by hand delivery, certified mail or overnight to (212) 316-1324 or overnight courier service on the Commission's counsel, David Stocking, Esq., Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281.

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V.

IT IS FURTHER ORDERED that Individual Defendants and Relief Defendant shall file with the Court and serve on the Commission, within three (3) business days following service of this Order, a list of all accounts at all banks, brokerage firms or financial institutions (including the name of the financial institution and the name and number on the account), tax identification numbers, telephone or facsimile transmission numbers (including numbers of pagers and mobile telephones), electronic mail addresses, World Wide Web sites or Universal Records Location, Internet bulletin board sites, online interactive conversational spaces or chat rooms, Internet or electronic mail service providers, street addresses, postal box numbers, safety deposit boxes, and storage facilities used or maintained by them or under their direct or indirect control, at any time from January 1, 2005 to the present including but not limited to information concerning the MS Entities, including but not limited to, those entities listed on Exhibit A.

VI.

IT IS FURTHER ORDERED that the Defendants show cause at that time why this Court should not also enter an Order appointing or continuing the appointment of a receiver for the MS Entities and all entities they control or have an ownership interest in including but not limited to, those entities listed on Exhibit A, to (i) preserve the assets of the MS Entities, (ii) ascertain the extent of commingling of funds among the MS Entities, (iii) ascertain the true financial condition of the MS Entities and the disposition of investor funds, (iv) prevent further dissipation of the property and assets of the MS Entities and all entities they control or have an ownership interest in, (v) prevent the encumbrance or disposal of property or assets of the MS Entities and the investors, (vi) preserve the books, records and documents of the MS Entities, (vii) be available to respond to investor inquiries, (viii) protect the assets of the MS Entities from further

disposition; and (ix) determine whether the MS Entities should undertake bankruptcy filings.

To effectuate the foregoing, the receiver would be empowered to:

- (a) Take and retain immediate possession and control of all of the assets and property, and all books, records and documents of the MS Entities including but not limited to, the entities listed on Exhibit A, and the rights and powers of it with respect thereto including the power set forth in the management agreements and LLC agreements and/or operating agreements applicable to any LLCs or other property or entities owned or controlled by the Defendant;
- (b) Have exclusive control of, and be made the sole authorized signatory for, all accounts at any bank, brokerage firm or financial institution that has possession or control of any assets or funds of the MS Entities including but not limited to, the entities listed on Exhibit A;
- (c) Pay from available funds necessary business expenses required to preserve the assets and property of the MS Entities including but not limited to, the entities listed on Exhibit A, including the books, records, and documents of the MS Entities and all entities they control or have an ownership interest in, notwithstanding the asset freeze imposed by paragraph II, above;
- (d) Take preliminary steps to locate assets that may have been conveyed to third parties or otherwise concealed;
- (e) Take preliminary steps to ascertain the disposition and use of funds obtained by the Defendants resulting from the sale of securities issued by MS Entities including but not limited to, the entities listed on Exhibit A;
- (f) Engage and employ persons, including accountants, attorneys and experts, to

assist in the carrying out of the receiver's duties and responsibilities hereunder;

- (g) Report to the Court and the parties within 45 days from the date of the entry of this Order, subject to such reasonable extensions as the Court may grant, the following information:

1. All assets, money, funds, securities, and real or personal property then held directly or indirectly by or for the benefit of the MS Entities and all entities they control or have an ownership interest in, including but not limited to, real property, bank accounts, brokerage accounts, investments, business interests, personal property, wherever situated, identifying and describing each asset, its current location and value;
2. A list of secured creditors and other financial institutions with an interest in the receivership assets;
3. To the extent practicable, a list of investors in the MS Entities including but not limited to, the entities listed on Exhibit A;
- (b) The receiver's preliminary plan for the administration of the assets of the receivership, including a recommendation regarding whether bankruptcy cases should be filed for all of a portion of the assets subject to the receivership and a recommendation whether litigation against third parties should be commenced on a contingent fee basis to recover assets for the benefit of the receivership.

VII.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, MS & Co., MS Capital, FAIN, FEIN, YDN, TAIN, McGinn and Smith and each of them, their agents, servants, employees, and

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attorneys-in-fact, and those persons in active contact or participation with them who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from, directly or indirectly, singly or in concert, in the offer or sale of any security, by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails to offer or sell securities through the use or medium of a prospectus or otherwise when no registration statement has been filed or is in effect as to such securities and when no exemption from registration is available in violation of Sections 5(e) and 5(f) of the Securities Act.

