UNITED STATES BANKRUPTCY COURT Middle District of Florida, Jacksonville Div. PROOF OF CLAIM				
Name of Debtor: TAYLOR, BEAN & WHITAKER MORTGAGE CORP.	Case Number: 3:09-bk-07047-JAF			
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of administrative expense may be filed pursuant to 11 U.S.C. § 503.	f the case. A request for payment of an			
Name of Creditor (the person or other entity to whom the debtor owes money or property): Melinda Hedden Name and address where notices should be sent:	Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: (If known)			
Cynthia A. Majestro, Esquire Mountain State Justice, Inc., 1031 Quarrier St., St. 200, Charleston, WV 25301				
Telephone number: (304) 344-3144 CLAIM FILED JACKSONVILLE, FWANDA	Filed on:			
Name and address where payment should be sent (if different from above): DEC 22 2009	☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of			
Telephone number: CLERK, U. S. BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA	statement giving particulars. Check this box if you are the debtor or trustee in this case.			
1. Amount of Claim as of Date Case Filed: \$ 400,000.00	5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If			
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.	any portion of your claim falls in one of the following categories, check the box and state the			
If all or part of your claim is entitled to priority, complete item 5.	amount.			
☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.	Specify the priority of the claim. Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). Wages, salaries, or commissions (up to \$10,950*) carned within 180 days before filing of the bankruptcy petition or cessation of the debtor's			
2. Basis for Claim: predatory lending civil suit (See instruction #2 on reverse side.)				
3. Last four digits of any number by which creditor identifies debtor: 3075 3a. Debtor may have scheduled account as: (See instruction #3a on reverse side.)				
Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. business, whichever is earlier U.S.C. §507 (a)(4).				
Nature of property or right of setoff:	☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).			
Value of Property:\$ Annual Interest Rate% Amount of arrearage and other charges as of time case filed included in secured claim,	☐ Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use − 11 U.S.C. §507 (a)(7).			
if any: \$ Basis for perfection: Amount of Secured Claim: \$ Amount Unsecured: \$	☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).			
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.	☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(). Amount entitled to priority:			
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)				
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.	\$*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.			
If the documents are not available, please explain:				
Date: 12/15/2009 Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the crother person authorized to file this claim and state address and telephone number if different from the address above. Attach copy of power of attorney, if any.	he notice T, B & W Mortgage Cor			

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4. Secured Claim:

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a). If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101 (10)

Claim

A claim is the creditor's right to receive payment on a debt owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a) Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's taxidentification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

__INFORMATION_

Acknowledgment of Filing of Claim
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.

Mail original claim and copies of supporting documentation to:

If by regular mail

TB&W Mortgage c/o BMC Group, Claims Processing P.O. Box 3020 Chanhassen, MN 55317-3020

If by messenger or overnight courier

TB&W Mortgage c/o BMC Group, Claims Processing 18750 Lake Drive East Chanhassen, MN 55317

Once filed, a "Filed" stamped copy of the claim will be returned to the claimant within three (3) business days of docketing <u>If</u> the claimant encloses a stamped, self-addressed envelope with a copy of the proof of claim.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

MELINDA D. HEDDEN,

Plaintiff,

ν.

CIVIL ACTION NO. 09-C- 284

TAYLOR, BEAN & WHITAKER MORTGAGE CORPORATION,

Defendant.

COMPLAINT

1 This case arises out of illegal loan servicing that has caused Plaintiff, Melinda D. Hedden, to face foreclosure Ms. Hedden refinanced her home loan with Defendant, Taylor, Bean & Whitaker Mortgage Corporation ("TBW") in February, 2006. In late 2008, she fell behind after her employer cut back her overtime hours because of the downturn in the economy. Shortly thereafter, TBW contacted her and offered to put her in a "new program" for people who were struggling with their payments TBW told Plaintiff not to make any loan payments while it processed her application, approximately 6-8 weeks, even though Ms. Hedden offered to send in the payment. Approximately eight weeks later, Ms. Hedden received a pre-foreclosure letter from TBW When she contacted TBW, it could not verify that she had ever been considered for the "new program" or any other program which could have helped her. Since then, she has received notice that her home would be sold in foreclosure on June 15, 2009. The sale was postponed after Plaintiff retained counsel. The Plaintiff brings this action to save her home, for CIRCUIT CLERK JEFFERSON COUNTY equitable relief on the loan, and for other appropriate relief.

