

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKRE  
MORTGAGE CORPORATION,

Case No. 3:09-bk-07047-JAF  
Chapter 11

Debtor.

\_\_\_\_\_ /

**WACHOVIA BANK, N.A.'S MOTION  
FOR RELIEF FROM AUTOMATIC STAY**

Wachovia Bank, N.A. ("Wachovia"), by its undersigned counsel, moves this Court pursuant to 11 U.S.C. § 362(d)(1) and (2) and Federal Rule of Bankruptcy Procedure 4001(a) for relief from the automatic stay to enforce all *in rem* remedies including the continued prosecution of a state court foreclosure action through sale in Duval County, Florida, against property in possession of Laurie D. Mathes and James A. Mathes II, on which the Debtor holds a second position mortgage. In support of its motion, Wachovia states:

1. On or about September 1, 2005, Laurie D. Mathes and James A. Mathes II (collectively, "Mathes") executed and delivered a promissory note in the principal amount of \$175,628.66 (the "Note") in favor of Wachovia.

2. To secure the obligation under the Note, the Debtor executed and delivered a mortgage (the "Mortgage") which grants Wachovia a first lien against the property located at 11374 S. Aston Hall Drive, Jacksonville, Florida 32246, bearing the legal description attached hereto as **Exhibit A** ("Property"). True and correct copies of the Note and Mortgage are attached hereto as **Composite Exhibit B**.

3. Wachovia properly secured its interest in the Property by recording the Mortgage in the public records of Duval County, Florida at Official Records Book 12816, Page 2271.

4. Thereafter, on March 30, 2007, Taylor Bean & Whitakre Mortgage Corporation (the "Debtor") obtained a second mortgage on the Property. The Debtor secured its interest in the Property by recording its mortgage in the public records of Duval County, Florida at Official Records Book 13913, Page 2225. On the Mortgage, Mortgage Electronic Registration Systems, Inc. ("MERS") was listed as the nominee for the Debtor. A true and correct copy of the Debtor's Mortgage is attached hereto as **Exhibit C**.

5. Mathes defaulted in their obligations under the Note by failing to pay the amount due on April 20, 2008, and thereafter.

6. Pre-petition, on November 19, 2008, Wachovia instituted a foreclosure action against Mathes and the Debtor in Duval County Circuit Court styled *Wachovia Mortgage Corporation v. Laurie A. Mathes, James D. Mathes, et al*, Case No. 16-2008-CA-015255 (the "State Court Foreclosure Action").

7. MERS was served with the State Court Foreclosure Action as nominee for the Debtor. MERS did not respond in the State Court Foreclosure Action and was defaulted.

8. On August 24, 2009 (the "Petition Date"), the Debtor filed for Chapter 11 relief under the Bankruptcy Code.

9. On November 24, 2009, Wachovia obtained a Summary Final Judgment of Foreclosure in the State Court Action. As of the Petition Date, the total outstanding obligation on the Property to Wachovia was \$186,043.96, consisting of \$168,838.37 in principal, \$14,242.19 in interest through the Petition Date (with per diem interest of \$28.31), and \$3,283.96

in late fees. The Summary Final Judgment of Foreclosure in support of amounts due and owing to Wachovia is attached hereto as **Exhibit D**.

10. No equity exists in the Property above the first lien of Wachovia. According to the Duval County Property Appraiser, the Property has a value of \$153,632.00. A true and correct copy of the Duval County Property Appraiser's Website Report is attached hereto as **Exhibit E**.

11. Wachovia seeks relief from the automatic stay to enforce all of its rights and remedies under applicable law as against the Debtor with respect to the Property, including but not limited to the continuation of the State Court Foreclosure Action and conducting a foreclosure sale.

#### **Grounds for Relief**

12. Wachovia seeks relief from the automatic stay to seek all *in rem* relief to continue the State Court Foreclosure Action including sale of the Property. The Debtor does not own the Property; it holds a second position mortgage on the Property. The Property has no equity above Wachovia's first position lien and the Debtor's interest in the Property is not necessary for an effective reorganization.

13. Pursuant to Section 362(d)(1) and (2) of the Code, grounds exist to lift the automatic stay. 11 U.S.C. § 362(d)(1) states the court shall grant relief from the automatic stay, after notice and a hearing, for cause, including lack of adequate protection of an interest in property of the party in interest requesting such relief. 11 U.S.C. § 362(d)(2) states the court shall grant relief from the automatic stay if the debtor does not have equity in such property and the property is not necessary to an effective reorganization. Where the debtor has no equity in the property, the automatic stay must be lifted. *In re J & M Salupo Development Co., Inc.*, 388

B.R. 809, 812-813 (Bankr. N.D. Oh. 2008) (citations omitted), *see also In re Goulin Realty, Inc.*, 60 B.R. 283 (Bankr. D. RI 1986) (due to absence of equity cushion or other evidence of adequate protection, stay relief granted to mortgage holder).

14. In this instance, Mathes have no equity in the Property above the first lien of Wachovia. The Debtor is the second mortgage holder. Based upon the foregoing authority, Wachovia seeks relief from the automatic stay to seek all available *in rem* relief, including all State Court Foreclosure Action remedies.

**WHEREFORE**, Wachovia respectfully requests that this Court: (i) grant the Motion; (ii) lift the automatic stay to allow Wachovia to enforce all available *in rem* relief against the Property, including continued prosecution of the State Court Foreclosure Action through judgment and sale; and (iii) grant such other and further relief as the Court deems necessary and appropriate.

Dated March 15, 2010.

Respectfully submitted,

/s/ Stephanie Crane Lieb

STEPHANIE CRANE LIEB

Florida Bar No. 0031806

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*Attorneys for Movant, Wachovia Bank, N.A.*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing WACHOVIA BANK, N.A.'S MOTION FOR RELIEF FROM AUTOMATIC STAY, together with the referenced Exhibits, has been served through the Court's CM/ECF Noticing System or by U.S. Mail to: **Debtor**, Taylor, Bean & Whitaker Mortgage Corp., 315 N.E. 14th St., Ocala, FL 34470; **Counsel for the Debtor**, Amy Denton Harris, Esquire, Stichter, Riedel, Blain & Prosser, P.A., 110 E Madison Street, Suite 200, Tampa, FL 33602-4700; Jeffrey W Kelley, Troutman Sanders LLP, 600 Peachtree Street, Suite 5200, Atlanta, GA 30308-2216; **US Trustee**, Elena L Escamilla, Esquire, United States Trustee, 135 W Central Blvd Suite 620, Orlando, FL 32806; **Counsel for the Official Committee of Unsecured Creditors**, Arthur J. Spector, Esquire, Berger Singerman PA, 350 East Las Olas Blvd., Suite 1000, Fort Lauderdale, FL 33301, James D Gassenheimer, Esquire, Berger Singerman, 200 South Biscayne Boulevard, Suite 1000, Miami, FL 33131; and **All Parties on the Court's LBR 1007 Matrix** on this 15<sup>th</sup> day of March, 2010.

/s/ Stephanie Crane Lieb  
Attorney

**EXHIBIT A**

**Legal Description**

Reference Number: 052320002

ALL THAT CERTAIN PROPERTY SITUATED IN THE CITY OF JACKSONVILLE, IN THE COUNTY OF DUVAL, AND STATE OF FLORIDA AND BEING MORE PARTICULARLY DESCRIBED IN A DEED DATED 07/10/1998 AND RECORDED 07/29/1988 IN BOOK 9022 PAGE 766 AMONG THE LAND RECORDS OF THE COUNTY AND STATE SET FORTH ABOVE AND REFERENCED AS FOLLOWS: LOT 40, SUBDIVISION SUTTON LAKES UNIT 4, PLAT BOOK 51, PLAT PAGE 38, PARCEL ID NUMBER: 165262-3845



320101000589632\*3

**EXHIBIT B**

BK: 01 LOC: LN TP: 88  
RC: 00032B2 0172000/00

Ref. No. 0523200002

Date: 09/01/08 Acct. No.

