

New Lawyers Tool Kit: Title Examinations and Abstracts



Presented by:

Katherine Prifti, Esq.

First American Title Insurance Company

Dominic Poncia, Esq.

Warshaw, Dicarlo & Associates, P.C.

June 22, 2020



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The Title Exam Process

Definitions:

Title Abstract

- Consolidation of data from records of Registry of Deeds
- Reflects basic analysis of relevance by abstractor

Title Examination

- Ultimate decision made by Attorney
- NREIS CASE – certification of title is practice of law in Massachusetts



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The Title Exam Process

Title Certification

- Binding statement by attorney as to status of title
- Required by MGL c. 93 §70 for purchase money mortgage transaction
- Analysis of relevance/application of appropriate legal standards by attorney



Tax Takings

- MLC shows outstanding taxes
- City/Town must commence action to finalize taking
- Notice of Petition to Foreclose
- Right of Redemption
- Withdrawal of Petition not sufficient
- Must have Certificate of Redemption
- Sale by City/Town

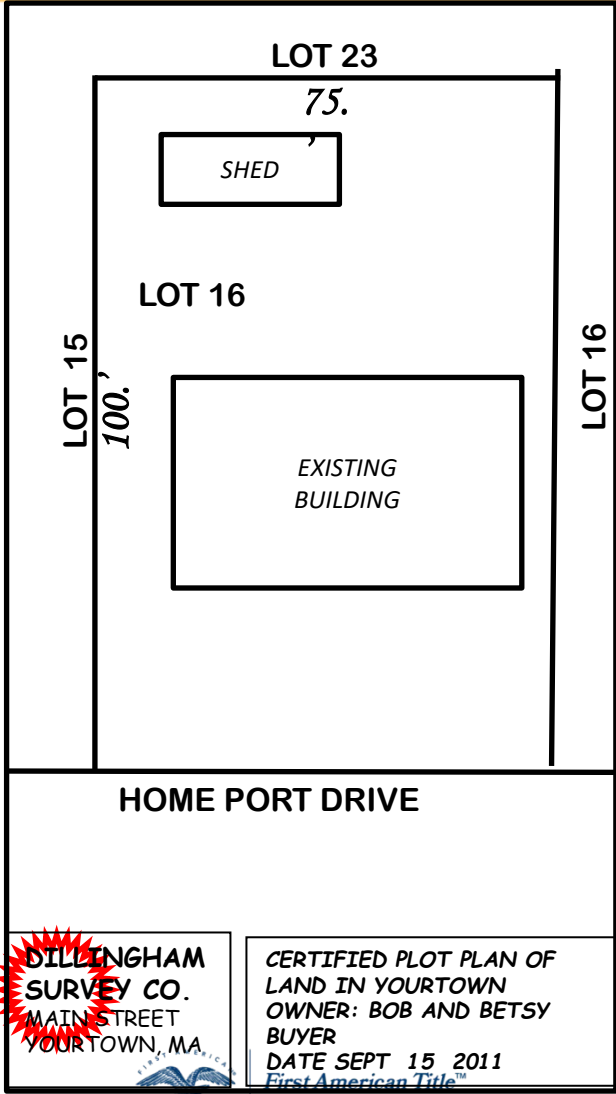
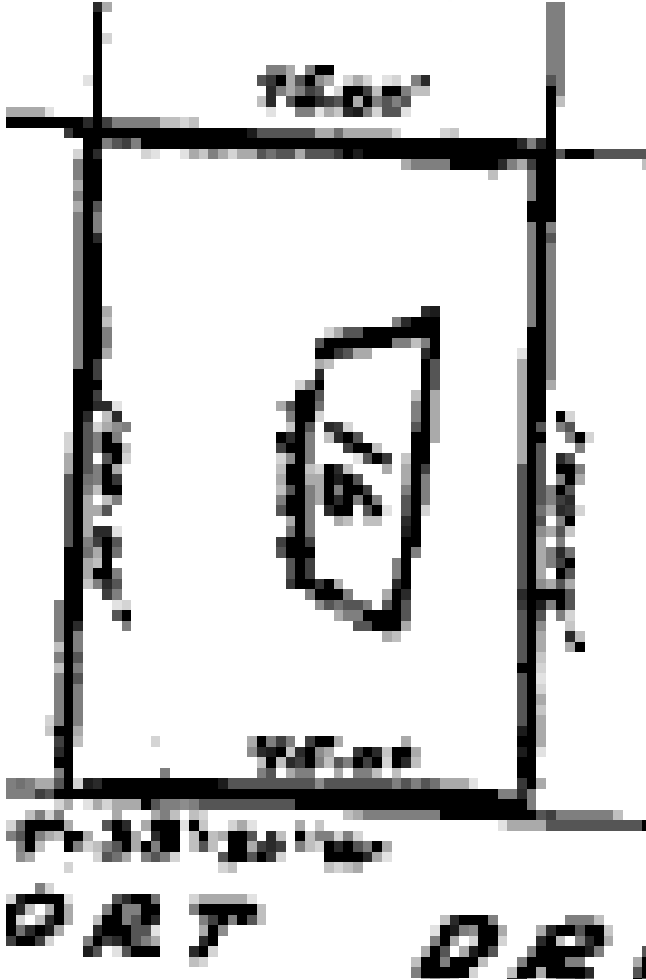
The Property



- Seller's Lot:
- #16 on Homeport Drive;
- "75ft. x 100 ft"
- 1965 recorded plan
- 45 lots out of 11 acres



The Plot Plan



**DILLINGHAM
SURVEY CO.**
MAIN STREET
YOURTOWN, MA

**CERTIFIED PLOT PLAN OF
LAND IN YOURTOWN
OWNER: BOB AND BETSY
BUYER
DATE SEPT 15 2011**
First American Title

Estate No. 87 HOMEPORT DRIVE, HYANNISFORT

Owner JOHN SHEA & WAYNE PACHECO, J/T

Sheet No.

