



Housing Authority of the City of Napa  
P.O. Box 660 Napa, CA 94559-0660  
(707) 257-9543 or (707) 257-9239 FAX

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## MEMORANDUM

**TO:** Richard Spitler, City Manager, City of Calistoga  
**FROM:** Andrea Clark, Affordable Housing Representative  
**DATE:** January 20, 2011  
**SUBJECT:** 2010 High Rocks Drive, Calistoga  
Theresa Bohan

A handwritten signature in black ink, appearing to read "Andrea Clark", written over the "FROM:" line of the memorandum.

The City received a notice of trustee's sale on the affordable housing unit located at 2010 High Rocks Drive. The foreclosure sale is set for Thursday, February 3, 2011.

The City has a soft money promissory note and second deed of trust in the amount of \$65,000 secured against the property. The loan is a 30 year deferred payment loan with 5% interest accruing for the first ten years of the loan. The City also has an Option To Purchase agreement recorded against the property.

The Housing Authority has been monitoring this foreclosure action since June 2010 when we received a copy of the notice of default indicating that payments were in arrears since July 15, 2009. I have contacted the homeowner on numerous occasions to request a status on the foreclosure and to refer her to foreclosure counseling and legal aid. According to the homeowner, she has been caught up in the banking takeovers and has been working on a loan modification for over a year.

In 2007, the City agreed to subordinate to a cash-out refinance of the property to allow for the payment of lengthy medical procedures. The homeowner requested she be allowed to obtain an adjusted rate mortgage loan which would allow for lower payments during the time of her medical procedures. The homeowner began working on a loan modification when the loan payments were increased beyond what she could afford.

Since you and I spoke this morning, I spoke to the credit counselor assisting the homeowner with the loan modification. The counselor indicated the bank has denied the loan modification due to lack of income and were proceeding with the foreclosure sale.

At this point the City has several options it could take:

1. Under Section 8 of the Option To Purchase Agreement, the City has the right to cure the foreclosure or exercise its option to purchase the property.
  - a. If the City chooses to cure the foreclosure it must bring all the loan payments, late charges, and fees current on the first mortgage loan. The estimated cost to cure the loan is \$30,000. Under the California State law the loan can be brought current up to five days before the trustee's sale date. If the City advances funds to bring the loan current, the City can modify its existing loan or record a new deed of trust to secure the funds advanced.
  - b. If the City chooses to exercise its option to purchase the property it can either negotiate the purchase from the homeowner or it can bid at the foreclosure sale. The City would also have to work with the lender to postpone the foreclosure sale. A recent Zillow.com search indicates the fair market value range of \$332,000 - \$429,000 depending on the condition of the property. The opening bid published for the foreclosure sale is \$325,956.38. If the City acquires the property, additional marketing & sales costs and possible repair costs will have to be added to the City's investment.
2. The other option left to the City is to do nothing and allow the property to go to foreclosure sale. The City's soft money second deed of trust would be wiped out at the foreclosure sale and the affordable housing unit would be lost.

Considering the unknown financial state of the homeowner and the City's limited Housing Trust Funds, I would recommend that the City allow the foreclosure sale to proceed.

Please feel to contact me if you have any questions or need additional information.

Attachments:    Notice of Trustee's Sale  
                      Zillow.com search of the property  
                      City's Promissory Note  
                      City's Deed of Trust  
                      City's Option To Purchase Agreement

Recording requested by:  
LSI Title Company

When Recorded Mail To:  
NDEX West, L.L.C.  
15000 Surveyor Boulevard, Suite 500  
Addison, Texas 75001-9013  
(866) 795-1852

APN #: 011-531-009-000  
Property Address:  
2010 HIGH ROCKS DRIVE  
CALISTOGA, CALIFORNIA 94515



NOTS20100015004895

Space above this line for Recorder's use only

Trustee Sale No.: 20100015004895

Title Order No.: 100308040

FHA/VA/PMI No.:

### NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 10/26/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NDEX WEST, LLC, as duly appointed Trustee under and pursuant to Deed of Trust Recorded on 11/01/2007 as Instrument No. 2007-0035114 of official records in the office of the County Recorder of NAPA County, State of CALIFORNIA.

