

FILED Aug 20, 2013

**Dan DeCesare  
4120 West 18<sup>th</sup> Ave  
Farmingdale N.J. 07727  
Cell 908-890-4741**

**RECEIVED**  
AUG 20 2013  
SUPERIOR COURT  
CLERK'S OFFICE

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August 19, 2013

Honorable Margaret Mary McVeigh, P.J.Ch.  
Passaic County Courthouse,  
71 Hamilton St., Chambers 100,  
Paterson, NJ 07505

**Re: Docket No F 17318-13**

**Citibank, N.A., Citibank Residential Lending, Inc., CitiMortgage ,Inc., and CitiFinancial Services, Inc., to Issue Corrected Notices of Intent to foreclose on Behalf of Identified Foreclosure Plaintiffs in uncontested Cases.**

Your Honor

I have enclosed the following in opposition to Plaintiffs motion to Issue an amended Notice of Intent to Foreclose.

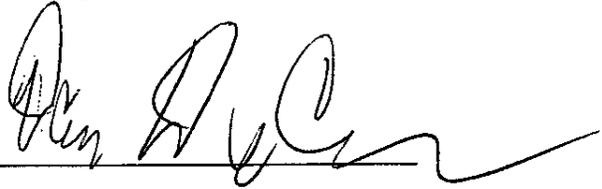
- 1) **Response and Objections to Issue Corrected NOI..**
- 2) **Answer and Affirmative defense**
- 3) **Request to Vacate default**
- 4) **Proposed Order**

As you will see in my Certification, I just received this less than 10 days ago. In the middle of being a single father, working to survive as this has ruined my credit, I have done this best I could to respond timely.

As I could not afford an Attorney yet, I had no option but to respond as a Pro Se Defendant.

With that being said, please advise me if the Court needs any additional information or if possible a Settlement conference could be scheduled to discuss a Deed in Lieu of Foreclosure agreement or some other satisfactory settlement to this matter without the necessity of me having to bear additional damages and costs.

I apologize in advance for the lack of legal formatting.

A handwritten signature in black ink, appearing to read "Dan DeCesare", written over a horizontal line. The signature is stylized and cursive.

Sincerely Dan DeCesare

CC All Parties

To CitiMortgage ,Inc.

1000 Technology Drive

O'Fallon Missouri 63368

Krovatin, Klingman LLC

Geraldine Krovatin, Esq.

60 park Place Suite 1100

Newark N.J. 07102

Paul, Weiss, Rifkind and Wharton & Garrison LLP

Theodore V. Wells Esq.

Joyce S. Huang, Esq.

Julie E. Fink Esq.

1285 Avenue of the Americas

New York, New York 10019-6064

Attorneys for Citibank

**Phelan Hallinan & Diamond, P.C.**

*Mount Laurel Office*

400 Fellowship Road, Suite 100

Mt. Laurel, NJ 08054

Tel: (856) 813-5500

Fax: (856) 813-5501

Daniel DeCesare  
4120 West 18<sup>th</sup> Ave  
Wall N.J. 07719  
Pro Se Defendant

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<b>IN RE APPLICATION BY CITIBANK.</b>	:	
<b>N.A., CITI RESDENTIAL LENDING.</b>	:	<b>SUPERIOR COURT OF NEW JERSEY</b>
<b>INC., CITIMORTGAGE INC., AND</b>	:	<b>CHANCERY DIVISION:</b>
<b>CITIFINANCIAL SERVICES , INC.,</b>	:	<b>PASSAIC COUNTY</b>
<b>TO ISSUE CORRECTED NOTICES</b>	:	
<b>OF INTENT TO FORECLOSE ON</b>	:	<b>DOCKET NO: F-17318-13</b>
<b>BEHALF OF UNIDENTIFIED</b>	:	
<b>FORECLOSURE PLAINTIFFS IN</b>	:	<b>Civil Action</b>
<b>UNCONTESTED CASES</b>	:	
	:	<b>RESPONSE AND OBJECTION TO</b>
<b>Plaintiff,</b>	:	<b>ISSUE CORRECTED NOTICES OF</b>
	:	<b>DEFAULT AND INTENT TO</b>
<b>Vs.</b>	:	<b>FORECLOSE, ANSWER AND</b>
	:	<b>AFFIRMATIVE DEFENSES AND</b>
<b>Daniel DeCesare</b>	:	<b>REQUEST TO VACATE DEFAULT</b>
	:	
<b>Defendants.</b>	:	

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Honorable Judge McVeigh:

Please accept this letter memorandum in lieu of a more formal brief in support of the Defendant's Response and Objection to Plaintiffs Order to Show Cause to Issue an Amended Notice of Intent to Foreclose.

### STATEMENT OF FACTS

The moving party relies upon my detailed Certification filed as part of the within application.

### LEGAL ARGUMENT AS TO AMENDED NOTICE OF INTENT

Plaintiffs Application to Issue an Amended Notice of Intent to Foreclose shall be denied based on Plaintiffs Service of the Amended Notice of Default and Intent to Foreclose.

In accordance with Your Honors order to allow "Citi" to serve , along with the order to show cause and Verified Complaint, corrected Notices of Intention to Foreclose "NOI" an all defendants and mortgagors/parties obligated on the debt in pending Foreclosure actions filed before February 28,2012, Plaintiff has failed to serve the defendant.

**LACK OF SERVICE IN THE ORDER TO SHOW CAUSE AMENDED NOI**

In this Instance, the Plaintiff, fully aware that my home is 4120 West 18<sup>th</sup> Avenue in Wall NJ 07727, which is the address in the Complaint and where Plaintiff's Certification of Service in the in the Underlying foreclosure action allegedly occurred, improperly sent this required NOI to the address of the Foreclosure, rather than my home. The Tenant at 146 East Rutherford New Jersey then mailed it to me and I received this NOI approximately 10 days ago, prejudicing my rights to properly respond.

**LACK OF SERVICE OF INITIAL FORECLOSURE ACTION**

In the Underlying Foreclosure action, Plaintiff certifies, I was served at my home at 4120 West 18<sup>th</sup> Ave in Wall N.J. I called Plaintiffs council Jennifer Coulter, last week when I received the NOI from my tenant and advised them I had never received the initial Foreclosure complaint. Plaintiffs Counsel advised me the process server advised it was refused. I was never served at my home in Wall N.J and did not have any knowledge of the initial foreclosure action.

**RULE 4:4. Process:**

Pursuant to Your honors order a copy of the Verified Complaint was required to be attached to the NOI, it is reasonable to assume that process in accordance with 4:4 applies, which in part is as follows.

- **(a) Summons and Complaint.** Summonses shall be served, together with a copy of the complaint, by the sheriff, or by a person specially appointed by the court for that purpose, or by plaintiff's attorney or the attorney's agent, or by any other competent adult not having a direct interest in the litigation. If personal service cannot be effected after a reasonable and good faith attempt, which shall be described with specificity in the proof of service required by R. 4:4-7, service may be made by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, to the usual place of abode of the defendant or a person authorized by rule of law to accept service for the defendant or, with postal instructions to deliver to addressee only, to defendant's place of business or employment. If the addressee refuses to claim or accept delivery of registered or certified mail, service may be made by ordinary mail addressed to the defendant's usual place of abode. The party making service may, at the party's option, make service simultaneously by registered or certified mail and ordinary mail, and if the addressee refuses to claim or accept delivery of registered mail and if the ordinary mailing is not returned, the simultaneous mailing shall constitute effective service. Mail may be addressed to a post office box in lieu of a street address only as provided by R. 1:5-2. Return of service shall be made as provided by R. 4:4-7.

**INCORRECT CERTIFICATION IN COMPLAINT IN VIOLATION OF 4:5-1**

At the time of Plaintiffs application in the Foreclosure action Plaintiff was fully aware of pending actions INCLUDING WORLDWIDE FINANCIAL RESOURCES, THE STATE OF NEW JERSEY ATTORNEY GENERALS OFFICE, DAVID FINDEL AND VITO AND DAVID GRIPPO, MR. ZBGNIOW MOTEL, AND 146 MOUNTAIN WAY LLC but failed to disclose the matter when filing the case. 4:5-1 provides for in relevant part:

“Further, each party shall disclose in the certification the names of any non-party who should be joined in the action pursuant to R. 4:28 or who is subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts”.

#### **4:5-1. General Requirements for Pleadings**

**(2) Notice of Other Actions and Potentially Liable Persons.** Each party shall include with the first pleading a certification as to whether the matter in controversy is the subject of any other action pending in any court or of a pending arbitration proceeding, or whether any other action or arbitration proceeding is contemplated; and, if so, the certification shall identify such actions and all parties thereto. Further, each party shall disclose in the certification the names of any non-party who should be joined in the action pursuant to R. 4:28 or who is subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts. Each party shall have a continuing obligation during the course of the litigation to file and serve on all other parties and with the court an amended certification if there is a change in the facts stated in the original certification. The court may require notice of the action to be given to any non-party whose name is disclosed in accordance with this rule or may compel joinder pursuant to R. 4:29-1(b). If a party fails to comply with its obligations under this rule, the court may impose an appropriate sanction including dismissal of a successive action against a party whose existence was not disclosed or the imposition on the noncomplying party of litigation expenses that could have been avoided by compliance with this rule. A successive action shall not, however, be dismissed for failure of compliance with this rule unless the failure of compliance was inexcusable and the right of the undisclosed party to defend the successive action has been substantially prejudiced by not having been identified in the prior action.

If the Plaintiff denies knowing of the other pending matters at the time of the of the Initial Foreclosure action, Plaintiff surely knew about them at the time they filed the Order to Show Cause and should have amended the complaint accordingly. Having knowledge of the alleged Fraud at the time of the filing provides cause of naming the additional parties to the action. Furthermore if in fact it is found Plaintiff failed to name the Parties as required by 4:5-1 it would not be an uncontested case and the matter must be dismissed.

#### **INCORRECT CERTIFICATION IN COMPLAINT IN VIOLATION OF 4:64-1(a)**

#### **4:64-1. Foreclosure Complaint, Uncontested Judgment Other Than In Rem Tax Foreclosures**

- **(a) Title Search; Certifications.**

- (1) Prior to filing an action to foreclose a mortgage, a condominium lien, or a tax lien to which R. 4:64-7 does not apply, the plaintiff shall receive and review a title search of the public record for the purpose of identifying any lienholder or other persons and entities with an interest in the property that is subject to foreclosure and shall annex to the complaint a certification of compliance with the title search requirements of this rule.
- (2) In all residential foreclosure actions, plaintiff's attorney shall annex to the complaint a certification of diligent inquiry:
  - (A) that the attorney has communicated with an employee or employees of the plaintiff who (i) personally reviewed the documents being submitted and (ii) confirmed their accuracy; and
  - (B) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) with whom the attorney communicated pursuant to paragraph (2)(A) of this rule.
- (3) Plaintiff's attorney shall also annex to the complaint a certification, executed by the attorney, attesting that the complaint and all documents annexed thereto comport with the requirements of R. 1:4-8(a).
- (b) **Contents of Mortgage Foreclosure Complaint.** In an action in the Superior Court to foreclose a mortgage, the complaint shall state:
  - (1) the name of the obligor, mortgagor, obligee and mortgagee;
  - (2) the amount of the debt secured by the mortgage;
  - (3) the dates of execution of the debt instrument and the mortgage;
  - (4) the recording date, county recording office, and book and page recording reference of the mortgage securing the debt;
  - (5) whether the mortgage is a purchase money mortgage;
  - (6) a description of the pertinent terms or conditions of the debt instrument or mortgage and the facts establishing the default;
  - (7) the default date;
  - (8) if applicable, the acceleration of the debt's maturity date;
  - (9) if applicable, any prepayment penalty;
  - (10) if the plaintiff is not the original mortgagee or original nominee mortgagee, the names of the original mortgagee and a recital of all assignments in the chain of title;
  - (11) the names of all parties in interest whose interest is subordinate or affected by the mortgage foreclosure action and, for each party, a description of the nature of the interest, with sufficient particularity to give the court and parties notice of the transaction or occurrence on which the interest is based including recording date of the lien, encumbrance, or instrument creating the interest;
  - (12) a description of the subject property by street address, block and lot as shown on the municipal tax map and a metes and bounds description stating whether the recorded mortgage instrument includes that description; and
  - (13) if applicable, whether the plaintiff has complied with the pre-filing notice requirements of the Fair Foreclosure Act or other notices required by law.

If Plaintiff did the required title search they would have located the Deed between Daniel DeCesare and 146 Mountain Way LLC dated February 25<sup>th</sup> 2009. Having knowledge of the alleged Fraud at the time of the filing provides cause of naming the additional parties to the action. Furthermore if in fact it is found Plaintiff failed to name the Parties as required by 4:64-1 it would not be an uncontested case and the matter must be dismissed.

**Default and Default Judgment should be set aside because of excusable neglect on the part of the Defendant, and because enforcement of the judgment would be unjust, oppressive and inequitable**

Rule 4:50-1 of the New Jersey Rules of Court sets forth several grounds for relief from a judgment or order:

On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: **(a) mistake inadvertence, surprise, or excusable neglect; .... (c) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (f) any other reason justifying relief from the operation of the judgment or order.**

(Emphasis added)

Although relief under R. 4:50 is granted sparingly and only in exceptional circumstances, it should be available "**in situations in which, were it not applied, a grave injustice would occur.**" Housing Authority of Town of Morristown v. Little, 135 N.J. 274, 289 (1994). (emphasis added).

More leeway is warranted when dealing with applications to vacate *default* or *default* judgment. It is a well established principle that applications to vacate default should be "viewed with great liberality, and **every reasonable ground for indulgence is tolerated to the end that a just result is reached.**" Marder v. Realty Construction

Co., 84 N.J. Super. 313, 319 (App. Div. 1964) (emphasis added). Marder holds that “a defendant seeking to reopen a default judgment must show that the neglect to answer was excusable under the circumstances and that he has a meritorious defense.”

In the instant case Defendant has demonstrated that both that Defendants failure to Answer was excusable and that Defendant has a meritorious defense (see Defendant's Certification, including the proposed Answer attached as Exhibit “ A”).

With respect to Defendants failure to answer, the Defendant was simply NOT served and even if the Court was to find Defendant was served, Plaintiffs failure to comply with the required provisions of the Statute in the Initial Process or in the Amended NOI Process, and The Fair Foreclosure Act, provides enough issue “In the Interest of Justice” to set aside the default and allow the parties to proceed properly and at Law in the above action.

The court also can relieve a party of a default based upon Fraud, which in this matter the evidence seems overwhelming that this is what occurred.

Given the fact , the Matter was pursued by the **UNITED STATES ATTORNEY GENERALS OFFICE AND THE DEFENDANT WAS CONVICTED IN THE UNITED STATES DISTRICT COURT OF NEW JERSEY UNDER AN INDICTMENT BY A GRAND JURY IN NEWARK NEW JERSEY, IN “THE UNITED STATES OF AMERICA VS. VITO C.GRIPO AND WAS CONVICTED** was convicted of Wire fraud and Tax Evasion stemming from this Mortgage fraud.

### **Fraud Predatory Lending**

Worldwide Financial Resources Inc, David Findel and Freddie Grippo were Agents of the Plaintiff. Plaintiff made loans with No Reasonable Expectation That the Borrowers

Could repay them. Under the typical facts of a predatory lending case, the breach of fiduciary duty is a species of fraud.

An especially damaging form of predatory lending is the origination of loans by a lender who has no reasonable expectation that the borrowers can repay them. *Bauer v. Giannis*, 359 Ill.App.3d 897, 908 (Ill. App. Ct. 2005); *Sound Techniques, Inc. v. Hoff man*, 737 N.E.2d 920, 924 (Mass. App. Ct. 2000)n28]

Plaintiff as Purchaser of notes need to have measures in place to protect themselves from these gambits of dishonest brokers.

Mortgage brokers are the agents of the borrowers when they hold themselves out as having the expertise to provide financial advice and undertake to act as the borrower's fiduciary by functioning as her broker to obtain financing from a third party lender.

Mortgage brokers purport to help their customers find a lender that can provide a mortgage with terms best suited to the customer's situation. Therefore, a principal and agent relationship is created when one party undertakes to find financing on behalf of another. *DeLeon v. Beneficial Constr. Co.*, 998 F. Supp. 859, 865 (N.D. Ill. 1998); *DeLeon v. Beneficial Constr. Co.*, 55 F. Supp. 2d 819, 827 (N.D. Ill. 1999); *Weller v. Accredited Home Lenders, Inc.*, No. 08-2798, slip op. at 9 (D. Minn. Mar. 31, 2009) ("Residential mortgage originators who solicit or receive an advance fee in exchange for assisting a borrower located in this state in obtaining a loan secured by a lien on residential real estate, or who offer to act as an agent

of the borrower located in this state in obtaining a loan secured by a lien on residential real estate shall be considered to have created a fiduciary relationship with the borrower”). Cf. *Ellipso, Inc. v. Mann, et al.*, 541 F. Supp. 2d 365, 373-74 (D.D.C. 2008) (lender normally has no fiduciary duty to borrower, but duty may arise if “special relationship of trust of confidence” exists).