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PARTIES

- 2. <u>Plaintiff</u>: The Plaintiff, Melinda D. Hedden, lives in Harpers Ferry, Jefferson County, West Virginia. She is single and lives with her 17 year old son. She has a high school diploma and is unsophisticated in financial matters
- 3 <u>Lender/Servicer</u>: The Defendant Taylor Bean & Whitaker Mortgage Corporation is the lender and current servicer of the Plaintiff's loan. It is a Florida corporation with its headquarters at 315 NE 14th St., Ocala, FL 34470.

STATEMENT OF FACTS

- 4 Plaintiff purchased her home in Harpers Ferry, Jefferson County, West Virginia, in 2002 for about \$167,000
- In early 2006, Plaintiff received a coupon in the mail advertising appraisal-free mortgage loans with good terms and affordable payments. She called the telephone number on the coupon and spoke with Missy Harper at American Mortgage Group, Inc., d/b/a Zen Mortgage. Ms Harper took some information from Plaintiff and arranged for her to refinance with TBW
- 6. Defendant lender TBW offered to refinance Plaintiff with a loan in the amount of \$168,000. The loan closing took place on February 1, 2006.

Servicing & Collection:

- 7. (a) The Plaintiff began making monthly mortgage payments of \$1,198.27 to the Defendant TBW.
- (b) In late 2008, Plaintiff lost her overtime hours at her job because of a downturn in the economy She fell behind on her payments

- 8 (a) In December, 2008, Pedro Williams, an employee of Defendant TBW, called Plaintiff and told her about a "new program" for people who were struggling with their mortgage payments
- (b) Mr. Williams spoke with Plaintiff for about an hour, collecting information from her He gave her a list of documents to send to TBW and told her it would take about six to eight weeks to process the paperwork
- (c) Plaintiff asked Mr. Williams to note on her account that she was sending out a payment, but he told her not to send it because he was putting her into the new program and TBW would not accept any payments from her
- 9 (a) Plaintiff called TBW to verify that Mr. Williams was an employee and that the new program was real TBW verified that Mr. Williams was an employee.
- (b) While Plaintiff was assembling the documents that Mr. Williams had requested, she received a letter from TBW stating her request for Homeowner's assistance was denied. She also received another letter from TBW saying her loan was in default. Plaintiff contacted Mr. Williams immediately, and he told her not to worry, that he was putting her into the new program. He told her to ignore any calls from TBW asking for payment, saying they were automatic.
- 10. After Plaintiff collected the documents Mr. Williams had requested, including tax records she had to obtain from the IRS, she faxed them to him on January 13, 2009. She followed up with a telephone call to make sure that he received it.
- When Plaintiff did not receive any more information about the new program, she called Mr. Williams in February 2009. He told her TBW was still reviewing the paperwork, and

that it was taking longer than expected because there were a lot of people in the new program.

- In March, 2009, Plaintiff became worried and left messages for Mr Williams on March 3 and 13 Mr. Williams called Plaintiff and said someone from TBW should have contacted her. He said he was working in a different department now, and he would have someone contact her by March 18, 2009.
- 13 (a) Plaintiff contacted TBW Loss Mitigation Department when she did not hear anything by March 18. She was told her loan was in default and there was no record of her having been put into any programs.
- (b) Plaintiff's call was then forwarded to a manager named Brent who told her there was no record of her having been considered for any program. She explained what Mr. Williams had told her to do Brent said she would have to send in at least three or four payments, and if she did not, she would be put into foreclosure
- (c) Plaintiff asked that Brent help her. He said she could fill out a work package, but that it would take TBW six to eight weeks to process it.
 - On March 27, 2009, Plaintiff received a letter stating that her loan was in default.
- Thereafter, Plaintiff spoke with Amanda McNeal after requesting to speak with another manager at TBW. Ms McNeal suggested that Plaintiff send in another work package, but that it would take six to eight weeks for consideration.
- Defendant TBW scheduled the Plaintiff's home for a foreclosure sale on June 15, 2009. The sale was postponed after Plaintiff retained counsel

