

**UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF FLORIDA**

**Proof of Claim**

Name of Debtor: Taylor, Bean & Whitaker Mortgage Corp.

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

Name of Creditor (the person or other entity to whom the debtor owes money of property):  
**Frederick L. Ransier, Trustee for the Bankruptcy Estate of Patrick S. Johnson and  
 Chuong K. Johnson, Case No. 08-52599 (Bankr. S.D. Ohio)**

Check this box to indicate that this claim amends a previous filed claim.

Name and address where notices should be sent:  
**Frederick L. Ransier, Trustee for the Bankruptcy Estate of Patrick S. Johnson and  
 Chuong K. Johnson, Case No. 08-52599 (Bankr. S.D. Ohio)**  
 c/o Jesse Cook-Dubin, Esq.  
 Vorys, Sater, Seymour and Pease LLP  
 52 East Gay Street  
 Columbus, Ohio 43215  
 Telephone number: (614) 464-6498 Email: [jcookdubin@vorys.com](mailto:jcookdubin@vorys.com)

Court Claim Number: \_\_\_\_\_  
 (If known)

Filed on: \_\_\_\_\_

Name and address where payment should be sent (if different from above):  
 JACKSONVILLE, FLORIDA

**CLAIM FILED**

**FEB 27 2010**

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Telephone number:

CLERK, U. S. BANKRUPTCY COURT  
 MIDDLE DISTRICT OF FLORIDA

Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: **\$175,464.00**  
 If all or part of your claim is secured, complete item 4 below; however, if your entire claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5.  Check this box if claim included interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

2. Basis for Claim: **Avoidance of Defective Mortgage**  
 (See instruction #3a on reverse side).

Specify the priority of the claim.  
 Domestic support obligation under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

3. Last four digits of any number by which creditor identifies debtor: **08-52599**

Wages, salaries, or commissions (up to \$10,950\*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507(a)(4)

4. 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.  
 Nature of property or right of setoff:  Real Estate  Motor Vehicle  Other  
 Describe: Value of property: At least **\$175,464.00** Annual Interest Rate **\_\_\_** %  
 Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ \_\_\_\_\_ Basis for perfection: **Security Agreement/Financing Statement**  
 Amount Secured: **\$175,464.00** Amount Unsecured: **\$0.00**

Contributions to an employee benefit plan – 11 U.S.C. §507(a)(5).

6. Credits: The amount of all payment on this claim has been credited for the purpose of making this proof of claim.

Up to \$2,424\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507(a)(7).

7. Documents: Attached redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statement 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 definition of "redacted" on reverse side.)  
 DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  
 If the documents are not available, please explain:

Taxes or penalties owed to governmental units – 11 U.S.C. §507(a)(7).

Other-Specify applicable paragraph of 11 U.S.C. \_\_\_\_\_ Amount entitled to priority: \$ \_\_\_\_\_ \*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

Date: 02/24/10

**Jesse Cook-Dubin, Attorneys for Claimant**

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

**FOR COURT USE ONLY**

T, B & W Mortgage Corp.



01005

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT COLUMBUS

IN RE: : CASE NO. 08-52599  
: :  
PATRICK S. JOHNSON : CHAPTER 7  
and CHUONG K. JOHNSON, : :  
: :  
Debtors. : JUDGE CHARLES M. CALDWELL

Frederick L. Ransier, Trustee  
52 East Gay Street  
Columbus, Ohio 43215,

Plaintiff,

Adv. Pro. No. \_\_\_\_\_

v.

Taylor Bean & Whitaker Mortgage Corp.  
101 NE 2nd Street  
Ocala, FL 34470

**COMPLAINT**

Agent for Service of Process:  
Taylor Bean & Whitaker Mortgage  
c/o CT Corporation System,  
Statutory Agent  
1300 East Ninth Street  
Cleveland, OH 44114,

Mortgage Electronic Registration  
Systems, Inc.  
c/o CT Corporation System, Statutory Agent:  
1300 East Ninth Street  
Cleveland, OH 44114,

- and -

Mercury Transaction Services, Inc.  
909 Wadsworth Blvd.  
Lakewood, CO 80214,

Also serve at: :  
Mercury Transaction Services, Inc. :  
6000 Greenwood Plaza Blvd, #200 :  
Greenwood Village, CO 80111 :