**EXECUTED BY:** THERESA BOHAN,  
WILL SELL AT PUBLIC AUCTION TO HIGHEST BIDDER FOR CASH, CASHIER'S CHECK/CASH EQUIVALENT or other form of payment authorized by 2924h(b), (payable at time of sale in lawful money of the United States).  
**DATE OF SALE:** 02/03/2011 **TIME OF SALE:** 1:30 PM  
**PLACE OF SALE:** AT THE BROWN STREET ENTRANCE TO THE COUNTY COURTHOUSE, 825 BROWN STREET, NAPA, CA.

**STREET ADDRESS** and other common designation, if any, of the real property described above is purported to be:  
2010 HIGH ROCKS DRIVE, CALISTOGA, CALIFORNIA 94515  
**APN#:** 011-531-009-000

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by said Deed of Trust, with interest thereon, as provided in said note(s), advances, under the terms of said Deed of Trust, fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$325,956.38. The beneficiary under said Deed of Trust heretofore executed and delivered to the undersigned a written Declaration of Default and Demand for Sale, and a written Notice of Default and Election to Sell. The undersigned caused said Notice of Default and Election to Sell to be recorded in the county where the real property is located.

**FOR TRUSTEE SALE INFORMATION PLEASE CALL:**  
**AGENCY SALES & POSTING**  
3210 EL CAMINO REAL, SUITE 200  
IRVINE, CA 92602  
714-738-7727  
www.ipssap.com

NDEX West, L.L.C. MAY BE ACTING AS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

NDEX West, L.L.C. as Trustee

BY: Rio Jarez

Dated: 01/07/2011

CITY OF CALISTOGA  
City Clerk

JAN 18 2011

Page 1 of 1

FCUS\_NoticeOfTrusteeSale.rpt - Record - 12/07/2010 - Ver-29

RECEIVED



1999-0010198

Recording requested by and when recorded return to:

Napa Valley Housing Authority  
1115 Seminary Dr.  
Napa, Ca. 94559

Recorded  
Official Records  
County Of  
NAPA  
JOHN TUTEUR  
Recorder

REC FEE 31.00

08:00AM 31-Mar-1999

VB  
Page 1 of 9

APN 011-531-009

302383-LM

For use by Recorder only

OPTION TO PURCHASE

This Option to Purchase (the "Agreement") is entered into as of this 25th day of March, 19 99, by and between the City of Calistoga, a California municipal corporation (the "Agency"), and Theresa Bohan (the "Owner").

WHEREAS, pursuant to that certain Development Agreement for Affordable Housing, dated as of June 18, 1992, between the Agency and Paul Coates Construction, Inc., the Agency has sought to provide housing opportunities to low and moderate income purchasers; and

WHEREAS, the Agency has thereby made it possible for the Owner to purchase the residence which is the subject of this Agreement at a price below those otherwise prevailing in the market;

NOW, THEREFORE, in consideration of the benefits received by the Owner, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and intending to be bound, the Owner and the Agency agree as follows:

1. The Residence. The residence which is the subject of this Agreement (the "Residence") has a street address of 2010 High Rocks Drive, Calistoga, CA, and its legal description is "Exhibit A" to this Agreement.

2. Representations and Warranties. The Owner represents and warrants to the Agency that the financial and other information previously provided to the Agency or any lenders by the Owner for the purpose of qualifying to purchase the Residence was true and correct at the time it was given and remains true and correct as of the date of this Agreement. The Owner further represents and warrants to the Agency that the Owner shall occupy

the Residence as his or her principal residence.

3. Purchase Option. The Owner hereby grants to the Agency, as optionee (the "Optionee"), an option to purchase the Residence (the "Purchase Option") on the terms of this Agreement. The Agency may designate any individual or entity (the "Designee") to exercise the Purchase Option. The Designee when so designated shall then be the Optionee. After the exercise of the Purchase Option by the then Optionee in the manner hereinafter prescribed, the Optionee may assign the Purchase Option to any substitute buyer who is approved by the Agency; provided, however, that such subsequent assignment shall not extend any time limits contained herein. Upon approval by the Agency, such substitute buyer shall become the Optionee. The Agency shall give the Owner notice of any designation of a Designee. The Agency, the Designee or the Optionee, as the case may be, shall give the Owner notice of any assignment to an Optionee.

4. Prohibited Transfers. Any attempt by the Owner to make a Prohibited Transfer (defined below) of title to or any interest in the Residence or otherwise in violation of this Agreement shall be void and subject to exercise by the Optionee of the Purchase Option described in Section 3.