COUNT I - BREACH OF CONTRACT

17. The Plaintiff incorporates the preceding paragraphs by reference.

- Pursuant to the Deed of Trust, the Defendant TBW as lender has an implied contractual duty to act in good faith in the performance of the contract such that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the benefit of their contract.
- Defendant TBW breached the contract in exercising its discretionary rights pursuant to the Deed of Trust in bad faith by:
- (a) inviting Plaintiff to participate in a new program for people who are struggling with their mortgage payments, collecting a great deal of personal financial information to initiate a loan modification, and then failing to take any action to place her into the program;
- (b) instructing Plaintiff not to make any loan payments pursuant to the Deed of Trust while she was being put into the new program;
- (c) instructing Plaintiff to ignore any calls from TBW asking for payment, saying they were automatic;
- (d) failing to take any action to place Plaintiff into the new program after she called numerous times inquiring as to the status of her entry into the program;
- (e) providing the Plaintiff contradictory and confusing information regarding the status of her entry into the new program; and
- (f) refusing to accept payments when offered and then scheduling the Plaintiff's home for a foreclosure sale.
 - 20. Defendant's breach of contract was intentional, wanton and/or reckless.
 - Plaintiff was damaged as a proximate result of the Defendant's breach.

 WHEREFORE, the Plaintiff respectfully requests the following relief:

- (a) The Court enjoin the Defendant from foreclosing on the Plaintiff's property;
- (b) The Court declare that the Defendant breached the contract as alleged;
 - (c) Actual and punitive damages;
 - (d) Reasonable attorney's fees and the costs of this litigation; and
 - (e) Such other relief as the Court deems equitable and just

COUNT II - ILLEGAL DEBT COLLECTION

- 22. The Plaintiff incorporates the preceding paragraphs by reference.
- The Defendant, in attempting to collect a debt, used unfair and unconscionable means to collect and misrepresented the character, extent, or amount of a claim against the Plaintiff by:
- (a) Instructing Plaintiff not to make loan payments while her entry into IBW's new program was pending;
- (b) Assessing penalties and fees to Plaintiff during the time period in which they had instructed her not to make payments;
- (c) Attempting to collect said penalties and fees from her while at the same time instructing her not to make payments.
 - 24. As such, the Defendant violated W.Va. Code § 46A-2-128.

WHEREFORE, Plaintiff respectfully requests the following relief:

(a) Actual damages;

- (b) Civil penalties of \$4,400 per each violation pursuant to W Va. Code §§ 46A-5-101(1) & 106;
 - (c) Reasonable attorneys fees and the costs of this litigation; and
 - (d) Such other relief as the Court deems equitable and just.

COUNT III - ESTOPPEL

- 25. The Plaintiff incorporates the preceding paragraphs by reference.
- The Defendant represented to the Plaintiff that the Defendant TBW would modify the loan and that she should not pay on the loan pending modification
- 27. The Defendant represented to the Plaintiff that their home would not go into foreclosure
- 28. In reliance on the Defendant's representations, the Plaintiff did not make payments on her loan
- 29. Because the Defendant represented that the Plaintiff did not have to make payments while the loan modification was being processed, the Plaintiff had a reasonable expectation that the Defendant would provide a reasonable loan modification and not foreclose on the home, as promised.
 - The Plaintiff was injured by her reliance on the Defendant's representations.

 WHEREFORE, the Plaintiff respectfully requests the following relief:
 - (a) Appropriate equitable relief;
 - (b) Such other relief as the Court deems equitable and just.

THE PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Plaintiff, MELINDA D. HEDDEN, By Counsel:

ANDREW C. SKINNER (WVSB# 9314)

Skinner Law Firm

115 East Washington Street East

P. O Box 487

Charles Town, WV 25414

(304) 725-7029

and

Cynthia A. Majestro (State Bar ID No. 5092)
Daniel F. Hedges (WV State Bar ID No. 1660)
Mountain State Justice, Inc.
1031 Quarrier Street, Suite 200
Charleston, West Virginia 25301
(304) 344-3144
(304) 344-3145 (fax)

After Recording Return To: CRAWFORD & KELLER 305 AIKENS CENTER MARTINSBURG

. WV

25401

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN: 100029500010430753

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated February 01, 2006 Riders to this document.

