



## Dealing with Tax Liens: The Nominee Lien



### Liens—Authority

- The federal tax lien, under IRC §6321, arises when any “person” liable to pay any federal tax fails to pay the tax after a demand by the government for payment
- The “Silent Lien”



## Liens—Authority

IRC §6321 authorizes the IRS to file a Notice of Federal Tax Lien (NFTL) in favor the United States to protect the Government's interest in the taxpayer's property against third parties



## Notice of Federal Tax Lien



- Effective from date of assessment
- No requirement to file NFTL
- Filing of NFTL “perfects” the tax lien and provides priority over subsequent liens



## Notice of Federal Tax Lien

- Prior to 2012 would file NFTL if the taxpayer owed >\$5,000
- Increased the threshold to \$10,000



## Notice of Federal Tax Lien



- IRC §6320 requires notice and a hearing
- Land records
- Secretary of the State

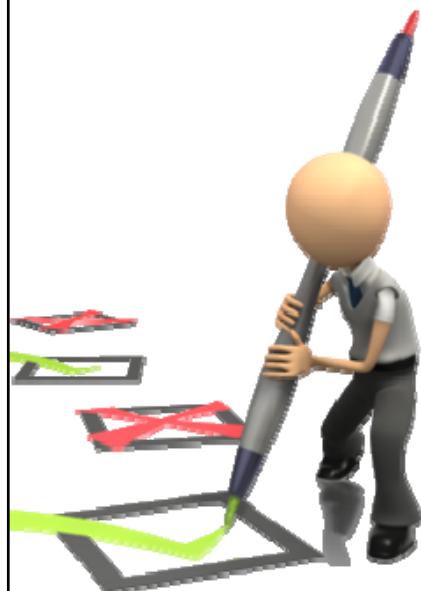


## Federal Tax Lien

- Under IRC §6322, the federal tax lien continues until satisfied or expires
- 10 years to collect—  
IRC §6502



 TAX REP, LLC  
A Member Organization



## Dealing with Tax Liens

---

- Discharge
- Subordination
- Withdrawal

 TAX REP, LLC  
A Member Organization

## Lien Subordination

- A “subordination” is where the IRS will allow another creditor to take a higher priority position over the IRS lien
- Partially pay the IRS debt
- Improve collection
- Make your pitch!



## Lien Discharge

- Full paid
- All the equity
- No equity
- Form 14135

Form 14135 Application for Certificate of Discharge of Property from Federal Tax Lien		OMB No. 1545-0174
Complete the entire application. Enclosed copy of the notice of lien and exhibits should be included as necessary. Additional information may be requested of you or a third party to clarify the details of the individual case.		
<b>1. Taxpayer Information:</b> (individual or business named on the notice of lien)		
Name (Individual First, Middle Initial, Last) or (Business name) as it appears on lien		Primary Social Security Number
Name Continuation (Individual First, Middle Initial, Last) or (Business name)		Secondary Social Security Number (use 4 digits only)
Address (Number, Street, P.O. Box)		Employer Identification Number
City	State	ZIP Code
Telephone Number (with area code)	Fax Number (with area code)	
<b>2. Applicant Information:</b> <input type="checkbox"/> Check if also the Taxpayer (if not the taxpayer, attach copy of lien. See Sec. 10)		
Name (First, Middle Initial, Last)		Relationship to taxpayer
Address (Number, Street, P.O. Box)		
City	State	ZIP Code
Telephone Number (with area code)	Fax Number (with area code)	
<b>3. Purchase/Transferee/New Owner</b> <input type="checkbox"/> Check if also the Applicant		
		Relationship to taxpayer
<b>4. Attorney/Representative Information</b>		
Name (First, Middle Initial, Last)		Attachment Form 8821 or Power of Attorney Form 2848 <input type="checkbox"/> Yes <input type="checkbox"/> No
Address (Number, Street, P.O. Box)		
City	State	ZIP Code
Telephone Number (with area code)	Fax Number (with area code)	
<b>5. Lender/Finance Company Information - or (Settlement/Escrow Company for applications under Section 6325(b)(3) only)</b>		
Company Name	Contact Name	Contact Phone Number
Catalog Number 547275		www.irs.gov
		Form 14135 (Rev. 06-2010)