### Note

**BORROWER(S):**  
LAURIE A MATHES  
JAMES D MATHES II  
11374 S ASTON HALL DRIVE  
JACKSONVILLE, FL 32246

Amount Financed \$ 175628.66

1. **BORROWER(S) PROMISE TO PAY.** In return for a loan that I have received, the undersigned Borrower(s) (hereinafter referred to as "I," "me," or "my") jointly and severally promise to pay to Wachovia Bank, National Association, a national banking association organized and existing under the law of the United States of America ("Lender"), the sum of \$ 175628.66 (this amount will be called "Principal"), plus daily simple interest ("Interest") beginning on the date that Principal is advanced. The Principal may include points, origination fees and other amounts permitted by applicable law. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note and who is entitled to receive payments under this Note will be called the "Note Holder."

2. **INTEREST.** Interest will accrue on the entire Principal balance outstanding at any time. Notwithstanding anything to the contrary, I do not agree to pay and the Note Holder does not intend to charge any interest at a rate that is higher than the maximum rate of interest that could be charged under applicable law for the extension of credit that is agreed to under this Note (either before or after maturity). If any notice of interest accrual is sent and is in error, and if the Note Holder actually collects more interest than allowed by law or this Note, the Note Holder agrees to refund any such excess interest.

I agree to pay interest on the unpaid Principal balance of this Note owing after maturity, and until paid in full at the same rate in effect before maturity. I agree that any loan origination fees paid to the Note Holder is earned as of the date of this Note.

Interest accrues on the Principal remaining unpaid from time to time, until paid in full. The Interest Rate, as defined in this Section 2 below, will be charged at a rate of 1/365th of the Interest Rate for each day, or 1/366th of the Interest Rate for each day in any leap year, applied against that day's outstanding Principal balance. The dollar amount of the finance charge disclosed to me for this credit transaction is based upon my payments being received by the Note Holder on the date payments are due. If my payments are received after the due date, even if received before the date a Late Charge as permitted by Section 4 applies, I may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of Principal. This is a result of the accrual of daily interest.

If the governing law which applies to this Note sets maximum loan charges and is finally interpreted so that the interest and other charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such interest or other charge shall be reduced by the amount necessary to reduce the interest or other charge to the permitted limit and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial payment.

Check One:

Fixed Rate

I agree to pay interest on the outstanding Principal balance at a fixed annual rate of 6.12 % ("Interest Rate").

Adjustable Rate

(A) Interest Rate: I agree to pay interest on the outstanding Principal balance at the initial annual rate of N/A % ("Interest Rate") until the first Change Date as defined in Paragraph (B) below. Thereafter, the Interest Rate I pay may change as of each Change Date and will be calculated pursuant to Paragraph (D) below.

(B) Date Definitions:

(i) Change Date: The date that falls 12 month(s) from the date of this Note, and every 12 month(s) thereafter is called a "Change Date."

(ii) Index Date: The 25th day of each month is an "Index Date." If the Index is not published on the 25th day of the month, then the Index Date shall be the first day prior to the 25th day of the month on which the Index is published.

(iii) Look-back Date: The date that is 45 days prior to a Change Date is called the "Look-back Date."

(C) The Index: Check One:

The "Index" is the "Prime Rate" as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one Prime Rate published on an Index Date, then the Note Holder will use the higher of such prime rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of the Prime Rate.

The "Index" is the average of interbank offered rates for     month U.S. dollar-denominated deposits in the London market ("LIBOR") as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one LIBOR published on an Index Date, then the Note Holder will use the higher of such LIBOR rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of LIBOR.

(D) Calculation of New Interest Rate: The new annual interest rate that will be applicable beginning on each Change Date will be based on the Index published on the Index Date that occurs during the calendar month that

Immediately precedes the Look-back Date for that Change Date. On the Look-back Date, the Note Holder will calculate my new Interest Rate by adding \_\_\_\_\_% ("Margin") to the Index on the Index Date. Subject to any applicable limitations set forth in Paragraph (E), this new Interest Rate will become effective on each Change Date.

(E) Limits on Interest Rate Changes: If this Note is governed by North Carolina law, my Interest Rate will never be greater than 16.00%. Otherwise, my Interest Rate will never be greater than 18.00%.  If this box is checked, Interest Rate Increases will be subject to an additional limitation on each Change Date such that the Interest Rate I pay will never be increased on any single Change Date by more than \_\_\_\_\_% from the Interest Rate I have been paying for the preceding 12 months.  If this box is checked, there will be no additional limitation on increases in my Interest Rate.

(F) Notice of Changes: The Note Holder will deliver or mail to me a notice of any changes in my Interest Rate before the effective date of any change or as required by applicable law. The notice will include information about any changes to my Payment Amount.

3. PAYMENTS.

(A) Payment Options and Schedule:

Check One:

Interest Payments with or without Principal Reduction Payments and/or a Balloon Payment:

I will pay accrued Interest beginning on \_\_\_\_\_ as follows; check one:  monthly or  quarterly ("Interest Payments"). The amount of each Interest Payment will vary depending upon the amount of principal outstanding and if Section 2 of this Note provides for an Adjustable Rate, the Interest Rate then in effect. In addition to the Interest Payments, Principal Payments shall be payable as set forth in the Payment Schedule below.

Fully Amortizing Installment Payments or Installment Payments with a Balloon Payment:

I will pay the unpaid Principal and Interest as set forth in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, the payment amounts, including the final payment, as set forth in the Payment Schedule may change. On each Change Date, the Note Holder will determine the payment amount that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in paragraph (E), below, at my new Interest Rate. The result of this calculation will be the new payment amount. I will pay my new payment amount beginning on the first payment due date after the Change Date until the payment amount changes again or until the Maturity Date as described in Paragraph (E).

Payment Schedule:

Number of Payments	Payment Amount	Frequency	Start/Due Date	Number of Payments	Payment Amount	Frequency	Start/Due Date
380	\$ 1058.98	M	10/20/05		\$		
	\$						

Frequency Legend: M = Monthly Q = Quarterly S = Semi Annually A = Annually

(B) Place of Payments: I will make my payments in U.S. funds payable to the Note Holder at the address provided to me by the Note Holder or at a different address if required by the Note Holder.

(C) Application of Payments: Unless otherwise prohibited by the law governing this Note, each payment I make on this Note will first reduce the amount of accrued unpaid interest, then any optional insurance premiums due, then any applicable unpaid charges and then unpaid Principal. I will make payments until I have paid all of the Principal and interest and any other fees or charges that I may owe under the terms of this Note.

(D) Maturity Date: If on 09/20/35, I still owe any amount under this Note, I will pay those amounts in full on that date which is called the "Maturity Date."

(E) Balloon Payment: If the Payment Schedule requires me to make a final payment that is significantly larger than any other payment ("Balloon Payment"), I understand that I may be required to make this Balloon Payment on the Maturity Date. I understand that the law governing this Note may provide me with a right to refinance any Balloon Payment. If I have a right to refinance any Balloon Payment, the Note Holder will advise me as to whether I have a limited right to refinance and the terms surrounding such refinance. Otherwise, I understand that the Balloon Payment disclosed above will be due and payable on the Due Date disclosed above.