, together with all

(B) "Borrower" is Melinda D. Hedden

P.O. Box 1246 / M.H.

Borrower's mailing address is 30 MeCormick Drive, Harpers Ferry, WV 25425

Borrower is the trustor under this Security Instrument..

(C) "Lender" is Taylor, Bean & Whitaker Mortgage Corp. Lender is a a Florida Corporation the laws of FL 1417 North Magnolia Ave, Ocala, FL 34475

organized and existing under . Lender's address is

The Trustee resides at BerkeleyXX

Jefferson

, County, West Virginia.

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

WEST VIRGINIA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

ITEM T2706L1 (0011)-MERS

(Page 1 of 13 pages)

Form 3049 1/01

GREATLAND ©
To Order Call: 1-800-530-9393 C) Fax: 616-791-1131



*0241081043075

states tl	hat Borrower owes Lender O	ote signed by Borrower and dated Februa ne Hundred Sixty Eight Thousand ar Dollars (U.S. \$ 168,000.00 ayments and to pay the debt in full not later	d no/100) plus interest. I	. The Note Borrower has promised 3		
(G) "I	Property" means the property	that is described below under the heading	"Transfer of Rights in t	he Property."		
(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.						
	Riders" means all Riders to t ed by Borrower [check box as	his Security Instrument that are executed applicable]:	by Borrower. The follo	owing Riders are to be		
	Adjustable Rate Rider	Condominium Rider	Second Home Ric	der		
	Balloon Rider	Planned Unit Development Rider	Other(s) [specify]	I		
	1-4 Family Rider	Biweekly Payment Rider				
		controlling applicable federal, state and				
(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.						
similar so as to to, poi	paper instrument, which is in order, instruct, or authorize	means any transfer of funds, other than itiated through an electronic terminal, tele a financial institution to debit or credit an ed teller machine transactions, transfers	phonic instrument, com account. Such term incl	puter, or magnetic tape udes, but is not limited		
(M) "I	Escrow Items" means those i	tems that are described in Section 3.				
party (c Propert	other than insurance proceeds y; (ii) condemnation or other	eans any compensation, settlement, award paid under the coverages described in Sectaking of all or any part of the Propertyons as to, the value and/or condition of the	tion 5) for: (i) damage to (iii) conveyance in lie	o, or destruction of, the		
(O) "I	Mortgage Insurance" means	insurance protecting Lender against the no	onpayment of, or defaul	t on, the Loan.		
	Periodic Payment" means to amounts under Section 3 of t	ne regularly scheduled amount due for (i his Security Instrument.) principal and interes	t under the Note, plus		
Regula or regu and res	tion X (24 C.F.R. Part 3500), slation that governs the same	as they might be amended from time to t subject matter. As used in this Security In regard to a "federally related mortgage der RESPA.	ime, or any additional of strument, "RESPA" res	or successor legislation fers to all requirements		
		rower" means any party that has taken titler the Note and/or this Security Instrument	• •	er or not that party has		
WEST V	/IRGINIA—Single Family—Fannie	: Mae/Freddic Mac UNIFORM INSTRUMENT		Form 3049 1/01		
1TEM T270	06L2 (0011)—MERS	(Page 2 of 13 pages)	To Order Call	GREATLAND # : 1-800-530-9393 D Fax: 616-791-1131		

(Page 2 of 13 pages)

ITEM T2706L2 (0011)-MERS

Book-Page 1520-3

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower hereby irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

[Type of Recording Jurisdiction]

Berkeley Jefferson [Name of Recording Jurisdiction]

See Attached Exhibit A.

which currently has the address of

30 McCormick Drive

Harpers Ferry [City]

, West Virginia

25425 [Zip Code] ("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

IN TRUST FOREVER to secure the payment of the Note which is payable to the order of Lender, the beneficial owner of said Note, at its principal office at the top of this Security Instrument, the residence of said beneficial owner, and to secure also any and all extensions, modifications and renewals of said Note, or any part thereof, however changed in form, manner or amount, and all other indebtedness of Borrower to Lender or Trustee hereunder.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all

WEST VIRGINIA—Single Family—Fannle Mac/Freddle Mac UNIFORM INSTRUMENT

Form 3049 1/01
GREATLAND ©
To Order Call. 1-800-530-9393 ID Fax 616-791-1131

ITEM T2706L3 (0011)-MERS

(Page 3 of 13 pages)

subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any, (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

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The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest within thirty days after the date of the Notice of Placement of Insurance sent by Lender pursuant to W. Va. Code § 46A-3-109a(c).