Defendants. :  
:

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Now comes Plaintiff, Frederick L. Ransier, the duly appointed Trustee (the “Trustee”) in the Chapter 7 bankruptcy case of Patrick S. Johnson and Chuong K. Johnson (the “Debtors”), and avers for his Complaint against Defendants, Taylor Bean & Whitaker Mortgage Corp., Mortgage Electronic Registration Systems, Inc., and Mercury Transaction Services, Inc., as follows:

**Parties and Jurisdiction**

1. This adversary proceeding arises in and relates to the Chapter 7 case of Patrick S. Johnson and Chuong K. Johnson, Bankruptcy Case No. 08-52599, which was filed as a voluntary Chapter 7 petition for bankruptcy on March 25, 2008 (the “Petition Date”) and which is now pending before this Court.
2. The Trustee is the duly qualified and acting Trustee in that case.
3. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 157(b)(2) and § 1334 and the General Order of Reference entered in this District.
4. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K) and (O).
5. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

**Facts Common to All Counts**

6. This adversary proceeding concerns real property owned jointly by Debtors that is commonly known as 4830 Victory Court, Columbus, Ohio 43231 (the “Property”).

7. The Property constitutes property of the bankruptcy estate pursuant to 11 U.S.C. § 541.
8. As of the Petition Date, no unsatisfied Mortgage against the Property was filed of record in the Franklin County, Ohio, Recorder's Office.
9. Defendant Taylor Bean & Whitaker Mortgage Corp. ("TBW") is described as the Lender in a certain Open-End Mortgage (the "Mortgage") against the Property, a true and correct copy of which is attached hereto as Exhibit A. Consequently, TBW may claim to have an interest in the Property.
10. The Mortgage identifies Defendant Mortgage Electronic Registration Systems, Inc. ("MERS") as the Mortgagee, "solely as nominee for Lender." Consequently, Defendant MERS may claim to have an interest in the Property.
11. The Mortgage was not recorded as of the Petition Date.
12. On May 13, 2008, an Affidavit, a copy of which is attached hereto as Exhibit B (the "Affidavit") was filed in the Franklin County, Ohio, Recorder's Office. Paragraph 4 of the Affidavit states, "a certified copy of said Mortgage is attached hereto, with the intent that it be recorded in the Franklin County Recorder's Office, State of Ohio."
13. The Affidavit was recorded after the commencement of the Debtors' chapter 7 bankruptcy case.

**Count I: Avoidance of Mortgage – 11 U.S.C. § 544(a)**  
**(Against Defendants TBW and/or MERS)**

14. The Trustee restates the allegations contained in paragraphs 1 through 13 of the Complaint as if fully written herein.

15. Under Ohio law in effect on the Petition Date, an unrecorded mortgage is ineffective as notice, to a judicial lien creditor or a bona fide purchaser of real property, of the mortgagee's interest in such property.

16. Under Ohio law in effect on the Petition Date, the unrecorded Mortgage was ineffective as notice, to a hypothetical judicial lien creditor or a hypothetical bona fide purchaser of the Property, of the interest of TBW, MERS, and/or their successor(s), in the Property.

17. Pursuant to 11 U.S.C. § 544(a), as of the commencement of the bankruptcy case, the Trustee has the rights and power of, or may avoid any transfer of property of the Debtors that is avoidable by a judicial lien creditor, a creditor with an unsatisfied execution or a bona fide purchaser of real property.

18. The Trustee may avoid the Mortgage.

19. The filing of the Affidavit after the Petition Date does not prevent the Trustee from avoiding the Mortgage to the extent it is avoidable.

20. The Trustee is entitled to a judgment avoiding the Mortgage.

**Count II: Violation of Automatic Stay – 11 U.S.C. § 362(a)**  
**(Against All Defendants)**

21. The Trustee restates the allegations contained in paragraphs 1 through 20 of the Complaint as if fully written herein.

22. The Affidavit purports to suffice to record, and therefore perfect, the Mortgage.

23. The filing of the Affidavit was an act to perfect a lien against the Property.

24. The filing of the Affidavit by Defendant Mercury Transaction Services, Inc. ("Mercury") violated the automatic stay provisions of the Bankruptcy Code, including 11 U.S.C. § 362(a).