Description SEE DO BK 24732/213

37

Said Estate Subject to

1. Mortgage to SEE NEXT SHEET

" "

" "

" "

" "

" "

2. Restrictions or Conditions - NONE

2a. Federal Tax Lien - NONE

3. Easements SEE REMARKS

4. Bankruptcy - NONE / INCOMPLETE RECORDS

5. Attachments - NONE

6. Party Walls

7. Mech. Liens - NONE

8. Tax Titles - NONE

Said Estate Entitled to

1. Passageway Rights

2. Party Wall Rights

3. Plan LOT 16 PLAN BK 197/123

1

Remarks:

1) ESHT TO N.E.T.A.T. Co. & N.B. GAS & ED LT Co. BK 1668/46

11A

Title Report Sheet

Title Report Sheet

→ MTG TO STEPHEN K. GLICKMAN, TRUSTEE OF THE
HOMEPORT REALTY TRUST DATED AUG. 5, 2010
BK 24732/214 (38)(41)

[COLL AST OF L+R BK 24732/228] (42)

[ASSIG OF PROJECT DOCS BK 24732/231] (43)

→ CONFIRM MTG TO STEPHEN K. GLICKMAN, TRUSTEE
HOMEPORT REALTY TRUST DATED FEB. 7, 2011
BK 25245/267 (44)

Starting Deed

“Good” starting point:

- What is/What isn't
- Use of “back title”

Tax Taking and Sale

- Deed out from Town
- Consideration
- Unrelated parties

THE INHABITANTS OF THE TOWN OF BARNSTABLE, a municipal corporation located within the County of Barnstable and Commonwealth of Massachusetts, for Thirty-one Hundred (\$3100.00) Dollars paid, grant to SHAWN CLARK and RUTH CLARK, husband and wife, as Tenants in Common, both of Barnstable (Hyannisport), Barnstable County, Massachusetts the following described real estate situate in said Barnstable (Hyannis):

→ 11.84 acres of land located on the Straightway in Hyannis.

For the Town's title reference is made to Tax Lien Foreclosure Case No. 38682,

Full compliance has been made with the provisions of Section 63A of Chapter 44 of the General Laws (Ter. Ed.).

The Town's title was sold at public auction to the highest bidder, being the grantees herein, for the consideration mentioned herein, held on September 23, 1964.

IN WITNESS WHEREOF, The Inhabitants of the Town of Barnstable have this ^{30th} day of November, 1964, caused its corporate seal to be hereto affixed and these presents to be signed in its name and behalf by Victor F. Adams, George L. Cross and E. Thomas Murphy, its Selectmen, duly authorized by vote of said Town.

THE INHABITANTS OF THE TOWN OF BARNSTABLE

By Victor F. Adams
George L. Cross
E. Thomas Murphy
Selectmen as aforesaid.



11/21/64 833



Corporate Transfer

- Signing authority of Grantor
- “All or substantially all assets”

Status of Grantee:

- trustees not trust recordation status of trust

MID CAPE CONSTRUCTION CORP.

a corporation duly established under the laws of the Commonwealth of Massachusetts and having its usual place of business at Barnstable (Hyannis), Barnstable County, Massachusetts, for consideration paid,

grants to SPERO THEOHARIDIS and MAGDALENE THEOHARIDIS, both of Yarmouth (South), Barnstable County, Massachusetts, as TRUSTEES OF CEDAR ACRES REALTY TRUST/under a written Declaration of Trust dated July 25, 1960 recorded in Barnstable Registry Book 1084, Page 33, with quitclaim interests

the land in Barnstable (Hyannisport), Barnstable County, Massachusetts, bounded and described as follows: Beginning at the southwest corner of the hereinafter described parcel at the intersection of an old wood road and an old town road commonly called the Straightway. Thence running Northerly by said old town road, seven hundred fifty-two (752) feet, more or less to land now or formerly of one Penna; Thence running North 77° East, two hundred twenty-six (226) feet, more or less; Thence running Northerly fifty (50) feet, more or less to land now or formerly of David Soudder's heirs; Thence running South 81° 45' East by land now or formerly of David Soudder's heirs, four hundred forty-seven (447) feet, more or less, to a fourteen inch pine tree; Thence South 5° 45' West by land now or formerly of Maurice L. Frost, five hundred fifty-four (554) feet, more or less to an old oak stump; Thence continuing South 15° West, eighteen and 5/10 (18.5) feet, more or less to the old wood road, so-called; Thence Westerly by the old wood road, seven hundred sixty (760) feet, more or less to the point of beginning.