## Withdrawal

- Direct Debit Installment Agreement for 25K or less may request withdrawal
- IA will be completed within 60 months
- Must have made three consecutive direct debit payments
- Use Form 12277



## Multiple NFTLs

- New tax debts require new liens be filed by the IRS with a new lapse date
- It is not uncommon for taxpayers with a history of tax problems to have multiple IRS liens filed



## Self-Releasing

- Self-releasing unless re-filed
- May be re-filed if actions extended the statute
- Prior to 2012, IRS would not release after expiration
- Fresh Start initiative, IRS may now agree to withdrawal after the lien expires
- Use Form 12277



## Nominee Liens

- A nominee is generally a third-party individual who holds legal title to property of a taxpayer while the taxpayer enjoys full use and benefit of that property.
- In other words, the federal tax lien extends to property "actually" owned by the taxpayer even though a third party holds "legal" title to the property as nominee.
- A nominee situation generally involves a fraudulent conveyance or transfer of a taxpayer's property to avoid legal obligations.



## Nominee Liens

- To establish a nominee lien situation, it must be shown that while a third party may have legal title to the property, it is really the taxpayer that owns the property and who enjoys its full use and benefit.
- If state law is undeveloped or underdeveloped as to the issue of nominee ownership, contact Area Counsel for assistance (Connecticut does not recognize nominee lien ownership).
- No one factor determines whether a nominee situation is present



## Nominee Lien Factors

- The taxpayer previously owned the property.
- The nominee paid little or no consideration for the property.
- The taxpayer retains possession or control of the property.
- The taxpayer continues to use and enjoy the property conveyed just as the taxpayer had before such conveyance.
- The taxpayer pays all or most of the expenses of the property.
- The conveyance was for tax avoidance purposes



## Nominee Liens

- Taxpayer is awarded an appeal
- Forgone conclusion that taxpayer loses
- Counsel already reviewed and signed off
- Usually have to file a “Quiet Title” action in federal district court



<b>Form 668(Y)</b> <small>(Rev. 10-1999)</small>	<b>Department of the Treasury - Internal Revenue Service</b> <b>Notice of Federal Tax Lien</b>	
Small Business / Self Employed - Area: 1	Serial Number  <input type="text"/>	<i>For Optional Use</i>  <input type="text"/>
<p>As provided by sections 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.</p> <p>Name of Taxpayer          NAME Realty LLC,          Transferee of DAD       </p> <p>Residence          1 STREET          TOWN, CT XXXXX       </p>		

## Situation: Need to sell before resolved

- Form 14135 allows for funds to be held in escrow

**7. Basis for Discharge:** Check the box below that best addresses what you would like the United States to consider in your application for discharge. (*Publication 783 has additional descriptions of the Internal Revenue Code sections listed below.*)

- 6325(b)(1) Value of property remaining attached by the lien(s) is at least double the liability of the federal tax lien(s) plus other encumbrances senior to the lien(s)
- 6325(b)(2)(A) The United States receives an amount not less than the value of the United States' interest.  
*(Note: If you are applying under 6325(b)(2)(A) and are the property owner but not the taxpayer, see also section 16.)*
- 6325(b)(2)(B) Interest of the United States in the property to be discharged has no value.
- 6325(b)(3) Proceeds from property sale held in escrow subject to the liens and claims of the United States.
- 6325(b)(4) Deposit made or bond furnished in an amount equal to the value of the United States' interest.  
*(Note: This selection provides a remedy under 7426(a)(4) for return of deposit but is exclusively for a property owner not named as the taxpayer on the lien)*



## Problem

- IRS doesn't have an escrow agreement
- Had a client that had to sell 2 properties quickly
- We had to create the escrow agreement with IRS Office of Chief Counsel
- With handouts



## Escrow pending

- Allows us to get the property sold while we sort out the issue
- If we cannot resolve it we will file a Quiet Title action



Questions?