The lender is deemed present at the closing through its agent. Therefore, the knowledge of the agent is attributable to the lender if the closing agent had actual or constructive knowledge of the fraudulent conduct. See *Triple A Mgmt. Co., Inc. v. Frisone, et al.*, 81 Cal. Rptr. 2d 669, 679 (Cal.Ct. App. 1999).

Bank lenders do not simply send prepared loan documents arbitrarily to random brokers and title agents, or authorize the signing of documents obliging them to extend a loan in a state where the bank maintains no offices, without first entering into agreements with those who generate and consummate the loans on the bank's behalf. Moreover, the lender cannot delegate its TILA obligations to the title agent, and thus remains responsible for the disclosures made or not made by the agent.

In a slightly different context, the Sixth Circuit noted that a principal may be vicariously liable for an agent's tortious conduct based upon an apparent authority theory, “if . . . [the principal] held the agent out to third parties as possessing sufficient authority to commit the particular act in question, and there was reliance on the apparent authority. . . liability is based upon the fact that the agent's position facilitates the consummation of the fraud, in that from the point of view of the third person the transaction seems regular

on its face and the agent appears to be acting in the ordinary course of the business provided to him. *Jones v. Federated Fin. Reserve Corp.*, 144 F.3d 961, 965 (6th Cir. 1998);

Under the same common law agency principles, the mortgage broker may be found to be the agent of the lender where the originating lender had no local offices, made no direct loans, had a close relationship with the broker, purchased most or all of its generated loans, provided guidelines and marketing materials, and essentially relied on brokers to sell its products. E.g., *Christinson v. Venturi Constr. Co.*, , 440 N.E.2d 226, 228 (Ill. App. Ct.1982); *England v. M.G. Invs., Inc.*, 93 F. Supp. 2d 718, 723 (S.D.W.Va. 2000); *Commercial Credit Corp. v. Orange County Mach. Works*, 214 P.2d 819, 822 (Cal. 1950).

Therefore, it is important to explore the relationship between the broker and originating lender. The necessary information may not be obtainable without discovery, however. In cases where the title company gave the loan documents to the broker to conduct a closing in the borrower's home, the broker actually becomes the agent for the originating lender, thus allowing additional claims against the originating lender.

The lender is liable where the evidence indicates that the lender knew or should have known of the broker's fraud, for example, where there is a close relationship between the remote lender and the broker, a high volume of dealings between the entities, or other information available to the lender from the transaction documents that suggests a fraud has occurred.

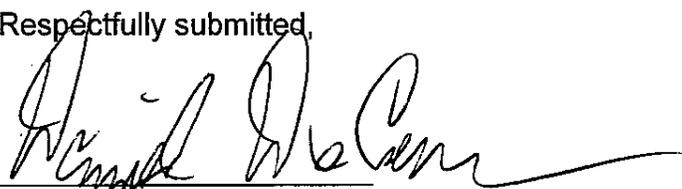
Even if the Court does not find sufficient grounds to set aside default on the grounds of excusable neglect, or fraud, relief is still warranted under subsection (f) of Rule 4:50, i.e. "for any other reason justifying relief from the operation of the judgment or order." This Rule "is designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case" Baumann v. Marinaro, 95 N.J. 380, 392 (1984). It has been held that reliance on R. 4:50-1(f) is appropriate when "**enforcement of the order or judgment would be unjust, oppressive, or inequitable.**" Quagliato v. Bodner, 115 N.J. Super, 133, 138 (App. Div. 1971) (citing Greenberg v. Owens, 31 N.J. 402, 411 (1960)) (emphasis added).

In the instant matter, the Plaintiff obtained a default judgment in the amount of \$585,176 against me without my knowledge or due process. The Plaintiff seeks to simply ignore their obligations under the law and simply bulk my case in with the other NOI cases and simply overlook the requirements to my detriment. Under all the circumstances, enforcement of the default judgment would certainly be "unjust, oppressive and inequitable."

### **CONCLUSION**

For the foregoing reasons, it is respectfully requested that the Court set aside default and default judgment, and permit the Defendant to file his proposed Answer and Counterclaim in order to adjudicate the matter on its merits.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel DeCesare", written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Daniel DeCesare  
Pro Se Defendant

Daniel DeCesare  
4120 West 18<sup>th</sup> Ave  
Wall N.J. 07719  
Pro Se Defendant

<b>IN RE APPLICATION BY CITIBANK.</b>	:	
<b>N.A., CITI RESIDENTIAL LENDING.</b>	:	<b>SUPERIOR COURT OF NEW JERSEY</b>
<b>INC., CITIMORTGAGE INC., AND</b>	:	<b>CHANCERY DIVISION:</b>
<b>CITIFINANCIAL SERVICES , INC.,</b>	:	<b>PASSAIC COUNTY</b>
<b>TO ISSUE CORRECTED NOTICES</b>	:	
<b>OF INTENT TO FORECLOSE ON</b>	:	<b>DOCKET NO: F-17318-13</b>
<b>BEHALF OF UNIDENTIFIED</b>	:	
<b>FORECLOSURE PLAINTIFFS IN</b>	:	<b>Civil Action</b>
<b>UNCONTESTED CASES</b>	:	
	:	<b>RESPONSE AND OBJECTION TO</b>
<b>Plaintiff,</b>	:	<b>ISSUE CORRECTED NOTICES OF</b>
	:	<b>DEFAULT AND INTENT TO</b>
<b>Vs.</b>	:	<b>FORECLOSE, ANSWER AND</b>
	:	<b>AFFIRMATIVE DEFENSES AND</b>
<b>Daniel DeCesare</b>	:	<b>REQUEST TO VACATE DEFAULT</b>
	:	
<b>Defendants.</b>	:	
	:	
	:	

**THIS MATTER** having been brought before the Court by Plaintiff upon an Order to Show Cause filed by Attorney for the Plaintiff Theodore Wells Esq, of the law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP, and responded to on Defendants behalf by Pro Se Defendant Daniel DeCesare of Wall NJ, and the Court having considered the matter, and having heard argument of The Plaintiff and the Defendant, and for good cause appearing,

**IT IS** on this \_\_\_\_\_ day of \_\_\_\_\_, 2013, **ORDERED** as follows:

1. The request by Plaintiff to Issue an Amended NOI is denied and the Case against the Defendant is Dismissed;

2. The Default entered against the Defendant on August 20<sup>th</sup> 2010 is hereby vacated and the Defendant shall have 35 days to answer the foreclosure complaint;
3. The Default entered against the Defendant on August 20<sup>th</sup> 2010 is hereby Set-aside and the Defendant shall have 35 days to answer the foreclosure complaint;
- 4.

Hon. Margaret Mary McVeigh, P.J.Ch.

- opposed
- unopposed

Daniel DeCesare  
4120 West 18<sup>th</sup> Ave  
Wall N.J. 07719  
Pro Se Defendant

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<b>IN RE APPLICATION BY CITIBANK.</b>	:	
<b>N.A., CITI RESIDENTIAL LENDING.</b>	:	<b>SUPERIOR COURT OF NEW JERSEY</b>
<b>INC., CITIMORTGAGE INC., AND</b>	:	<b>CHANCERY DIVISION:</b>
<b>CITIFINANCIAL SERVICES , INC.,</b>	:	<b>PASSAIC COUNTY</b>
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	:	<b>AFFIRMATIVE DEFENSES AND</b>
<b>Daniel DeCesare</b>	:	<b>REQUEST TO VACATE DEFAULT</b>
	:	
<b>Defendants.</b>	:	

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**CERTIFICATION OF DAN DECESARE**

Defendants, Dan DeCesare herein referred to as "Defendant", files the following Certification which will serve in Response and Objection to Plaintiffs Motion to Issue an Amended Notice of Default and Intent to Foreclose as follows:

History of the Matter

It is important for the Court to fully understand the history on the above property to make a decision in the above action and plaintiff's request.

In or around October of 2008, I was approached by a Mr. Vito Grippo, who boasted he was owner of numerous businesses, such as Morgan Financial Equities, Vanick Holdings and property Management as well as having an interest along with his son and another partner Mr. David Findel of Worldwide Financial Resources as well as other related companies, including The Mortgage Assignee Plaintiff Citibank collectively referred to as Future Third Party Defendants for now.

Mr. Grippo offered me a partnership in an equity company related to Morgan Financial Equities Group which investment was secured by Real Estate.

The investment unknown to me, until the closing occurred on October 31<sup>st</sup> 2008, was for the Purchase of 146 Mountain Way from a Mr. Motel Zbigniew Podgornik Motel (Mr. "Motel") who along with Mr. Grippo's Company (ies) was contributing over two hundred thousand dollars as the Capital to obtain a loan from Worldwide Financial Resources who I was told in advance of any agreement, had agreed to supply the Financing for the acquisition of 146 Mountain Way Rutherford.

I believe based upon the documents I am providing to the Court, and after reviewing the State Attorney Generals Case, the court will find, that I am a victim in this case, along with the seller Mr. Motel, who is not a party to this action and should be afforded the opportunity to state a claim in this action as well.

As the Court may be aware, as I believe other properties in Rutherford and surrounding areas are subject of the Mortgage Fraud action against Mr. Vito Grippo, Mr. Freddie Grippo and David Findel, as they have all been charged, indicted and sentenced to prison for Mortgage Fraud, involving Worldwide Financial Resources, Vanick Holdings and Morgan Financial. I have attached as Exhibit "A" a copy of the State Attorney Generals case against The Third Party Defendants. As a point of reference, my case is on Page 5 Paragraph 12 (a) titled Mountain Way Rutherford New Jersey. In the States case, I am referred to as DD.

As additional proofs to the Court I have attached a few additional documents in support of this application.

- 1) A copy of the Morgan Financial Equity Share agreement as Exhibit "B".
- 2) A copy of The HUD settlement as Exhibit "C".
- 3) A copy of the 146 Mountain Way Operating Agreement and having three members Mr. Motel, Mr. Grippo's Company Morgan Financial Equity Share and Danny DeCesare (named improperly) as Exhibit "D".
- 4) **AND SIGNIFICANTLY A COPY OF A FILED DEED from Dan DeCesare to the 146 Mountain Way LLC** formed by Mr. Grippo as Exhibit "E".

The State's Case goes on to accurately elaborate the Fraud that I as well as the Seller have become victim to, in relevant part;

"Between January 2008 and February 2010, Vito Grippo held Morgan Financial out to the public as a company that could help homeowners who faced foreclosure on their homes through something Grippo called the "Equity Share Program." As described by Grippo and his associates, the Equity Share Program involved creating a limited liability company (LLC) in the

name of the homeowner's house, in which the homeowner would supposedly own a 90 percent interest with the rest to be owned by one or two private investors.

In reality, the so-called investors invested nothing and were instead straw buyers recruited by Vito Grippo or his son, Frederick Grippo, because they had good credit. The Grippo's and their associates then applied for mortgages in the names of the "investors" for the purchase of the properties owned by the homeowners in distress.

A homeowner in distress would come to a closing in Vito Grippo's office in Holmdel and be given a stack of documents to sign to prevent foreclosure. The homeowners frequently did not understand that they would be transferring title to their homes to the "investor."

Once the new loan application was filled out, it would be submitted to Worldwide Financial Resources for processing, where Freddie Grippo, a loan officer at Worldwide, would see to it that the loan was approved. Once the loan was approved and the loan money was wired to the settlement agent for a given transaction, Vito Grippo would direct the settlement agent to forward a portion of those loan proceeds to bank accounts that Vito Grippo controlled.

Properties that lost money through the Equity Share Program were found throughout the metropolitan area, including homes in Rutherford, N.J., Monroe, N.J. and Brooklyn, N.Y."

The property was transferred by deed to 146 Mountain Way LLC, on April 23<sup>rd</sup> 2009, which I was only a 5% member in, I have attached a copy of 146 Mountain Way LLC as Exhibit "D",

As the Deed from Daniel DeCesare to 146 Mountain Way LLC was filed, Plaintiffs action clearly does not name relevant parties, which should include all of the above third party

defendants. As stated above I have attached a copy of the deed from Dan DeCesare to 146 Mountain Way LLC as Exhibit "E".

As required by the Morgan Financial Equity Shares Agreement, Mr. Motel was to contribute \$5,000 + per month as his contribution to the Partnership, as well as his Use and Occupancy, which in turn was to be utilized to pay the Mortgage.

In furtherance of Mr. Motel's claim I had received from Mr. Motel's Attorney James Fitzgerald dated March 17<sup>th</sup> 2010, which letter states,

- 5) ***"Unbeknownst to our client, title to his property was wrongfully transferred to you and you placed a mortgage against his property in the amount of \$558,750. Demand is hereby made that you immediately transfer title to the above property back to our client, and that you have the \$558,750 Mortgage discharged of record."*** A copy of correspondence between Mr. Motel's Council and Mr. Vito Grippo as Exhibit "F".

I have attached the following correspondence as proof of the above claim.

- 6) A copy of Morgan Equity Financials Letter to Mr. Motel dated October 9<sup>th</sup> 2008, a few weeks before the closing advising him, he was accepted in Morgan Financials Equity shared program as Exhibit "G", which was the Government's case for Fraud against Mr. Grippo.
- 7) A copy of a letter from Mr. Vito Grippo to Mr. Motel dated March 25 2009, stating that Mr. Grippo had received a call from The Rutherford Constable advising that Mr. Motel was unhappy with the agreement he entered into" attached hereto as Exhibit "H".

8) A Notice of default dated October 2009, sent from Vanick Property Management to Mr. Motel advising he was in arrears of his Equity Share Agreement in the amount of \$35,762.67, Attached hereto as Exhibit "I".

### **Fraud Predatory Lending**

In my particular case I was not involved in the loan process, nor did I ever sign a loan application, receive a truth in lending package or any other relevant loan documents.

In review of the documents that I have, it is clear my name has been forged on numerous documents, including the resident seller's certificate attached hereto as Exhibit "J" to my certification, which is clearly in Contrast to my signature attached hereto as Exhibit "K".

To the best of my knowledge at no time did I execute a Mortgage or a Note to Worldwide or to any other entity.

David Findel , CEO of Worldwide Financial Group, Worldwide Financial Resources Inc. along with Freddie Grippo, both who have been indicted and convicted of Crimes relating to this Mortgage fraud, were acting as an Agent for Plaintiff fraudently applied for and obtained this loan.

If they were not parties to the action, they had a responsibility to review and approve the loan documents prior to funding them.

Plaintiff then as a party to this action, in 2010 recalls \$20,000,000 in loans that were issued from Worldwide Financial causing the company to go out of Business. As I have not received any discovery yet, I believe this loan would be included in that recall package. If that is the case CitiMortgage is fully aware of the status and the Foreclosure complaint is fatally flawed as it fails to disclose the parties.

**RESPONSE AND OBJECTION TO ISSUE AMENDED NOTICE OF DEFAULT AND INTENT TO FORECLOSE**

In accordance with Your Honors order to allow “Citi” to serve, along with the order to show cause and Verified Complaint, corrected Notices of Intention to Foreclose “NOI” on all defendants and mortgagors/parties obligated on the debt in pending Foreclosure Actions filed before February 28, 2012, Plaintiff has failed to serve the defendant.

LACK OF SERVICE IN THE ORDER TO SHOW CAUSE AMENDED NOI

In this Instance, the Plaintiff, fully aware that my home is 4120 West 18<sup>th</sup> Avenue in Wall NJ 07727, which is the address in the Complaint and where Plaintiff’s Certification of Service in the in the Underlying foreclosure action allegedly occurred, improperly sent this required NOI to the address of the Foreclosure, rather than my home. The Tenant at 146 East Rutherford New Jersey then mailed it to me and I received this NOI approximately 10 days ago, prejudicing my rights to properly respond.

LACK OF SERVICE OF INITIAL FORECLOSURE ACTION

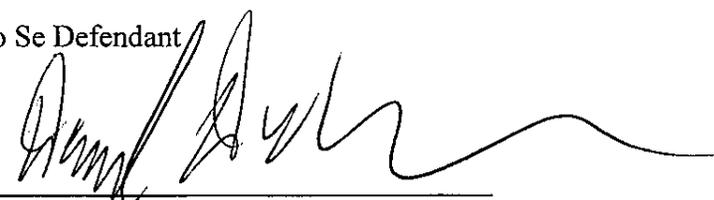
In the Underlying Foreclosure action, Plaintiff certifies, I was served at my home at 4120 West 18<sup>th</sup> Ave in Wall N.J. I called Plaintiffs council Jennifer Coulter, last week when I received the NOI from my tenant and advised them I had never received the initial Foreclosure complaint. Plaintiffs' Counsel advised me the process server advised it was refused and that the process server did not leave a copy as it is not required. I was never served at my home in Wall N.J and did not have any knowledge of the initial foreclosure action.

FAILURE TO NAME ALL PARTIES

At the time of Plaintiffs application in the Foreclosure action Plaintiff was fully aware of pending actions between **WORLDWIDE FINANCIAL RESOURCES, THE STATE OF NEW JERSEY ATTORNEY GENERALS OFFICE, DAVID FINDEL, VITO AND DAVID GRIPPO, MR. MOTEL, 146 MOUNTAIN WAY LLC AND OTHER UNNAMED PARTIES** but failed to include the parties or disclose the matter when filing the case.

WHEREFORE, Defendant, Daniel DeCesare, request that judgment be entered dismissing plaintiff's complaint with prejudice, awarding Attorney fees and costs of suit and for such other relief as may deem just and equitable.