Containing 11.84 acres, more or less.

For title see deed of Sharn Clark and Ruth Clark to Mid Cape Construction Corp. recorded in Barnstable County Registry of Deeds on June 2, 1965.

1292/1181

In witness whereof, the said MID CAPE CONSTRUCTION CORP.

has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by William H. Nelson, its President and Treasurer

ix hereto duly authorized, this 12th

day of July, in the year one thousand nine hundred and sixty-five.

Signed and sealed in presence of

For authority see Vote recorded in Barnstable County Registry of Deeds Instrument No. 5594

MID CAPE CONSTRUCTION CORP.

by William H. Nelson
President and Treasurer



3rd Commonwealth of Massachusetts

Barnstable ss.

July 12, 1965

Then personally appeared the above named William H. Nelson, President and Treasurer as aforesaid and acknowledged the foregoing instrument to be the free act and deed of the Mid Cape Construction Corp., before me,

William B. Conwell Jr.



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Trust Transfer

- Nominal consideration
- Grantor authority
- Certificate required?
- Liability of trustees:
- Fiduciary to beneficiaries
- Void/voidable transaction

MID CAPE CONSTRUCTION CORP.

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grants to SPERO THEOHARIDIS and MAGDALENE THEOHARIDIS, both of Yarmouth (South), Barnstable County, Massachusetts, as TRUSTEES OF CEDAR ACRES REALTY TRUST/under a written Declaration of Trust dated July 25, 1960 recorded in Barnstable Registry Book 1084, Page 33, with quitclaim interests

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Containing 11.64 acres, more or less.

For title see deed of Sharn Clark and Ruth Clark to Mid Cape Construction Corp. recorded in Barnstable County Registry of Deeds on June 2, 1965.

1292/1181

In witness whereof, the said MID CAPE CONSTRUCTION CORP.

has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by William H. Nelson, its President and Treasurer

ix hereto duly authorized, this 12th

day of July, in the year one thousand nine hundred and sixty-five.

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MID CAPE CONSTRUCTION CORP.

by William H. Nelson
President and Treasurer



Sp. Commonwealth of Massachusetts

Barnstable ss.

July 12, 1965

Then personally appeared the above named William H. Nelson, President and Treasurer as aforesaid and acknowledged the foregoing instrument to be the free act and deed of the Mid Cape Construction Corp., before me,

William B. Conwell Jr.



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Easement

- No monetary consideration
- No specific location
- Can be as general as “where we put it”
- Streets and adjacent land
- Earlier grantees bound by reservation in deed

Know all men by these presents that DENNIS STAR CONSTRUCTION CORPORATION a corporation duly established by law and having a usual place of business at Yarmouth (South) County of Barnstable Commonwealth of Massachusetts, in consideration of the mutual covenant herein contained, grants to NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY, a New York Corporation, duly established by law and having a usual place of business at 185 Franklin Street, Boston, Suffolk County, Massachusetts and NEW BEDFORD GAS & EDISON LIGHT COMPANY a corporation duly established by law and having a usual place of business at 693 Purchase Street, New Bedford, Bristol County, Massachusetts and its/their successors and assigns forever, (hereinafter called the grantees), with quitclaim covenants, the perpetual right and easement to lay, construct, reconstruct, operate, maintain, replace and remove lines for the transmission of intelligence by electricity and for the transmission of electricity as either or both of the grantees may from time to time desire upon, across, over and under land and private ways as now laid out or as may be laid out in the future in the Edge/Town of Barnstable (Hyannis) County of Barnstable Commonwealth of Massachusetts, said land and private ways as now laid out being shown on a plan entitled: Subdivision of Land in Hyannis, Mass. for Cedar Acres Realty Trust Scale 1"=50' September 1965 David H. Greens, Surveyor, Hyannis, Massachusetts and duly recorded with Barnstable County Registry of Deeds in Plan Book 197, Page 123. Said ways shown are OLD SCHOOLHOUSE ROAD, Homeport Drive and SECURITY STREET.

For our title see Book 1318, Page 576.

The above granted rights being more particularly described as the right within said private ways and strips of land to construct, reconstruct, operate, replace and remove poles with the wires and/or cables thereon, with the necessary guys, anchors, supports, fixtures and appurtenances thereon and lamp connections, also the right and easement to renew, replace and to otherwise change said lines and each and every part thereof and the location thereof, with the right to place anchors and guys to support lines in said private ways on land adjacent thereto and to overhang with wires and cables the property abutting said private ways, ~~also the right to cut down and keep trimmed all trees, bushes, underbrush and growth including the foliage thereon as the grantees or either of them may from time to time deem necessary for the safe operation of said lines. Permission is herein granted to enter said private ways, strips of land and premises for access thereto for all the above purposes.~~

IN WITNESS WHEREOF Dennis Star Construction Corporation has caused these presents to be signed and its corporate seal to be hereto affixed by Spero Thecharidis its President & Treasurer thereunto duly authorized this 9th day of June 19 72

For Reserved Rights to grant easements, see reservation clause in deeds.

For Vote of Authority see Book 1317, Page 962.