(a) "Transfer" means any voluntary or involuntary sale, assignment or transfer of ownership of or any interest in the Residence, including a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entireties, life estate, or other limited estate, leasehold interest or any rental of the Residence, or any interest evidenced by a land contract. Any Transfer without satisfaction of the conditions of this Agreement shall be deemed a "Prohibited Transfer." In addition, any breach by the Owner of the representations and warranties set forth in Section 2 shall be deemed a "Prohibited Transfer."

(b) The following Transfers are not considered Prohibited Transfers and therefore are not subject to exercise by the Optionee of the Purchase Option: (i) Transfer by gift, devise, or inheritance to the Owner's spouse or natural or adopted children; (ii) Transfer of title by an Owner's death to a surviving joint tenant, tenant by entireties, or a surviving spouse of community property; (iii) Transfer of title to a spouse as part of divorce or dissolution proceedings; or (iv) Transfer of title or an interest in the Residence to the spouse in conjunction with marriage; providing, however: (x) that these covenants shall continue to run with the title to the Residence following said Transfers; (y) that an instrument be executed by the transferee making such transferee wholly or jointly liable, as the Agency deems appropriate, for the Owner's obligations under that certain promissory note of even date herewith made by the Owner in favor of the Agency and (z) that an instrument be executed, acknowledged and recorded by the transferee containing the following covenant: "This Residence is subject to an Option to Purchase recorded on \_\_\_\_\_ ("the Agreement") and transferee, on behalf of transferee, and transferee's successors

and assigns, covenants and agrees to be bound by and perform the Agreement." A transferee who satisfies the conditions of this Section 4(b) shall then be the Owner.

5. Notice of Intent to Transfer. Whenever the Owner of the Residence no longer desires to own the Residence, and intends to make a Transfer of title to or any interest in the Residence which, unless the Owner complies with this Section 5, would be a Prohibited Transfer, the Owner shall notify the Optionee to that effect. The Optionee, upon receipt of said notice, shall then have the right to exercise its Purchase Option by delivery of notice to the Owner of such exercise at any time within forty-five (45) calendar days from the receipt by the Optionee of such written notice from the Owner of intent to sell or otherwise transfer the Residence.

6. Exercise of Option; Purchase Price.

(a) If the Optionee exercises its right to purchase the Residence, closing shall be through an escrow with the title insurance company issuing the owners title insurance policy required by Section 6(b) of this Agreement, utilizing the form of escrow agreement customarily used by such escrowee in residential transactions in the Agency, modified to the extent necessary to conform to this transaction. The closing of the sales transaction shall be within ninety (90) days from receipt by the Optionee of the Owner's notice of intent to sell.

(b) Closing costs and title insurance shall be paid pursuant to the custom and practice in the Agency at the time of the opening of escrow. At the closing the Owner shall furnish the Optionee, an ALTA owner's residential title insurance policy, subject to its exclusions from coverage, special exceptions for current taxes and assessments not yet due, and such matters (other than taxes, assessments, and encumbrances created or suffered by the Owner who signed this Agreement and all those claiming under that Owner) which were exceptions to title on the date of this Agreement. At the closing Owner shall convey title to the Optionee by grant deed, or its equivalent which warrants title against matters created or suffered by the Owner and those claiming under the Owner.

(c) The purchase price of the Residence shall be its fair market value. The Owner and the Optionee may agree on market value. In the alternative, the Optionee may have an appraisal made by a neutral professional appraiser of its choice to establish the market value. The Owner may also, at Owner's own expense, have an appraisal made by a neutral professional appraiser of the Owner's choice, but reasonably acceptable to the Optionee, to establish the market value. If agreement cannot be reached, the average of the two appraisals shall be deemed to be the market value.

(d) In no event shall the Agency become in any way liable to the Owner, nor become obligated in any manner to any other party, by reason of the assignment of its Purchase Option, nor shall the Agency be in any way obligated or liable to Owner for any failure of the then Optionee to consummate a purchase of the Residence or to comply with the terms of the Purchase Option.

(e) If the Optionee fails to exercise its Purchase Option hereunder, or, if such Purchase Option is exercised but no sale is consummated within the allotted 90-day period, the Owner may Transfer the Residence free of the restrictions of this Agreement.