Pro Se Defendant

By: 

Daniel DeCesare

Dated: August 18, 2013



c. Morgan Financial Equity Shares ("Morgan Financial"), located at the South Holmdel Road address, was described on its letterhead as being in the business of providing "financial relief for homeowners" and "equity sharing for investors." Defendant VITO GRIPPO was the president of Morgan Financial, and he used Morgan Financial as the business entity through which he purported to offer foreclosure rescue services.

d. Vanick Holdings Corp., a/k/a Vanick Holdings LLC, a/k/a Vanick Property Management, a/k/a Vanick Holdings LLC Management, a/k/a Vanick Holdings LLC Property Management ("Vanick") had several addresses listed for it, including defendant VITO GRIPPO's home address in Jackson and the South Holmdel Road address. Defendant VITO GRIPPO described Vanick as the property management company for Morgan Financial. Defendant VITO GRIPPO and coconspirator Freddie Grippo were each identified as officers of Vanick.

e. Jandever, a/k/a Jandever 1031 ("Jandever"), was another business that listed the South Holmdel Road address as its New Jersey address. Defendant VITO GRIPPO controlled Jandever and used its bank accounts in connection with his purported foreclosure rescue business.

#### THE CONSPIRACY

2. From at least in or about January 2008 to in or about February 2010, in the District of New Jersey and elsewhere, defendant

VITO C. GRIPPO

did knowingly and intentionally conspire and agree with coconspirator Freddie Grippo and others to devise a scheme and artifice to defraud mortgage lenders and to obtain money or property from them by means of materially false and fraudulent pretenses, representations, and promises, and,

for the purpose of executing the scheme and artifice, to transmit and cause to be transmitted by means of wire communications in interstate commerce certain writings, signs, signals, pictures and sounds, contrary to Title 18, United States Code, Section 1343.

#### OBJECT OF THE CONSPIRACY

3. The object of the conspiracy was to profit from arranging fraudulent mortgage loans on properties whose initial owners had been induced to participate in the Equity Share Program and to divert funds related to those mortgage loans for personal use.

#### MANNER AND MEANS OF THE CONSPIRACY

4. At all times relevant to this Indictment, defendant VITO GRIPPO, coconspirator Freddie Grippo and other coconspirators arranged real estate transactions involving the homes of homeowners in financial distress who were financially unsophisticated and/or who had a poor command of English. The purpose of these transactions was to obtain new mortgage loans on the properties and then defendant VITO GRIPPO would direct the distribution of the proceeds of the loans among himself, the entities he controlled, his coconspirators and his associates.

5. Defendant VITO GRIPPO held himself out as someone operating businesses that could assist homeowners in distress by providing new financing so as to help them avoid losing a home to foreclosure or to help them recover from some type of financial trauma, such as, for example, that caused by a house fire.

6. Defendant VITO GRIPPO touted an "Equity Share Program" that was offered by Morgan Financial, which purportedly would help homeowners in distress to keep their homes.

7. As represented by defendant VITO GRIPPO, the Equity Share Program involved the creation of a limited liability company ("LLC") for the house originally owned by the

homeowner in distress. The homeowner in distress purportedly would own 90% of the LLC, with 5% owned by Morgan Financial, and 5% owned by an individual referred to as an "investor."

8. In reality, the "investor" invested nothing and instead was a straw buyer whom defendant VITO GRIPPO or a coconspirator had recruited. Using the name of the "investor," defendant VITO GRIPPO and coconspirator Freddie Grippo applied for a new mortgage loan in an amount exceeding the original homeowner's existing mortgage loan.

9. The new mortgage loan application that defendant VITO GRIPPO and/or coconspirator Freddie Grippo or other coconspirators created in the name of the "investor" contained materially false information. For example, the "investor's" purported residence, income, assets and employment listed on the loan application were often false.

10. At the closing arranged by defendant VITO GRIPPO, the homeowner in distress was given a stack of documents to sign, by the execution of which documents title to the homeowner's home was transferred from the homeowner to the "investor." In most cases, the homeowners in distress were not aware of and did not understand that they were transferring title in their homes to another person or entity.

11. Defendant VITO GRIPPO instructed the homeowners in distress to make monthly payments to Vanick, which the homeowners believed were mortgage payments. Defendant VITO GRIPPO forwarded some of the monthly payments to the financial institution holding the new mortgage loan and diverted the other payments to his personal use and to the use of coconspirators. Due to the missed regular loan payments, the mortgage loans often resulted in foreclosure.

12. In all, defendant VITO GRIPPO, coconspirator Freddie Grippo and other coconspirators orchestrated more than ten fraudulent real estate transactions and mortgage loans related to those transactions, including the following properties:

a. Mountain Way, Rutherford, New Jersey

i. In or about October 2008, defendant VITO GRIPPO induced Z.M., a homeowner in distress who was the co-owner with his then-partner of a home on Mountain Way in Rutherford, New Jersey, to participate in Morgan Financial's Equity Share Program. Z.M. had immigrated to the United States as an adult and had a poor command of English. Z.M.'s home had been gutted by fire and water damage in 2005, and the cost of repairing the damage was only partially covered by fire insurance. Seeking to complete repairs in 2008, Z.M. sought approximately \$50,000 in new financing.

ii. In or about October 2008, defendant VITO GRIPPO and coconspirator Freddie Grippo recruited D.D. to serve as the "investor" for a new mortgage loan premised on the "sale" of the Mountain Way property from distressed homeowner Z.M. to D.D.

iii. In or about October 2008, defendant VITO GRIPPO and coconspirator Freddie Grippo prepared or caused to be prepared a loan application for approximately \$558,750 in D.D.'s name. The income, assets, and residence information listed on that application for D.D. were fictitious.

iv. In or about October 2008, coconspirator Freddie Grippo processed the loan application in the name of D.D. and caused it to be approved by Worldwide Financial. In approving the loan, Worldwide Financial relied at least in part on the false statements contained in the application. After fees and other expenses, the loan netted \$539,786.

v. On or about October 31, 2008, defendant VITO GRIPPO induced Z.M. to sign a stack of documents that Z.M. thought related to a new mortgage loan provided by Morgan Financial but whose execution instead transferred title to the Mountain Way property from Z.M. to D.D.

vi. On or about November 4, 2008, defendant VITO GRIPPO and coconspirator Freddie Grippo caused Westbound Bank in Texas to send a wire transfer in the amount of approximately \$539,786 to an account in New Jersey at TD Bank held by Quick Title Search, LLC, the settlement agent for the closing involving the Mountain Way property.

vii. In or about November 2008, defendant VITO GRIPPO instructed the settlement agent for the mortgage loan on Mountain Way to disburse \$205,906 to a Jandevan bank account that defendant VITO GRIPPO controlled. Z.M. received \$50,000 of that amount, and defendant VITO GRIPPO, coconspirator Freddie Grippo as well as their associates received the balance.

viii. In and after November 2008, Z.M. made a number of monthly payments to Vanick that he thought were mortgage payments on his new loan. He stopped making such payments when he came to realize that he no longer owned the Mountain Way home. That property has since gone into foreclosure.

b. Bordentown Turnpike, Monroe, New Jersey

i. In or about November 2008, an employee of defendant VITO GRIPPO induced F.L. and his wife D.L., co-owners with F.L.'s mother of a home on Bordentown Turnpike in Monroe, New Jersey, to participate in the Morgan Financial Equity Share Program. F.L. and D.L. were homeowners in distress who were behind on their mortgage payments

because of a job loss.

ii. In or about November 2008, coconspirator Freddie Grippo recruited B.G. to serve as the “investor” for a new mortgage loan premised on the “sale” of the Bordentown Turnpike property from F.L. and D.L. to B.G.

iii. In or about November 2008, defendant VITO GRIPPO and coconspirator Freddie Grippo created or caused to be created a loan application for \$386,250 in B.G.’s name. The income, assets and residence information listed for B.G. on the application were fictitious.

iv. In or about November 2008, coconspirator Freddie Grippo processed the loan application for approximately \$386,250 and caused it to be approved by Worldwide Financial so that after fees and other expenses the loan would net approximately \$372,476. In approving the loan, Worldwide Financial relied at least in part on the false statements contained in the loan application.

v. On or about November 26, 2008, defendant VITO GRIPPO and his agent or agents induced F.L. and D.L. to sign a stack of documents that F.L. and D.L. thought were related to a new mortgage loan provided by Morgan Financial but whose execution instead transferred title to the Bordentown Turnpike property from them to B.G.

vi. On or about November 26, 2008, defendant VITO GRIPPO and coconspirator Freddie Grippo caused Westbound Bank in Texas to send a wire transfer in the amount of \$372,476 to an account in New Jersey at TD Bank held by Quick Title Search, LLC, the settlement agent for the closing involving the Bordentown Turnpike property.

vii. In or about November 2008, defendant VITO GRIPPO instructed the

settlement agent handling the \$372,476 net amount of the mortgage loan to disburse \$59,361 of that loan amount to a Jandever bank account defendant VITO GRIPPO controlled. Defendant VITO GRIPPO then caused distributions of that amount to be made to himself, coconspirator Freddie Grippo and others.

viii. The home on Bordentown Turnpike subsequently went into foreclosure.

c. St. Johns Place, Brooklyn, New York

i. In or about February 2009, defendant VITO GRIPPO induced J.R., a homeowner in distress who owned a home on St. Johns Place in Brooklyn and who had fallen behind in her mortgage payments, to participate in the Morgan Financial Equity Share Program.

ii. In or about February 2009, defendant VITO GRIPPO and coconspirator Freddie Grippo created a fictitious "investor" named "J.M." to be the nominal applicant on a new mortgage loan premised on the "sale" of the St. Johns Place property from J.R. to "J.M."

iii. In or about February 2009, defendant VITO GRIPPO and coconspirator Freddie Grippo prepared or caused to be prepared a loan application for \$489,300 in "J.M.'s" name in which the name of the purported borrower as well as the listed income, assets and residence information were completely fictitious.

iv. In or about February 2009, coconspirator Freddie Grippo processed the loan application for \$489,300 and caused it to be approved by Worldwide Financial so that after fees and other expenses the loan would net \$471,067. In approving the loan, Worldwide Financial relied at least in part on the false information in the loan application.

v. On or about February 28, 2009, defendant VITO GRIPPO induced J.R.

to sign a stack of documents that J.R. thought related to a new mortgage loan provided by Morgan Financial but whose execution instead transferred title to the St. Johns Place property from J.R. to "J.M."

vi. On or about March 3, 2009, defendant VITO GRIPPO and coconspirator Freddie Grippo caused Westbound Bank in Texas to send a wire transfer in the amount of \$471,067 to an account in New Jersey at TD Bank held by Quick Title Search, LLC, the settlement agent for the closing involving the St. Johns Place property.

vii. In or about February 2009, defendant VITO GRIPPO instructed the settlement agent handling the \$471,067 mortgage loan to disburse \$72,622 of that loan amount to a Jandever bank account, which resulted in distributions to defendant VITO GRIPPO, Vanick, Jandever and others.

viii. In or after March 2009, J.R. made a number of monthly payments to Vanick that she thought were mortgage payments on her new loan. She stopped making such payments when she came to realize that she no longer owned the home on St. Johns Place. That property subsequently went into foreclosure.

13. As a result of the above fraudulent and conspiratorial acts, defendant VITO GRIPPO and coconspirator Freddie Grippo arranged to obtain and then control the distribution of mortgage loans totaling approximately \$4.4 million; financial institutions have suffered and will continue to suffer losses caused by those loans; and homeowners unknowingly lost title to the homes they believed were being saved from foreclosure.

In violation of Title 18, United States Code, Section 1349.

**COUNT 2**  
**(Subscribing to a False Tax Return for the Year 2006)**

1. The allegations set forth in paragraph 1 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.
2. On or about July 21, 2005, Vanick Holding, LLC was created as a Domestic Limited Liability Company in the State of New Jersey.
3. On or about October 3, 2005, the Internal Revenue Service assigned an Employee Identification Number (EIN) to Vanick Holding, LLC.
4. For purposes of Federal taxation, Vanick Holding, LLC would be taxed as a sole proprietorship.
5. From on or about July 21, 2005, defendant VITO GRIPPO was the president and owner of Vanick Holding, LLC.
6. During the tax years 2006 to 2008, Vanick Holding, LLC was operated as a property management and real estate company.
7. During the tax years 2006 to 2008, Vanick Holding, LLC earned income from various sources, including, but not limited to, individuals and municipalities for Section 8 housing rental payments and conventional housing rental payments, and in connection with residential mortgage refinancing and the residential Equity Share Program.
8. On or before April 17, 2007, defendant VITO GRIPPO signed, filed and caused to be filed with the Internal Revenue Service a 2006 United States Individual Income Tax Return on Form 1040. That return was required to include a Schedule C so as to capture and report the income derived from Vanick Holding, LLC, but the business activity of Vanick was not reported

on a Schedule C or otherwise. That Tax Return stated that defendant VITO GRIPPO's taxable income for the calendar year 2006 was \$0.

9. The Tax Return was signed by defendant VITO GRIPPO and contained a written declaration that it was signed under the penalties of perjury.

10. The Tax Return was not true and correct as to every material matter in that the Return did not report approximately \$289,780 in gross receipts or income from the activities of Vanick Holding, LLC.

11. On or before April 17, 2007, in the District of New Jersey and elsewhere, defendant  
**VITO C. GRIPPO**  
knowingly and willfully did make and subscribe a 2006 United States Individual Income Tax Return, Form 1040, as described in paragraph 8, which he did not believe to be true and correct as to every material matter, as described in paragraph 10.

In violation of Title 26, United States Code, Section 7206(1).

**COUNT 3**  
**(Subscribing to a False Tax Return for the Year 2007)**

1. The allegations set forth in paragraph 1 of Count 1 and paragraphs 2 through 7 of Count 2 of this Indictment are hereby realleged and incorporated as though set forth in full herein.
2. On or before April 15, 2008, defendant VITO GRIPPO signed, filed and caused to be filed with the Internal Revenue Service a 2007 United States Individual Income Tax Return, Form 1040. That return was required to include a Schedule C so as to capture and report the income derived from Vanick Holding, LLC, but the business activity of Vanick was not reported on a Schedule C or otherwise. That Tax Return stated that defendant VITO GRIPPO's taxable income for the calendar year 2007 was \$9,261.
3. The Tax Return was signed by defendant VITO GRIPPO and contained a written declaration that it was signed under the penalties of perjury.
4. The Tax Return was not true and correct as to every material matter in that the Return did not report approximately \$213,261 in gross receipts or income from the activities of Vanick Holding, LLC.
5. On or before April 15, 2008, in the District of New Jersey and elsewhere, defendant

**VITO C. GRIPPO**

knowingly and willfully did make and subscribe a 2007 United States Individual Income Tax Return, Form 1040, as described in paragraph 2, that he did not believe to be true and correct as to every material matter, as described in paragraph 4.

In violation of title 26, United States Code, Section 7206(1).

COUNT 4

(Aiding in the Preparation of a False Tax Return for the Year 2008)

1. The allegations set forth in paragraph 1 of Count 1 and paragraphs 2 through 7 of Count 2 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or before April 17, 2009, defendant VITO GRIPPO met with one or more tax preparers at PP&D Accounting Services, Inc., in Woodbridge, New Jersey ("PP&D") for the purpose of having PP&D prepare his Federal Income Tax Return for the year 2008 to be filed jointly with his wife.

3. In connection with having PP&D prepare his Tax Return for 2008, defendant VITO GRIPPO was requested by PP&D to provide PP&D with all income and expense information relating to the year 2008, and defendant VITO GRIPPO provided various such documents to PP&D.

4. Defendant VITO GRIPPO did not provide PP&D with any documents revealing GRIPPO's gross receipts or income derived from the activities of Vanick Holding, LLC.

5. On or before April 17, 2009, in the District of New Jersey and elsewhere, defendant

VITO C. GRIPPO

did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service of an income tax return of the defendant for the calendar year 2008 that was false and fraudulent as to a material matter in that said return was required to include a Schedule C or otherwise capture and report the income derived from Vanick Holding, LLC, and said return represented that taxpayer Vito C. Grippo's taxable income for the calendar

year 2008 was \$22,745; whereas, as the defendant VITO GRIPPO then and there well knew and believed, his gross income from the activities of Vanick Holding, LLC, was approximately \$1,366,261.

In violation of Title 26, United States Code, Section 7206(2).

## FORFEITURE ALLEGATION

1. The allegations contained in this Indictment are hereby realleged and incorporated by reference for the purpose of noticing forfeiture pursuant to Title 18, United States Code, Section 982.

2. Upon conviction of the offense set forth in this Indictment, the defendant,

VITO C. GRIPPO;

shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(2)(A), all property, real or personal, constituting, or derived from, proceeds the defendant obtained directly or indirectly as the result of a violation of Title 18, United States Code, Section 1349, including, but not limited to, a sum of money equal to at least \$1,319,721 in United States currency, as to which the defendant shall be jointly and severally liable with any and all other defendants.

3. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without

difficulty, it is the intent of the United States, pursuant to Title 21, United States Code, Section 853, to seek forfeiture of any other property of the defendant up to the value of the forfeitable

property described in this forfeiture allegation.