Dennis Star Construction Corporation
By Spero Thecharidis
President & Treasurer

THE COMMONWEALTH OF MASSACHUSETTS
Barnstable ss. June 9 19 72

Then personally appeared before me the above named Spero Thecharidis, President and Treasurer of the Dennis Star Construction Corporation and he acknowledged the foregoing instrument to be his free act and deed and the



Grantee Status/ROW

- Grantees: Tenants by Entirety (recitation is key)
- Bounding and Lot on Pla
- Grant of right of way
- Reservation of right to grant rights to others

BOOK 1888 PAGE 069

MASSACHUSETTS QUITCLAIM DEED INDIVIDUAL (LONG FORM) SEE

20296

LESTER S. JANSEN and PHYLLIS S. JANSEN, husband and wife, as tenants by the entirety, both of 1325 Falmouth Road, Barnstable (Centerville), Barnstable County, Massachusetts,

not

~~Hyannis, Massachusetts~~

~~being conveyed~~ for consideration paid, and in full consideration of \$25,000.00

grants to WILLIAM E. WALSH and MAUREEN A. WALSH, husband and wife, as tenants by the entirety, both of Newton 25 Halcyon Road, Newton Centre

not

with quitclaim covenants

~~whereas~~

(Description and encumbrances, if any)

the land together with the buildings thereon situated in Barnstable (Hyannisport), Barnstable County, Massachusetts, bounded and described as follows:

EASTERLY by Homeport Drive, a 40-foot private way, as shown on plan hereinafter mentioned, seventy-five and 00/100 (75.00) feet;

SOUTHERLY by Lot 15, as shown on said plan, one hundred and 00/100 (100.00) feet;

WESTERLY by Lot 23, as shown on said plan, seventy-five and 00/100 (75.00) feet; and

NORTHERLY by Lot 17, as shown on said plan, one hundred and 00/100 (100.00) feet.

Being shown as LOT 16, containing 7,500 square feet more or less, on a plan of land entitled "Subdivision of Land in Hyannis Mass. for Cedar Acres Realty Trust Scale 1" = 50' September 1965 David H. Greene - Surveyor Hyannis, Mass.", which said plan is duly filed in Barnstable County Registry of Deeds in Plan Book 197, Page 123.

The above described lot is conveyed together with a right of way over all the roads and lanes as shown on the above described plan for all purposes for which ways are commonly used in the Town of Barnstable, to be used in common with all others now or hereafter legally entitled to use the same.

The above described premises are conveyed subject to the reservation to Dennis Star Construction Corporation of a right of way over so much of said lot as by implication of law lies within the limits of any way; subject also to the reservation to said Dennis Star Construction Corporation of the right to install and maintain all public utilities in, over, under and upon any private way and the right to grant easements to public service utilities in, over, under and upon any private way.

Being the same premises conveyed to us by deed from Florence Delano dated May 26, 1971, duly recorded with the Barnstable County Registry of Deeds in Book 1512, Page 066.



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Mortgage

- Statute of limitations
- Use of Exhibit A
- Foreclosure:
- If mortgage predated easement
- Notarization
- Number of grantors required
- Impact of not reciting grantor name

(Handwritten: MTG F/C)

523373

BOOK 6928 PAGE 011
MORTGAGE 53841

THIS MORTGAGE ("Security Instrument") is given on OCTOBER 19TH 1978

19. The mortgagor is CATHARINE L. KOUFAKIS ("Borrower"). This Security Instrument is given to UNIVERSITY BANK, NA ("Lender"). This Security Instrument is organized and existing under the laws of the COMMONWEALTH OF MASSACHUSETTS, whose address is 1200 WASHINGTON STREET, NEWTON, MA

Borrower owes Lender the principal sum of EIGHTY THOUSAND DOLLARS Dollars (U.S. \$ 80,000.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on NOVEMBER 1, 2019. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in HYANNISBORO, BRANFORD County, Massachusetts:

FOR LEGAL DESCRIPTION SEE ATTACHED EXHIBIT "A"

which has address of 87 HERRING DRIVE HYANNISBORO
Massachusetts 02647 ("Property Address")

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

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

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

MASSACHUSETTS - Single Family - FHMA/FHLMC UNIFORM INSTRUMENT
0143(3/89) FORM 3022 12/83



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Statutory Laws

The
beginning

Statutory
Framework

FORECLOSURE

- Non-Judicial Foreclosure
- Statutory Law Governing Typical Manner of Foreclosures in Massachusetts is:
 - MGL Chapter 244
 - MGL Chapter 244 Sec. 1: Foreclosure by Entry
 - MGL Chapter 244 Sec. 14: Foreclosure under

Power of Sale



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Power of Attorney

- Specific for entry
- Actions at sale
- Separate for execution of documents

BP#09695-0255 95-06-02 3:33 #026889
169050(AMI)

SPECIFIC POWER OF ATTORNEY
Federal Home Loan Mortgage Corporation
(the "Corporation") holder of a Mortgage
FROM Katherine L. Kourafas
TO University Bank, NA
DATED October 19, 1989, and recorded with the Barnstable County
Registry of Deeds, Book 6928, Page 011
hereby make, constitute and appoint Lisa Weisman
its true and lawful attorney in fact, in its name,
place and stead to perform the following limited actions and have the
following limited powers.

