

**When recorded, mail to:**  
 Community Development Corporation of Utah  
 501 East 1700 South  
 Salt Lake City, Utah 84105

10629455  
 2/23/2009 4:01:00 PM \$18.00  
 Book - 9689 Pg - 3143-3147  
 Gary W. Ott  
 Recorder, Salt Lake County, UT  
 MONUMENT TITLE INS. CO.  
 BY: eCASH, DEPUTY - EF 5 P.

### RIGHT OF FIRST REFUSAL

AGREEMENT made effective February 20, 2009, by and between:

COMMUNITY DEVELOPMENT  
 CORPORATION OF UTAH,  
 a Utah nonprofit corporation  
 501 East 1700 South,  
 Salt Lake City, Utah 84105  
 ("CDC")

and ROBERT MORK, AN UNMARRIED MAN

("Owner")

### RECITALS:

A. CDC has assisted Owner in being able to purchase from CDC the home and real estate described in Exhibit A attached (the "Property").

B. As a condition to assisting Owner, CDC has requested and Owner has agreed to grant to CDC an option to repurchase the Property on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises contained in this Agreement and in the purchase agreement between CDC and Owner, the receipt and sufficiency of which consideration is acknowledged, the parties agree as follows:

1. Grant of Option. Upon the occurrence of any of the following events (the "Triggering Events"), Owner hereby grants to CDC an option to purchase the Property:

(a) Owner directly or indirectly sells or conveys the Property or any interest in or portion of the Property, or attempts to do any of the foregoing, in any manner or form whatsoever; or

(b) Owner defaults under any trust deed recorded against the Property or any portion of the Property, or under the promissory note secured by that trust deed.

2. Purchase Price/Payment. The purchase price for the Property, to be paid in cash at closing, will be determined as follows:

(a) if the Triggering Event is one described in Subsection 1(a) above, the purchase price will be equal to the lesser of (i) the resale price, if any, agreed to by Owner, or (ii) the appraised value of the Property as determined by an appraiser mutually agreed upon by CDC and Owner; or

(b) if the Triggering Event is one described in Subsection 1(b) above, the purchase price will be equal to the balance of principal, accrued interest, and other charges owed on all trust deed(s) and promissory note(s) on the Property, excluding the balance owed under any promissory note or trust deed owed to CDC as beneficiary.

3. Notice of Event. Owner will promptly give CDC notice of any event described in Section 1.

4. Exercise/Closing Date.

(a) If CDC decides to purchase the Property, CDC must exercise its option by delivering to Owner, within 30 days after receiving the notice under Section 3, a written notice advising Owner that CDC is exercising its option under this Agreement to purchase the Property (the "Exercise Notice"). The option period will not expire until notice has been given by Owner and received by CDC under Section 3 above and 30 days have elapsed following CDC's receipt of that notice. The closing of the purchase and sale of the Property must then occur within 20 calendar days after CDC gives the Exercise Notice.

(b) If CDC does not exercise the option strictly when and as required in this Agreement, then this Agreement and the option granted herein will terminate automatically and completely as of the end of the 30-day period described in Subsection 4(a) above.

5. Title Report. Within ten days after Owner receives the Exercise Notice, unless this requirement is waived by CDC, Owner will provide to CDC a commitment for title insurance from a title insurance company acceptable to both parties (the "Title Company") covering the Property, naming CDC as the proposed insured, and contemplating the issuance of an owner's title insurance policy in the amount of the purchase price.

6. Closing. Closing of the purchase and sale will occur at the offices of the Title Company or at another location selected by CDC. At closing:

(a) Owner will execute and deliver to CDC a special warranty deed to the Property, subject only to the exceptions listed in the title insurance policy issued to Owner when Owner purchased the Property;

(b) CDC will deliver to Owner cash or certified funds in the amount of the Purchase Price, as adjusted by prorations, credits, and closing costs required by the provisions of this Agreement to be taken into account;

(c) Owner will deliver possession of the Property to CDC; and

(d) Owner will provide to CDC, at Owner's cost, a standard owner's ALTA title insurance policy in the amount of the Purchase Price.

7. Property Taxes. Property taxes for the year of closing will be prorated between the parties as of the closing date.

8. Closing Costs. Owner and CDC will each pay one half of the escrow closing fee. Each party will pay its own attorney fees and costs.

9. Owner's Death.

(a) If Owner dies, Owner's estate or other legal successor (the "Estate") or will have a period of 90 days following the date of death in which to pay in full all trust deeds, promissory notes, and other liens and encumbrances (referred to herein together as the "Indebtedness") against the Property. The Estate may accomplish this by selling the Property or by refinancing the Indebtedness. If the Estate fails to pay all of the Indebtedness in full, as required in this Subsection 9(a), the Estate will, as of the 90<sup>th</sup> day following the date of Owner's death, be deemed to be in default under Subsection 1(a) of this Agreement and such failure will constitute a Triggering Event for all purposes of this Agreement.

(b) If Owner consists of two persons who own the Property in joint tenancy, Subsection 9(a) will apply only when the surviving joint tenant Owner dies.