4. FEES AND CHARGES. In addition to interest and other amounts I may agree to pay, I agree to pay the Note Holder the following additional fees and charges:

(A) Late Charges: The following late charges will apply to the extent the Note is governed by the laws of the jurisdiction referenced in the subsection header or text:

- (1) Alabama. If a scheduled payment or any portion is received more than 10 days after the day it is due, I will pay a late charge equal to 5% of the unpaid portion of the scheduled payment amount or \$10, whichever is greater, but my late charge will never exceed \$100.00.
- (2) Connecticut. If a scheduled payment or any portion is not received within ten (10) days of the date it is due, I will pay a late charge equal to the lesser of \$10.00 or 5% of the scheduled payment amount.
- (3) Mississippi. If a scheduled payment or any portion is received more than fifteen (15) days after the date it is due, I will be charged 4% of the unpaid portion of the scheduled payment or \$5.00, whichever is greater, but my late charge will never exceed \$50.00.
- (4) New Jersey and Pennsylvania. If a scheduled payment or any portion is not received within fifteen (15) days of the day it is due, I will pay a late charge equal to 5% of the scheduled payment amount.
- (5) North Carolina. If a scheduled payment or any portion is not received within fifteen (15) days of the date it is due, I will pay a late charge equal to four percent (4%) of the scheduled payment amount.
- (6) South Carolina. If a scheduled payment or any portion is not received within ten (10) days of the day it is due, I will pay a late charge equal to five percent (5%) of the scheduled payment amount (but not less than \$5.80 nor more than 14.50) or such greater amounts as may be authorized by South Carolina law from time to time.

(7) Other. If this Note is governed by the law of any jurisdiction other than those referenced in this subsection above and a scheduled payment or any portion is not received within ten (10) days of the date it is due, I will pay a late charge equal to 5% of the scheduled payment.

(B) **Returned Payment Fee:** Unless otherwise limited or prohibited by the law governing this Note, I will pay a charge of up to \$25.00 for each payment (check or automatic payment) that I make that is returned or dishonored for any reason.

(C) **Prepayment Charge:** If this Note is governed by the laws of Connecticut, Florida, Georgia, Tennessee or Virginia, and I prepay this Note in full at any time prior to the expiration of 2/3rds of the term of this Note, I will pay a prepayment penalty of \$100.00. If this Note is governed by Maryland law and Lender will be secured in the first lien position as of the date of this Note, and if I make a full prepayment of the Principal at any time prior to the expiration of 2/3rds of the term of this Note, I will pay a prepayment penalty of \$100.00. If this Note is governed by the laws of a jurisdiction other than those referenced in this subsection above, I will not have to pay a prepayment penalty.

(D) **Origination Fee.** If an origination fee or other fee or charge is charged as included on the HUD-1, HUD-1A, or Itemization of Amount Financed prepared in connection with this loan transaction, I agree to pay such fees and charges. Except as otherwise required by law, I agree that such fees and charges are fully earned as of the date of this Note and are nonrefundable upon prepayment.

(E) **Additional Charges:** I agree that if, during the term of this Note, I request other services related to servicing or administering my loan for which the Note Holder has a scheduled charge, I will, to the extent permitted by the law governing this Note, pay the Note Holder the then current fee for such services or request if the Note Holder agrees to perform such service or request.

**5. BORROWER'S FAILURE TO PAY AS REQUIRED AND TERMS OF DEFAULT.**

(A) **Terms of Default:** I will be in Default under this Note if any of the following things happen:

- (1) If I fail to make any payment or comply with any of the terms of this Note or any other note with the Note Holder now or in the future; or
- (2) If I make any false, incorrect or misleading representation or warranty at any time during the application process; or
- (3) If I die; or
- (4) If I become involved in any bankruptcy or insolvency proceeding; or
- (5) If the collateral described in Section 6 or any schedule to this Note is used in violation of any law or regulation or if a judgment or lien is filed or levied against me or the collateral or the collateral is impaired, damaged, or removed from the custody of the Note Holder; or
- (6) If I fail to abide by the term(s) of any Security Instrument or other documents described in Section 6 which secure payment of this Note.

(B) **Notice of Default:** If I am in Default, then the entire Principal balance, accrued interest, fees, and collection costs permitted to be collected under applicable law will be immediately due and payable. At its option or if required by law, the Note Holder may send me a written notice informing me of said Default and acceleration. If I make any payment after the Note Holder has demanded payment of the entire balance due, my payment will be applied to the unpaid balance due under this Note. The unpaid balance consists of the Principal Amount remaining due, plus accrued finance charges, unpaid Late Charges, collection costs, and all other amounts due to the Note Holder under this Note. The Note Holder shall also have other rights and remedies provided by law. If the net proceeds of collateral sold do not pay my indebtedness in full, I will pay the Note Holder the difference, plus interest at the Note Interest Rate until the unpaid balance is paid in full. Any Default of this Note will also constitute an event of Default of any separate Mortgage, Deed of Trust or Security Deed securing this Note ("Security Instrument") or Pledge Agreement securing this Note. Upon Default, the Note Holder may proceed to enforce the terms of this Note or enforce any rights that it may have under the Security Instrument or Pledge Agreement.

(C) **No Waiver by Note Holder:** Even if, at a time when I am in Default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in Default at a later time. Any failure to enforce any provision of this Note by the Note Holder shall not constitute any waiver of such rights of the Note Holder to subsequently enforce such rights or remedies.

(D) **Payment of the Note Holder's Costs and Expenses:** If the Note Holder has required me to pay immediately in full as described above, and I fail to do so and such failure causes the Note Holder to incur additional expenses, the Note Holder will have the right to a refund of all of its costs and expenses to the extent not prohibited by the law governing this Note. Those expenses include, for example, reasonable attorney's fees for an attorney who is not the Note Holder's salaried employee, foreclosure fees and court costs. In no event shall these expenses exceed fifteen percent (15%) of the unpaid balance plus Court Costs.

**6. THIS NOTE IS SECURED BY A SECURITY INSTRUMENT.** In addition to the protections given to the Note Holder under this Note, a separate Security Instrument(s), on real property (the "Property") described in the Security Instrument and dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Note. I agree to these conditions. Subject to applicable law, I understand that this loan is subject to repayment in full in the event the Property securing this debt is sold, conveyed or otherwise transferred.

If in addition to a Security Instrument, I pledge securities, cash accounts or other liquid collateral (the "Other Collateral") as Other Collateral for this Note, then I grant to the Note Holder a perfected security interest in such Other Collateral and all additions or replacements to, or proceeds of as is more fully described in the separate Collateral Pledge Agreement (the "Pledge Agreement") executed as of the same date as this Note. The Pledge Agreement describes the Other Collateral in detail and protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. The Pledge Agreement also describes how and under what conditions I may also be required to make immediate payment in full of all amounts that I owe under this Note. I agree to these conditions. If the Other Collateral includes securities, I agree to deliver immediately to the Note Holder, fully endorsed, any certificates for shares representing any stock dividend, stock split or right to subscribe. I further pledge and agree to deliver to the Note Holder, upon demand, additional Other Collateral satisfactory to the Note Holder and in accordance with all margin requirements. If I do not provide the Note Holder with a perfected security interest in the Other Collateral and the Note Holder incurs any expenses, including attorneys' fees, in order to obtain a perfected security interest, I will be responsible for such expenses.

If I do not provide or assist the Note Holder in obtaining a perfected security interest in the Property or Other Collateral and the Note Holder incurs any expenses, including attorney's fees, in order to obtain a perfected security interest in such Property or Other Collateral, to the extent not otherwise prohibited by the law governing this Note, I agree that the Note Holder may add the amount of such expenses to the Principal and that such expenses will accrue interest at the Note Interest Rate until paid in full.