Without limitation, authorizing the said Lisa Weisman
_____ to make an open and peaceable entry and
to take possession of the property secured by said mortgage on behalf of
the Corporation, to bid on any duly scheduled foreclosure sale on the
Corporation's behalf and generally to do all such things on the
Corporation's behalf which may be necessary to complete the foreclosure
of said mortgage, all in accordance with the laws of the Commonwealth of
Massachusetts.

Generally to execute and perform other acts, matters or things
whatsoever that in the opinion of said attorney ought to be done,
executed or performed in and about the mortgaged premises.

Any person or corporation dealing with said attorney shall be
entitled to rely upon the statement of Certificate of said attorney
that this Power of Attorney is still in force and effect and has not
been revoked. Further, no one dealing with the said attorney shall be

22



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REO Deed Out

- Separate transaction
- Third party purchase
- Consideration amount

BP:10064-0290 96-02-21 10:48 #009272

FHLMC #492010951

FEDERAL HOME LOAN MORTGAGE CORPORATION, a United States corporation duly established under the laws of the United States of America and having its usual place of business at 12222 Merit Drive, Dallas, Texas 75251, for full consideration paid, \$63,000.00, grants to ROBERT EMRICK and DAVID AZANOW, of 382 South Peak Road, Boulder, Colorado 80302, to hold title as JOINT TENANTS with QUITCLAIM COVENANTS, the premises described in Exhibit A affixed hereto and incorporated herein by reference.

The grantor is exempt from paying the Massachusetts State Excise Stamp Tax by virtue of 12 United States Code Section 1452.

*Property Address: 87 Homeport Drive
Hyannis, MA 02601*

For title reference is made to foreclosure deed dated May 18, 1995 recorded with the Barnstable County Registry of Deeds in Book 9695, Page 258.

IN WITNESS WHEREOF, the said FEDERAL HOME LOAN MORTGAGE CORPORATION has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by DIANE RICHARD its Assistant Treasurer hereto duly authorized this 15th day of February, 1996.

FEDERAL HOME LOAN MORTGAGE CORPORATION

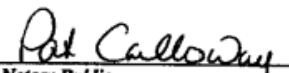

By: 
Diane Richard
ASSISTANT TREASURER

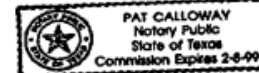
STATE OF TEXAS

Dallas, ss.

February 15, 1996

Then personally appeared the above named Diane Richard Assistant Treasurer and acknowledged the foregoing instrument to be the free act and deed of the corporation, before me


Notary Public
My commission expires: 



First American Title

Commercial Mortgage

MTG O/S

Bk 24732 P#214 #39081
08-05-2010 @ 03:37P

Bk 24732 Pg 225 #39081

MORTGAGE AND SECURITY AGREEMENT

- 12 -

SEE
CASE FILE
MTG
25234
267

KNOW ALL PERSONS that John Shea, and Wayne Pacheco, jointly and severally, of P.O. Box 427 Hyannis, MA 02601, ("Mortgagor") for consideration paid, hereby grant unto Stephen K. Glickman, Trustee of the Homeport Realty Trust w/d/t dated July 19, 2010, and recorded with the Barnstable County South Registry of Deeds herewith in Book 4472, Page 309, of 1008 Embassy Row Way, Johns Island, SC 29455, (the "Mortgage"), with Mortgage COVENANTS to secure (a) the repayment of \$65,000.00 with interest and other charges thereon, payable as provided in the Promissory Note (the "Note") of even date, and any extensions, substitutions or renewals thereof, (b) the Collateral Assignment of Leases and Rents, (c) Assignment of Project Documents, (d) other documents given or executed by the Mortgagor in connection with this loan, and (e) the repayment of any future advances, with interest thereon, made to Mortgagor by Mortgage ("Future Advances"), covering the land and building known as and numbered 87 Homeport Drive, Hyannis, MA, together with any buildings, structures or improvements now or hereafter situated thereon and all as described in Exhibit A, ("Legal Description") having been annexed hereto prior to the execution hereof and incorporated herein by reference as if fully set out herein.

Collateral Security Interest

Also, the Mortgagor hereby grants to the Mortgagee a security interest in all of the goods, fixtures, furniture, furnishings, equipment, chattels and articles of personal property, including, without limitation, all building materials and supplies, heating apparatus, plumbing, furnaces, boilers, oil burners, refrigeration, air conditioning and sprinkler systems, awnings, screens, window shades, drapes, carpeting, office and model furniture, motors, dynamos, incinerators, plants and shrubbery, and all other equipment, machinery, appliances, fittings and fixtures, whether personal property, inventory or fixtures, whether now owned or hereafter from time to time acquired by the Mortgagor, together with all substitutions, replacements, additions, attachments, accessories, accretions, their component parts thereto or thereof, all other items of like property, whether now in existence or hereafter arising, and all of the rents, issues, income revenues and profits derived from the above-described realty (all of which items or property are hereinafter referred to as the "Collateral"), it being the intention of the parties hereto that this instrument shall constitute a security agreement within the meaning of the Uniform Commercial Code with respect to so much of the Collateral as may be considered personal property; and that a security interest shall attach thereto as soon as the Mortgagor obtains any interest in any of the Collateral and before the Collateral becomes fixtures or before the Collateral is installed or affixed to other collateral, for the benefit of the Mortgagee to secure the indebtedness evidenced by the Note and secured by this Mortgage and Security Agreement, and all other sums and charges which may become due hereunder or thereunder. The security interest held by the Mortgagee shall cover cash and non-cash proceeds of the Collateral, but nothing contained herein shall be construed as authorizing, either expressly or by implication, the sale or other disposition of the Collateral by the Mortgagor, which sale or other disposition is hereby expressly prohibited without the Mortgagee's prior written consent, or as otherwise provided herein. No personal property or business equipment owned by any tenants holding under Mortgagor is included within this Mortgage and Security Agreement (sometimes hereinafter referred to as the "Mortgage").