# Application for Certificate of Discharge of Property from Federal Tax Lien

Complete the entire application. Enter NA (*not applicable*), when appropriate. Attachments and exhibits should be included as necessary. Additional information may be requested of you or a third party to clarify the details of the transaction(s).

## 1. Taxpayer Information (*Individual or Business named on the notice of lien*):

Name ( <i>Individual First, Middle Initial, Last</i> ) or ( <i>Business</i> ) as it appears on lien	Primary Social Security Number (last 4 digits only)	
Name Continuation ( <i>Individual First, Middle Initial, Last</i> ) or ( <i>Business d/b/a</i> )	Secondary Social Security Number (last 4 digits only)	
Address ( <i>Number, Street, P.O. Box</i> )	Employer Identification Number	
City	State	ZIP Code
Telephone Number ( <i>with area code</i> )	Fax Number ( <i>with area code</i> )	

## 2. Applicant Information:

Check if also the Taxpayer (*If not the taxpayer, attach copy of lien. See Sec. 10*)

Name ( <i>First, Middle Initial, Last</i> )	Relationship to taxpayer	
Address ( <i>Number, Street, P.O. Box</i> )		
City	State	ZIP Code
Telephone Number ( <i>with area code</i> )	Fax Number ( <i>with area code</i> )	

## 3. Purchase/Transferee/New Owner

Check if also the Applicant

	Relationship to taxpayer
--	--------------------------

## 4. Attorney/Representative Information

**Attached:** Form 8821 or  
Power of Attorney Form 2848     Yes     No

Name ( <i>First, Middle Initial, Last</i> )	Interest Represented ( <i>e.g. taxpayer, lender, etc.</i> )
---	---

Address ( <i>Number, Street, P.O. Box</i> )
---

City	State	ZIP Code
------	-------	----------

Telephone Number ( <i>with area code</i> )	Fax Number ( <i>with area code</i> )
--	--------------------------------------

## 5. Lender/Finance Company Information - or (*Settlement/Escrow Company* for applications under Section 6325(b)(3) only)

Company Name	Contact Name	Contact Phone Number
--------------	--------------	----------------------

**6. Monetary Information**

<b>Proposed sales price</b>	
Expected proceeds to be paid to the United States in exchange for the certificate of discharge ( <i>Enter NA if no proceeds are anticipated</i> )	

**7. Basis for Discharge:** Check the box below that best addresses what you would like the United States to consider in your application for discharge. (*Publication 783 has additional descriptions of the Internal Revenue Code sections listed below.*)

- 6325(b)(1) Value of property remaining attached by the lien(s) is at least double the liability of the federal tax lien(s) plus other encumbrances senior to the lien(s)
- 6325(b)(2)(A) The United States receives an amount not less than the value of the United States' interest.  
*(Note: If you are applying under 6325(b)(2)(A) and are the property owner but not the taxpayer, see also section 16.)*
- 6325(b)(2)(B) Interest of the United States in the property to be discharged has no value.
- 6325(b)(3) Proceeds from property sale held in escrow subject to the liens and claims of the United States.
- 6325(b)(4) Deposit made or bond furnished in an amount equal to the value of the United States' interest.  
*(Note: This selection provides a remedy under 7426(a)(4) for return of deposit but is exclusively for a property owner not named as the taxpayer on the lien)*

**8. Description of property** (for example, 3 bedroom rental house; 2002 Cessna twin engine airplane, serial number AT91900000000X00; etc.):

<b>Address of real property (If this is personal property, list the address where the property is located):</b>		
Address (Number, Street, P.O. Box)		
City	State	ZIP Code
<b>FOR REAL ESTATE:</b> a legible copy of the deed or title showing the legal description is required		<input type="checkbox"/> Attached <input type="checkbox"/> NA
<b>FOR Discharge Requests under Section 6325(b)(1):</b> copy of deed(s) or title(s) for property remaining subject to the Federal Tax Lien is required		<input type="checkbox"/> Attached <input type="checkbox"/> NA

**9. Appraisal and Valuations**

<b>REQUIRED APPRAISAL</b> Professional appraisal completed by a disinterested third party		<input type="checkbox"/> Attached
<b>PLUS ONE OF THE FOLLOWING ADDITIONAL VALUATIONS:</b>		
County valuation of property ( <i>real property</i> )		<input type="checkbox"/> Attached
Informal valuation of property by disinterested third party		<input type="checkbox"/> Attached
Proposed selling price ( <i>for property being sold at auction</i> )		<input type="checkbox"/> Attached
Other:		<input type="checkbox"/> Attached
<b>AND</b> for applications under Section 6325(b)(1), valuation information (of the type described above in this section) must also be provided for property remaining subject to the lien.		