**7. PREPAYMENT.**

(A) Subject to the order of application of payments described in Section 3, I have the right to make payments of Principal at any time before they are due. A prepayment of all unpaid Principal is known as a "full prepayment." A prepayment of only part of the unpaid Principal is known as a "partial prepayment."

(B) If I make a partial prepayment, my next due date may be advanced. If I make a payment that is more than the amount that is due, the amount in excess of the amount due is called an "Excess Payment." If I make an Excess Payment, the Note Holder will assume that I want to reduce or skip my next scheduled payment or payments. If the Excess Payment is less than or equal to the next scheduled payment, the next scheduled payment will be reduced by the amount of the Excess Payment. If the Excess Payment exceeds the amount of my next scheduled payment, the number of payments that may be skipped will be determined by subtracting each subsequently scheduled payment from the Excess Payment. So long as the remaining portion of the Excess Payment exceeds the next scheduled payment amount, that payment may be skipped. When the remaining portion of the Excess Payment is equal to or less than my next scheduled payment, that remaining portion will be used to reduce the amount of the next scheduled payment. If I want the Note Holder to handle an Excess Payment differently, I will tell the Note Holder in writing. I understand that interest will continue to accrue on the outstanding principal balance and that if I want maximum interest savings from Excess Payments, I should continue to make payments on or before the scheduled due date.

**8. BORROWER'S WAIVERS.** I waive my rights to require the Note Holder to do certain things. Those things are: (a) to demand payment of amounts due (known as "presentment"); (b) to give notice that amounts due have not been paid (known as "notice of dishonor"); and (c) to obtain an official certification of non-payment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else, also waives these rights. These persons are known as "Guarantors," "Sureties," "Co-Signers" and "Endorsers."

**9. GIVING OF NOTICES.**

(A) Any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail addressed to me at the address contained in this Note. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

(B) Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address provided to me by the Note Holder. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

**10. PAYMENT IN FULL.** I AGREE THAT THE NOTE HOLDER MAY ACCEPT PAYMENTS MARKED "PAID IN FULL" WITHOUT ANY LOSS OF THE NOTE HOLDER'S RIGHTS UNDER THIS NOTE UNLESS I SEND THEM FOR SPECIAL HANDLING TO WACHOVIA BANK, NATIONAL ASSOCIATION, SPECIAL PAYOFFS, PO BOX 10723, ROANOKE, VA 24022. ACCEPTANCE OF ANY PAYMENT SENT TO THE SPECIAL HANDLING ADDRESS DOES NOT WAIVE THE NOTE HOLDER'S RIGHT TO SUBSEQUENTLY REJECT SUCH PAYMENT IN ACCORDANCE WITH APPLICABLE LAW.

**11. EXTENSIONS AND MODIFICATIONS.** All Guarantors, Sureties, Co-Signers, Endorsers and I consent to any and all extensions of time, renewals, waivers or modifications which may be granted or consented to by the Note Holder as to the time of payment or any other provision of this Note. If in its sole discretion, the Note Holder permits an extension, renewal or modification to this Note, I agree to pay a charge not to exceed an amount permitted by the law governing this Note. All Guarantors, Sureties, Co-Signers, Endorsers and Makers hereby waive presentment, notice of dishonor, and protest hereof. This Note is the joint and several obligation of each Maker and shall be binding upon them and their heirs, successors and assigns.

**12. INSURANCE REQUIREMENTS.** I agree to purchase property/hazard insurance insuring the Property against loss and as required by the Security Instrument. I acknowledge that I may obtain property/hazard insurance from any insurance company of my choice, subject to the Note Holder's right of approval which shall not be unreasonably withheld. Unless I provide the Note Holder with evidence of the insurance coverage required by my agreement with the Note Holder, the Note Holder may purchase insurance at my expense to protect the Note Holder's interests in the Property. This insurance may, but need not, protect my interests. The coverage that the Note Holder purchases may not pay any claim that I make or any claim that is made against me in connection with the Property. I may later cancel any insurance purchased by the Note Holder, but only after providing the Note Holder with evidence that I have obtained insurance as required by our agreement. If the Note Holder purchases insurance for the Property, I will be responsible for the costs of the insurance, including interest and any other charges the Note Holder 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 will be added to the Principal and will accrue interest at the Note Interest Rate. I understand that the costs of the insurance obtained by the Note Holder may be more than the cost of insurance I may be able to obtain on my own.

**13. RESPONSIBILITY OF PERSONS UNDER THIS NOTE.** If more than one person signs this Note, each of us is jointly and severally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any Guarantor, Surety, Co-Signer or Endorser of this Note (as described in Section 8 above) jointly and severally guarantee the payment, when due, to any Note Holder hereof of all amounts (including interest) owing on this Note. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. I and any Guarantor, Surety, Co-Signer or Endorser of this Note further agree that the failure by the Note Holder to perfect any security interest granted by this Note shall not affect my liability or the liability of any Guarantor hereon.

**14. GOVERNING LAW.** This Note shall be governed by the laws of the State where the Property securing this loan is located and applicable federal law. If the Property securing this debt is located in Maryland, to the extent this Note is governed by Maryland law, this Note is governed by *Md. Code Ann., Commercial Law §12-1001 et. seq.* and applicable federal law.

15. GENERAL PROVISIONS. I agree that I may not sell, assign or otherwise transfer my rights or obligations under this Note and that such action will be void. Any person who takes over my rights or obligations under this Note by operation of law will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of any Guarantor, Surety, Co-Signer or Endorser of this Note is also obligated to keep all of the promises made in this Note. This Note is intended by the Note Holder and me as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Note. This Note may not be supplemented or modified except in writing signed by the Note Holder and me. This Note benefits the Note Holder, its successors and assigns, and binds me and my heirs, personal representatives and assigns. If any provision of this Note shall for any reason be held to be invalid or unenforceable, such determination shall not affect the enforceability of the remaining provisions of this Note. Headings are for convenience of reference only and shall not affect the construction of this Note or any other document associated with this loan.

16. SAVINGS AND COMPLIANCE. It is the intention of you and me to comply with applicable law. In each and every instance, our rights shall be limited by applicable law (to the extent such laws may not be effectively waived), construed so as to comply with such laws, and our rights may not be exercised except to the extent permitted by applicable law. No part of this agreement, nor any charge or receipt by you, is supposed to permit you to impose interest or other amounts in excess of lawful amounts. If an excess occurs, you will apply it as a credit or otherwise refund it and the rate or amount involved will automatically be reduced to the maximum lawful rate or amount. To the extent permitted by law, for purposes of determining your compliance with law, you may calculate charges by amortizing, prorating, allocating and spreading any such charges.

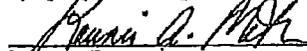
17. DOCUMENTARY TAX. For loans secured by real property located in Florida, the state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

**NOTICE TO BORROWER:**

1. CAUTION: IT IS IMPORTANT THAT THE BORROWER THOROUGHLY READS THIS NOTE BEFORE THE BORROWER SIGNS IT.
2. THIS NOTE IS SECURED BY EITHER A FIRST OR SUBORDINATE LIEN ON REAL PROPERTY.
3. THIS NOTE MAY PROVIDE FOR THE PAYMENT OF A PENALTY IF THE BORROWER WISHES TO REPAY THE NOTE PRIOR TO THE DATE PROVIDED FOR REPAYMENT IN THIS NOTE.
4. THE BORROWER IS ENTITLED TO A COPY OF THIS NOTE.
5. DO NOT SIGN THIS NOTE IF IT CONTAINS ANY BLANK SPACES.
6. THE BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE.

For Texas residents only: NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS 18 PERCENT PER YEAR.