A TRUE BILL

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FOREPERSON



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PAUL J. FISHMAN  
UNITED STATES ATTORNEY

Exhibit "B"

**Morgan Financial Equity Share  
EQUITY SHARING AGREEMENT**

**Equity Share Co-owners:**

As Occupier: Zbigniew Motel  
As Investor: Morgan Financial & Danny Decesare

**Equity Share Title:**

146 Mountain Way LLC

**Ownership Split:**

Occupier: Zbigniew Motel	90 %
Investor: Morgan Financial	5 %
Investor: Danny Decesare	5 %

**Equity Share Property:**

146 Mountain Way, Rutherford, NJ 07070

**Equity Sharing Agreement  
Table of Contents**

<b>Number</b>	<b>Title</b>	<b>Page</b>
1.	Purpose of Equity Share.....	4
2.	Equity share of Property .....	4
3.	Designation of Parties.....	4
4.	Duration of Equity Share .....	4
5.	Name of Equity Share.....	4
6.	Equity Share Address.....	4
7.	Initial Capital .....	5
8.	Purchase of Real Property.....	5
9.	Ownership Percentages.....	5
10.	Occupier Exclusive Occupancy.....	5
11.	Investor Inspection Rights .....	6
12.	Maintenance and Repair .....	6
13.	Rental by Occupier.....	6
14.	Insurance .....	7
15.	Association Dues & Property Taxes.....	7
16.	Loan Repayment .....	8
17.	Loan Negative Amortization - Principal Reductions .....	8
18.	Labor Contribution by Occupier .....	8
19.	Necessary Capital Improvements.....	9
20.	Unnecessary Capital and Other Improvements .....	10
21.	Responsibility for Equity Share Expenses Not Allocated .....	10
22.	Books of Account .....	10
23.	Assignment of Interest .....	11
24.	Management of and Liability for Remainder .....	11
25.	No Partnership Existence.....	12
26.	Restriction on Authority of Owners.....	12
27.	Tax Allocations and Declarations.....	13
28.	Tax Disclosure .....	13
29.	Occupier As Tenant Upon Default.....	13
30.	Primary Obligations Default.....	13
31.	Buy Out Upon Primary Obligations Default .....	14
32.	Method of Buy Out.....	14
33.	5-Year Term.....	15
34.	Buy Out - Mutual Agreement - Before Term.....	15
35.	Extension of Agreement at Term.....	15
36.	Automatic Extension of Agreement if Required Appreciation not Met.....	16
37.	Termination of Equity Share .....	16
38.	Buy Out Options at Term.....	16

39.	Fair Market Valuation .....	16
40.	Interest Valuation on Buy Out .....	17
41.	Default by Death .....	20
42.	Default by Bankruptcy .....	20
43.	Default by Conservatorship .....	20
44.	Default by Creditor Lien Recording.....	20
45.	Buy Out or Sale Upon Default by Death, Bankruptcy, etc.....	20
46.	Buy Out on General Default.....	21
47.	Buy Out if More Than One Provision Applies .....	22
48.	Payment of Buy Out - Lump Sum .....	22
49.	Payment of Buy Out - Installments.....	22
50.	5-Year Termination of Equity Share.....	22
51.	Listing Price - Designation of Listing Agent.....	23
52.	Sale at Term.....	24
53.	Sale Upon Default.....	25
54.	Co-owner Obligations Limited .....	25
55.	Cooperation in Internal Revenue Code §1031 Exchange.....	26
56.	Termination if Options Unexercised.....	26
57.	Assumption of Obligations Upon Buy Out.....	26
58.	Notices .....	26
59.	Consents and Agreements.....	26
60.	Each Party's Independent Analysis.....	27
61.	Mediation - Arbitration .....	27
62.	Attorney's Fees .....	28
63.	NEW JERSEY Law to Apply.....	28
64.	Parties Bound.....	28
65.	Legal Construction.....	28
66.	This Agreement Supersedes .....	28
67.	Sole Agreement .....	28
68.	Counterparts/Signatures.....	29
69.	Legal Description.....	
30		
70.	Summary of term.....	31

This Agreement is entered into by Zbigniew Motel and Morgan Financial & Danny Decesare. These parties agree to associate themselves as equity share co-owners on the following terms:

**1. Purpose of Equity Share**

The purpose of this equity share shall be the purchase and joint ownership of a property bearing an address of 146 Mountain Way, Rutherford, NJ 07070, and being the real property in the County of Bergen, State of N.J., more particularly described in Exhibit A hereto.

**2. Equity share of Property**

Legal title shall be acquired by this equity share and maintained thereafter during the term of this equity share as tenants in common, each owning undivided interests, as follows:

Occupier:	Zbigniew Motel	90 %
Investor:	Morgan Financial Equity Share	5 %
Investor:	Danny Decesare	5 %

**3. Designation of Parties**

All references to Occupier shall pertain to Zbigniew Motel. All references to Investor shall pertain to Morgan Financial Equity Share & Danny Decesare. In this agreement, the singular of a party designation shall pertain to all parties of that designation, i.e., Occupier means all Occupiers.

**4. Duration of Equity Share**

This equity share shall commence on execution of this Agreement and shall continue until dissolved by mutual consent of the parties or terminated as provided for in this Agreement.

**5. Name of Equity Share**

The name of this equity share shall be "146 Mountain Way LLC".

**6. Equity Share Address**

The equity share's mailing address shall be:

Zbigniew Motel, Occupier  
146 Mountain Way, Rutherford, NJ 07070  
And

Morgan Financial Equity Share & Danny Decesare, Investor  
C/O MORGAN FINANCIAL EQUITY SHARE 22 South Holmdel Road, Holmdel,  
NJ 07733

### 7. Initial Capital

The purchase price of the equity share property is the sum of \$745,000.00. The initial capital of this equity share in the sum of \$745,000.00 has been contributed by the parties as follows:

- a. The Investor has contributed the sum of \$185,250.00. Said amount shall be reimbursed to Investor in accordance with the terms of this Agreement.
- b. The Occupier has contributed the sum of \$559,750.00. Said amount shall be reimbursed to Occupier in accordance with the terms of this Agreement.

### 8. Purchase of Real Property

This equity share shall purchase, own, maintain and sell the real property in accordance with the terms of this Agreement.

### 9. Ownership Percentages

The parties agree to take title to the subject property as tenants in common in the following ownership percentages:

Occupier: Zbigniew Motel	90 %
Investor: Morgan Financial	5 %
Investor: Danny Decesare	5 %

### 10. Occupier Exclusive Occupancy

Occupancy of the equity share property shall proceed as follows:

- a. The co-owners are designated as Occupier and Investor as described in Paragraph 3, "Designation of Parties."
- b. Occupier agrees to occupy the equity share property at all times during the term of this equity share.
- c. In the event that the parties hereto desire to have the equity share property occupied by someone other than the Occupier, written consent of Investor is required, which consent shall not be unreasonably withheld.

d. Occupier's agreement to occupy the equity share property is a material inducement to Investor's decision to participate in this transaction. Therefore, in the event that Occupier ceases occupancy of the equity share property without written consent of Investor, Investor shall be entitled to the remedies set forth in Paragraph 30, "Primary Obligations Default."

### 11. Investor Inspection Rights

In consideration of exclusive occupancy of the property being granted to Occupier, Investor is granted a reasonable right of inspection which may be exercised upon giving 24 hour written notice to Occupier.

*(X) Void*

### 12. Maintenance and Repair

Maintenance and repair shall proceed as follows:

*Mr. Hotel doesn't have to abide by. Void Section 12 (X)*

a. Occupier agrees to individually manage, occupy, maintain and repair the subject property, in as good as or better condition as when this equity share commenced, less reasonable wear and tear.

*Darlene Wittmann*

b. All costs of ordinary improvements, maintenance, and repairs shall be borne solely by the Occupier and shall not be reimbursed to Occupier, unless agreed to in writing by Investor.

*Darlene M. Wittmann  
Notary Public  
State of New Jersey  
My Commission Expires 3/13/2013*

c. It is specifically agreed that under no circumstance is Investor responsible in any sum or manner for maintenance or repair of the equity share property.

d. Occupier's agreement to repair and maintain the equity share property is a material inducement to Investor's decision to participate in this transaction. Therefore, in the event that Occupier fails to repair and maintain the equity share property in accordance with this provision, Occupier shall be considered in default of this Agreement and Investor shall be entitled to exercise those remedies set forth in Paragraph 30, "Primary Obligations Default."

*Kristen Kowalski (X)*

### 13. Rental by Occupier

This agreement constitutes a Shared Equity Financing Agreement pursuant to Internal Revenue Code §280A whereby the co-owners agree:

a. Occupier agrees to rent Investor's interest in the subject property for a rental of \$4,950.00 per month, \$59,400.00 annually. Said rent constitutes consideration for

Occupier's exclusive right to occupy the equity share property. Per Internal Revenue Code §280A, the rent charged herein represents the fair rental value of the property times Investor's ownership interest in the property, less a 20% owner occupier discount. This rental amount shall be deposited by Occupier on a monthly basis into a bank account set up by the co-owners identified as Investor's Equity Share Rental Account, which account shall be utilized as described in b, below. Occupier is entitled to sign on said account to make payments described herein on behalf of Investor.

b. As rental reimbursement, Investor agrees to contribute the rent described in a., above, in its entirety to the equity share property as follows: First to insurance, then to maintenance expenses, if any, then to association dues, if any, then to property taxes, then to mortgage payments, only to the extent required to deplete rental reimbursement. Investor's duty to make these payments from this account is contingent upon payment of the rent specified herein by Occupier. If rental payment is not received, Investor's rental reimbursement duty does not arise.

#### **14. Insurance**

Insurance shall be paid as follows:

a. Homeowner's insurance of not less than \$400,000 for liability shall be paid by Occupier. To the extent of rental reimbursement, payments shall first be made from the Rental Account described in Paragraph 13, "Rental by Occupier". Occupier shall provide Investor with proof of payment at the time payment made.

b. Occupier's agreement to pay insurance is a material inducement to Investor's decision to enter into this equity share. Accordingly, if Occupier fails to make such payments in accordance with this provision, Occupier shall be considered in default of this Agreement and Investor shall be entitled to exercise those remedies set forth in Paragraph 30, "Primary Obligations Default."

#### **15. Association Dues & Property Taxes**

Association dues and property taxes shall be paid as follows:

a. Occupier shall pay association dues, if any, and property taxes. To the extent of remaining rental reimbursement, payments shall first be made from the Rental

Account described in Paragraph 13, "Rental by Occupier". Occupier shall provide Investor with proof of payment at the time payment is made.

b. Occupier's agreement to pay association dues, if any, and property taxes is a material inducement to Investor's decision to enter into this equity share. Accordingly, if Occupier fails to make such payments in accordance with this provision, Occupier shall be considered in default of this Agreement and Investor shall be entitled to exercise those remedies set forth in Paragraph 30, "Primary Obligations Default."

#### **16. Loan Repayment**

The purchase money loan shall be paid as follows:

a. Occupier shall pay the loan on the property according to the terms of the loan documents. To the extent of remaining rental reimbursement, payments shall first be made from the Rental Account described in Paragraph 13, "Rental by Occupier". Occupier shall provide Investor with proof of payment each and every month.

b. Occupier's agreement to make loan payments is a material inducement to Investor's decision to enter into this equity share. Accordingly, if Occupier fails to make such payments in accordance with this provision, Occupier shall be considered in default of this Agreement and Investor shall be entitled to exercise those remedies set forth in Paragraph 30, "Primary Obligations Default."

#### **17. Loan Negative Amortization - Principal Reductions**

**Negative Amortization:** In the event that the subject purchase loan is one involving negative amortization, Occupier agrees to be responsible for all additional sums incurred by the application of negative amortization. Therefore, when the underlying loan is deducted from property value upon buy out or sale, sums incurred as a result of negative amortization shall be borne solely by Occupier and those sums shall be separately assessed to Occupier.

**Principal Reductions:** Principal reduction is any reduction of the principal balance of said loan beyond the original loan principal amount. Any party making such a principal reduction shall be credited with said reduction as set forth herein.

#### **18. Labor Contribution by Occupier**

Occupier's labor shall be contributed in accordance with the following provisions:

a. Occupier agrees that there will be no charge for their first 10 (ten) hours of labor, per each improvement.

b. Thereafter, when any improvement is undertaken by Occupier, after the first 10 (ten) hours Occupier shall charge no more than \$20.00 (Twenty Dollars) per hour for Occupier's own personal labor.

c. Said labor contribution by Occupier shall be approved in advance in writing by Investor upon presentation of an estimate by Occupier to Investor setting forth the reasonable estimate of the labor contributions Occupier intends to make for which reimbursement is sought. Investor shall approve or disapprove of said labor charges; however, Investor's consent will not be unreasonably withheld.

d. Written approval of said labor expenditure and the amount thereof is a condition precedent to reimbursement to Occupier of said labor charges at sale or buy out.

e. All reasonable and approved labor charges in conformity with this paragraph will be credited to Occupier at sale or buy out before the net equity is determined and split between the parties.

#### **19. Necessary Capital Improvements**

Necessary capital improvements shall be defined and paid for as follows:

a. Necessary capital improvements include necessary roof, sewer, septic or furnace replacement or replacement of any component involving structural integrity, along with any other items defined by the Internal Revenue Code as "capital improvements".

b. Occupier agrees to make necessary capital improvements as required to keep the property in good condition and to pay the cost of these improvements.

c. Necessary capital improvements shall require three estimates from qualified professionals to confirm that the expenditure is necessary and reasonable.

d. Written consent to proceed with these improvements must be obtained from all co-owners before commencing work. Such consent shall not be unreasonably withheld.

e. Reimbursement shall be made at sale or buy out according to the terms of this agreement.

## **20. Unnecessary Capital and Other Improvements**

Unnecessary capital improvements shall be defined and paid for as follows:

a. An unnecessary capital improvement is any improvement which adds to the value of the property other than those defined herein as necessary capital improvements.

b. Improvements may be made without consultation with a co-owner as long as the improvement is made without expectation of reimbursement and costs One thousand dollars (\$1000.00) or less.

c. If the anticipated unnecessary improvement costs more than One Thousand Dollars (\$1,000) or if reimbursement is requested, the improving owner shall obtain the written consent of the remaining owner(s) to the improvement and its reimbursement amount, which consent shall not be unreasonably withheld.

d. The parties agree that in maintaining, repairing, and improving the Equity Share property, each party will exercise good faith to insure that any improvement will increase the value of the property as a whole.

e. Any party who makes improvements in violation of this Agreement shall not be entitled to reimbursement for the improvement made.

## **21. Responsibility for Equity Share Expenses Not Allocated**

As occupying co-owner, Occupier agrees to be responsible for all equity share expenses, duties and obligations not otherwise allocated in this Agreement.

## **22. Books of Account**

The equity share co-owners shall keep their own books of account for accounting and tax purposes. However, since Occupier has exclusive occupancy of the property and all duties of repair and maintenance, Occupier shall, during the term of this Agreement, keep accurate records of all matters relating to ordinary and capital expenditures to the property, and other property information relative to tax and resale. The books of account shall be kept on a cash basis and shall be open to examination by any party to this Agreement upon reasonable notice.

### 23. Assignment of Interest

Assignment of the equity share co-owners' property interests shall proceed as follows:

#### a. Occupier Assignment:

(1.) Occupier shall not sell, assign, mortgage, borrow against, transfer or encumber their respective interest in the equity share without first receiving the written consent of Investor, which consent shall not be unreasonably withheld.

(2.) The parties herein acknowledge that the Occupier's ownership capacity as the exclusive property occupant and primary loan obligor is sufficiently personal and unique that any purported transfer or assignment of Occupier's ownership interest would inherently cause a material failure of consideration unless their assignees possess substantially comparable financial and personal characteristics.

(3.) Occupier may lease out the property as long as the lessor is first approved by Investor, which consent shall not be unreasonably withheld.

(4.) Occupier's agreement to refrain from assigning their property interest or any portion thereof without Investor's written consent is a material inducement to Investor's decision to enter into this equity share. Accordingly, if Occupier violates this provision, Occupier shall be considered in default of this Agreement and Investor shall be entitled to exercise those remedies set forth in Paragraph 30, "Primary Obligations Default."

b. **Investor Assignment:** Since Investor's involvement in the property's ongoing obligations is limited; Investor may freely assign and transfer its interest in the equity share property, which interest shall be subject to all terms of this Agreement.

c. **Buy Out Options:** Both Investor and Occupier are granted an option to buy out one another before assignment of interest may be made to any third party in accordance with applicable provisions of this paragraph. Said buy out if exercised shall proceed in conformity with applicable provisions of Paragraph 32, "Method of Buyout", and Paragraph 40, "Interest Valuation on Buy Out", and be valued in accordance with Paragraph 39, "Fair Market Valuation."

### 24. Management of and Liability for Remainder

None of the co-owners hereto shall have authority to bind the equity share property or the co-owners in making contracts or incurring obligations in the equity share name. Any owner who incurs any such obligation shall be personally liable to both the creditor and the other co-owners for the entire amount of the obligation so incurred.