VIII

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, MS & Co., MS Advisors, MS Capital, and each of their financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active contact or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, are temporarily restrained from violating, directly or indirectly, Section 10(b) of the Exchange Act, 15 U.S.C. § 78(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading or

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- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IX

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, MS & Co., MS Advisors, MS Capital, and each of their financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active contact or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from violating Section 17(d) of the Securities Act, 15 U.S.C. § 77(d), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

X

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, MS & Co., and each of its officers,

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agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from violating Section 15(c) of the Exchange Act, 15 U.S.C. § 78(c)(6), and 17 C.F.R. § 240.10b-3, by while acting as a broker or dealer, directly or indirectly, making use of the mails or any instrumentality of interstate commerce, or any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of any security otherwise than on a national exchange of which it is a member, by means of any manipulative, deceptive or other fraudulent device or contrivance, or to use or employ, in connection with the purchase or sale of any security otherwise than on a national securities exchange, any act, practice, or course of business defined by the Commission to be included within the term "manipulative, deceptive or other fraudulent device or contrivance" as such term is used in Section 15(c)(1) of the Exchange Act.

XI.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, the Individual Defendants, and each of their financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from aiding and abetting any broker's or dealer's violations of Section 15(c) of the Exchange Act, 15 U.S.C. § 78(c)(6), by providing substantial assistance

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to an individual or entity, which, while acting as a broker or dealer, directly or indirectly, makes use of the mails or any instrumentality of interstate commerce, or any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of any security otherwise than on a national exchange of which it is a member, by means of any manipulative, deceptive or other fraudulent device or contrivance, or to use or employ, in connection with the purchase or sale of any security otherwise than on a national securities exchange, any act, practice, or course of business defined by the Commission to be included within the term "manipulative, deceptive or other fraudulent device or contrivance" as such term is used in Section 15(c)(1) of the Exchange Act.

XII.

IT IS FURTHER ORDERED that pending a hearing and determination of the Commission's Application for Preliminary Injunction, MS & Co., MS Advisors and each of their officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, who receive actual notice of this Order by personal service, facsimile service, or otherwise, are temporarily restrained from violating Sections 206(1), 206(2) and 206(4) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and (2), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8, while acting as an investment adviser, by the use of the mails or any means or instrumentality of interstate commerce, directly or indirectly to employ any device, scheme or artifice to defraud any client or prospective client; to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client; to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.

XIII.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for Preliminary Injunction, FAIN, FEIN, FUN, and TAIN and each of their officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, feasible service or otherwise, and each of them, who receive actual notice of this Order by personal service, feasible service, or otherwise, are temporarily restrained from Violating Section 7(q) of the Company Act, 15 U.S.C. § 80b-7, while acting as an investment company, shall directly or indirectly, offer for sale, sell, or deliver after sale, by the use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; or offer for sale, sell, or deliver after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by use of the mails or any means or instrumentality of interstate commerce; purchase, redeem, retire, or otherwise acquire or attempt to acquire, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; control any investment company which does any of the acts enumerated above; engage in any business in interstate commerce; or control any company which is engaged in any business in interstate commerce.

XIV.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for a Preliminary Injunction, the Defendants, and each of their

financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them and all other persons or entities who receive actual notice of such Order by personal service, feasible service or otherwise, and each of them, hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, disposition, concealment or other disposal of any assets, funds or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the direct or indirect control of the Defendants, including but not limited to, entities owned or controlled by, related to, or associated or affiliated with the MS Entities including but not limited to, those entities listed on Exhibit A, whether held in any of their names or for any of their direct or indirect beneficial interest wherever situated, in whatever form such assets may presently exist and wherever located within the territorial jurisdiction of the United States courts, and directing each of the financial or brokerage institutions, debtors and bullies, or any other person or entity holding such assets, funds or other property of the Defendants to hold or retain within its or his control and prohibit the withdrawal, removal, transfer or other disposal of any such assets, funds or other properties including but not limited to, all assets, funds, or other properties held in the accounts listed in Exhibit B, as well as each real estate parcel owned directly or indirectly by the MS Entities including but not limited to, those entities listed on Exhibit A.