By signing and sealing this Note, I agree under seal to the terms set forth above.

 \_\_\_\_\_ [SEAL]  
Borrower LAURIE A. MATHES

 \_\_\_\_\_ [SEAL]  
Borrower JAMES D MATHES II

Any Guarantor, Surety, Co-Signer or Endorser of this Note acknowledges receipt and execution of the Co-Signer's Notice.

\_\_\_\_\_ [SEAL]  
Guarantor - Co-Signer

\_\_\_\_\_ [SEAL]  
Guarantor - Co-Signer

**FOR OFFICE USE ONLY**

Endorsement.  
Pay to the Order of \_\_\_\_\_

Without Recourse  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Prepared By:  
DIANE LUDMAN  
Wachovia Bank, National Association  
Retail Credit Servicing  
P.O. Box 50010  
Roanoke, VA 24022

Return To:  
Wachovia Bank, National Association  
Retail Credit Servicing  
P.O. Box 50010  
Roanoke, VA 24022

Doc # 2005378173, OR BK 12816 Page 2271,  
Number Pages: 6  
Filed & Recorded 10/13/2005 at 01:04 PM,  
JIM FULLER CLERK CIRCUIT COURT DUVAL COUNTY  
RECORDING \$52.50 MORTGAGE DOC ST \$614.95  
INTANGIBLE TAX \$351.26

**MORTGAGE**

THIS MORTGAGE made this day 1 September, 2005 between the Mortgagor,  
JAMES D MATHES II, HUSBAND; LAURIE A MATHES, WIFE

(herein "Borrower"), and the Mortgagee, Wachovia Bank, National Association, a national banking association organized and existing under the laws of the United States of America, whose address is Wachovia Bank, National Association, 301 South College Street, NC 0530, Charlotte, North Carolina 28288-0630 (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S.\$ 175628.66 which indebtedness is evidenced by Borrower's Note dated 09/01/05 and extensions, modifications and renewals thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not sooner paid, due and payable on 09/20/35.

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the following described Property located in the County of DUVAL, State of Florida:

DEED DATE:07/10/98 RECORDED: 07/29/98 BOOK/INST: 9022 PAGE: 766  
PARCEL/TAX ID #:165282-3845 TWP/BORO:CITY OF JACKSONVILLE  
LOT:40 SEE ATTACHED LEGAL DESCRIPTION

which has the address of 11374 S ASTON HALL DR  
JACKSONVILLE FL 32246

(herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the Property, and all easements, rights, appurtenances and rents all of which shall be deemed to be and remain a part of the Property covered by this Mortgage; and all of the foregoing, together with said Property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

Any Rider ("Rider") attached hereto and executed of even date is incorporated herein and the covenants and agreements of the Rider shall amend and supplement the covenants and agreements of this Mortgage, as if the Rider were a part hereof.

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 covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

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

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note. This Mortgage secures payment of said Note according to its terms, which are incorporated herein by reference.
2. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations, under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.
3. **Hazard Insurance.** a) 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 floods, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with section 5.

b) All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. 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.

c) Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. 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 Mortgage, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Mortgage, whether or not then due. The 30-day period will begin when the notice is given.

d) Except as provided in subsection 3(e) below, should partial or complete destruction or damage occur to the Property, Borrower hereby agrees that any and all instruments evidencing insurance proceeds received by Lender as a result of said damage or destruction, shall be placed in a non-interest bearing escrow account with Lender. At Lender's discretion, Lender may release some or all of the proceeds from escrow after Borrower presents Lender with a receipt(s), invoice(s), written estimates(s) or other document(s) acceptable to Lender which relates to the repair and/or improvements of the Property necessary as a result of said damage and/or destruction. Absent an agreement to the contrary, Lender shall not be required to pay Borrower any interest on the proceeds held in the escrow account. Any amounts remaining in the account after all repairs and/or improvements have been made to Lender's satisfaction, shall be applied to the sums secured by this Mortgage. Borrower further agrees to cooperate with Lender by endorsing all checks, drafts and/or other instruments evidencing insurance proceeds and any necessary documents. Should Borrower fail to provide any required endorsement and/or execution within 30 days after Lender sends Borrower notice that Lender has received an instrument evidencing insurance proceeds, or document(s) requiring Borrower's signature, Borrower hereby authorizes Lender to endorse said instrument and/or document(s) on Borrower's behalf, and collect and apply said proceeds at Lender's option, either to restoration or repair of the Property or to sums secured by this Mortgage. It is not the intention of either party that this escrow provision, and/or Lender's endorsement or execution of an instrument(s) and/or document(s) on behalf of Borrower create a fiduciary or agency relationship between Lender and Borrower.

e) Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in section 1 or change the amount of the payments. If under section 15 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Mortgage.

**4. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the Declaration of covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

**5. Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such actions as is necessary to protect Lender's interest.

Any amounts disbursed by Lender pursuant to this section 5, with interest thereon from the date of disbursement, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this section 5 shall require Lender to incur any expense or take any action hereunder.

**6. Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property.

**7. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in

lieu of condemnation, are hereby assigned and shall be paid to Lender subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

**8. Borrower Not Released; Forbearance By Lender Not a Waiver.** Borrower shall remain liable for full payment of the principal and interest on the Note (or any advancement or obligation) secured hereby, notwithstanding any of the following: (a) the sale of all or a part of the premises; (b) the assumption by another party of Borrower's obligations hereunder; (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Borrower or a subsequent owner of the Property; and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Lender's right to a deficiency judgment (in the event of foreclosure) against Borrower or any party assuming the obligations hereunder, to the extent permitted by applicable law. Any forbearance by Lender in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

**9. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Mortgage but does not execute the Note (a "co-signer"): (a) is co-signing this Mortgage only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Mortgage; (b) is not personally obligated to pay the sums secured by this Mortgage; 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 Mortgage or the Note without the co-signer's consent.

Subject to the provisions of section 14, any Successor in Interest of Borrower who assumes Borrower's obligations under this Mortgage in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Mortgage. Borrower shall not be released from Borrower's obligations and liability under this Mortgage unless Lender agrees to such release in writing. The covenants and agreements of this Mortgage shall bind and benefit the successors and assigns of Lender.

**10. Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by first class mail addressed to Borrower or the current owner at the Property Address or at such other address as Borrower may designate in writing by notice to Lender as provided herein, and any other persons personally liable on the Note as their names and addresses appear in Lender's records at the time of giving notice and (b) any notice to Lender shall be given by first class mail to Lender's address at Wachovia Bank, National Association, Retail Credit Servicing, P.O. Box 50010, Roanoke, VA 24022 or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**11. Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflicts shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

**12. Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note, this Mortgage and Rider(s) at the time of execution or after recordation hereof.

**13. Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

**14. Transfer of the Property or a Beneficial Interest in Borrower; Assumption.** As used in this section 14, "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 Mortgage. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law.

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 10 within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies by this Mortgage without further notice or demand on Borrower.

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

**15. Default; Acceleration; Remedies.** Upon Borrower's breach of any covenant or agreement of Borrower in this entire Mortgage, including the covenants to pay when due any sums under the Note secured by this Mortgage, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without demand or notice, notice of the exercise of such option being hereby expressly waived. Lender may invoke the power of sale hereby granted. Lender shall have the right to enter upon and take possession of the Property hereby conveyed or shall without taking such possession have the right to sell the same at public auction for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale, in some newspaper published in said county, and upon payment of the purchase money, Lender, or owner of the debt and this Mortgage, or auctioneer, shall execute to the purchaser for and in the name of Borrowers, a good and sufficient deed to the Property sold. Lender shall apply the proceeds of said sale: first, to the expense of advertising, selling and conveying said Property, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment in full of the principal indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the date of said sale; and fourth, the balance, if any, shall be paid over to said Borrowers or to whomever then appears of record to be the owner of said Property. Lender may bid and become the purchaser of the Mortgaged Property at any foreclosure sale hereunder.