10. Default. Time is of the essence of this Agreement and of each of the provisions hereof. If either party fails to carry out any of the provisions of this Agreement or to timely perform any of its obligations hereunder, the other party may pursue all rights and remedies available at law or in equity, including a right of specific performance in CDC. CDC's option and rights under this Agreement are intended to be in addition and cumulative to any and all rights of CDC under any other contract or instrument, including without limitation any promissory note or trust deed in favor of CDC as beneficiary.

11. Execution by Counterpart/Signatures. This Agreement may be executed separately or independently in any number of counterparts, each and all of which together will be deemed to have been executed simultaneously and for all purposes to be one Agreement. Facsimile signatures will constitute original, binding signatures.

12. Headings. All headings in this Agreement are inserted for convenience of reference and will not affect its meaning or interpretation.

13. Exhibits. All exhibits annexed to this Agreement and the documents to be delivered at or prior to the closing are expressly made a part of this Agreement as fully as though completely set forth in it. All references to this Agreement, either in the Agreement itself or in any of such writings, will be deemed to refer to and include this Agreement and all such exhibits and writings.

14. Further Action. The parties will execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the intent and purposes of this Agreement. In the case of either party's refusal or failure to execute, acknowledge and deliver any document, instrument or conveyance that may be necessary or proper to carry out the provisions of this Agreement, the other party will have power and authority as an attorney-in-fact for the party so refusing or failing, to execute, acknowledge, and deliver such instrument or conveyance.

15. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Utah applicable to agreements made and entirely to be performed within such jurisdiction except to the extent federal law may be applicable. Any action under this Agreement may be filed and maintained only in state or federal courts located within Salt Lake County, State of Utah, and all parties hereby submit to the jurisdiction of such courts.

16. Severability. If and to the extent that any court of competent jurisdiction holds any provision or any part hereof of this Agreement to be invalid or unenforceable, such holding will in no way affect the validity of the remainder of this Agreement.

17. Notices. All notices, requests, consents, demands, approvals, and other documents, instruments, and communications which are required or permitted hereunder will be in writing and will be deemed to have been duly given either at the time of delivery if personally delivered, or five business days after the time of the postmark if mailed registered or certified mail, return receipt requested, and addressed to the respective addresses stated in the first paragraph of this Agreement.

18. Litigation Expenses. If any action, suit or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement, all costs and expenses of the prevailing party incident to such proceeding, including reasonable attorney's fees, will be paid by the other party.

19. Assignment. CDC may assign its rights under this Agreement.

20. In the event of a foreclosure. In the event of a foreclosure, or a deed in lieu of foreclosure by the First Mortgage, any provision herein or in any collateral agreement restricting the use of the Property or restricting the Borrower's ability to sell the Property, shall automatically have no further force or effect on subsequent owners or purchasers of the Property. Any Person, including his successors and assigns, (other than the Borrower or related entity or person to the Borrower) receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the First Mortgage shall receive title to the Property free and clear from such restrictions.

21. Waiver. The waiver by CDC of any breach of any term, covenant or condition contained in this Agreement will not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term covenant or condition contained in this Agreement. No covenant, term, or condition of this Agreement will be deemed to have been waived by either party unless the waiver is in writing.

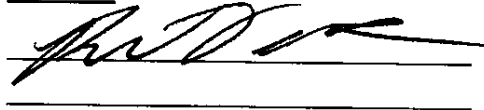
22. Successors. This Agreement will be binding upon, and inure to the benefit of, the parties hereto and their respective successors and legal representatives.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates shown below, effective as of the date and year first shown above.

**OWNER:**

Date: 2-20-09

Date: \_\_\_\_\_

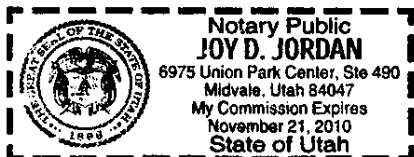
  
\_\_\_\_\_

STATE OF UTAH )

: ss.

COUNTY OF SALT LAKE )

On the 20th day of February, 2009, the foregoing instrument was acknowledged before me by Robert Mark



Date: 2/20/09

Notary Public

**SELLER:**

COMMUNITY DEVELOPMENT CORPORATION OF UTAH, a Utah nonprofit corporation

By: 

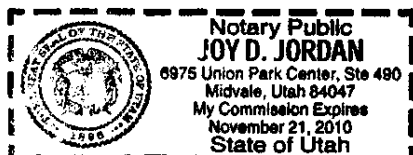
Its: Executive Director CFO

STATE OF UTAH )

: ss.

COUNTY OF SALT LAKE )

On the 20TH day of FEBRUARY, 2009, the foregoing instrument was acknowledged before me by John Farmer, the Executive Director of COMMUNITY DEVELOPMENT CORPORATION OF UTAH, a Utah nonprofit corporation.



Notary Public

EXHIBIT A

(Attached to and forming part of Right of First Refusal agreement)

Property Address: 9010 WEST 2900 SOUTH MAGNA UT 84044

Tax Serial No.: 14-30-210-027

Property Legal Description:

**All of Lot 1A, C.D.C. Subdivision of Magna, Chambers Park (unrecorded) 2nd Amendment Block 7, amending Lots 1 & 46 and creating Lot 1A, according to the official plat thereof, as recorded in the Salt Lake County Recorder's Office, State of Utah.**