#### **25. No Partnership Existence**

The parties specifically agree and represent to one another that a partnership does not exist with respect to their equity share of the subject property within the meaning of the Internal Revenue Code, and more specifically, §280, §761 and §1031, or for any other non-tax purpose. Instead, the parties have joined for the sole purpose of owning the subject property as tenants in common. The parties represent that they will not carry on a trade, business or financial venture together with respect to the subject property in which they shall divide income and profits during ownership. Furthermore, no party to this Agreement shall be entitled to any compensation other than specifically stated herein for services in connection with ownership of the equity share property.

#### **26. Restriction on Authority of Owners**

The individual equity share co-owners shall have no authority with respect to the equity share and this Agreement to:

- a. Do any act in violation of this Agreement;
- b. Do any act which would make it impossible to carry on the equity share;
- c. Make, execute, or deliver any general assignments for the benefit of creditors, or any bond, guaranty, indemnity bond, or surety bond;
- d. Assign, transfer, pledge, compromise, or release any equity share claims except for full payment;
- e. Incur any debt or obligation in the name of the equity share property or a co-owner;
- f. Do any of the following without unanimous consent of the co-owners:
  - (1.) Confess a judgment;
  - (2.) Make, execute, or deliver for the equity share any bond, mortgage, deed of trust, guaranty, indemnity bond, surety bond, or accommodation paper or accommodation endorsement;

(3.) Amend or otherwise change this Agreement so as to modify the rights or obligations of the co-owners as set forth without written consent of all owners;  
or

(4.) Create any personal liability for any co-owner other than liability to which such co-owner may agree in writing.

### **27. Tax Allocations and Declarations**

Tax allocations are agreed to as follows:

a. Principal Residence for Occupier: Occupier intends to occupy this property as a principal residence during the term of this Agreement and reserves the right to claim principal residence tax treatment for Occupier's interest in the subject property and tax benefits for deductible payments made by Occupier.

b. Investment Property for Investor: Investor is holding the subject property as an investment property. Investor reserves the right to have any tax on gain on Investor's interest in the subject property treated as deferred and nontaxable pursuant to Internal Revenue Code §1031, to obtain capital gains tax treatment, to claim depreciation on Investor's property interest and to take deductions for any tax-deductible expenses Investor pays.

### **28. Tax Disclosure**

The parties hereto are declaring their tax-related intentions and no guarantees with respect to Internal Revenue Service treatment of these deductions have been given.

### **29. Occupier As Tenant Upon Default**

Upon the occurrence of the primary obligations defaults described in Paragraph 30, "Primary Obligations Default" Occupier agrees to immediately become a month-to-month tenant obligated to pay Investor as rent an amount equal to all principal, interest, insurance, property tax, dues and assessments due on the subject property and further acknowledges that if Occupier is unable to pay the rent called for herein, Occupier will be subject to eviction in an unlawful detainer proceeding or by way of a writ of ejectment.

### **30. Primary Obligations Default**

The co-owners shall have the following remedies upon a co-owner's default of the primary obligations under this Agreement:

a. The primary obligations are defined as follows: Paragraph 10, "Occupier Exclusive Occupancy", Paragraph 12, "Maintenance and Repair", Paragraph 14, "Insurance", Paragraph 15, "Association Dues and Property Taxes", Paragraph 16, "Loan Repayment", Paragraph 19, "Necessary Capital Improvements" and Paragraph 23, "Assignment of Interest".

b. The non-defaulting co-owner agrees to provide written Notice of Breach to the defaulting co-owner specifying the condition of default.

c. After giving Notice of Breach as provided in b., above, the non-defaulting co-owner shall allow a thirty day period to lapse within which to allow defaulting co-owner to cure the default.

d. If the default is not cured within the discretion of the non-defaulting party within that thirty day period, the non-defaulting party shall be entitled to exercise any of the following remedies:

(1.) Buy out as provided for in Paragraph 31, "Buyout Upon Primary Obligations Default," or

(2.) Sale of the property as provided for in Paragraph 53, "Sale Upon Default."

### **31. Buy Out Upon Primary Obligations Default**

In accordance with the provisions of Paragraph 30, "Primary Obligations Default," the non-defaulting co-owner shall be entitled to buy out the defaulting co-owner as follows:

a. Buy out shall be calculated at seventy percent (70%) of fair market value.

b. Buy out under this provision shall be performed in escrow in accordance with Paragraph 32, "Method of Buy Out."

c. Buy out under this provision shall be paid in accordance with Paragraph 49, "Payment of Buyout - Installments."

### **32. Method of Buy Out**

The method of buyout by a co-owner shall proceed as follows:

a. Fair market value shall be determined as agreed upon by unanimous mutual consent of all co-owners.

b. In the event that the co-owners are unable to agree upon value, the co-owners shall jointly select an MAI certified appraiser actively engaged in business in the county in which the equity share property is located.

c. The appraiser shall perform an appraisal of the property, and the value established by the appraiser shall be binding and conclusive on the parties and on any person legally entitled to receive the value of any co-owner's interest.

d. In the event that the parties are unable to agree upon selection of a single appraiser, and only in that event, Occupier or Occupier's representative shall appoint an MAI certified appraiser actively engaged in business in the county in which the equity share property is located. The remaining co-owners shall appoint an appraiser of equal designation. The average of the two appraisals shall constitute the fair market value of the property.

e. All fees and expenses of each appraiser above described shall be paid by the party ordering the appraisal.

#### **40. Interest Valuation on Buy Out**

The co-owners' interests on buyout shall be calculated as follows:

**a. Buy out of Investor:**

FIRST: From fair market value, the balance due on the purchase money loan shall first be deducted (less amounts incurred due to negative amortization, which shall be borne solely by Occupier).

SECOND: Deducted next is Investor's initial capital contribution in the amount of \$185,250.00. To the extent of proceeds, Investor shall receive this amount.

THIRD: To the extent of proceeds, deducted next is the amount of Occupier's initial capital contribution in the amount of \$559,750.00.

FOURTH: Deducted next is the amount of principal by which Investor's payments, if any, have reduced the loan. To the extent of proceeds, Investor shall receive this amount.

FIFTH: To the extent of proceeds, deducted next is the amount of principal by which Occupier's payments have reduced the loan.

SIXTH: Deducted next is the amount of improvement contributions Investor has made, if any, per Paragraphs 19 and 20, "Necessary Capital Improvements" and "Unnecessary Capital and Other Improvements." To the extent of proceeds, Investor shall receive this amount.

SEVENTH: To the extent of proceeds, deducted next is the amount of improvement contributions Occupier has made, if any, per Paragraphs 18, 19 and 20, "Labor Contribution by Occupier," "Necessary Capital Improvements," and "Unnecessary Capital and Other Improvements."

EIGHTH: Remaining amount is net equity. Investor shall receive 5% of net equity.

NINTH: Value shall be reduced, if so provided, in accordance with the applicable buy out provision.

TENTH: Investor shall be reimbursed by Occupier for all amounts Investor has advanced for payment of expenses for which Occupier is responsible under this Agreement.

ELEVENTH: Investor proceeds shall be reduced by amounts Occupier has advanced for payment of expenses for which Investor is responsible under this Agreement.

TWELFTH: Closing costs on buyout shall be shared by the parties in accordance with their ownership split. However, if buy out is triggered by default, the defaulting party shall pay all closing costs.

**b. Buy out of Occupier:**

FIRST: From fair market value, the balance due on the purchase money loan shall first be deducted (less amounts incurred due to negative amortization, which amounts shall be borne solely by Occupier.)

SECOND: To the extent of proceeds, deducted next is the initial capital contribution by Investor in the amount of \$185,250.00.

THIRD: Deducted next is the amount of Occupier's initial capital contribution in the amount of \$559,750.00. To the extent of proceeds, Occupier shall receive this amount.

FOURTH: To the extent of proceeds, deducted next is the amount of principal by which Investor's payments, if any, have reduced the loan.

FIFTH: Deducted next is the amount of principal by which Occupier's payments have reduced the loan. To the extent of proceeds, Occupier shall receive this amount.

SIXTH: To the extent of proceeds, deducted next is the amount of improvement contributions Investor has made, if any, per Paragraphs 19 and 20, "Necessary Capital Improvements" and "Unnecessary Capital and Other Improvements."

SEVENTH: Deducted next is the amount of improvement contributions Occupier has made per Paragraphs 18, 19 and 20, "Labor Contribution by Occupier," "Necessary Capital Improvements," and "Unnecessary Capital and other Improvements." To the extent of proceeds, Occupier shall receive this amount.

EIGHTH: Remaining amount is net equity. Occupier shall receive 90% of net equity.

NINTH: Occupier proceeds shall be reduced by amounts which have been incurred due to negative amortization of the purchase money loan described in FIRST above, if any.

TENTH: Value shall be reduced, if so provided, in accordance with the applicable buy out provision.

ELEVENTH: Occupier shall be reimbursed for amounts Occupier has advanced for payment of expenses for which Investor is responsible under this Agreement.

TWELFTH: Occupier proceeds shall be reduced by amounts Investor has advanced for payment of expenses for which Occupier is responsible under this Agreement.

THIRTEENTH: Closing costs on buyout shall be shared by the parties in accordance with their ownership split. However, if buy out is triggered by default, the defaulting party shall pay all closing costs.

#### **41. Default by Death**

Unless a co-owner holds title to this property in the name of their living trust or some other entity that survives death, death of an equity share co-owner shall constitute a material default entitling the surviving co-owners to buy out the interest of the decedent or sell the equity share property according to the provisions of Paragraph 45, "Buy Out or Sale Upon Default by Death, Bankruptcy, etc.."

#### **42. Default by Bankruptcy**

The filing of a Chapter 7 or Chapter 13 petition in bankruptcy by a co-owner shall constitute a material default entitling the remaining co-owners to buy out or sale of the equity share property according to the provisions of Paragraph 45, "Buy Out or Sale Upon Default by Death, Bankruptcy, etc."

#### **43. Default by Conservatorship**

Appointment of a conservator for any of the co-owners shall constitute a material default entitling the remaining co-owners to buy out or sale of the equity share property according to the provisions of Paragraph 45, "Buy Out or Sale Upon Default by Death, Bankruptcy, etc."

#### **44. Default by Creditor Lien Recording**

A material default entitling the remaining co-owners to buy out or sale of the equity share property according to the provisions of Paragraph 45, "Buy Out or Sale Upon Default by Death, Bankruptcy, etc.", shall occur if a creditor of a party records a lien or abstract of judgment on the equity share property and the lien remains unsatisfied for a period of ninety (90) days. The purchasing co-owner shall satisfy the lien or judgment of the debtor co-owner to the extent of buy out or sale proceeds due to the debtor co-owner.

#### **45. Buy Out or Sale upon Default by Death, Bankruptcy, etc.**

In accordance with the provisions of Paragraphs 41 through 44, "Default by Death," "Default by Bankruptcy," "Default by Conservatorship," and "Default by Creditor Lien Recording," the parties shall be entitled to buy out one another as follows:

a. If a co-owner defaulting hereunder is married to another co-owner of the same designation (i.e., Occupier, Investor) the non-defaulting co-owner husband or wife shall have a first option to purchase the defaulting co-owners' interest in the Equity Share property.

b. If a., above, does not apply or the spouse does not exercise his or her buy out option, the remaining co-owner(s) shall be entitled to purchase the defaulting co-owner's interest.

c. Buy out shall be valued at eighty percent (80%) of fair market value and shall be calculated according to Paragraph 40, "Interest Valuation on Buy Out".

d. Buy out under this provision shall be performed in escrow in accordance with the provisions of Paragraph 32, "Method of Buy Out."

e. Buy out under this provision shall be paid in accordance with Paragraph 48, "Payment of Buyout - Lump Sum."

f. If the defaulting party's interest is not entirely bought out, the property shall be sold in accordance with Paragraph 53, "Sale upon Default."

#### **46. Buy Out on General Default**

The non-defaulting co-owners shall have an option to buy out the defaulting owners or by sale of the equity share property upon default for any substantial breach of this agreement not otherwise specifically described by any other provision herein as follows:

a. Buy out shall be valued at seventy-five percent (75%) of fair market value and shall be calculated according to Paragraph 40, "Interest Valuation on Buy Out".

b. Buy out under this provision shall be performed in escrow in accordance with the provisions of Paragraph 32, "Method of Buy Out."

c. Buy out under this provision shall be paid in accordance with Paragraph 49, "Payment of Buyout - Installments."

d. If the non-defaulting party does not exercise its buy out option, the property shall be sold in accordance with Paragraph 53, "Sale upon Default."

#### **47. Buy Out if More Than One Provision Applies**

If more than one buy out provision applies, the buyout provision providing the lowest amount to a defaulting party on buyout shall prevail.

#### **48. Payment of Buy Out - Lump Sum**

Payment of buy out under this provision shall proceed as follows:

a. No later than forty five (45) days after value is determined, payment of the entire amount of the co-owner's interest shall be deposited in escrow.

b. Concurrent with payment referred to in a., above, the party being bought out shall deposit into escrow a fully executed Grant Deed to that co-owner's interest in the subject property.

#### **49. Payment of Buy Out - Installments**

Payment of buy out under this provision shall proceed as follows:

a. No later than forty five (45) days after value is determined one-fifth of the buyout amount shall be deposited in escrow, along with a promissory note for the remaining buy out amount payable without interest in equal installments over 18 months after close of escrow.

b. A deed of trust or mortgage, as applicable, securing payment of said promissory note shall be executed in favor of the party being bought out and deposited in escrow.

c. Concurrent with a. and b., above, the party being bought out shall deposit into escrow a fully executed Grant Deed to that co-owner's interest in the subject property.

#### **50. 5-Year Termination of Equity Share**

The method to be followed by the parties in terminating the equity share in 5 years is as follows:

a. One hundred fifty (150) days before the 5-year expiration of this equity share, the parties may execute a written Extension of Equity Sharing Agreement pursuant to Paragraph 35, "Extension of Agreement at Term," which document shall be fully

executed within 30 days. If this extension is executed, the remaining paragraphs hereunder will become void.

b. One hundred twenty (120) days before the 5-year expiration of this Equity Sharing Agreement, if this agreement has not otherwise been extended, this agreement shall automatically be extended for a one year period if the required appreciation set forth in Paragraph 36, "Automatic Extension of Agreement if Required Appreciation not Met" has not been met. The dates herein shall automatically be extended one year in this event.

c. Ninety (90) days before the 5-year expiration of this equity share, Occupier shall be granted an exclusive 30-day option to buy out Investor, exercisable by providing written Notice of Intent to Buy Out to Investor within said option period. Upon buy out, the remaining paragraphs hereunder will become void.

d. Sixty (60) days before the 5-year expiration of this Equity Sharing Agreement, Investor shall be granted an exclusive 30-day option to buy out Occupier, exercisable by providing written Notice of Intent to Buy Out to Occupier within said option period. Upon buy out, the remaining paragraphs hereunder will become void.

e. If buy out is selected by the parties as set forth herein, the buyout shall proceed according to Paragraph 32, "Method of Buy Out."

f. Buy out under this provision shall be paid in accordance with the provisions of Paragraph 48, "Payment of Buy out - Lump Sum."

g. If no provision above operates to terminate or extend this agreement and if neither party elects to buy out the other per Paragraphs c. and d., above, thirty (30) days before the 5-year expiration of this equity share, the parties agree to jointly list the property for sale.

h. If the equity share is terminated by sale of the equity share property, distribution shall proceed according to Paragraph 52, "Sale at Term."

#### **51. Listing Price - Designation of Listing Agent**

At term, if extension or buy out has not been selected, the property listing shall proceed as follows:

a. The parties hereto irrevocably designate the realtor of Investor's choice as listing agent for the sale of the property.

b. The parties agrees to cooperate fully to facilitate sale of the property at the highest reasonable price.

## 52. Sale at Term

Sale proceeds shall be distributed in the following order as proceeds permit when sale occurs at term without default.

FIRST: From the unadjusted sales price, the balance due on the purchase money loan shall first be deducted (less amounts incurred due to negative amortization, which amounts shall be borne solely by Occupier.)

SECOND: Less seller closing costs which shall be borne solely by Occupier.

THIRD: To the extent of remaining proceeds, Investor shall be credited for their initial capital contribution in the amount of \$185,250.00.

FOURTH: To the extent of remaining proceeds, Occupier shall be credited for their initial capital contribution in the amount of \$559,750.00.

FIFTH: To the extent of remaining proceeds, Investor shall be credited for any amounts paid resulting in principal loan reduction as defined in Paragraph 17, "Loan Negative Amortization - Principal Reductions".

SIXTH: To the extent of remaining proceeds, Occupier shall be credited for any amounts paid resulting in principal loan reduction as defined in Paragraph 17, "Loan Negative Amortization - Principal Reductions".

SEVENTH: To the extent of remaining proceeds, Investor shall be credited for improvement contributions, if any, per Paragraphs 19 and 20, "Necessary Capital Improvements" and "Unnecessary Capital and Other Improvements."

EIGHTH: To the extent of remaining proceeds, Occupier shall be reimbursed for improvement contributions, if any, per Paragraphs 18, 19 and 20, "Labor Contribution by Occupier," "Necessary Capital Improvements," and "Unnecessary Capital and Other Improvements." Remaining amount is net equity.

NINTH: Investor shall receive 5% of any remaining net equity.

TENTH: Occupier shall receive the remaining 90% of net equity less any unpaid amounts incurred due to negative amortization of the purchase loan at Provision FIRST above.