The Mortgagor covenants and agrees that, as of the execution hereof and upon the subsequent acquisition of such Collateral now or hereafter used in the construction or operation of the realty hereby conveyed, the Mortgagor shall:

- provide the holder with a precise inventory of the same, as when required;
- execute and deliver to the holder, in the form appropriate for recording and filing, financing

LAW OFFICES OF
JAMES C. RUDSER
88 BLACK FALCON AVE. STE. 272
BOSTON, MA 02210

38

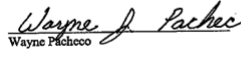
WDP 14

persons to which the provisions of this Mortgage are applicable, so that if, for example, but without limitation any party who is one of the Mortgagor or a guarantor of the Notes, shall file a petition in bankruptcy, such filing shall be treated as a breach of condition of this Mortgage. The word "holder" as used herein shall mean the Mortgagee named at the beginning of this instrument, and any subsequent holder or holders of this Mortgage.

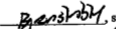
- Headings: that the paragraph heading used throughout this Mortgage are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify amplify or and in the interpretation, construction or meaning of the provisions of this Mortgage.
- Separability: that in case any one or more of the provisions, terms, paragraphs or clauses of this Mortgage, or the application thereof to any party or circumstance, may be found to be invalid or unenforceable for any reason or in any respect, such invalidity shall not limit or impair the validity or enforcement of any other provision, term, paragraph or clause, or the application thereof to any party or circumstance, and each provision, term, paragraph and clause shall be valid and enforced to the fullest extent permitted by law.
- Covenants to Run with the Land: that all the covenants and agreements of the Mortgagor herein contained shall constitute covenants running with the land and shall be binding upon the Mortgagor and the heirs, executors, administrators, successors and assigns of the Mortgagor; and, where more than one party constitutes the Mortgagor, the liability of such persons under this Mortgage for the obligations set forth herein shall be joint and several.
- Power of Sale: subject and to the extent permitted by applicable law, that this Mortgage is upon the further condition that all covenants and agreements on the part of the Mortgagor herein undertaken shall be kept and fully and seasonably performed and that no breach of any other of the conditions specified herein shall be permitted, for any breach of which conditions, or for any breach of any of the conditions contained in any prior Mortgage or permitted subordinate Mortgage, or under the notes or obligations secured thereby, the holder shall have the power of sale, to the extent permitted by applicable law.

WITNESS my hand and seal this 5 day of August, 2010.


John Shea


Wayne Pacheco

COMMONWEALTH OF MASSACHUSETTS


Branstator, ss

On this 5 day of August, 2010, before me, the undersigned notary public, personally appeared, John Shea, and Wayne Pacheco, personally known to me, or proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

39



First American Title™

Collateral Assignment

- Commercial Loan-
- More Collateral needed;
- Allows lender to collect rents from tenants directly
- At payoff, need releases

87 Homeport Drive, Hyannis

o/s

Bk 24732 Pg 228 #39082
08-05-2010 @ 03:37p

COLLATERAL ASSIGNMENT OF LEASES AND RENTS

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, John Shea, and Wayne Pacheco, jointly and severally, of P.O. Box 427 Hyannis, MA 02601, (hereinafter the "Assignor"), hereby grants, assigns and transfers to Stephen K. Glickman, Trustee of the Homeport Realty Trust w/d/t dated July 19, 2010, and recorded herewith with the Barnstable County Registry of Deeds Book 24732, Page 209, of 1008 Embassy Row Way, John's Island, SC 29455, (hereinafter referred to as the "Bank") all of the Assignor's right, title and interest in and to all leases, tenancies, and occupancies whether written or not, which have been entered into, or may, at any time in the future be entered into regarding any parcel or premises located at 87 Homeport Drive, Hyannis, MA as described in the Assignor's Mortgage to the Bank dated the day and date hereof, recorded herewith, regarding any part or portion of such parcel or premises (which is referred to hereinafter as the "Premises"), together with all rent, income, and profit arising out of the use and occupation of the Premises.

1. ASSIGNMENT AS SECURITY

The within assignment is to secure the Promissory Note by the Assignor(s) dated the day and date hereof, in the total amount of \$100,000.00.

2. ASSIGNOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

- 2.1 The Assignor represents that no rent on any portion of the Premises has been assigned or anticipated.
- 2.2 The Assignor represents that no lease, occupancy or conditions exist which have not been disclosed to the Bank.
- 2.3 The Assignor covenants that it will not collect any rent, income or profit on account of any lease tenancy or occupancy of the Premises in advance of the time such becomes due except in the case of a new tenant where Assignor may collect a security deposit along with first and last month's rent.
- 2.4 The Assignor will not make any other assignment of the Assignor's rights under any lease or tenancy or occupancy of Premises.
- 2.5 The Assignor will neither modify the terms nor accept the surrender or early termination of any lease tenancy or occupancy of the Premises except upon the prior written consent of the Bank.
- 2.6 The Assignor will not enter into any lease of the Premises or any portion thereof, for a period greater than five (5) years except upon the prior written consent of the Bank.
- 2.7 The Assignor will promptly furnish the Bank with a copy of each and every lease occupancy and tenancy of the Premises into which the Assignor may enter from time to time.
- 2.8 The Assignor will undertake all such reasonable actions as may be requested by the Bank in furtherance of the rights of the Lender hereunder.

WAP 3

42



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Assignment of Rights

- Borrower will be getting funds for improvements;
- Lender right to continue and finish project in the event of default

o/s

Bk 24732 Pg 231 #39083
08-05-2010 a 03:37p

ASSIGNMENT OF PROJECT DOCUMENTS

THIS ASSIGNMENT OF PROJECT DOCUMENTS (this "Assignment") is made and entered into this 5 day of August, 2010 by John Shea, and Wayne Pacheco, jointly and severally, of P.O. Box 427 Hyannis, MA 02601, ("Borrower"), to Stephen K. Glickman, Trustee of the Homeport Realty Trust u/d/t dated July 19, 2010, and recorded herewith with the Barnstable County Registry of Deeds in Book 24732, Page 209, of 1008 Embassy Row Way, John's Island, SC 29455, ("Bank" of "Lender").

WHEREAS, as evidence of the indebtedness incurred under the Loan, Borrower has executed and delivered to Bank a Promissory Note of even date herewith, payable to Lender in the principal face amount of \$65,000.00 Dollars ("Note"), payment of which is secured by a Mortgage and Security Agreement of even date therewith (the "Security Deed") from Borrower covering the real estate described in the Security Deed; as well as other security agreements;

WHEREAS, Borrower and Bank have executed a Loan Agreement of even date herewith (the "Construction Loan Agreement") pursuant to which Bank has agreed to make a loan to Borrower in the aggregate principal amount of up to \$100,000.00 (the "Loan") on the terms and conditions set forth in the Loan Agreement and for the purposes set forth therein; and

WHEREAS, the execution and delivery of this Assignment is a condition precedent to the performance by the Bank of its obligations under the Loan Agreement;

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby covenants agrees as follows:

1. Borrower hereby grants, transfers and assigns to Bank all the right, title and interest of Borrower in, to and under the following agreements, contracts, guaranties, warranties, plans, licenses, permits and other items of personal property, whether now or hereafter executed, granted, received, acquired or issued:
 - I. all contracts and subcontracts, together with any and all extensions, modifications, amendments and renewals thereof, which are entered into by Borrower in connection with the performance of the work or the supply of labor, services or materials required for the construction of the Improvements;
 - ii. all guarantees, warranties and other undertakings, whether written, oral or statutory, covering the quality or performance of the work or the quality of the materials required by the contracts and subcontracts, together with any claims which may be asserted thereunder;
 - iii. all building permits, governmental permits, licenses, consents, approvals and authorizations now or hereafter granted or issued, and all tradenames, trademarks and logos used, in connection with the construction, development or operation of the Project (as defined in the Construction Loan Agreement); and
 - iv. all plans, specifications, drawings, surveys, renderings and models prepared for the construction of the Improvements in existence from time to time, together with all

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87 Homeport Realty, Hyannis

43

WDP 6
ASXM



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Confirmatory Mortgage

- Different than Notice of Scriveners Error or Attorney's Affidavit
- Note reason at Top
- Lender consent/execution may be needed
- Confirm Discharge releases all mortgages

HTG 9/5

Bk 25245 Pg267 #7488
02-09-2011 @ 09:39a

CONFIRMATORY MORTGAGE AND SECURITY AGREEMENT

THIS INSTRUMENT IS TO CORRECT AND CONFIRM THE MORTGAGE AND SECURITY AGREEMENT DATED AUGUST 5, 2010, AND RECORDED AS BOOK 24723, PAGE 214, THAT, AS A RESULT OF A TYPOGRAPHICAL ERROR IN DRAFTING, RECITED THAT SUCH MORTGAGE WAS GRANTED TO SECURE THE REPAYMENT OF \$65,000.00 INSTEAD OF THE CORRECTED AMOUNT DUE UNDER THE PROMISSORY NOTE DATED AUGUST 5, 2010, \$100,000.00.