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

- 6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.
- 7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damage to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

- 8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.
- 9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for

whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Montgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

- (a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.
- (b) Any such agreements will not affect the rights Borrower has—if any—with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfelture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

- 12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.
- 13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey

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the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

- 15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.
- 16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

- 17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.
- 18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

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If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

- 19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.
- 20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

WEST VIRGINIA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3049 1/01 GREATLAND To Order Call: 1-800-530-9393 🗆 Fax. 616-791-1131 Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable fees and costs of title evidence.

If Lender invokes the power of sale, Lender or Trustee shall give Borrower, in the manner provided in Section 15, notice of Lender's election to sell the Property. Trustee shall give notice of sale by public advertisement for the time and in the manner prescribed by Applicable Law. Borrower hereby waives personal service of notice of any sale made hereunder, upon Borrower, its devisees, agents, successors or assigns, and also waives the posting of notice of sale at the courthouse. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's fees as permitted by Applicable Law; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

In the event that foreclosure proceedings are instituted hereunder but are not completed, Trustee shall be reimbursed for all costs and expenses incurred by it in commencing such proceedings; and all costs and expenses so incurred by Trustee, together with interest thereon until paid at the Note default rate shall be and become a part of the obligations secured hereby and shall be collectible as such.

- 23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower Borrower shall pay any recordation costs.
- 24. Beneficiary's Address. The beneficial owner and holder of the Note at the time of execution and delivery hereof is Lender, whose residence address is stated on the first page of this Security Instrument.
 - 25. Attorneys' Fees. The provisions in this Security Instrument for Borrower to pay "attorneys' fees" shall be void.
- 26. Notice of Trustee's Sale. Any notice of other liens which may be given to Lender pursuant to W. Va. Code § 38-1-4, shall be effective upon the receipt of such notice, in writing, through the regular United States mail, postage prepaid, addressed to Lender at its address set forth on the face of this Security Instrument.

A copy of any notice of Trustee's sale under this Security Instrument shall be served on Borrower by certified mail, return receipt requested, directed to Borrower at the address stated above or such other address given to Lender in writing by Borrower, subsequent to the execution and delivery of this Security Instrument.

27. Trustees and Substitution of Trustees. It is hereby expressly covenanted and agreed to all parties hereto that Lender may, at any time and from time to time hereafter, without notice, appoint and substitute another Trustee or Trustees, corporations or person, in place of the Trustee herein named to execute the trust herein created. Upon such appointment,

WEST VIRGINIA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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GREATLAND

either with or without a conveyance to said substituted Trustee or Trustees by the Trustees herein named, or by any substituted Trustee in case the said right of appointment is exercised more than once, the new and substituted Trustee or Trustees in each instance shall be vested with all the rights, titles, interests, powers, duties and trusts in the premises which are vested in and conferred upon the Trustees herein named; and such new and substituted Trustee or Trustees shall be considered the successors and assigns of the Trustees who are named herein within the meaning of this Security Instrument, and substituted in their place and stead. Each such appointment and substitution shall be evidenced by an instrument in writing which shall recite the parties to, and the book and page of record of, this Security Instrument, and the description of the real property herein described, which instrument, executed and acknowledged by Lender and recorded in the office of the Clerk of the County Commission of the County wherein the Property is situate, shall be conclusive proof of the proper substitution and appointment of such successor Trustee or Trustees, and notice of such proper substitution and appointment to all parties in interest.

The Trustees, or either of them or the survivor thereof, may act in the execution of this trust and in the event either of the Trustees shall act alone, the authority and power of the Trustee so acting shall be as full and complete as if the powers and authority granted to the Trustees herein jointly had been granted to such Trustee alone. Either or both of the Trustees are hereby authorized to act by agent or attorney in the execution of this trust, and it shall not be necessary for any Trustee to be present in person at any foreclosure sale.