ELEVENTH: Occupier proceeds shall be reduced by any unpaid amounts incurred due to negative amortization of the purchase money loan described in FIRST above, if any, and for the amount of closing costs described in SECOND, above.

### 53. Sale Upon Default

Sale proceeds shall be distributed in the same manner as "Sale at Term" at Paragraph 52, with the following exceptions:

a. The closing costs are solely borne by the party causing the default from any proceeds the defaulting party receives from the sale.

b. Five percent (5%) of the unadjusted sales price shall be paid by the defaulting party to the non-defaulting co-owner(s) as a penalty. If there is more than one co-owner, the penalty proceeds shall be divided on a pro rata basis in relation to their ownership percentages.

c. The non-defaulting party(s) shall be reimbursed for payments advanced on behalf of the defaulting party for mortgage, property taxes, insurance, deferred maintenance and repairs from any proceeds the defaulting party receives from the sale.

d. The proceeds to the defaulting co-owner shall be discounted to the following percentage, depending on the category of the default triggering sale:

(i.) Seventy percent (70%) of value for defaults under Paragraph 30, "Primary Obligations Default;

(ii.) Eighty percent (80%) of value for defaults under Paragraph 45, "Buy Out or Sale on Default by Death, Bankruptcy, etc."

(iii.) Seventy-five percent (75%) of value for all other defaults.

e. Any amounts due defaulting party will first be repaid to non-defaulting party(s) as specified above, before the defaulting party receives any proceeds. Each party's obligation is limited to his interest in the subject property; thus no party shall owe more than is received from the sale proceeds.

### 54. Co-owner Obligations Limited

Each co-owner's obligation hereunder is limited to its interest in the joint ownership property. Thus, no Party shall owe more than its interest in said property.

#### **55. Cooperation in Internal Revenue Code §1031 Exchange**

Occupier agrees to cooperate to all extents required to facilitate an Internal Revenue Code §1031 exchange by Investor if so desired upon buy out or upon sale of the equity share property.

#### **56. Termination if Options Unexercised**

In the event that the owners fail to extend this agreement or to exercise buy out options conferred, the affairs of the equity share shall be wound up, the assets liquidated, the debts paid and the remaining funds divided among the equity share co-owners in accordance with this Agreement.

#### **57. Assumption of Obligations Upon Buy Out**

On buy out of an interest under this Agreement, the remaining owners shall assume all ownership obligations and shall protect and indemnify the withdrawing or terminated co-owner, the personal representative and estate of a deceased, bankrupt or incompetent owner from liability for future obligations.

#### **58. Notices**

All notices between the equity share co-owners shall be in writing and shall be deemed duly served when deposited in the United States mail, certified, first-class postage prepaid, return receipt requested, addressed to the owners at the address of each individual owner as follows:

Occupier:

Zbigniew Motel  
146 Mountain Way  
Rutherford, NJ 07070

And Investor:

Morgan Financial Equity Share & Danny Decesare  
C/O MORGAN FINANCIAL EQUITY SHARE 22 South Holmdel Road, Holmdel,  
NJ 07733

#### **59. Consents and Agreements**

Any and all consents and agreements provided for or permitted by this Agreement shall be in writing. Signed copies of all such consents and agreements shall be kept with the books of the equity share.

#### **60. Each Party's Independent Analysis**

The parties acknowledge that they have been advised to independently hire economic, tax and legal counsel to evaluate and review the financial, tax and legal consequences of this transaction and this Agreement. The parties acknowledge that they have either conducted their own independent tax and legal analysis of each of the terms herein or hereby knowingly waive their right to do so. None of the parties have relied on representations made by the other unless contained in this agreement.

#### **61. Mediation - Arbitration**

Any dispute or claim in law or equity arising out of this Agreement, concerning the equity share property, sale of said property, or the rights and duties of any party under this Agreement shall be first submitted to non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association. If after a full mediation hearing the matter has not been resolved, said dispute shall be decided by neutral binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

The following matters are excluded from mediation - arbitration hereunder:

(a) An unlawful detainer or ejectment action; (b) The filing or enforcement of a mechanics lien; or (c) any matter which is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a Notice of Action Pending, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the mediation and arbitration provisions.

NOTICE: BY INITIALLING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE MEDIATION - ARBITRATION PROVISION DECIDED BY BINDING ARBITRATION PRECEDED BY MEDIATION AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALLING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT AS PROVIDED BY STATUTE. IF YOU REFUSE

TO SUBMIT TO MEDIATION - ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO MEDIATE - ARBITRATE. YOUR AGREEMENT TO THIS PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE MEDIATION - ARBITRATION PROVISION TO BINDING ARBITRATION PRECEDED BY MEDIATION.

ZM  
Occupier

ZM  
Occupier

DD  
Investor

DD  
Investor

#### 62. Attorney's Fees

If arbitration or litigation authorized by this agreement is commenced between the co-owners herein or their personal representatives concerning any provision of this agreement or the rights and duties of any person in relation thereto, the prevailing party(s) shall be entitled to a reasonable sum for their attorneys' fees incurred in such proceedings in addition to such other relief as may be granted.

#### 63. NEW JERSEY Law to Apply

This Agreement shall be construed under and in accordance with the laws of the State of NEW JERSEY.

#### 64. Parties Bound

This Agreement is binding on and shall inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.

#### 65. Legal Construction

If one or more of the provisions contained in this Agreement shall, for any reason, be held unenforceable in any respect, its unenforceability shall not affect any other provision, and the Agreement shall be construed as if the unenforceable provision had never been included.

#### 66. This Agreement Supersedes

The terms of this Agreement that conflict with terms of any other prior agreement between the parties hereto shall supersede and prevail.

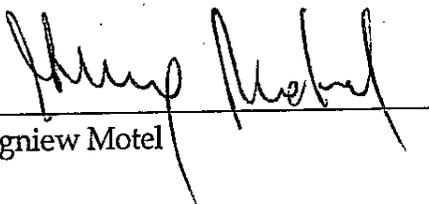
#### 67. Sole Agreement

This instrument contains the sole agreement of the parties relating to this equity share and correctly sets forth the rights, duties, and obligations as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. Any agreement changing any of the terms of this Agreement must be in writing and signed by the parties hereto in order to be binding.

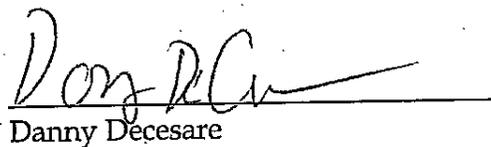
**68. Counterparts/Signatures**

This Agreement may be executed in any number of counterparts and each Counterpart shall be deemed an original for all purposes. Signatures by facsimile or scanned copy shall be deemed original as if made in blue ink.

Dated: October 31, 2008

  
\_\_\_\_\_  
Zbigniew Motel

Dated: October 31, 2008

  
\_\_\_\_\_  
Danny Decesare

\_\_\_\_\_  
MORGAN FINANCIAL EQUITY SHARE

[Exhibit A consisting of legal description attached]

## SUMMARY TO EQUITY SHARING AGREEMENT

### Equity Share Co-owners:

As Occupier: Zbigniew Motel

As Investor: Morgan Financial & Danny Decesare

### Equity Share Title:

146 Mountain Way LLC

### Ownership Split:

Occupier: Zbigniew Motel: 90 %

Investor: Morgan Financial 5 %

Investor: Danny Decesare 5 %

### Equity Share Property:

146 Mountain Way, Rutherford, NJ 07070

### Occupier Monthly rental payment:

\$4950.00

### Occupier Annual rental payment:

\$59,400.00

### Equity Share Agreement Term:

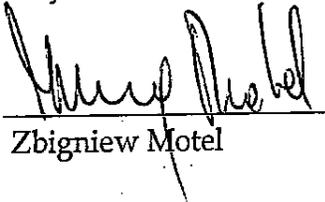
5 YEARS

## AFFIDAVIT OF TRANSACTION UNDERSTANDING

Re: Zbigniew Motel / Morgan Financial & Danny Decesare Equity Share  
Agreement  
146 Mountain Way, Rutherford, NJ 07070

Date: OCTOBER 31, 2008

I, Zbigniew Motel, understand that I am transferring the property to the Investor. In consideration of this transfer, the balance of the sale proceeds will be paid to the Investor to repurchase equity/ownership in the property. Upon completion of the transaction, the property will be transferred to an LLC, of which I will own 90%, with the Investors to own the remaining 10%. I also understand that I will make all monthly payments to Vanick Holdings LLC Property Management. In addition, I have had adequate time and information of which to consult with an attorney if we desire and fully understand the transaction.

 10/31/08  
\_\_\_\_\_  
Zbigniew Motel

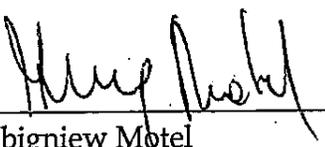
**Vanick Holdings LLC  
PROPERTY MANAGEMENT  
22 South Holmdel Road, Holmdel, NJ 07733**

**Re: Zbigniew Motel / Morgan Financial & Danny Decesare Equity  
Share Agreement  
146 Mountain Way, Rutherford, NJ 07070**

I am aware that Vanick Holdings LLC Property Management will be entitled to a fee of 5.85% of the sale price of your home and will be paid directly from the proceeds at closing.

In addition, we have had adequate time and information of which to consult an attorney if we desire and/or fully understand the transaction and enter into this transaction under our own FREE WILL.

Date: October 31, 2008

  
\_\_\_\_\_  
Zbigniew Motel

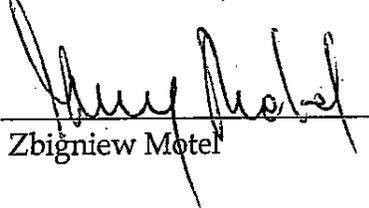
**MORGAN FINANCIAL EQUITY SHARE**  
**22 South Holmdel Road, Holmdel, NJ 07733**

Re: Zbigniew Motel / Morgan Financial & Danny Decesare Equity  
Share Agreement  
146 Mountain Way, Rutherford, NJ 07070 .

I am aware that the investor will make a premium on the repurchase of the equity in our home and that they are entitled to benefit from the appreciation of value in our home equal to the amount owned through the LLC, 10%, and I am also entitled to the appreciation in value of our share to 90%.

In addition, we have had adequate time and information of which to consult an attorney if we desire and fully understand the transaction and enter into this transaction under our own FREE WILL.

Date: October 31, 2008

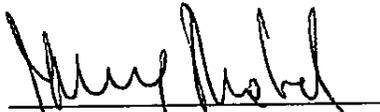
  
Zbigniew Motel

**MORGAN FINANCIAL EQUITY SHARE**  
**22 South Holmdel Road, Holmdel, NJ 07733**

Re: Zbigniew Motel/Morgan Financial & Danny Decesare Equity  
Share Agreement  
146 Mountain Way, Rutherford, NJ 07070

I, Zbigniew Motel, have had adequate time and information of which to consult an attorney if we desire and fully understand the transaction and enter into this transaction under our own FREE WILL.

Date: October 31, 2008

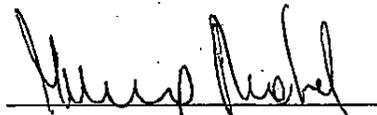
  
\_\_\_\_\_  
Zbigniew Motel

**MORGAN FINANCIAL EQUITY SHARE**  
**22 South Holmdel Road, Holmdel, NJ 07733**

Re:           Zbigniew Motel / Morgan Financial & Danny Decesare Equity  
Share Agreement  
146 Mountain Way, Rutherford, NJ 07070

I, Zbigniew Motel, understand that we are transferring the property to the investor. In consideration of this transfer, the balance of the sales proceeds will be paid to the investor to RE-PURCHASE equity ownership in the property. Upon Completion of the transaction, the property will be transferred to an LLC; of we will OWN 90%, with the investor to own the remaining 10%. We also understand that we will make all monthly payments to Vanick Holdings LLC Property Management. In addition, we have had adequate time and information of which to consult an attorney if we desire and or fully understand the transaction and enter into this transaction under our own FREE WILL.

Date: October 31, 2008

  
\_\_\_\_\_  
Zbigniew Motel

# Exhibit C

UNIFORM SETTLEMENT STATEMENT

A. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		SETTLEMENT STATEMENT	
B. TYPE OF LOAN: Conv. Unins.		6. File Number: 11784 HUD Name: 11784	7. Loan Number: 001120243016
1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FmHA 3. <input type="checkbox"/> Conv. Unins. 4. <input type="checkbox"/> VA 5. <input type="checkbox"/> Conv. Ins.		8. Mortgage Insurance Case Number: N/A	
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.		<b>Quick Title Search, LLC</b> 610 MARS AVENUE LAKEWOOD, NJ 08701 732.363.0708	
D. NAME AND ADDRESS OF BORROWER:  Daniel Decesare 146 Mountain Way Rutherford, NJ 07070	E. NAME, ADDRESS AND TIN OF SELLER:  Jandevar 1031 as 1031 Intemedary for Zbigniew Motel Elzbieta Podgorniak	F. NAME AND ADDRESS OF LENDER:  Worldwide Financial Resources, Inc. 50 Route 9 North, Building B Morganville, NJ 07751	
G. PROPERTY LOCATION:  146 Mountain Way Rutherford, NJ 07070 Block: 136 Lot: 28 & 29	H. SETTLEMENT AGENT: NAME, ADDRESS AND TAXPAYER'S IDENTIFICATION NUMBER Quick Title Search, LLC		I. SETTLEMENT DATE: 10/31/2008  DISBURSEMENT DATE: 10/31/2008
PLACE OF SETTLEMENT: 22 South Holmdel Road Holmdel, NJ 07733			

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract sales price:	\$745,000.00	401. Contract sales price:	\$745,000.00
102. Personal property:		402. Personal property:	
103. Settlement charges to borrower (1400)	\$24,450.08	403.	
104.		404.	
105.		405.	
<i>Adjustments for items paid by seller in advance</i>		<i>Adjustments for items paid by seller in advance</i>	
106. City/town taxes:		406. City/town taxes:	
107. County taxes:		407. County taxes:	
108. Assessments:		408. Assessments:	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	\$769,450.08	420. GROSS AMOUNT DUE TO SELLER	\$745,000.00

200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money	\$210,700.08	501. Excess deposit (see instructions)	\$210,700.08
202. Principal amount of new loan(s)	\$558,750.00	502. Settlement charges to seller (1400)	\$7,022.00
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Countrywide Home Loans Servicing	\$321,371.60
205.		505. Payoff 2nd:	\$0.00
206.		506. Express Payoff:	
207.		507.	
208.		508.	
209.		509.	
<i>Adjustments for items unpaid by seller</i>		<i>Adjustments for items unpaid by seller</i>	
210. City/town taxes:		510. City/town taxes:	
211. County taxes:		511. County taxes:	
212. Assessments:		512. Assessments:	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER	\$769,450.08	520. TOTAL REDUCTION IN AMOUNT DUE SELLER	\$539,093.68

300. CASH AT SETTLEMENT FROM/TO BORROWER:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
301. Gross amount due from borrower (line 120)	\$769,450.08	601. Gross amount due to seller (line 420)	\$745,000.00
302. Less amounts paid by/for borrower (line 220)	\$769,450.08	602. Less reduction in amount due seller (line 520)	\$539,093.68
303. Cash <input checked="" type="checkbox"/> from <input type="checkbox"/> to Borrower	\$0.00	603. Cash <input checked="" type="checkbox"/> to <input type="checkbox"/> from Seller	\$205,906.32

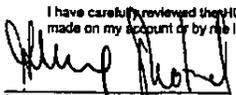
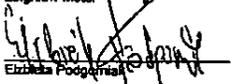
SUBSTITUTE FORM 1099 SELLER STATEMENT

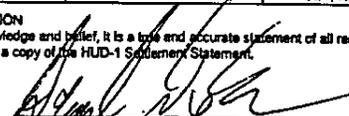
The information contained in Blocks E, G, H and I and on line 401 (or, if line 401 is asterisked, lines 403 and 404) is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported. If this real estate is your principal residence, file Form 2119, *Sale or Exchange of Principal Residence*, for any gain, with your income tax return; for other transactions, complete the applicable parts of Form 4797, Form 6252 and/or Schedule D (Form 1040). You are required to provide the Settlement Agent (named above) with your correct taxpayer identification number. If you do not provide the Settlement Agent with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law. Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.