25. TBW may have instructed Mercury to file the Affidavit, an act which also violated the automatic stay.

26. MERS may have instructed Mercury to file the Affidavit, an act which also violated the automatic stay.

27. The filing of the Affidavit is void.

28. The filing of the Affidavit is voidable.

29. The Trustee is entitled to damages from Defendants Mercury, TBW, and MERS, and to a judgment determining that the filing of the Affidavit was void or is voidable.

**Count III: Preservation of Avoided Transfer – 11 U.S.C. § 551**  
**(Against Defendants TBW and MERS)**

30. The Trustee restates the allegations contained in paragraphs 1 through 27 of the Complaint as if fully written herein.

31. In the event that the Mortgage is avoided pursuant to 11 U.S.C. § 544, it shall be preserved for the benefit of the bankruptcy estate pursuant to 11 U.S.C. § 551.

**WHEREFORE**, the Trustee respectfully requests that this Court grant judgment to the Trustee (1) avoiding the Mortgage pursuant to 11 U.S.C. § 544(a), (2) awarding damages against all Defendants for violation of 11 U.S.C. § 362(a), (3) determining that the filing of the Affidavit was void and/or voidable, (4) preserving the Mortgage for the benefit of the bankruptcy estate

[ Remainder of page intentionally left blank ]

pursuant to 11 U.S.C. § 551, and (5) granting such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Jesse Cook-Dubin

Frederick L. Ransier, III (0020513)

Jesse Cook-Dubin (0081949)

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street / P.O. Box 1008

Columbus, Ohio 43216-1008

Telephone (614) 464-6498

Facsimile (614) 719-4752

E-Mail: [jcookdubin@vorys.com](mailto:jcookdubin@vorys.com)

Attorneys for the Trustee

After Recording Return To:  
TNS NATIONAL SOLUTIONS  
909 WADSWORTH BLVD  
LAKEWOOD, CO 80214

Certified Copy

Open Above This Line For Recording Only  
**OPEN-END MORTGAGE** MERS CASE NO.  
413-4605888-703

MIN: 100028500018450385  
THIS MORTGAGE ("Security Instrument") is given on June 25, 2007  
The mortgagor is PATRICK S. JOHNSON and CHUNG K. JOHNSON, Husband and Wife, for their Joint  
lives, remainder to the survivor of them, Fun Th, unmarried  
("Borrower"). This Security Instrument is given to  
Mortgage Electronic Registration Systems, Inc. ("MERS") (solely as agent for Lender, as hereinafter defined, and  
Lender's successors and assigns), as beneficiary. MERS is organized and existing under the laws of Delaware, and has an  
address and telephone number of P.O. Box 2026, Flint, MI 48301-2026, tel. (810) 679-MERS. Taylor, Bean & Whitaker  
Mortgage Corp.  
("Lender") is organized and existing  
under the laws of FL  
has an address of 4447 North Magnolia Ave, Ocala, FL 34476

Borrower owes Lender the principal sum of One Hundred Seventy Five Thousand Four Hundred Sixty Four and  
no/100 Dollars (U.S. \$ 175,464.00 ).  
This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for  
monthly payments, with the full debt, if not paid earlier, due and payable on July 01, 2037.  
This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all  
renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under  
paragraph 7 to protect the accuracy of this Security Instrument; and (c) the performance of Borrower's covenants and  
agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey  
to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS the  
following described property located in Franklin County, Ohio:  
See Attached Exhibit A.

OHIO PBA MORTGAGE 626  
12/04/2007 11:00:00 AM (Page 1 of 7 pages) GREENTOWN #  
TOLSON DE 1 60-24-044 D 01 1974-11



EXHIBIT  
tabbler  
A



which has the address of

4830 VICTORY COURT

COLUMBUS  
(City)

, Ohio

43231  
(Zip Code)

(Property Address)

TOGETHER WITH all the improvements now or hereafter created 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 conveying this Security Instrument.

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, 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 and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance, and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (A) taxes and special assessments levied or to be levied against the Property, (B) household payments or ground rents on the Property, and (C) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if the Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Borrower Items" and the sums paid to Lender are called "Borrower Funds."