**16. Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued if: (a) Borrower pays Lender all sums which then would be due under this Mortgage, the Note and Notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in section 15 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action, as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**17. Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that so long as Borrower is not in default hereunder, Borrower shall, prior to acceleration under section 15 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration and/or foreclosure under section 15 hereof, or abandonment of the Property, Lender, in person or by agent, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. Lender shall be liable to account only for those rents actually received prior to the foreclosure sale as provided in section 15. Lender shall not be liable to account to Borrower or to any other person claiming any interest in the Property for any rents received after foreclosure.

**18. Loan Charges.** If the loan secured by this Mortgage 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 permitted limits, then: (a) any such loan charges 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 under the Note.

**19. Legislation.** If, after the date hereof, enactment or expiration of applicable laws have the effect either of rendering the provisions of the Note, this Mortgage or any Rider, unenforceable according to their terms, or all or any part of the sums secured hereby uncollectible, as otherwise provided in this Mortgage or the Note, or of diminishing the value of Lender's security, then Lender, at Lender's option, may declare all sums secured by this Mortgage to be immediately due and payable.

**20. Satisfaction.** Upon payment of all sums secured by this Mortgage, the conveyance of the Property pursuant to this Mortgage shall become null and void and Lender shall release this Mortgage. Borrower shall pay all costs of recordation, if any. Lender, at Lender's option, may allow a partial release of the Property on terms acceptable to Lender and Lender may charge a release fee.

**21. Waiver of Homestead.** Borrower hereby waives all rights of homestead exemption in the Property and relinquishes all rights of dower and curtesy in the Property.

**22. Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances 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 maintenance 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 section 22, "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 section 22, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety, or environmental protection.

REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender at Wachovia Bank, National Association, Retail Credit Servicing, P.O. Box 50010, Roanoke, VA 24022 of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage and adopted as his seal the word ("SEAL") appearing beside his name.

Signed, sealed and delivered in the presence of:

Hazel Jackson  
Witness Signature

Laurie A. Mathes [SEAL]  
Borrower LAURIE A MATHES  
Address 11374 S ASTON HALL DR  
JACKSONVILLE FL 32246

HAZEL JACKSON  
Witness Print Name

James D. Mathes II [SEAL]  
Borrower JAMES D MATHES II  
Address 11374 S ASTON HALL DR  
JACKSONVILLE FL 32246

Valeria Thliveros  
Witness Signature

\_\_\_\_\_  
Borrower  
Address

Valeria Thliveros  
Witness Print Name

\_\_\_\_\_  
Borrower  
Address

STATE OF Florida  
COUNTY OF St. Johns

This foregoing Instrument was acknowledged before me this 9.21.05 (date) by  
LAURIE A MATHES  
JAMES D MATHES II

who is personally known to me or who has produced FILE M320-000674080  
(type of identification) as identification. FILE M320-000674080  
Deborah J. Annell  
Notary Public



Deborah J. Annell  
Notary Public Name (Typed, Printed or Stamped)

**EXHIBIT C**

Doc # 2007117369, OR BK 13913 Page 2225, Number Pages: 15, Filed & Recorded  
04/11/2007 at 06:54 AM, JIM FULLER/ YORK CIRCUIT COURT DUVAL COUNTY RECORDING  
\$129.00 MORTGAGE DOC ST \$266.00 1 INGLE TAX \$152.00

PREPARED BY:

Name:

Address: Taylor, Bean & Whitaker Mortgage Corp.  
1417 North Magnolia Ave  
Ocala, FL 34475

Return to: ASSOCIATED LAND TITLE  
1633 RACE TRACK ROAD, STE 104, STE 104  
JACKSONVILLE, FL 32269

[Space Above This Line For Recording Data]

### MORTGAGE (Secondary Lien)

MIN: 100029500016737227

#### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 10, 12, 17, 19, and 20. Certain rules regarding the usage of words used in this document are also provided in Section 15.

(A) "Security Instrument" means this document, which is dated March 30, 2007, together with all Riders to this document.

(B) "Borrower" is James D Mathes, II a/k/a James D. Mathes and Laurie A Mathes, husband and wife

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is netting 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.

(D) "Lender" is Taylor, Bean & Whitaker Mortgage Corp. Lender is a Florida Corporation organized and existing under the laws of FL. Lender's address is 1417 North Magnolia Ave, Ocala, FL 34475

(E) "Note" means the promissory note signed by Borrower and dated March 30, 2007. The Note states that Borrower owes Lender Seventy Six Thousand and no/100 Dollars (U.S. \$76,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than April 01, 2022

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

FLORIDA MORTGAGE—Single Family—Secondary Lien  
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ITEM T65471 (0304)—MERC

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\*0244691673722\*

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, if allowed under Applicable Law, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- Adjustable Rate Rider       Condominium Rider       Second Home Rider  
 Balloon Rider       Planned Unit Development Rider       Biweekly Payment Rider  
 Home Improvement Rider       Revocable Trust Rider  
 Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "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.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 *et seq.*) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

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**TRANSFER OF RIGHTS IN THE PROPERTY**

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 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 the

County of Duval  
(Type of Recording Jurisdiction) of (Name of Recording Jurisdiction)

See Attached Exhibit A.

which currently has the address of 11374 Aston Hall Dr. S.  
(Street)  
 Jacksonville, Florida 32246 ("Property Address")  
(City) (Zip Code)

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.

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 Other Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and if allowable under Applicable Law, any prepayment charges and late charges due under the Note. 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 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.

2. **Application of Payments or Proceeds.** 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

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Section 14 or in such manner or location as required under Applicable Law. Except as otherwise described in this Section 2, and as permitted under Applicable Law, 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. To the extent permitted by Applicable Law, 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.

3. Funds for Escrow Items. Subject to Applicable Law, 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. 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 8. 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 8 and pay such amount and Borrower shall then be obligated under Section 8 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 14 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.

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. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that

FLORIDA MORTGAGE—Single Family—Secondary Lien

THE COMPLIANCE SOURCE, INC. ☐  
ITEM T054714 (03/04)—MERS

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Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender. If under Section 21 the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Security Instrument.

4. **Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust, or other security agreement with a lien which has priority over this Security Instrument. Borrower shall pay when due, 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 other than a lien disclosed to Lender in Borrower's application or in any title report Lender obtained 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.

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 if allowed under Applicable Law.

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 be added to the unpaid balance of the loan and interest shall accrue at the Note rate, from the time it was added to the unpaid balance until it is paid in full.

Subject to Applicable Law, 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 21 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. 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 damaged 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.

**7. 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.

**8. 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 has or 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 or may attain 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 8, 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 8.

Any amounts disbursed by Lender under this Section 8 shall become additional debt of Borrower secured by this Security Instrument if allowed under Applicable Law. 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.

**9. Mortgage Insurance.** 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.

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.

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10. **Assignment of Miscellaneous Proceeds; Forfeiture.** The Miscellaneous Proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Security Instrument.

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.

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 18, 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.

11. **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. Lender shall not be required to commence proceedings against any Successor 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.

12. **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 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 17, 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 19) and benefit the successors and assigns of Lender.

13. **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, as allowed under Applicable Law. 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.

14. **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.

15. **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.

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

17. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 17, "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.

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 14 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.

18. **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, as allowed under Applicable Law; 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;

- OR BK 13913 PAGE 2233

(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 17.