7. Fees. Upon any Prohibited Transfer, or any Transfer pursuant to Section 6, the Owner shall pay to the Agency a Transfer Fee of Five Hundred Dollars (\$500.00). The amount of the Transfer Fee established by this Section may be adjusted by the Agency annually in an amount not to exceed the percentage change in the Consumer Price Index from the later of \_\_\_\_\_ or the last adjustment made to the Transfer Fee. During the month of June of each year, the Agency shall establish by resolution any adjusted Transfer Fee for the ensuing fiscal year. In the event the Agency does not adjust such Transfer Fee in June of any particular year, the prior fee schedule shall remain in effect.

8. Default and Foreclosure. A request for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Residence shall be recorded by the Agency. Any notice of default given pursuant to Civil Code Section 2924b, as amended, shall constitute an Owner's notice of intent to sell under Section 5 of this Agreement, and the Optionee may exercise its Purchase Option pursuant to the provisions of this Agreement; provided however, that, notwithstanding any language contained in this Agreement to the contrary, with regard to the rights of the lien holder, the Optionee must complete such purchase no later than the end of the period established by California Civil Code Section 2924c for reinstatement of a monetary default under the deed of trust or mortgage. In the event that no request for notice is recorded, the Optionee's Purchase Option shall run from the date the notice of default is given to the Owner, and any such purchase must be completed within the period established in this Section 8.

In the event of default and foreclosure, the Optionee shall have the same right as the Owner to cure defaults and redeem the Residence prior to the foreclosure sale. Such redemption shall be subject to the same fees, charges and penalties which would otherwise be assessed against the Owner. Nothing herein shall be construed as creating any obligation on the part of the Agency to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

9. Notice of Prohibited Transfer. Within thirty (30) days after receiving notification that a Prohibited Transfer has occurred, the Optionee will give written notice to the Owner, specifying the nature of the Prohibited Transfer. If the violation is not corrected to the satisfaction of the Optionee within ten (10) days after the date of the notice, or within such further time as the Optionee determines is necessary to correct the violation, the Optionee may declare a default under this Agreement. Upon the declaration of a default, the Optionee may exercise its Purchase Option as set forth in Section 6 or apply to a court of competent jurisdiction for specific performance of this Agreement, for an injunction prohibiting a proposed sale or transfer in violation of this Agreement, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate.

10. Attorney Fees and Costs. If either party to this Agreement shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees in bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorney fees and costs incurred in enforcing such judgment. For purposes of this Section, attorney fees shall include, without limitation, fees incurred in the following: (a) postjudgment motions; (b) contempt proceedings; garnishment, levy and debtor and third party examinations; (d) discovery; and (e) bankruptcy litigation.

11. Controlling Agreement. The Owner covenants that the Owner has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that in any event, the Owner understands and agrees that this Agreement shall control the rights and obligations between and among the parties.

12. Subordination. This Agreement is subordinate to any deed of trust or mortgage on the property made by or held by an institutional lender or institutional investor. Any party, and its successors and assigns, including the United States Department of Housing and Urban Development ("HUD"), receiving title to the property through a trustee's sale, a judicial foreclosure sale or deed in lieu of foreclosure, of such deed of trust or mortgage, and any conveyance or transfer thereafter, shall receive title free and clear of the provisions of this Agreement. Upon assignment of the deed of trust or mortgage to HUD pursuant to 24 CFR 203.650 (or any successor provision), the provisions of this Agreement shall terminate and be of no further force or effect.



13. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

14. Waiver. Any requirement of this Agreement may be waived by the Agency in its sole discretion, such waiver to be in writing and consistent with the Agency's goal of creating, preserving, maintaining, and protecting housing for persons of low and moderate income. Notwithstanding the foregoing, any waiver in connection with a Residence purchased by a veteran with a loan guaranteed by the Veterans Administration shall only be effective after submission to, and approval by, the Loan Guaranty Division of the VA Regional Office.

15. Time of the Essence. Time is of the essence of this entire Agreement. Whenever under the terms of this Agreement the time for performance falls on a day which is not a business day, such time for performance shall be on the next day that is a business day.