XV.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for a Preliminary Injunction, the Defendants, any person or entity acting at their direction or on their behalf, and any other third party including but not limited to any investor, be and hereby are enjoined and restrained from destroying, altering, concealing or

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otherwise interfering with the access of Plaintiff Commission and the receiver to any and all documents, books, and records that are in the possession, custody or control of the Defendants and each of their respective officers, agents, employees, servants, accountants, financial or brokerage institutions, or attorneys-in-fact, subsidiaries, affiliates, predecessors, successors and related entities, including but not limited to, the MS Entities, that refer, reflect or relate to the allegations in the Complaint, including, without limitation, documents, books and records referring, reflecting or relating to the Defendants' financial or business operations, or the offer, purchase or sale of securities and the use of proceeds therefrom; and (2) ordered to provide all reasonable cooperation to the receiver in carrying out his duties set forth herein.

XVI.

IT IS FURTHER ORDERED that, pending a hearing and determination of the Commission's Application for a Preliminary Injunction, each of the Defendants shall file with this Court and serve upon Plaintiff Commission, within three (3) business days, or within such extension of time as the Commission agrees to, a verified written accounting signed by each of the individual Defendants, and the officers or employees of the MS Entities who are most knowledgeable about the assets, liabilities and general financial condition of the each of the Defendants, if any, under penalty of perjury, of:

- (1) All assets, liabilities and property currently held, directly or indirectly, by or for the benefit of each Defendant, including, without limitation, bank accounts, brokerage accounts, investments, business interests, loans, lines of credit, and real and personal property wherever situated, describing each asset and liability, its current location and amount;
- (2) All money, property, assets and income received by each such Defendant for his

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direct or indirect benefit from the other Defendants, at any time from January 1, 2005 through the date of such accounting, describing the amount, disposition and current location of each of the items listed;

- (3) The names and last known addresses of all banks, debtors, and other persons and entities that currently are holding the assets, funds or property of each Defendant; and
- (4) All assets, funds, securities and real or personal property invested by each such Defendant, or any other person controlled by them, and the disposition of such assets, funds, securities, real or personal property.

Each individual Defendant and the officers or employees of the Entity Defendants who are most knowledgeable about the assets, liabilities and general financial condition of the Defendants, if any, shall verify the Entity Defendant's accounting and serve such sworn statements of asset identifying information by hand delivery, facsimile transmission to (212) 356-1724 or overnight courier service on the Commission's counsel, David Sholtz, Esq., Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281. Each of the individual Defendants is required to provide the Commission with an accounting for his own personal assets, liabilities and general financial condition. The Replevin Defendant is required to provide the Commission with an accounting for her own personal assets, liabilities and general financial condition.

XVII.

IT IS FURTHER ORDERED that William J. D'Amico, pending further order of this Court, be and hereby is appointed to act as receiver for the MS Entities including

but not limited to, those entities listed on Exhibit A, to (1) preserve the *status quo*; (2) ascertain the true financial condition of the MS Entities and the disposition of investor funds; (3) determine the extent of commingling of funds between the MS Entities; (4) prevent further disposition of the property and assets of the MS Entities; (5) prevent the encumbrance or disposal of property or assets of the MS Entities; (6) preserve the books, records and documents of the MS Entities; (7) be available to respond to investor inquiries; and (8) determine if the MS Entities and all entities they control or have an ownership interest in should undertake a bankruptcy filing. To effectuate this foregoing, the receiver is hereby empowered to:

- (a) Take and retain immediate possession and control of all of the assets and property of the MS Entities including but not limited to, those entities listed on Exhibit A, and all books, records and documents of MS Entities, and the rights and powers of it with respect thereto;
- (b) Have exclusive control of, and be made the sole authorized signatory for, all accounts at any bank, brokerage firm or financial institution that has possession or control of any assets or funds of MS Entities including but not limited to, those entities listed on Exhibit A;

- (c) succeed to all rights to manage all properties owned or controlled, directly or indirectly, by the MS Entities, including but not limited to, those entities listed on Exhibit A, pursuant to the LLC and operating agreement relating to each entity;
- (d) Pay from available funds necessary business expenses required to preserve the assets and property of MS Entities and all entities they control or have an ownership interest in, including the books, records, and documents of the Defendants, notwithstanding the asset freeze imposed above;

- (e) Take preliminary steps to locate assets that may have been conveyed to third parties or otherwise concealed;
- (f) Take preliminary steps to ascertain the disposition and use of funds obtained by the Defendants resulting from the sale of securities issued by the Defendants and the entities they control;
- (g) Engage and employ persons, including accountants, attorneys and experts, to assist in the carrying out of the receiver's duties and responsibilities hereunder;
- (h) Take all necessary steps to gain control of the Defendants' interests in assets in foreign jurisdictions, including but not limited to taking steps necessary to repatriate foreign assets; and
- (i) Take such further action as the Court shall deem equitable, just and appropriate under the circumstances upon proper application of the receiver.