19. **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, if required under Applicable Law, 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 14) 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 section. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 21 and the notice of acceleration given to Borrower pursuant to Section 17 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 19.

20. **Hazardous Substances.** As used in this Section 20: (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).

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:

21. **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 17 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, foreclosure by judicial proceeding and sale of the Property. The notice

shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. 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 foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 21, including, but not limited to, reasonable attorneys' fees and costs of litigation.

22. Explaining Loan Papers. If required by Applicable Law, Lender has explained to the undersigned that: (a) the loan is made under the Florida Consumer Finance Act; (b) the terms of the loan provide for interest and charges pursuant to the Florida Consumer Finance Act; and (c) the nature of the security for the loan.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing 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.

24. Attorneys' Fees. As used in this Security Instrument and the Note, attorneys' fees shall include those awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

25. Jury Trial Waiver. The Borrower hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Note.

REQUEST FOR NOTICE OF DEFAULT  
AND FORECLOSURE UNDER SUPERIOR  
MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Security Instrument to give notice to Lender, at Lender's address set forth on page one of this Security Instrument, of any default under the superior encumbrance and of any sale or other foreclosure action.

OR BK 13913 PAGE 2235

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 through 11 of this Security Instrument and in any Rider executed by Borrower and recorded with it.

*[Signature]*  
James D Mathes (Seal)  
-Borrower

*[Signature]*  
Laurie A Mathes (Seal)  
-Borrower

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

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

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

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

Signed, sealed and delivered in the presence of:

*[Signature]*  
\_\_\_\_\_  
Christine Ann Vick

*[Signature]*  
\_\_\_\_\_  
Barbara Beverly

State of Florida  
County of ST. JOHNS

The foregoing instrument was acknowledged before me this            day of MAR 9 0 2007 by James D. Mathes and Laurie A. Mathes, husband and wife

who is personally known to me or who has produced DRIVERS LICENSE  
as identification.

*[Signature]*  
\_\_\_\_\_  
Christine Ann Vick  
Notary Public



OR BK 13913 PAGE 2236

**EXHIBIT "A"**

Lot 40, SUTTON LAKES UNIT FOUR, according to plat thereof recorded in Plat Book 51, Pages 38, 38A, 38B, 38C and 38D, of the Current Public Records of Duval County, Florida.

**PLANNED UNIT DEVELOPMENT RIDER**

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 30th day of March 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to Taylor, Bean & Whitaker Mortgage Corp.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

11374 Aston Hall Dr. S.  
Jacksonville, FL 32246

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

(the "Declaration"), The Property is a part of a planned unit development known as

SUTTON LAKES

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

**PUD COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of Incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and 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, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.



OR BK 13913 PAGE 2238

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in pages 1 and 2 of this PUD Rider.

James D Mathes (Seal) -Borrower Laurie A Mathes (Seal) -Borrower

(Seal) -Borrower (Seal) -Borrower

(Seal) -Borrower (Seal) -Borrower

OR BK 13913 PAGE: 2239

Loan Number 1673722

**BALLOON RIDER**

THIS BALLOON RIDER is made 3/30/2007 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Deed to Secure Debt [the "Security Instrument" and the Note] of the same date given by the undersigned [the "Borrower"] to Taylor, Bean & Whitaker Mortgage Corp. [the "Lender"] and covering the property located at: 11374 Aston Hall Dr. S., Jacksonville, FL 32246

THE TERM OF THE LOAN IS FIFTEEN YEARS. AS A RESULT, YOU WILL BE REQUIRED TO REPAY THE ENTIRE PRINCIPAL BALANCE AND ANY ACCRUED INTEREST THEN OWING Fifteen Years FROM THE DATE ON WHICH THE LOAN IS MADE.

THE LENDER HAS NO OBLIGATION TO REFINANCE THIS LOAN AT THE END OF ITS TERM. THEREFORE, YOU MAY BE REQUIRED TO REPAY THE LOAN OUT OF ASSETS YOU OWN OR YOU MAY HAVE TO FIND ANOTHER LENDER WILLING TO REFINANCE THE LOAN.

ASSUMING THIS LENDER OR ANOTHER LENDER REFINANCES THIS LOAN AT MATURITY, YOU WILL PROBABLY BE CHARGED INTEREST AT MARKET RATES PREVAILING AT THAT TIME AND SUCH RATES MAY BE HIGHER THAN THE INTEREST RATE PAID ON THIS LOAN. YOU MAY ALSO HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW MORTGAGE LOAN.

**LOAN REFINANCING**

Borrower acknowledges that the entire principal balance of the Loan will not be fully repaid by the regular monthly payments due under the Note and that at maturity, a final payment, significantly larger than the regular monthly payments, must be made.

The Lender may consider an application to refinance the unpaid principal of the Loan at anytime prior to maturity, but such an application will be treated like any other new loan application.

The Borrower may have the option to refinance the Loan at maturity under terms then offered by the Lender if the Lender is still originating mortgage loans and if the following provisions are fully met and satisfied:

- (i) Borrower must make written application to Lender to refinance the Loan no later than ninety (90) days prior to maturity. The application must be on the form then approved for use by the Lender and completed in all respects. The Borrower must execute such other documents as Lender shall require to process and underwrite the loan application including, but not by way of limitation, requests for release of credit and employment information and deposit verification.
- (ii) Borrower shall pay Lender's loan application fee then in effect for the loan program applied for, as well as Lender's cost for credit reports, appraisals and other costs and fees then in effect. Such fees shall be paid at time of application.
- (iii) At the time of application, Borrower must have fulfilled all promises made by Borrower under the Note and must continue to fulfill such promises through the time of closing to refinance the Loan.
- (iv) Borrower shall be entitled to refinance only the principal balance of the Loan which is outstanding at maturity. No new or additional funds will be advanced.
- (v) Borrower's credit, financial status, employment history and value of the security must all satisfy Lender's requirements from the time of application through closing of the refinance. The opinion of the Lender shall be conclusive and binding.
- (vi) Nothing herein shall be either construed or interpreted to create an obligation of Lender to provide a new loan if the Borrower does not fully satisfy the aforementioned requirements.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

[SEAL] \_\_\_\_\_

James D Mathes

[SEAL] \_\_\_\_\_

Laurie A Mathes

[SEAL] \_\_\_\_\_

[SEAL] \_\_\_\_\_

(Sign Original Only)

**EXHIBIT D**

12-2  
021

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR DUVAL COUNTY  
CIRCUIT CIVIL CASE NO. 16-2008-CA-015255  
Judge: TYGART, FREDERICK B. - Division: CV-B

WACHOVIA BANK, NATIONAL ASSOCIATION

Plaintiff,

v.

LAURIE A. MATHES; JAMES D. MATHES II a/k/a JAMES D. MATHES; , et al.,

Defendants.

SUMMARY FINAL JUDGMENT OF FORECLOSURE

THIS CAUSE having come on to be heard on November 24, 2009, upon the Motion For Summary Final Judgment of Foreclosure filed by Plaintiff, WACHOVIA BANK, NATIONAL ASSOCIATION, and the Court having reviewed the pleadings and affidavits filed herein by Plaintiff, and being otherwise fully advised in the premises:

IT IS ADJUDGED that:

1. This Court has jurisdiction over all Defendants, LAURIE A. MATHES; JAMES D. MATHES II a/k/a JAMES D. MATHES; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. as nominee for TAYLOR, BEAN & WHITAKER MORTGAGE CORP.; 84 LUMBER COMPANY, LP; SUTTON LAKES OWNERS ASSOCIATION, INC.