16. Notices. All notices required herein shall be in writing and shall be considered as given when personally delivered or when delivered to Federal Express or similar overnight delivery service with all delivery charges paid or when mailed, certified mail, return receipt requested, addressed to the parties as follows:

If to Agency:                   City of Calistoga  
  1232 Washington Street  
  Calistoga, CA 94515

with copy to:                   Napa Valley Housing Authority  
  1115 Seminary Street, P.O. Box 660  
  Napa, CA 94559  
  Attn: Executive Director

If to Owner:                   Theresa Bohan  
  2010 High Rocks Drive  
  Calistoga, CA 94515

If to Optionee:                At the address specified in the  
  (other than                    designation or assignment  
  the Agency)                   required by Section 6.

The address of a party for notices may be changed by that party's designation to all other parties of the new address and the recording of the designation, including the recording reference of this Agreement and its legal description, Exhibit A.

17. Covenants as to Use of and Title to the Residence. The Owner covenants and agrees with the Agency that the Owner will use and maintain the Residence as a single family residence and will perform all obligations of any consensual lien encumbering the Residence, until a permitted Transfer, purchase by the Optionee pursuant to this Agreement or termination of this Agreement.

18. Running of Benefits and Burdens. All provisions of this Agreement, including the benefits and burdens, run with the land described in Exhibit A and are binding upon the heirs, successors, assigns and personal representatives of the parties hereto and inure to the benefit of the heirs, personal representatives and permitted successors and assigns of the parties hereto.

19. Construction. The rule of strict construction does not apply to this Agreement. This Agreement shall be given a reasonable construction so that the intention of the parties, to create a valid and enforceable Purchase Option and prevent any Prohibited Transfer or any use of the Residence in violation of this Agreement is carried out.

20. Termination. The Purchase Option shall terminate and become void automatically thirty (30) years following the date of execution of this Agreement. This Agreement shall terminate on the earlier of conveyance to the Optionee or its nominee pursuant to exercise of the Purchase Option, acquisition of title through a foreclosure of any consensual lien to which this Agreement has been subordinated, or termination of the Purchase Option. To the extent permitted by law, any unfulfilled obligations of any Owner shall survive the termination of this Agreement, but this Agreement shall no longer affect title to the Residence.

IN WITNESS THEREOF, the parties have executed this Agreement as of the date first written above.

CITY OF CALISTOGA

By: 

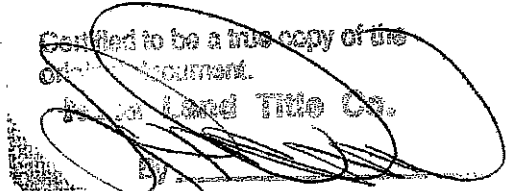
Mark L. Jeff Butzlaff, Manager

ATTEST

  
Matt Osborne  
City Clerk

OWNER

  
Theresa Bohan

  
Certified to be a true copy of the  
original document.  
Palmdale Land Title Co.

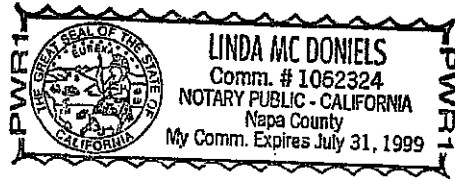
Notarizations

STATE OF CALIFORNIA )  
COUNTY OF NAPA ) ss.

On March 25, 1999, before me, the undersigned personally appeared L. Jeff Butzlaff, [ ] personally known to me [X] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

*[Handwritten Signature]*  
Notary Public

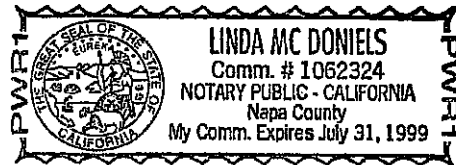


STATE OF CALIFORNIA )  
COUNTY OF NAPA ) ss.

On March 26, 1999, before me, the undersigned personally appeared Theresa Bohan, [ ] personally known to me [X] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

*[Handwritten Signature]*  
Notary Public



Certified to be a true copy of the original document.

Napa Land Title Co.

By *[Handwritten Signature]*

**EXHIBIT "A"**

The land referred to herein is situate in the State of California, County of Napa, City of Calistoga and is described as follows:

Lot 7 as shown on the map of Palisades Subdivision filed for record on August 18, 1992 in Book 19 of Maps at Pages 4-8 in the office of the County Recorder of said Napa County.

APN: 011-531-009