- 28. Waiver of Homestead Exemption. Borrower hereby waives all right of homestead exemption in the Property.
- 29. Lender's Purchase of Property Insurance. Unless Borrower provides Lender with evidence of the insurance coverage required and described above, Lender may purchase insurance at Borrower's expense to protect its interest in Borrower's Property. This insurance may, but need not, protect Borrower's interests. The coverage that Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by this Security Instrument. If Lender purchases insurance for the Property, Borrower will be responsible for the costs of that insurance, including interest and any other charges Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Borrower's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on Borrower's own.

BY SIGNING BELOW, Borrower accepts and a this Security Instrument and in any Rider executed by I	grees to the terms and covenants contained in pages 1 through 13 of Borrower and recorded with it.
0 = 1 + 1 = 1	
[Nelendar Kedden	(Scal)(Scal)
Melinda D. Hedden -Bo	orrower -Borrower
	(Scal)(Scal)
	Orrower -Borrower
-B	(Seal) (Seal) strower -Borrower
-	- Solitore
Witness:	Witness:
State of INEST VIRGINIAL County of BETKELLY	ore me this Feb 1 2006 (date) by
The foregoing instrument was acknowledged before Melinae D. +	(2010) 0)
	(person[s] acknowledging).
OFFICIAL SEAL NOTARY PUBLIC STATE OF WEST VIRGINIA DAVID J. HINKLE ORAWFORD & KELLER 305 AIKENS CENTER 305 AIKENS CENTER MARTINSBURG, W 25401 MARTINSBURG, W 25401	Notary Public
MARTINSBURG, W 254014. My commission supires April 5, 2014. My commission supires April 5, 2014.	My commission expires: 4-5-2014
This instrument was prepared by: Name:	
WEST VIRGINIA—Single Family—Famile Mac/Freddie Mac UN	ODEAY AND B
ITEM T2706L13 (0011)—MER8 (F	Page 13 of 13 pages) To Order Cell: 1-800-530-9393 @Fax: 616-791-1131

PORTIONS OF THIS DOCUMENT WERE PREPARED BY CRAWFORD & KELLER, PLLC

EXHIBIT A

All that certain lot or parcel of real estate, with the improvements thereon, situate in the Bolivar Corporation, Jefferson County, West Virginia, and more particularly bounded and described as follows:

Being all of Lot No. 1, containing 0.3737 acres, more or less, as set forth upon that certain resurvey plat prepared by Ed Johnson and Associates, Inc., dated February 7, 2001 and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 945, at page 344.

M.H.

JEFFERSON COUNTY, WV

FILED

February 07, 2006 15:48:15

JENNIFER S. MAGHAN

COUNTY CLERK

TRANSACTION NO: 2006002919

DEEDS OF TRUST

Book: 1520 Page: 00001



1031 Quarrier Street, Suite 200
 Charleston, WV 25301
 Telephone: (304) 344-3144
 Facsimile: (304) 344-3145

321 W. Main Street, Suite 620 Clarksburg, WV 26301 Telephone: (304) 326-0188 Facsimile: (304) 326-0189

Cynthia A. Majestro, Esquire cynthia@msjlaw.org

December 15, 2009

TB&W Mortgage c/o BMC Group, Claims Processing PO Box 3020 Chanhassen, MN 55317-3020

Re: Taylor, Bean & Whitaker Mortgage Group

Case No.: 3:09-bk-07047-JAF

Gentlemen:

Enclosed please find:

- 1. A completed Proof of Claim form on behalf of my client, Melinda Hedden;
- 2. A copy of the Deed of Trust in favor of Taylor, Bean & Whitaker and executed by Ms. Hedden;
- 3. A copy of the Complaint filed in Civil Action No.: 09-C-284 now pending in the Circuit Court of Jefferson County, West Virginia; and
- 4. A self addressed stamped envelope.

Please file the claim appropriately and return a file stamped copy to me in the enclosed self addressed stamped envelope.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Cynthia A. Majestro

CAM/rsy