Lender may, at any time, collect and hold amounts for Borrower Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §2601 et seq., and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the creation of reserves permitted by RESPA for anticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Borrower Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Borrower Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Borrower Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (A), (B), and (C) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower, immediately prior to a foreclosure sale of the Property or its acquisition by Lender. Borrower's account shall be credited with any balance remaining for all installments for items (A), (B), and (C).

3. **Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

FIRST, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

SECOND, to any taxes, special assessments, household payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

THIRD, to interest due under the Note;

OHIO PSA MORTGAGE

FORM 700003 (2007-0808)

(Page 2 of 7 pages)

SP207, 04/08  
Trade-Off 1-888-626-8881 or 614-847-9741

**FOURTH**, to amortization of the principal of the Note; and  
**FIFTH**, to late charges due under the Note.

4. **Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be effected with companies approved by Lender. The insurance policies and any reserves shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may impound the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. **Charges to Borrower and Protection of Lender's Rights to the Property.** Borrower shall pay all governmental or municipal charges, fees and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights to the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement at the Note rate, and at the option of Lender shall be immediately due and payable.

OHIO FHA MORTGAGE

FORM 1000-3 (10/04) - 6/08

(Page 3 of 7 pages)

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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; (b) consents in good faith to the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) consents 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 may obtain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or liens or more of the actions set forth above within 10 days of the giving of notice.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Default. Lender may, except as limited by regulations issued by the Secretary in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay to full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or

(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) Sale Without Credit Approval. Lender shall, if permitted by applicable law (including section 341(d) of the Gen. St. Georgia Depository Institutions Act of 1962, 12 U.S.C. 1701-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does not occupy the Property, but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payment, Lender does not waive its rights with respect to subsequent events.

(d) No Guidelines of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) Mortgage Not Insured. Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within eight months

from the date hereof, Lender may, at its option require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to eight months

from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to make a mortgage insurance premium to the Secretary.

14. Right of Redemption. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are initiated. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a court foreclosure proceeding, (ii) reinstatement will prejudice foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released by Foreclosure by Lender Not a Waiver. Extension of the time of payment or modification of satisfaction of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's spouse in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify satisfaction of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any enforcement by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower'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 may agree to amend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Notice.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. 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. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. **Borrower's Copy.** Borrower shall be given one confirmed copy of the Note and of this Security Instrument.

16. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substance on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. 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 substances of the Property.

Borrower shall promptly give Lender written notice of 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. If Borrower learns, or is notified by any governmental or regulatory authority, 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.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances 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. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

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

17. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and royalties of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and royalties and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and royalties of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent as Lender's agent within the time specified by the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. **Foreclosure Procedure.** If Lender requires immediate payment in full under paragraph 9, Lender may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, costs of this evidence.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 5931 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this paragraph 18 or applicable law.

19. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument. Borrower shall pay any recording costs. Lender may charge Borrower a fee for subsiding this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under applicable law.

20. **Certain Other Advances.** In addition to any other sums secured hereby, this Security Instrument shall also secure the unpaid principal balance of, plus accrued interest on, any amount of money loaned, advanced or paid by Lender to or for the account and benefit of Borrower, after this Security Instrument is delivered to and filed with the Recorder's Office, Cuyahoga County, Ohio, for recording. Lender may make such advances in order to pay any real estate taxes and assessments, insurance premiums plus all other costs and expenses incurred in connection with the operation, protection or preservation of the Property, including to cure Borrower's defaults by making any such payments which Borrower should have paid as provided in this Security Instrument, it being intended by this paragraph 20 to acknowledge, affirm and comply with the provision of § 5301.233 of the Revised Code of Ohio.

21. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the contents of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. (Check applicable box(es)).

- Condominium Rider
- Graduated Payment Rider
- Growing Equity Rider
- Planned Unit Development Rider
- Adjustable Rate Rider
- Rehabilitation Loan Rider
- Non-Owner Occupancy Rider
- Other [Specify]

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in pages 1 through 7 of this Security Instrument and in any rider(s) attached by Borrower and associated with it.

