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Of Counsel
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:13-CV-1565-RM-KLM

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID W. GOLDSTON, individually and
as Trustee of Old Times Holding Trust and
Trustee of High Mountain Holding Trust;
NANCY S. GOLDSTON, individually and as
Trustee of Old Times Holding Trust and
Trustee of High Mountain Holding Trust;
JANET SENNEKER; JAMES SENNEKER;
and W.W. INVESTMENT GROUP, LLC, as
Trustee of Old Times Holding Trust and
Trustee of High Mountain Holding Trust;
FIRST PINKSTON L.P.; GUNNISON COUNTY,
Defendants.

**STIPULATION BETWEEN THE UNITED STATES, FIRST PINKSTON L.P. AND GUNNISON
COUNTY**

IT IS HEREBY STIPULATED AND AGREED by the United States of America (“United States”), defendant First Pinkston L.P. (“First Pinkston”), and defendant Gunnison County, that:

1. The United States filed its action to foreclose federal tax liens on certain residential real property located at Lots 2 and 3 of the Davenport Subdivision in Gunnison County, more particularly described in the Third Amended Complaint (the “Subject Property”).

2. The United States has recorded Notices of Federal Tax Lien with the Clerk and Recorder’s Office of Gunnison County, Colorado pursuant to 26 U.S.C. § 6323(a) to make its liens against any and all real property owned by David Goldston and held by High Mountain Holding Trust and Old Times Holding Trust as his nominees, including the subject property, effective against persons entitled to such notice.

3. First Pinkston and Gunnison County were named as defendants in the Third Amended Complaint to fulfill the requirements of 26 U.S.C. § 7403(b), as said defendants claim an interest in the Subject Property.

4. Gunnison County’s claimed interest in the Subject Property (Lots 2 and 3) derives from certain real property tax liens encumbering the Subject Property.

5. First Pinkston claims an interest only in Lot 2 of the Davenport Subdivision (“Lot 2”), which derives from the following:

5.1 Beginning in 2009 and continuing through 2012, High Mountain Holding Trust, the then record owner of Lot 2, did not pay the real property taxes it owed to Gunnison County for Lot 2.

5.2 In accordance with the statutory procedures set forth in C.R.S. §§39-11-100.3,

et seq. (the “Tax Lien Act”), Gunnison County sold, and First Pinkston purchased, the tax lien certificates for the unpaid real property taxes levied on Lot 2 for 2009, 2010, 2011 and 2012.

5.3 First Pinkston, as the holder of those tax lien certificates, exercised its rights under C.R.S. §39-11-120 of the Tax Lien Act to present said tax lien certificates to Gunnison County in exchange for the issuance of a treasurer’s deed to Lot 2.

5.4 Gunnison County issued First Pinkston a treasurer’s deed to Lot 2, which was recorded on June 9, 2014, at Reception No. 627079 of the records of Gunnison County.

6. First Pinkston subsequently paid the 2013 real property taxes due and owing to Gunnison County for Lot 2.

7. C.R.S. §39-11-128 of the Tax Lien Act sets forth the conditions precedent to the issuance of treasurer’s deeds. One of those conditions precedent requires that notice of the tax lien purchase and issuance of deed be served by the treasurer “upon all persons having an interest or title of record in or to the [subject property] if, upon diligent inquiry, the residence of such persons can be determined.” C.R.S. §39-11-128(1)(a).

8. That notice requirement is jurisdictional, and anything less than full compliance voids a treasurer’s deed. Siler v. Inv. Sec. Co., 244 P.2d 877, 880 (1952); Meyer v. Haskett, 251 P.3d 1287, 1292 (Colo. App. 2010); Wittemyer v. Cole, 689 P.2d 720, 721–22 (Colo. App. 1984).

9. The treasurer of Gunnison County failed to exercise the requisite diligence in sending notice of the impending issuance of the treasurer’s deed to the United States, as the treasurer (a) failed to determine the correct address of the United States as required by 26

U.S.C. §7425(c)(1) and as set forth in Treas. Reg. §301.7425-3 and IRS Publication 786, and (b) failed to send notice of the impending sale to the United States at that correct address.

10. As a consequence of the failure to exercise such diligence, the issuance of the treasurer's deed to First Pinkston was void and of no force and effect. Siler v. Inv. Sec. Co., 244 P.2d 877, 880 (1952). "A void deed is a nullity, invalid ab initio, or from the beginning, for any purpose. It does not, and cannot, convey title, even if recorded." Delsas ex rel. Delsas v. Centex Home Equity Co., LLC, 186 P.3d 141, 144 (Colo. App. 2008).

11. Because the issuance of the treasurer's deed to First Pinkston was void ab initio, Gunnison County's tax liens, and the tax lien certificates purchased and held by First Pinkston, exist as if First Pinkston had never presented said tax lien certificates to Gunnison County in exchange for the issuance of the treasurer's deed to Lot 2.

12. The United States, First Pinkston and Gunnison County agree that the tax lien certificates pertaining to Lot 2 and purchased and held by First Pinkston, including the tax lien certificate that would represent the payment by First Pinkston of the 2013 taxes, have priority over the federal tax liens at issue in this matter.

13. This stipulation defines only the relative priority between the United States, First Pinkston and Gunnison County pursuant to the provisions of the Federal Tax Lien Act, and does not include an agreement as to the amount owed by the taxpayer David Goldston to the United States.

14. First Pinkston agrees to allow the sale of the property (Lot 2) by judicial auction or by private sale (per the terms of the United States' stipulation with defendants David and Nancy Goldston).

15. The United States shall include in its proposed order of sale regarding its foreclosure claim against the subject property a provision that Gunnison County's liens and the tax lien certificates purchased and held by First Pinkston, including the tax lien certificate that would represent the payment by First Pinkston of the 2013 taxes, shall be satisfied from the net proceeds of sale (after the costs of sale are paid) prior to any distribution to the United States or any other party to cover Gunnison County's and First Pinkston's liens or other ownership interests in amounts according to proof at the time of sale. If the affected parties cannot stipulate to the amounts of said liens, the Court may hold an evidentiary hearing to determine the amounts.

16. To the extent a quit claim deed must be executed to effect the transfer of Lot 2 in a private sale or to otherwise enable the purchaser at such private or foreclosure sale to obtain insurable title to Lot 2, First Pinkston agrees to provide and execute such document(s) at the request of the United States.

~~17. — First Pinkston stipulates to entry of judgment foreclosing the federal tax liens on Lot 2 and distribution of proceeds in accordance with the terms above and the stipulations between the United States and the Goldstons (Doc. # 36), and the United States and Gunnison County (Doc. # 59).~~

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DATED this 19th day of December, 2014.

DAVID. A. HUBBERT
Deputy Assistant Attorney General

/s/ Aaron M. Bailey
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APPROVED AND SO ORDERED.

DATED: _____

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing STIPULATION has been made this 19th day of December, 2014, by depositing copies upon the parties hereto in the United States mail in a postage prepaid envelope addressed to the following:

David Goldston
Nancy Goldston
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