L. SETTLEMENT CHARGES		
	PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
<b>700. SALES COMMISSION: on \$0 @ % = \$0.00</b>		
Division of Commission (line 700) as follows:		
701. \$0.00 to:		
702 \$0.00 to:		
703. Commission paid at Settlement		
704.		
<b>800. ITEMS PAYABLE IN CONNECTION WITH LOAN</b>		
801. Loan Origination Fee: %		
802. Loan Discount: % Worldwide Financial Resources, Inc.	\$13,868.75	
803. Appraisal Fee: Russo Appraisals	\$560.00	
804. Credit Report:		
805. Commitment Fee: WWFR	\$695.00	
806. Application Fee: WWFR	\$450.00	
807.		
808.		
809.		
810.		
811.		
<b>900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE</b>		
901. Interest: From 10/31/2008 To 11/1/2008 @ 110.98 / day 1 days	\$110.98	
902. Mortgage Insurance Premium:		
903. Hazard Insurance Premium:		
904.		
905.		
<b>1000. RESERVES DEPOSITED WITH LENDER</b>		
1001. Hazard Insurance: 3 months @ \$102.25 per month	\$306.75	
1002. Mortgage Insurance:		
1003. City property taxes: 3 months @ \$1,143.88 per month	\$3,431.64	
1004. County property taxes:		
1005. Annual assessments:		
1006. Aggregate Adjustment	(\$0.04)	
1007.		
1008.		
<b>1100. TITLE CHARGES</b>		
1101. Settlement or closing fee: Quick Title Search, LLC	\$225.00	\$225.00
1102. Abstract or title search:		
1103. Title examination:		
1104. Title insurance binder:		
1105. Document preparation:		
1106. Notary fees:		
1107. Attorney's fees:		
<i>Includes above item numbers:</i>		
1108. Title insurance: Quick Title Search, LLC	\$3,250.00	
<i>Includes above item numbers:</i>		
1109. Lender's coverage: \$558,750.00		
1110. Owner's coverage: \$745,000.00		
1111.		
1112.		
1113.		
<b>1200. GOVERNMENT RECORDING AND TRANSFER CHARGES</b>		
1201. Recording fees: Deeds \$80.00 Mortgage \$240.00 Release \$75.00	\$320.00	\$75.00
1202. County transfer tax: Clerk of Bergen County	\$0.00	\$6,722.00
1203. Notice of Settlement:		
1204.		
1205.		
<b>1300. ADDITIONAL SETTLEMENT CHARGES</b>		
1301. Survey:		
1302. Pest inspection:		
1303. HSBC	\$439.00	
1304. NJNG	\$703.00	
1305. Property Taxes POC through 12/31/2008		
1306.		
1307.		
<b>1400. TOTAL SETTLEMENT CHARGES</b> (enter on lines 103, Section J and 502, Section K)	<b>\$24,450.08</b>	<b>\$7,022.00</b>

**CERTIFICATION**

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

  
 Zbigniew Motel  
  
 Elizabeth Podgorski

  
 Daniel Decesare

To the best of my knowledge the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.

  
 Settlement Agent

10-31-08 Date

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010. (9603-1)

# Exhibit D

## OPERATING AGREEMENT FOR MEMBER-MANAGED

146 Mountain Way LLC

### INTRODUCTION

The undersigned are all of the Members of 146 Mountain Way LLC, a Limited Liability Company formed under the laws of the State of New Jersey. The undersigned hereby adopt the following Operating Agreement pursuant to the LLC laws of the State of NEW JERSEY, and do hereby certify and agree as follows:

#### ARTICLE I - NAME

1.1 Name of Business: The name of the Company is 134 Mountain Way LLC. The business of the Company may be conducted under such trade or fictitious names as the Members may determine.

#### ARTICLE II. - OFFICES AND REGISTERED AGENT

2.1 Principal Office: The principal office of the Company is located at C/O LAW OFFICE OF GEORGE STAVROPOULOUS, PC. 26 COURT STREET, BROOKLYN, NY 11242. The Company may have other offices, inside or outside the State of New York as the Members may designate.

2.2 Registered Office: The registered office of the Company in the State of New York located at 26 COURT STREET, BROOKLYN, NY 11242. The registered agent of the Company for service of process at that address is LAW OFFICE OF GEORGE STAVROPOULOUS, PC.

#### ARTICLE III. - BUSINESS PURPOSE

3.1 Business Purpose: The purpose of the Company is to engage in any lawful business that may be engaged in by a limited liability company organized under the LLC laws of the State of New Jersey.

#### ARTICLE IV. - MEMBERS

4.1 Members: The names of each initial Member, their capital contributions, and percentage interests are as follows:

Name	Percentage Interest
Zbigniew Motel	90%
Morgan Financial	5%
Danny Decesare	5%

4.2 Additional Members: Additional Members may be admitted upon the consent of all Members.

4.3 Withdrawing: A Member may withdraw from the Company upon six months written notice to each remaining Member.

#### ***ARTICLE V. – MEMBERS' CAPITAL ACCOUNTS***

5.1 Capital Accounts: The Company will maintain a separate capital account for each Member. Each Member's capital account will reflect the Member's capital contributions and increases for the Member's share of any net income or gain of the Company. Each Member's capital account will also reflect decreases for distributions made to the Member and the Member's share of any losses and deductions of the Company.

- a) Each Member's capital account will be increased by: 1) the amount of money or the fair market value of property contributed by the Member to the Company (net of any liabilities secured by such contributed property that the Company is considered to assume or take subject to), 2) the amount of any Company liabilities assumed by the Member, and 3) allocations to the Member of profit, income, or gain.
- b) Each Member's capital account will be decreased by: 1) the amount of money and the fair market value of property distributed to the Member by the Company (net of any liabilities secured by such contributed property that the Company is considered to assume or take subject to), and 2) allocations to the Member of losses, deductions, and expenses.
- c) In the event of a permitted sale or exchange of an interest in the Company, the capital account of the transferor will become the capital account of the transferee.
- d) The manner in which capital accounts are to be maintained pursuant to this Operating Agreement is intended to comply with the requirements of the Internal Revenue Code Sec. 704(b) and the regulations there under. It is the specific intent of the Members that all adjustments as may be required pursuant to Sec. 704(b), and any restrictions there under, be made, so as to cause the allocations prescribed hereunder to be respected for tax purposes.

5.2 Fiscal Year: The fiscal year of the Company will be a calendar year. The books and records of the Company will be maintained in accordance with generally accepted accounting principles and Sec. 704 (b) of the Internal Revenue Code and the regulations there under.

#### ***ARTICLE VI. – ALLOCATIONS AND DISTRIBUTIONS***

6.1 Allocations and Distributions: All items of Company income, gain, loss, deduction, credit, or the like will be allocated among the Members in accordance with their respective percentage interests.

6.2 Distributions of Cash or Assets: Distributions of cash or other assets may be made to the Members from time to time. All distributions will be made to the Members in accordance with their respective percentage interests.

#### ***ARTICLE VII. – ASSIGNMENT OF MEMBERSHIP INTERESTS***

7.1 Assignment of Membership Interests: A Member may assign his or her membership interest in the Company in whole or in part. The assignment of a membership interest does not in and of itself entitle the assignee to become a Member. The assignee is only entitled to receive, to the extent assigned, the distributions the assigning Member would otherwise be entitled to, and the assignee will only become an assignee of a membership interest and not a substitute Member.

7.2 Substitute Members: An assignee of a membership interest will be admitted as a substitute Member and will be entitled to all the rights and powers of the assignee only if the other Members unanimously consent. If admitted, the substitute Member has, to the extent assigned, all of the rights and powers, and is subject to all of the restrictions and liabilities of a Member.

#### **ARTICLE VIII. – VOTING; MEMBERS MEETINGS**

8.1 Voting: Except to the extent provided to the contrary in this Operating Agreement, all Members will be entitled to vote on any matter submitted to a vote of the Members.

- a) Unless a greater vote is required by the LLC laws of the State of NEW JERSEY, the Articles of Organization, or this Operating Agreement, the affirmative vote or consent of a majority in interest of the Members present at meeting at which a quorum is present will be the act of the Members.
- b) The consent of all Members will be required to approve the following: 1) the dissolution of the Company, 2) the merger of the Company; 3) the conversion of the Company, 4) the authorization or ratification of acts that would otherwise violate the duty of loyalty, 5) an amendment to the Articles of Organization, 6) the sale, exchange, lease, or other transfer of all or substantially all of the assets of the Company other than in the ordinary course of business, 6) the compromise of an obligation to make a contribution, 7) the making of interim distributions, 8) the admission of a new Member, 9) the use of the Company's property to redeem an interest subject to a charging order, 10) an amendment to the Operating Agreement.

8.2 Annual Meetings of Members: Annual meetings of Members may be held at such time and at such place as the Members designate. Special meetings of Members may be called at the request of any Member.

8.3 Notice of Meetings: The Company will deliver notice stating the date, time, place, and purposes of any meeting to each Member entitled to vote at the meeting. Notice will be given not less than 10 or more than 30 days before the date of that meeting.

8.4 Quorum: A majority in interest, represented in person or by proxy, will constitute a quorum for the transaction of business at a meeting of Members.

8.5 Unanimous Written Consent: Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting, if consents in writing, setting forth the action taken, are signed by all Members entitled to vote at the meeting.

8.6 Voting by Proxy: A Member may appoint a proxy to vote or otherwise act for the Member by signing an appointment instrument either personally or by the Member's attorney-in-fact.

8.7 Meeting Participation: A Member may participate in a meeting by means of telephone conference or similar equipment.

#### ARTICLE IX. - MANAGEMENT OF THE COMPANY

9.1 Management: The Company will be managed by all of its Members.

- a) Subject to the delegation of rights and powers provided for herein, the Members will have the sole right to manage the business of the Company and will have all powers and rights necessary, appropriate or advisable to effectuate and carry out the purposes and business of the Company.
- b) The Members may appoint a President, Treasurer, Secretary, or such other Officers as they may deem necessary or appropriate.
- c) The Members may appoint, employ, or otherwise contract with other persons or entities for the transaction of business of the Company or the performance of services for or on behalf of the Company as they may deem necessary or appropriate. The Members may delegate to any Officer of the Company or to any other person or entity such authority to act on behalf of the Company as they may deem appropriate.
- d) Any Member, Officer, or other person specifically authorized by the Members may execute any contract or other agreement or document on behalf of the Company and may execute and file on behalf of the Company with the secretary of state any document required or permitted to be filed under the LLC laws of the State of NEW JERSEY.

## ARTICLE X. - STANDARD OF CONDUCT; INDEMNIFICATION

**10.1 Conduct:** A Member owes the Company and its other members a duty of loyalty and a duty of care. The duty of loyalty is limited to: 1) accounting to the Company and holding as trustee for it, any property, profit, or benefit derived by the Member in the conduct or winding up of the Company's business, 2) refraining from dealing with the Company as or on behalf of a party having an interest adverse to the Company, and 3) refraining from competing with the Company. The duty of care is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law. A Member will discharge his or her duties consistently with the obligation of good faith and fair dealing.

**10.2 Indemnification:** Except as otherwise provided in this Article, the Company will indemnify any Member and may indemnify any employee or agent of the Company who was or is a party or is threatened to be made a party to any action, suit or proceeding, other than an action by or in the right of the Company, by reason of the fact that such person is or was a Member, employee or agent of the Company against expenses, including attorney's fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with the action, suit or proceeding, if the person met the standard of conduct set forth above in this Article.

- a) To the extent that a Member, employee, or agent of the Company has been successful on the merits or otherwise in defense of an action, suit, or proceeding, such person will be indemnified against actual and reasonable expenses, including attorney's fees, incurred by such person in connection with the action, suit, or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided herein. Any indemnification permitted under this Article, unless ordered by a court, will be made by the Company only as authorized in the specific case upon a determination that the indemnification is proper under the circumstances because the person to be indemnified has met the applicable standard of conduct. That determination will be made by a majority vote of the Members who are not parties or threatened to be made parties to the action, suit, or proceeding.
- b) No indemnification will be provided to any Member, employee, or agent of the Company for or in connection with the receipt of a financial benefit to which such person is not entitled, voting for or assenting to a distribution to Members in violation of this Operating Agreement or the Act, or a knowing violation of law.

## ARTICLE XI. - DURATION; DISSOLUTION

**11.1 Duration:** The Company will continue in existence until dissolved pursuant to the LLC laws of the State of New Jersey.

**11.2 Dissolution:** The Company will be dissolved and have its affairs wound up and terminated upon the determination of all of the Members to dissolve the company, or upon the occurrence of any other event causing dissolution of the Company pursuant to the LLC laws of the State of NEW JERSEY.

11.3 Winding Up: Upon dissolution, the Company will cease carrying on its business and affairs and will commence the winding up of the Company's business and affairs and complete the winding up as soon as practicable. Upon the winding up of the Company, the assets of the Company will be distributed first to creditors to the extent permitted by law in satisfaction of the Company's debts, liabilities, and obligations, and second to Members and former Members in satisfaction of liabilities for distributions and in accordance with their percentage interests.

ARTICLE XII. - MISCELLANEOUS PROVISIONS

12.1 Entire Agreement: This Operating Agreement embodies the entire agreement and understanding among the Members with respect to the subject matter within. This Operating Agreement supersedes any and all other agreements, either oral or written, among the Members with respect to the subject matter within.

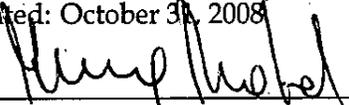
12.2 Severance: Every provision of this Operating Agreement is intended to be severable. The invalidity or illegality of any particular provision of this Operating Agreement will not affect the other provisions, and this Operating Agreement will be construed in all respects as if such invalid or illegal provisions were omitted.

12.3 Amendments and Revocations: This Operating Agreement may be amended or revoked at any time by the written consent of all of the Members.

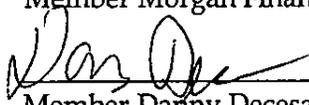
12.4 State Law: This Operating Agreement will be governed by, construed, and enforced in accordance with the laws of the State of NEW JERSEY.

THE UNDERSIGNED, being all of the Members of 146 Mountain Way LLC, evidence their adoption and ratification of the foregoing Operating Agreement of the LLC.

Dated: October 31, 2008

  
\_\_\_\_\_  
Member Zbigniew Motel

\_\_\_\_\_  
Member Morgan Financial Equity Share

  
\_\_\_\_\_  
Member Darny Decesare

***NOTE: Any resolution approved by unanimous written consent in lieu of holding a meeting must be signed by each Member/Manager and kept with the LLC's records. Otherwise, the text of the resolution is often included in the minutes of the meeting at which the resolution was approved.***



**NOTE: Informal meetings where Managers are not required to be present are allowed by some states. These meetings are held by unanimous written consent and provide an alternative manner of holding meetings.**

**Each Manager must sign the minutes of a meeting held by unanimous written consent. Meetings held by unanimous written consent are not required to comply with notice requirements.**

**Any resolutions approved by unanimous written consent must be signed by each Manager and kept with the LLC's records.**

**CONSENT OF MANAGERS OF**

**\_\_\_\_\_ 146 Mountain Way LLC \_\_\_\_\_**

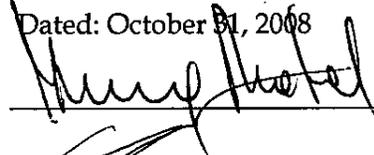
The undersigned, being all of the Managers of 146 Mountain Way LLC, an LLC formed under the laws of the State of NEW JERSEY, in lieu of holding an annual meeting, hereby consent to the adoption of the following resolution, agreeing that this resolution shall have the same force and effect as if unanimously adopted at a meeting of the Managers at which all Managers were present:

RESOLVED, that in lieu of holding the annual meeting of Managers, the following are hereby elected Officers of the LLC, to serve in accordance with the Operating Agreement until the next annual meeting:

PRESIDENT: MORGAN FINANCIAL EQUITY SHARE

SECRETARY: MORGAN FINANCIAL EQUITY SHARE

Dated: October 31, 2008

 \_\_\_\_\_, Member Zbigniew Motel

 \_\_\_\_\_, Member/Manager MORGAN FINANCIAL EQUITY SHARE

 \_\_\_\_\_, Member Danny Decesare

**Exhibit D**  
NEW JERSEY DEPARTMENT OF TREASURY  
DIVISION OF REVENUE

**CERTIFICATE OF FORMATION**

**146 MOUNTAIN WAY LLC  
0400257664**

The above-named DOMESTIC LIMITED LIABILITY COMPANY was duly filed in accordance with New Jersey State Law on 11/07/2008 and was assigned identification number 0400257664. Following are the articles that constitute its original certificate.

**1. Name:**

146 MOUNTAIN WAY LLC

**2. Registered Agent:**

KRISTIN KOWALSKI

**3. Registered Office:**

22 SOUTH HOLMDEL ROAD  
HOLMDEL, NJ 07733

**4. Business Purpose:**

real estate

**5. Members/Managers:**

ZBIGNIEW MOTEL  
22 SOUTH HOLMDEL ROAD  
HOLMDEL, NJ 07733  
ELZBIETA PODGORNIK  
22 SOUTH HOLMDEL ROAD  
HOLMDEL, NJ 07733  
MORGAN FINANCIAL EQUITY SHARE  
22 SOUTH HOLMDEL ROAD  
HOLMDEL, NJ 07733  
DANNY DECESARE  
22 SOUTH HOLMDEL ROAD  
HOLMDEL, NJ 07733

**6. Main Business Address:**

22 SOUTH HOLMDEL ROAD  
HOLMDEL, NJ 07733

**Signatures:**

TANIA LEMUS  
AUTHORIZED REPRESENTATIVE

Continued on next page ...