Executed this 25<sup>th</sup> day of June, 2007

[Signature] (Seal) Borrower PATRICK S. JOHNSON  
[Signature] (Seal) Borrower CHUANG K. JOHNSON  
UO

\_\_\_\_ (Seal) Borrower

\_\_\_\_ (Seal) Borrower

State of Ohio  
County of Franklin

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of June, 2007 (date) by

Patrick S. Johnson and Chuang K. Johnson (Name of person(s) acknowledged)

[Signature] (Seal) Notary Public

My commission expires: 10-31-07

This instrument was prepared by:



PAMELA G. DAVIS  
Notary Public  
in and for the State of Ohio  
My Commission Expires  
October 31, 2007

**Exhibit A**  
**(Legal Description)**

Situated in the County of Franklin, State of Ohio and in the City of Columbus, and being more particularly bounded and described as follows:

Being Lot No. Twenty Two (22) of Waltham Woods and Resubdivision of Lots 214 and 215 inclusive of Waltham Place Section 3, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 93, Pages 54 and 55, Recorder's Office, Franklin County, Ohio.

LOLOKLY

File: N0000540

200805130073489  
FEE: \$ 24.00 1206003577  
05/13/2008 10:54AM NEPTITLE JWB  
Robert E. Montgomery  
Franklin County Recorder

**AFFIDAVIT**

Sam Williams, being first duly sworn, states as follows:

1. I am the Title Manager for Mercury Transaction Services. I have personal knowledge of, and am competent to testify in a court of competent jurisdiction about the facts set forth below. I hereby make this affidavit under penalty of perjury pursuant to the provisions of C.R.S. § 38-35-109(5).
2. The Mortgage dated June 25, 2007, from Patrick S. Johnson and Choung K. Johnson, Husband and Wife, for their joint lives, remainder to the survivor of them, Pum Thi, unmarried in favor of Taylor, Bean & Whitaker Mortgage Corp., (a certified copy of which is attached hereto), was intended to be recorded in the public records of the County Recorder of Franklin County, State of Ohio, subsequent to its execution on June 25, 2007.
3. Through inadvertence and mistake, said original Mortgage was lost and never recorded.
4. Therefore, a certified copy of said Mortgage is attached hereto, with the intent that it be recorded in the Franklin County Recorder's Office, State of Ohio.

Done under penalty of perjury this 12th day of May, 2008.

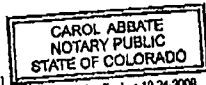
  
Sam Williams

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF JEFFERSON    )

Subscribed and sworn to before me this 12th day of May, 2008, by Sam Williams, Title Manager for Mercury Transaction Services.

Witness my hand and official seal.

My commission expires: 10-24-2009

[Seal] 

  
Notary Public

EXHIBIT  
B



# VORYS

Vorys, Sater, Seymour and Pease LLP  
Legal Counsel

52 East Gay St.  
PO Box 1008  
Columbus, Ohio 43216-1008

614.464.6400 | www.vorys.com

Founded 1909

Cindy D. Fricke, Advanced Certified Paralegal ~Bankruptcy/Discovery  
Direct Dial (614) 464-6439  
Direct Fax (614) 719-5121  
Email cdfricke@vorys.com

February 24, 2010

BMC Group, Inc.  
Attn: Taylor, Bean & Whitaker Mortgage Corp.  
Claims Processing  
P.O. Box 3020  
Chanhassen, MN 55317-3020

Re: Taylor, Bean & Whitaker Mortgage Corp., Case No. 3:09-bk-07047-JAF  
Proof of Claim

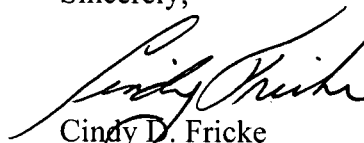
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Dear Claims Agent:

Enclosed is the original and one copy of the proof of claim of Frederick L. Ransier, Trustee for the Bankruptcy Estate of Patrick S. Johnson and Chuong K. Johnson, Case No. 08-52599 (Bankr. S.D. Ohio) to be filed in the Taylor, Bean & Whitaker Mortgage Corp. case. Please file the original with the papers of the case and return a date/time stamped copy to our office. A self addressed stamped envelope is provided for returning the copy.

Please call if you have questions.

Sincerely,



Cindy D. Fricke  
Advanced Certified Paralegal~  
Bankruptcy/Discovery

/cdf  
Enclosures