XVIII.

IT IS FURTHER ORDERED that no person or entity, including any creditor or claimant against any of the Defendants, or any person acting on behalf of such creditor or claimant, shall take any action without further order of this Court to interfere with the taking control, possession, or management of the assets, including but not limited to the filing of any lawsuits, liens or encumbrances or bankruptcy cases to impact the property and assets subject to this order.

XIX.

IT IS FURTHER ORDERED that the Defendants shall pay the reasonable costs, fees and expenses of this receiver incurred in connection with the performance of his duties described

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herein, including but not limited to the reasonable costs, fees and expenses of all persons who may be engaged or employed by the receiver to assist him in carrying out his duties and obligations. All applications for costs, fees and expenses of the receiver and those employed by him shall be made by application to the Court setting forth in reasonable detail the nature of such costs, fees and expenses and shall conform to the Fee Guidelines that will be supplied by the U.S. Securities and Exchange Commission.

XX.

IT IS FURTHER ORDERED that discovery is expedited as follows pursuant to Rules 26, 30, 31, 33, 34, 36 and 45 of the Federal Rules of Civil Procedure, and without the requirement of a meeting pursuant to Fed. R. Civ. P. 26(f), the parties and the receiver may:

- (1) Take depositions, subject to two (2) calendar days' notice by facsimile or otherwise;
- (2) Obtain the production of documents, within three (3) calendar days from service by facsimile or otherwise of a request or subpoena from any persons or entities, including non-party witnesses; and
- (3) Service of any discovery requests, notices, or subpoenas may be made by personal service, facsimile, overnight courier, or first-class mail on an individual, entity or the individual's or entity's attorney; and
- (4) The receiver may take discovery in this action without further order of the Court.

XXI.

IT IS FURTHER ORDERED that a copy of this Order and the papers supporting the Commission's Application be served upon the Defendants and Relief Defendant on or before Wednesday, April 21, 2010, by personal delivery, facsimile, overnight courier, or first-class

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mail.

XXII.

IT IS FURTHER ORDERED that the Defendants and Relief Defendant shall deliver any opposing papers in response to the Order to Show Cause above no later than

Thursday, April 22, 2010, at 4:00 p.m. Service shall be made by delivering the papers, using the most expeditious means available, by that date and time, to the New York Regional Office of the Commission at 3 World Financial Center, Room 4300, New York, New York 10281, Attn: David Steelling Bag. or such other place as counsel for the Commission may direct in writing. The Commission shall have until Friday, April 23, 2010, at 5:00 p.m., to serve, by the most expeditious means available, any reply papers upon the Defendants and Relief Defendants, or upon their counsel, if counsel shall have made an appearance in this action.

XXIII.

IT IS FURTHER ORDERED that this Order shall be, and it, binding upon the Defendants and Relief Defendants and each of their respective officers, agents, servants, employees, attorneys-in-fact, subsidiaries, affiliates and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, or otherwise.

UNITED STATES DISTRICT JUDGE

Issued at: 2:00 p.m.
April 22, 2010
Albany, New York

EXHIBIT A

Exhibit A List of Known Entities Controlled By McGinn and/or Smith

107th Associates LLC Trust 07
107th Associates LLC
74 State Street Capital LP
Acquisition Trust 03
Capital Center Credit Corporation
CMS Financial Services
Cruise Charter Ventures LLC dba YOLO Cruises
Cruise Charter Ventures Trust 08
First Advisory Income Notes LLC
First Commercial Capital Corp.
First Exclusive Income Notes LLC
First Independent Income Notes LLC
FirstLine Junior Trust 07
FirstLine Senior Trust 07
FirstLine Trust 07
FirstLine Trust 08
Integrated Excellence Junior Trust
Integrated Excellence Junior Trust 08
Integrated Excellence Senior Trust
Integrated Excellence Senior Trust 08
IP Investors
James J. Carroll Charitable Fund
JCC Trust 00
KC Acquisition Corp.
KMB Cable Holdings LLC
Luxury Cruise Center, Inc.
Luxury Cruise Holdings, LLC
Luxury Cruise Receivables, LLC
M & S Partners
McGinn, Smith & Co.
McGinn, Smith Acceptance Corp.
McGinn, Smith Advisors
McGinn, Smith Asset Trading
McGinn, Smith Capital Holdings
McGinn, Smith Capital Management LLC
McGinn, Smith Financial Services Corp.
McGinn, Smith FirstLine Funding LLC
McGinn, Smith Funding LLC
McGinn, Smith Group LLC
McGinn, Smith Holdings LLC
McGinn, Smith Independent Services Corp.
McGinn, Smith Licensing Co.