**10. Copy of Federal Tax Lien(s) (Complete if applicant and taxpayer differ)**

Attached  No

OR list the lien number(s) found near the top right corner on the lien document(s) (if known)


**11. Copy of the sales contract/purchase agreement (if available)**

Attached  No

OR

Describe how and when the taxpayer will be divested of his/her interest in the property:

**12. Copy of a current title report**

Attached  No

OR

List encumbrances senior to the Federal Tax Lien. Include name and address of holder; description of encumbrance, e.g., mortgage, state lien, etc.; date of agreement; original loan amount and interest rate; amount due at time of application; and family relationship, if applicable (**Attach additional sheets as needed**):

**13. Copy of proposed closing statement (aka HUD-1)**

Attached  No

OR

Itemize all proposed costs, commissions, and expenses of any transfer or sale associated with property (**Attach additional sheets as needed**):

**14. Additional information** that may have a bearing on this request, such as pending litigation, explanations of unusual situations, etc., is attached for consideration

Attached  No

**15. Escrow Agreement** (For applications under IRC 6325(b)(3))

Attached  No

Escrow agreement must specify type of account, name and depositary for account, conditions under which payment will be made, cost of escrow, name and address of any party identified as part of escrow agreement, and signatures of all parties involved including Advisory Group Manager. Terms for agreement must be reached before discharge approved.

**16. WAIVER** (For applications made by third parties under IRC 6325(b)(2))

If you are applying as an owner of the property and you are not the taxpayer, to have this application considered under section 6325(b)(2), you must waive the rights that would be available if the application were made under section 6325(b)(4). If you choose not to waive these rights, the application will be treated as one made under 6325(b)(4) and any payment will be treated like a deposit under that section. Please check the appropriate box.

I understand that an application and payment made under section 6325(b)(2) does not provide the judicial remedy available under section 7426(a)(4). In making such an application / payment, I waive the option to have the payment treated as a deposit under section 6325(b)(4) and the right to request a return of funds and to bring an action under section 7426(a)(4).

Waive  No

**17. Declaration**

Under penalties of perjury, I declare that I have examined this application, including any accompanying schedules, exhibits, affidavits, and statements and to the best of my knowledge and belief it is true, correct and complete.

Signature/TITLE

DATE

Signature/TITLE

DATE

## **DISCHARGE/ RELEASE OF LIEN AND ESCROW AGREEMENT**

**THIS DISCHARGE/RELEASE OF LIEN AND ESCROW AGREEMENT** (this “Agreement”) is made and entered into by and among **SELLER**, an individual (“Seller”), **BUYER**, an individual, (“Purchaser”), the **INTERNAL REVENUE SERVICE** (the “IRS”), lien claimant, acting herein by Supervisory Revenue Officer \_\_\_\_\_ and **FIRST AMERICAN TITLE INSURANCE COMPANY** (“Escrow Holder”).