KNOW ALL PERSONS that John Shea, and Wayne Pacheco, jointly and severally, of P.O. Box 427 Hyannis, MA 02601, ("Mortgagor") for consideration paid, hereby grant unto Stephen K. Glickman, Trustee of the Homeport Realty Trust u/d/d dated July 19, 2010, and recorded with the Barnstable County Registry of Deeds in Book 24732, Page 209, of 1008 Embassy Row Way, John's Island, SC 29455, (the "Mortgagee"), with Mortgage COVENANTS to secure (a) the repayment of \$100,000.00 with interest and other charges thereon, payable as provided in the Promissory Note (the "Note") of even date, and any extensions, substitutions or renewals thereof, (b) the Collateral Assignment of Leases and Rents, (c) Assignment of Project Documents, (d) other documents given or executed by the Mortgagor in connection with this loan, and (e) the repayment of any future advances, with interest thereon, made to Mortgagee by Mortgagee ("Future Advances"), covering the land and building known as and numbered 87 Homeport Drive, Hyannis, MA, together with any buildings, structures or improvements now or hereafter situated thereon and all as described in Exhibit A, ("Legal Description") having been annexed hereto prior to the execution hereof and incorporated herein by reference as if fully set out herein.

Collateral Security Interest

Also, the Mortgagor hereby grants to the Mortgagee a security interest in all of the goods, fixtures, furniture, furnishings, equipment, chattels and articles of personal property, including, without limitation, all building materials and supplies, heating apparatus, plumbing, furnaces, boilers, oil burners, refrigeration, air conditioning and sprinkler systems, awnings, screens, window shades, drapes, carpeting, office and model furniture, motors, dynamos, incinerators, plants and shrubbery, and all other equipment, machinery, appliances, fittings and fixtures, whether personal property, inventory or fixtures, whether now owned or hereafter from time to time acquired by the Mortgagor, together with all substitutions, replacements, additions, attachments, accessories, accretions, their component parts thereto or thereof, all other items of like property, whether now in existence or hereafter arising, and all of the rents, issues, income revenues and profits derived from the above-described realty (all of which items or property are hereinafter referred to as the "Collateral"), it being the intention of the parties hereto that this instrument shall constitute a security agreement within the meaning of the Uniform Commercial Code with respect to so much of the Collateral as may be considered personal property; and that a security interest shall attach thereto as soon as the Mortgagor obtains any interest in any of the Collateral and before the Collateral becomes fixtures or before the Collateral is installed or affixed to other collateral, for the benefit of the Mortgagee to secure the indebtedness evidenced by the Note and secured by this Mortgage and Security Agreement, and all other sums and charges which may become due hereunder or thereunder. The security interest held by the Mortgagee shall cover cash and non-cash proceeds of the Collateral, but nothing contained herein shall be construed as authorizing, either expressly or by

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Schedule Sheet

- What is reviewed and omitted from abstract

6928/10 DP HOMEPORT DRIVE
LOT 16 PL 197/123
S.H.P.

GRANTOR
KATHERINE L. KOURAFAS

8/28 6/2
1989-1995

1989
12-23-1989 UNIV BANK NA 6928-11 M
AST 6928/11 C
NORTH EASTERN MTG CO. INC.
AST 719 V 61
FED HOME LOAN MORT
FIR 15

1990-1994

12-31-1993 OLDE TOWNE PL LND CO. 8982-193 DP
EQUITY OWNER ✓✓

9-21-1994 FED HOME LOAN 9373-209 O/NOTC
RE: MTG 6928/11

1995
6-2/1995 9695-254 CO.

6-2/1995 9695-257 C/E

6-2/1995 FED HOME LOAN MTG 9695-258 DD/UP

1-31-1995 BARN (PUBLIC WORKS) 9541-298 BTMT
→ ESTIMATE OF BTMT ←

11-2-1995 BARN (PUBLIC WORKS) 9911-225 BTMT
REPAIRS TO PRIVATE WAYS CFF OF 17174/194 ✓
DISSOLUTION (OK)

(53)



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Schedule Sheet

- Mortgage amounts and dates (short sale)
- IRS lien
- Comm. Mass lien
- Deed out
- Three years for taxes

18718/345 DD
GRANTOR

87 HONEWELL DRIVE
LOT 16 PL 197/123
R.H.P.

DONALD C. BINGHAM, III
KRISTA J. LECKSTROM
N/A KRISTA J. BINGHAM

6/15 8/5
2004 - 2010

2004

6-16-2004	MIERS	\$ 256,400.00	18719-1 M	D/H 20230/143	AST 55224	OK
8-25-2005	MIERS	\$ 248,250.00	20192-175 M	D/H 22354/218	AST 55224	OK
8-25-2005	COUNTRYWIDE HOME	\$ 72,445.00	20192-170 M	D/H 22377/216	AST 51732/18	OK
9-13-2007	SOVEREIGN BANK	\$ 337,500.00	22331-199 M	D/H 25089/261	AST 55224	OK
12-31-2009	SOVEREIGN BANK		24279-224	O/NOTE	RE: MT6 22331/199	22331/199
2-8-2010			24355-320	DC/H	OUT	
2-9-2010	IRS	\$ 7,756.60	24358-343	L/X	R/L 24790/24	OK
8-5-2010	PACHECO, WAYNE (D)		24732-213	DD		
4-6-2009	MASS (REVENUE)	\$ 11,450.53	23591-24	L/X	R/L 24739/204	OK
8-6-2010			24732-212	C/H/L		

(58)



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QUESTIONS AND ANSWERS



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