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EXHIBIT B

McGinn, Smith Transaction Funding Corp.
MR Chasberry LLC
MS Partners
MSFC Security Holdings LLC
NHI Capital LLC
Pacific Trust 02
Pine Street Capital Management LLC
Pine Street Capital Partners LP
Point Capital LLC
Prime Vision Communications LLC
Prime Vision Communications Management Keya Cove LLC
Prime Vision Communications of Outer Cove LLC
Prime Vision Funding of Outer Cove LLC
Prime Vision Funding of Key Cove LLC
RTC Trust 02
SAI Trust 00
SAI Trust 03
Security Participation Trust I
Security Participation Trust II
Security Participation Trust III
Security Participation Trust IV
Seon Hall Associates
TDM Cable Funding LLC
TDM Cable Trust 06
TDM Cable Trust 09
TDM Cable Trust 07
TDM Verifier Trust 07R
TDM Verifier Trust 08
TDM Verifier Trust 08R
TDM Verifier Trust 09
TDM Verifier Trust 11
TDMM Benchmark Trust 09
TDMM Cable Funding LLC
TDMM Cable II Trust 09
TDMM Cable Sr Trust 09
Third Albany Income Notes LLC
Travel Liquidators LLC
White Glove LLC
White Glove LLC

Exhibit

सुराबि
Green Bank Accounts

[illegible]

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Known Bank Accounts

[illegible]

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Known Bank Accounts

[illegible]

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Exhibit B			
Known Bank Accounts			
Bank Name	Account Number	Name of Account Holder	Account Number
Wells Fargo	123456789	ITD David L Smith & Lynn A Smith, Invs II, LLC	123456789

Title No. CT12-30185-ALB

TAX SEARCH

RETURNS

Our policy does not insure against taxes, water rates, assessments and other matters relating to taxes which have not become a lien up to the date of the policy or installments due after the date of the policy. Neither our tax search nor our policy covers any part of the streets on which the premises to be insured abut. For information only, we set forth the assessed valuation for the current year. Taxes, assessments, water rates and sewer charges which are liens on the real property:

1. SECTION/BLOCK/LOT 167-4-35
 CITY: Saratoga Springs
 PREMISES: **REDACTED**
 ASSESSED TO: David and Lynn Smith
 LAND VALUE
 Assessed: \$194,800.00
 Full: \$772,700.00
 EXEMPTION Type: Star
 Amount: \$32,770.00
 SCHOOL DISTRICT: Saratoga Springs
 PROPERTY CLASS CODE: 210
 2012 City Tax Total: \$6,862.88

 1st Payment Due 03-01-2012: \$1,715.72 -open + penalty- (\$1,818.66 due by 3/31/12)
 2nd Payment Due 06-01-2012: \$1,715.72 -lien, not yet due-
 3rd Payment Due 09-01-2012: \$1,715.72 -lien, not yet due-
 4th Payment Due 12-01-2012: \$1,715.72 -lien, not yet due-

 2011-2012 School Tax: Total: \$11,012.26 (\$11,452.26 w/o exemption)

COMBINED TOTAL AMOUNT DUE BY 3/31/12 FOR 2011/2012 SCHOOL TAX IS \$10,016.60

 1st Half Due 10-04-2011: \$5,506.13 -open + penalty-
 2nd Half Due 02-04-2012: \$5,506.13 -open + penalty-
 2011 City Tax: Total: \$6,853.87 -open + penalty- (\$7,808.41 due by 3/31/12)
 2010-2011 School Tax: Total: \$5,529.54 (\$6,226.01 due by 3/31/12)

 Water Account #: 03-1576
 Water to 2/15/2012 \$111.18 -paid- SUBJECT TO FINAL READING

NOTE: Any unpaid water, sewer, or special assessments or housing code violations are not included or guaranteed in this search.

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