NEW JERSEY DEPARTMENT OF TREASURY  
DIVISION OF REVENUE

CERTIFICATE OF FORMATION

146 MOUNTAIN WAY LLC  
0400257664



IN TESTIMONY WHEREOF, I have  
hereunto set my hand and  
affixed my Official Seal  
at Trenton, this  
10th day of November, 2008

R. David Rousseau  
State Treasurer

Certificate Number: 112988430

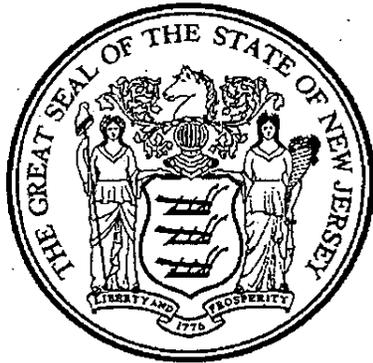
Verify this certificate online at

[https://www1.state.nj.us/TYTR\\_StandingCert/JSP/Verify\\_Cert.jsp](https://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp)

STATE OF NEW JERSEY  
DEPARTMENT OF TREASURY  
FILING CERTIFICATION (CERTIFIED COPY)

146 MOUNTAIN WAY LLC  
0400257664

*I, the Treasurer of the State of New Jersey,  
do hereby certify, that the above named business  
did file and record in this department a  
Certificate of Formation on November 7th, 2008  
and that the attached is a true copy of this  
document as the same is taken from and compared  
with the original(s) filed in this office and now  
remaining on file and of record.*



*IN TESTIMONY WHEREOF, I have  
hereunto set my hand and  
affixed my Official Seal  
at Trenton, this  
10th day of November, 2008*

*R. David Rousseau  
State Treasurer*

Certificate Number: 112990572

Verify this certificate online at

[https://www1.state.nj.us/TYTR\\_StandingCert/JSP/Verify\\_Cert.jsp](https://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp)

Exhibit "E"

**QUICK TITLE SEARCH LLC**

ACCOUNT # 36  
610 Mars Avenue  
Lakewood, NJ 08701  
Tel: 732-363-0708  
Tel: 732 539 7048  
Fax: 732 961 0308

April 23, 2009

Clerk of Bergen County

Re: QT-11784

Ladies/ Gentlemen:

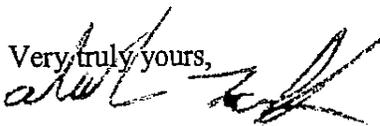
Please record the following document. Check in the sum of \$80.00 enclosed for recording fees.

I. Deed between Daniel Decesare and 146 Mountain Way, LLC

Please return the recorded item as indicated thereon.

Thank you.

Very truly yours,



Abraham Teitelbaum

Bargain & Sale Deed  
Covenant vs Grantor

Prepared By:



Daniel Decesare

**DEED**

This DEED is made on February 25, 2009

BETWEEN  
Daniel Decesare

whose address is 146 Mountain Way, Rutherford, NJ 07070

referred to as the Grantor,

And  
146 MOUNTAIN WAY LLC

Whose address is about to be 22 South Holmdel Road, Holmdel, NJ 07733

Referred to as Grantee,

(The words "Grantor" and "Grantee" shall include all Grantors and Grantees listed above)

**TRANSFER OF OWNERSHIP.** The Grantor grants and conveys (transfers ownership of) the property described below to the Grantee. This transfer is made for the sum of One Dollar and 00/100 (\$1.00)

The Grantor acknowledges receipt of this money.

**PROPERTY.** The property consists of the land and all the buildings and structures on the land in the Borough of Rutherford, County of Bergen and State of New Jersey.

The property is commonly known as 146 Mountain Way, Rutherford, NJ 07070 and is more particularly described in schedule A annexed hereto and incorporated herein by reference.

Tax Map Reference: (N.J.S.A. 46:15-1.1) Lot No. 28 & 29, Block No. 136 on the Borough of Rutherford Tax Maps.

Being the same premises conveyed to the grantor herein by deed from Zbigniew Motel and Elzbieta Podgorniak, dated 10/31/2008, recorded 11/06/2008 in Book 9637, Page 147.

The GRANTOR covenants that the grantor has done no act to encumber the premises. This Promise is called a "covenant as to grantor's acts" (N.J.S.A. 46:6-6). This promise means that the grantor has not allowed anyone else to obtain Legal rights which affect the property (such as making a Mortgage or allowing a judgment to be entered against the grantor.)

SIGNATURES: The grantor signs this Deed as of the date at the top of the first page. If the grantor is a corporation, this Deed is signed and attested by its proper corporate officers.

Witnessed or Attested by:

**CONCETTA MAGGIO**  
**NOTARY PUBLIC**  
**NEW JERSEY**

*Daniel Decesare* [LS]  
Daniel Decesare

*Concetta Maggio*  
*08/20/2013*

\_\_\_\_\_ [LS]

State of New Jersey County of *Monmouth* ss:

I certify that on 02/25/2009  
Daniel Decesare

Personally came before me and acknowledged under oath that:

- [a] He named in and personally signed this Deed;
- [b] signed, sealed and delivered this Deed as his act and Deed
- [c] the full and actual consideration paid or to be paid for the transfer of title as defined by N.J.S.A.46:15-5, is \$1.00

*Concetta Maggio* [LS]  
[Print name and title under  
Signature]

Record and Return to:

**CONCETTA MAGGIO**  
**NOTARY PUBLIC**  
**NEW JERSEY**

*Concetta Maggio*  
*08/20/2013*



State of New Jersey  
SELLER'S RESIDENCY CERTIFICATION/EXEMPTION  
(C.55, P.L. 2004)

GIT/REP-3  
(12-07)

(Please Print or Type)

**SELLER(S) INFORMATION (See Instructions, Page 2)**

Name(s)

Daniel Decesare

Current Resident Address:

Street: 148 Mountain Way

City, Town, Post Office

State

Zip Code

NJ

07070

Rutherford

**PROPERTY INFORMATION (Brief Property Description)**

Block(s)

Lot(s)

Qualifier

136

28 & 29

Street Address:

148 Mountain Way

City, Town, Post Office

State

Zip Code

NJ

07070

Rutherford

Seller's Percentage of Ownership

Consideration

Closing Date

100%

\$1.00

2/25/2009

**SELLER ASSURANCES (Check the Appropriate Box) (Boxes 2 through 8 apply to NON-residents)**

1.  I am a resident taxpayer (individual, estate, or trust) of the State of New Jersey pursuant to N.J.S.A. 54A:1-1 et seq. and will file a resident gross income tax return and pay any applicable taxes on any gain or income from the disposition of this property.
2.  The real property being sold or transferred is used exclusively as my principal residence within the meaning of section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C. s. 121.
3.  I am a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4.  Seller, transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5.  Seller is not an individual, estate or trust and as such not required to make an estimated payment pursuant to N.J.S.A.54A:1-1 et seq.
6.  The total consideration for the property is \$1,000 or less and as such, the seller is not required to make an estimated payment pursuant to N.J.S.A. 54A:5-1-1 et seq.
7.  The gain from the sale will not be recognized for Federal income tax purposes under I.R.C. Section 721, 1031, 1033 or is a cemetery plot. (CIRCLE THE APPLICABLE SECTION). If such section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale (see instructions).
- No non-like kind property received.
8.  Transfer by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this state.

**SELLER(S) DECLARATION**

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein could be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete.

2/25/2009

Date

*[Signature]*

Signature

(Seller) Please Indicate if Power of Attorney or Attorney in Fact

Date

**CONCETTA MAGGIO**  
*[Signature]*

Signature

(Seller) Please Indicate if Power of Attorney or Attorney in Fact

NEW JERSEY

*Concetta Maggio*

**TITLE INSURANCE COMMITMENT**  
*Issued by Quick Title Search, LLC*  
**AGENT FOR UNITED GENERAL TITLE INSURANCE COMPANY**

---

Commitment Number: QT-11784

**SCHEDULE A**

**LEGAL DESCRIPTION**

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Rutherford, the Municipality of Borough of Rutherford, in the County of Bergen, State of NJ:

BEGINNING at a point in the westerly Right of Way Line of Mountain Way said point being located 207.87 feet northerly from the intersection formed by the westerly Right of Way Line of Mountain Way and the northerly Right of Way Line of Summit Cross as extended and running; thence

(1) North 58 degrees 05 minutes 00 seconds West for a distance of 150.00 feet to a point, thence;

(2) North 31 degrees 55 minutes 00 seconds East for a distance of 83.48 feet to a point, thence;

(3) South 45 degrees 30 minutes 00 seconds East for a distance of 153.67 feet to a point in the westerly line of Mountain Way, thence;

(4) South 31 degrees 55 minutes 00 seconds West along the westerly line of Mountain Way, for a distance of 50.00 feet to a point and place of beginning herein described.

FOR INFORMATION PURPOSES ONLY: BEING known as 146 Mountain Way, Tax Lot 28 & 29, Tax Block 136 on the Official Tax Map of Borough of Rutherford, NJ.

Also known as Lots 28 & 29 in Block 136 as shown on map entitled "Map of Section No. 3 of Property of the Ridge Heights Land Company" filed on December 2, 1902 as Map No. 889.

# Exhibit F

LAW OFFICES

FRIEDMAN, KATES, PEARLMAN & FITZGERALD

A PROFESSIONAL CORPORATION

47 ORIENT WAY

RUTHERFORD, N.J. 07070

TEL. (201) 438-5600

FAX (201) 438-4037

HARVEY R. PEARLMAN\*  
JAMES FITZGERALD\*†

\*CERTIFIED BY THE SUPREME COURT OF  
NEW JERSEY AS A CIVIL TRIAL ATTORNEY

†MEMBER N.J. AND N.Y. BAR

MARTIN M. FRIEDMAN

(1929 - 1990)

DONALD S. KATES

(RETIRED)

March 17, 2010

Mr. Daniel Decesare  
146 Mountain Way  
Rutherford, New Jersey 07070

✓ Mr. Daniel Decesare  
4120 W 18th Avenue  
Farmingdale, New Jersey 07727

Mr. Daniel Decesare  
22 South Holmdel Road  
Holmdel, New Jersey 07733

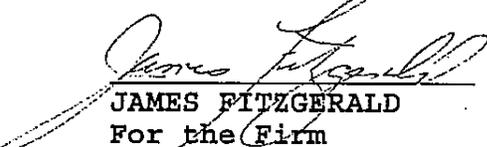
Re: Motel vs. Morgan Financial Equity Shares et al  
146 Mountain Way, Rutherford, NJ

Dear Mr. Decesare:

We represent Mr. Zbigniew Motel who obtained a loan through Morgan Financial Equity Shares back in October 2008. Unbeknownst to our client, title to his property was wrongfully transferred to you and you placed a mortgage against the property in the amount of \$558,750.

Demand is hereby made that you immediately transfer title to the above property back to our client, and that you have the \$558,750.00 mortgage discharged of record.

Very truly yours,

  
JAMES FITZGERALD  
For the Firm

JF:gp

cc: Mr. Zbigniew Motel

Exhibit G

October 16, 2008

Addendum to October 9, 2008 proposal

Dear Mr. Zbigniew Motel,

**Congratulations!** You have been pre-approved for the Morgan Financial Equity Share Program.

Based on the current market value, we propose the following:

- \*Your new loan will be \$558,750.00 at a 30 year fixed rate at 7.25%.
- \* Your new monthly mortgage payment will be approximately \$4950.00 including taxes and home owners insurance.
- \*At closing, your cash out will be \$50,000.00.

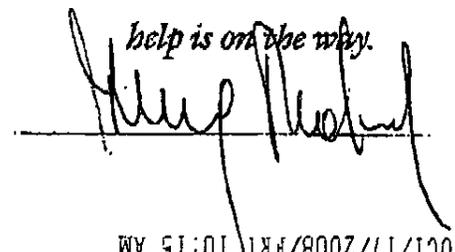
Your first monthly mortgage payment will be due on **December 1, 2008**. Our investor must escrow one year's mortgage payments for reserves. Please make all future mortgage payments out to Vanick Holdings LLC. Vanick Holdings LLC is Morgan Financial Equity Share property Management Company.

In lieu of this, Mr. Peter Nagy, who is head of our credit repair department; will assist you at no cost to get your credit in positive standing. Morgan Financial Equity Share will also provide the American Home Shield Program at no additional cost. The American Home Shield Program covers your heating, cooling, and appliances under warranty. In the event of a problem, you will be provided with a 24 hour emergency toll free number. Morgan Financial Equity Share will be responsible for the cost of any repairs or replacements. Mr. Motel you will be responsible for the \$90 service call fee.

In the interim, our concern at Morgan Financial Equity Share is to get you exclusively on the property in 12 to 36 months. We want our relationship with you to be a healthy and profitable one. If you accept this proposal please sign and fax or mail back. Our fax number is 732-333-4868.

Sincerely,



*help is on the way.*  




Morgan Financial  
Equity Shares

www.morganfinancial.com

- Financial Relief For Homeowners
- Equity Sharing For Investors
- No Money Required
- Excellent Financial Returns

03/25/2009

Exhibit H

J

Dear Mr. Motel,

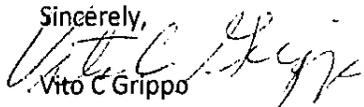
This is Vito C Grippo of Morgan Financial Equity Shares writing you; hope all is well.

We received a call from a Rutherford constable in our office on Monday, March 23, 09.

He mentioned to us that you were displeased about the nature of the agreement that you entered into with us. Mr. Motel, we urge you to please contact our office; we are here to help you. As a reminder, Mr. Motel back in October of 08 you solicited our office for help. We saved your home from foreclosure and saved a great portion of your equity upon entering into an equity agreement with us; as a reminder with the good wishes of your attorney Simchak. The following procedures took place: we paid off the previous loan that was in serious default, paid off all utility and legal liens, and all closing costs that were affiliated with this transaction. Also you received, as per your request, the sum of fifty thousand dollars. All brokers' fees were paid, all our fees were paid, our investors fees were paid; all applicable fees that you agreed upon.

We immediately formed the limited liability corporation for you and investor as outlined in our Esa agreement. To this date, you still did not sign the LLC paperwork and the deed. We also issued full warranty on all appliances, heating and cooling systems, and electrical to avoid any out of pocket expense for you the homeowner. Most importantly, it's because OF OUR COMPANY WHO WORKED ON RESTORING YOUR CREDIT RATING TO MUCH HIGHER STANDARDS THEN WHEN WE MET back in October. That's the reason for you coming to us ;you not having the ability to refinance BECAUSE OF POOR CREDIT RATING ,and severe delinquency on your mortgage .We furnished you with a much lower interest rate, prevailing at the time, lowered monthly mortgage payments, saved the roof over you r head, put significant amount of money in your pocket, and restored your credit far greater than you ever had it .Please call my office; we will help you with getting the property restored in your name and my investor off the property so he can make money with us in another equity share venture. Possibly some day you might consider being part of our investor network thanks to us your credit is now strong enough .God bless you and be well. Looking to hear from you.

Sincerely,

  
Vito C Grippo

MFIN

*helps on the way.*

Exhibit I

**Vanick Property Management  
22 South Holmdel Road  
Holmdel, NJ 07733**

October 20, 2009

Dear Mr. Z. Motel,

This letter is to inform you that you are currently in default status of the E.S.A agreement with Vanick Property Management. We have made several attempts to contact you. At this time you are in default status and if payment is not received and your account is not brought up to date immediately legal action will take place. Vanick Property Management has made several phone calls to you, with no response. It is very important that you call this office immediately. (1-800-566-4041).

**The balance on your account is the following:**

\$35,762.67

Thank You

Vanick Property Management

# Exhibit J

GIT/REP-3  
(12-07)



## State of New Jersey SELLER'S RESIDENCY CERTIFICATION/EXEMPTION (C.55, P.L. 2004)

(Please Print or Type)

### SELLER(S) INFORMATION (See Instructions, Page 2)

Name(s)

Daniel Decasare

Current Resident Address:

Street: 146 Mountain Way

City, Town, Post Office

Rutherford

State

NJ

Zip Code

07070

### PROPERTY INFORMATION (Brief Property Description)

Block(s)

136

Lot(s)

28 & 29

Qualifier

Street Address:

146 Mountain Way

City, Town, Post Office

Rutherford

State

NJ

Zip Code

07070

Seller's Percentage of Ownership

100%

Consideration

\$1.00

Closing Date

2/25/2009

### SELLER ASSURANCES (Check the Appropriate Box) (Boxes 2 through 8 apply to NON-residents)

1.  I am a resident taxpayer (individual, estate, or trust) of the State of New Jersey pursuant to N.J.S.A. 54A:1-1 et seq. and will file a resident gross income tax return and pay any applicable taxes on any gain or income from the disposition of this property.
2.  The real property being sold or transferred is used exclusively as my principal residence within the meaning of section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C. s. 121.
3.  I am a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4.  Seller, transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5.  Seller is not an individual, estate or trust and as such not required to make an estimated payment pursuant to N.J.S.A.54A:1-1 et seq.
6.  The total consideration for the property is \$1,000 or less and as such, the seller is not required to make an estimated payment pursuant to N.J.S.A. 54A:5-1-1 et seq.
7.  The gain from the sale will not be recognized for Federal income tax purposes under I.R.C. Section 721, 1031, 1033 or is a cemetery plot. (CIRCLE THE APPLICABLE SECTION). If such section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale (see instructions).
- No non-like kind property received.
8.  Transfer by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this state.

### SELLER(S) DECLARATION

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein could be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete.

2/25/2009

Date

Signature

(Seller) Please Indicate if Power of Attorney or Attorney in Fact

Date

Signature  
(Seller) Please Indicate if Power of Attorney or Attorney in Fact

NEW JERSEY

Corretta Maggio  
2/25/2009

# Exhibit K

James J. DeLoach