### **RECITALS**

- A. WHEREAS, Seller and Purchaser have entered into a Purchase and Sale Agreement dated March 15, 2017 (the “Purchase Agreement”), attached as Exhibit A, with respect to certain real property with improvements located in the City of \_\_\_\_\_, State of Connecticut, as more particularly described in the Purchase Agreement and commonly referred to as \_\_\_\_\_ Street, City, Connecticut (the “Property”).
- B. WHEREAS, by virtue of the recordation of federal tax liens relating to tax debts owed by **Seller’s Dad** (“Mr. Dad”), the IRS claims an interest in the Property and the Property is encumbered by those IRS liens more particularly set forth in Exhibit B.
- C. WHEREAS, the Seller and the IRS intend for the net proceeds from the sale of the Property, after satisfaction of customary closing costs, commission and escrow fee in the amount of \$250.00, to be distributed in their entirety in order of legal priority.
- D. WHEREAS, the IRS agrees to discharge the Property from its lien interests on the condition that the proceeds of the sale are placed in escrow with Escrow Holder in their entirety, less customary closing costs, commission and escrow fee, to allow marketable title to be conveyed to the Purchaser.
- E. WHEREAS, the parties agree to retain in escrow an amount equal to the \$257,000.00 purchase price set forth in the Purchase Agreement, less customary closing costs, commission and escrow fee, such amount representing the entirety of the net proceeds otherwise due to Seller following the closing of the Purchase Agreement (the “Escrow Funds”).
- F. WHEREAS, the parties understand and agree that the Escrow Funds are subject to the liens and claims of the United States in the same manner and with the same priority as such liens and claims had with respect to the Property.
- G. WHEREAS, the effective date of this Agreement is the same date as the Closing date of the sale of the Property.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements contained herein, the parties hereby agree as follows:

1. Terms. With respect to the Seller and Purchaser, all capitalized terms used herein but not

otherwise defined herein shall have the meanings set forth in the Purchase Agreement. Seller and Purchaser hereby agree that the Recitals set forth hereinabove are true and correct and are hereby incorporated into this Agreement.

2. Consent to Sale of the Property and Discharge/Release of Lien. The undersigned hereby represent that they are authorized, on behalf of their respective client and/or employer, to enter into this Agreement which effectively discharges the Property from any lien interest that IRS has relative to the Property and, by entering into this Agreement, there is a consent by the parties to the sale of the Property for the price of \$257,000.00 less customary costs, commission and escrow fee, with the balance in the possession of the Escrow Holder being subject to the IRS liens in the same priority as provided by law as it had with respect to the Property.
3. Certificate of Discharge. Upon deposit of the Escrow Funds with Escrow Holder, and upon presentation to the IRS of proof of deposit of funds in Escrow Account, copy of Closing and Disclosure Statement and copy of recorded deed to purchaser, the IRS shall immediately issue a certificate of discharge to Seller for recordation.
4. Escrow Account. Upon the Closing pursuant to the Purchase Agreement, and upon deposit of the Purchase Price by Purchaser to Escrow Holder, Escrow Holder shall show a debit to Seller's closing statement in the amount of the Escrow Funds. Escrow Holder shall invest the Escrow Funds immediately in an interest-bearing account (the "Account"). Any interest earned on the escrowed deposit shall be added to the principal amount held in escrow and shall be shared pro-rata between the Seller and the IRS depending on the percentage of the Escrow Funds disbursed to each. The Escrow Funds will be held in escrow for no longer than two hundred and fifteen (215) days from the effective date of this Agreement unless Seller initiates a quiet title suit pursuant to 28 U.S.C. § 2410, in which case the Escrow Funds will be held in escrow until final adjudication of the quiet title suit.
5. Disbursement. The Escrow Funds shall be released to the parties in accordance with the following terms and conditions:
  - (a) Within one hundred and eighty (180) days from the date of Closing, the Seller and the IRS, upon agreement, shall jointly deliver written disbursement instructions to Escrow Holder, and Escrow Holder shall thereafter disburse the Escrow Funds according to the instructions.
  - (b) If no agreement is reached by the Seller and IRS, the Seller shall have an additional thirty (30) days to file legal, for example, a suit to quiet title pursuant to 28 U.S.C. § 2410 or administrative action for determination of the validity and/or priority of the IRS liens.
  - (c) If a suit to quiet title is not filed within two hundred and ten (210) days from the date of the Closing, Escrow Holder will disburse the Escrow Funds in their entirety, including interest, to the IRS. That disbursement shall be made within two hundred and fifteen (215) days after the date of Closing.
6. Survival of Claims. It is expressly understood by the Parties that, unless agreed to separately in writing between the IRS and Seller, the underlying claims by the IRS against Mr. Dad are not affected by the execution of this Agreement. This Agreement is limited to the release of any interest and/or claim to the Property only by the IRS, subject to the

escrow and disbursement of the Escrow Funds as provided above.

7. **Holding of Escrow Funds.** The Escrow Holder hereby acknowledges receipt of this Agreement, and agrees to collect the Escrow Funds at the Closing under the Purchase Agreement, and to invest said sums and disburse said sums strictly in accordance with the terms and conditions of this Agreement.
8. **Escrow Holder Responsibilities.** Escrow Holder shall not be liable for any loss caused by the failure, suspension, bankruptcy or dissolution of the depository holding the Account or for other loss hereunder except as may have been caused by Escrow Holder's gross negligence or willful misconduct. The parties hereto agree that the duties of Escrow Holder shall be limited to holding and disbursing the Escrow Funds as provided herein. Notwithstanding anything to the contrary contained herein, nothing shall relieve Escrow Holder from the performance of its obligations hereunder prior to the cancellation or termination of the escrow established hereby.
9. **Termination.** Upon disbursement of all of the Escrow Funds from the Account in accordance with the terms hereof, this Agreement shall terminate.
10. **Notices.** Any notice, consent, request or approval required or permitted to be given under this Agreement (collectively, "Notices") shall be in writing and shall be deemed to have been given (i) upon hand delivery, (ii) one business day after being deposited with Federal Express or another reliable overnight courier service, (iii) upon transmission by electronic mail in PDF format or facsimile telecopy during regular business hours at the transmitter's location, with facsimile transmittal confirmation and with a confirming copy sent within one business day thereafter by United States mail or deposited with Federal Express or another reliable overnight courier service, or (iv) three (3) Business Days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required and addressed as follows:

If to Seller:

with a copy to:

If to Purchaser:

with a copy to:

If to IRS:

If to Escrow Holder:

**Notwithstanding anything to the contrary contained herein, all Notices to Seller shall be sent by electronic mail in addition to any other method of delivery permitted hereunder.**

11. **Successors.** This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, personal

representatives, successors and assigns.

12. Amendments. This Agreement is irrevocable and may only be amended by written agreement executed by all parties hereto.
13. Assignment. This Agreement may not be assigned by any of the parties hereto.
14. Attorneys' Fees. If any party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between or among the parties hereto concerning the meaning or interpretation of any provisions of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including without limitation, court costs, administrative costs and reasonable attorneys' fees and disbursements and nothing in this Agreement shall limit the amounts recoverable hereunder. Any such attorneys' fees, administrative costs, including, without limitation, accounting costs and other expenses incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. **THE PARTIES  
ACKNOWLEDGE AND AGREE THIS SECTION 14 SHALL NOT APPLY WITH  
RESPECT TO THE IRS.**
15. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut and the Internal Revenue Code (Title 26, U.S. Code). In the event of any inconsistency between this Agreement and the Purchase Agreement, the terms of this Agreement shall control. This Agreement may be signed in counterparts and all counterparts so executed shall constitute one contract, binding on all parties hereto, even though all parties are not signatory to the same counterpart. The parties contemplate that they may be executing counterparts of the Agreement transmitted electronically and agree and intend that a signature delivered by facsimile or electronic mail shall bind the party so signing with the same effect as though the signature were an original signature.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly and properly executed as of the day and year set forth with the signatures below.

SELLER

By: \_\_\_\_\_

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

PURCHASER

\_\_\_\_\_

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

**LIEN CLAIMANT**

**INTERNAL REVENUE SERVICE**

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

Supervisory Revenue Officer, duly authorized

**ESCROW HOLDER**

**FIRST AMERICAN TITLE INSURANCE COMPANY**

By: \_\_\_\_\_

Vice President

**EXHIBIT A**

**Purchase Agreement**

**EXHIBIT B**

**Tax Liens from Title Report**

Federal Tax liens to the Department of the Treasury, Internal Revenue Service in the amount of:

1. \$247,190.96 dated 08/26/2016 and recorded 09/14/2016 in volume 4348 at page 189 of the \_\_\_\_\_ Land Records.
2. \$432,836.38 dated 08/10/2016 and recorded 09/14/2016 in volume 4348 at page 194 of the \_\_\_\_\_ Land Records.