2. The equities of this action are in favor of Plaintiff, and Plaintiff is entitled to the foreclosure of its mortgage and is due the following sums:

Principal	\$168,838.37
Interest through July 31, 2009	14,242.19
Interest from August 1 -- November 24, 2009 (116 days x \$28.31)	3,283.96
Pre-acceleration late fees	320.64
Broker Price Opinion	75.00
Title Work	125.00
Clerk's Filing and Recording Fees	392.50
Service of Process & Investigative Fees	495.00 <i>210.00</i>
Notice of Action publication	210.00
<b>SUBTOTAL</b>	<b>\$187,982.66</b>
	<i>16,222.66</i>

The Court finds that, based upon the Affidavits presented and upon inquiry of counsel for the Plaintiff, that a total of 14.8 hours were reasonably expended in this action by Plaintiff's counsel; that an hourly rate of \$185.00 for partners, \$150.00 for associates and \$95.00 for paralegals is appropriate; that Plaintiff has agreed to pay for services rendered by its attorneys in connection with this action foreclosing a mortgage including review of title search and preparation of demand letter, in the total amount of \$2,400.00 and that said fee is reasonable and appropriate. The Court further finds that there are ~~no~~ reasons for either reduction or enhancement pursuant to Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985), and the Court, therefore, awards reasonable ATTORNEYS' FEES of \$ <sup>(500.00)</sup> 2,400.00, in addition to the above SUBTOTAL for a TOTAL SUM DUE PLAINTIFF of \$ 190,382.66 <sup>189,122.66</sup>

3. Plaintiff holds a lien for the total sums set forth in Paragraph 2 hereof superior to any claims, interests or estates of Defendants, LAURIE A. MATHES; JAMES D. MATHES II a/k/a JAMES D. MATHES; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. as nominee for TAYLOR, BEAN & WHITAKER MORTGAGE CORP.; 84 LUMBER COMPANY, LP; SUTTON LAKES OWNERS ASSOCIATION, INC., on the following-described property located and situated in Clay County, Florida:

**Lot 40, SUTTON LAKES UNIT FOUR, according to the plat thereof, as recorded in Plat Book 51, Pages 38, 38A through 38D, inclusive, of the Public Records of Duval County, Florida.**

**TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter attached to the property.**

4. If the total sum set forth in Paragraph 2 hereof, with interest thereon at the rate of eight percent (8.0%) and all costs of this action accruing subsequent to this judgment, are not paid immediately, the Clerk of this Court shall sell the property described in Paragraph 3 hereof at a public sale on the 1<sup>st</sup> day of Jan, 2010, to the highest bidder for cash, except as hereinafter set forth, at www.duval.realforeclose.com in accordance with Section 45.031 (2008), Florida Statutes.

5. IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.

6. IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN SIXTY (60) DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

7. If the Property described in Paragraph 3 has qualified for the homestead tax exemption in the most recent approved tax roll and IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT at Duval County Courthouse, Attn: Circuit Civil, 330 East Bay Street, Jacksonville, FL 32202 WITHIN TEN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT THE LEGAL AID OFFICE BELOW TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A

LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT A LEGAL AID OFFICE FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

**JACKSONVILLE AREA LEGAL AID  
126 W. ADAMS STREET  
JACKSONVILLE, FL 32202  
(904) 356-8371**

8. Plaintiff shall advance all subsequent costs of this action, and shall be reimbursed for them by the Clerk if Plaintiff is not the purchaser of the property described in Paragraph 3 at the sale. If Plaintiff is the purchaser, the Clerk shall credit Plaintiff's bid with the total sum with interest as described herein and costs accruing subsequent to this judgment or such part of it as is necessary to pay the bid in full.

9. On filing the Certificate of Title with respect to the property described in Paragraph 3 hereof, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of Plaintiff's costs; second, documentary stamps affixed to the Certificate; third, Plaintiff's attorneys' fees; fourth, the total sum due to Plaintiff, as set forth in Paragraph 2 hereof, less the items paid, plus interest at the rate prescribed by law from this date to the date of the sale to Plaintiff; and shall retain any amount remaining pending the further order of this Court. Any amounts so retained are to be distributed to the Defendants as determined by order of this Court.

10. The successful bidder and purchaser at the foreclosure sale of the real property being foreclosed herein shall pay, in addition to the amount bid, any documentary stamps and Clerk's fee, including registry fee, relating to the issuance of the Certificate of Title to be issued by the Clerk to the successful bidder and purchaser. At the time of the sale the successful high bidder shall post with the Clerk a deposit equal to 5 percent of the final bid. The deposit shall be applied to the sale price at the time of payment. If final payment is not made within the prescribed period, the Clerk shall re-advertise the sale as provided in this section, and pay all costs of the sale from the deposit. Any remaining funds shall be applied toward the judgment.

11. On filing the Certificate of Sale with respect to the property described in Paragraph

3 hereof, Defendants, LAURIE A. MATHES; JAMES D. MATHES II a/k/a JAMES D. MATHES; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. as nominee for TAYLOR, BEAN & WHITAKER MORTGAGE CORP.; 84 LUMBER COMPANY, LP; SUTTON LAKES OWNERS ASSOCIATION, INC., and all persons claiming by, through, under, or against them since the filing of the Notice of Lis Pendens in this action are foreclosed of all estate, interest or claim in the property described in Paragraph 3. On filing the Certificate of Title, the purchaser or purchasers at the sale shall be let into possession of the property, and Clerk of the Circuit Court is hereby ordered to issue a Writ of Possession upon demand by the purchaser or purchasers.

12. The Court hereby authorizes Plaintiff to assign its bid rights under this Judgment to a third party by the filing of a written assignment of bid with the Clerk of the Court prior to the issuance of the certificate of title without further order of this Court.

13. Plaintiff is prohibited from obtaining an in personam judgment against Defendants, LAURIE A. MATHES and JAMES D. MATHES II a/k/a JAMES D. MATHES, pursuant to the Order granting Wachovia's motion for relief from Stay dated April 1, 2009, and Discharge of Debtors dated May 11, 2009, both entered in the Chapter 7 Bankruptcy filed by said Defendants in Case No. 3:09-bk-00632-JAF, U.S. Bankruptcy Court, Middle District of Florida (Jacksonville Division).

14. Jurisdiction over this action is retained to enter such further orders as may be necessary and proper, including the scheduling of a public sale of the Property.

DONE AND ORDERED in Chambers, in Jacksonville, Duval County, Florida, this the 24<sup>th</sup> day of NOVEMBER, 2009.

**ORDER ENTERED**

**NOV 24 2009**

**/s/ FREDERICK B. TYGART**

\_\_\_\_\_  
FREDERICK B. TYGART  
CIRCUIT JUDGE

Copies to:  
See attached Service List

SERVICE LIST

LAURIE A. MATHES  
9515 Brookmere Lane  
Charlotte, NC 28214

JAMES D. MATHES II a/k/a  
JAMES D. MATHES  
8083 Donnegan Lane  
Jacksonville, FL 32244

MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC. as nominee  
for TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.  
c/o Electronic Data Systems Corporation  
3300 SW 34th Avenue, Suite 101  
Ocala, FL 34474

84 LUMBER COMPANY, LP  
c/o C T Corporation System  
1200 South Pine Island Road  
Plantation, FL 33324

Robert L. Tankel, Esquire  
ROBERT L. TANKEL, P.A.  
1022 Main Street, Suite D  
Dunedin, Florida 34698  
Attorney for Sutton Lakes Owners Association,  
Inc.

Gerald D. Davis, Esquire  
Lisa M. Easler, Esquire  
Trenam, Kemker, Scharf, Barkin, Frye, O'Neill &  
Mullis, P.A.  
Post Office Box 3542  
St. Petersburg, FL 33731-3542

**EXHIBIT E**

**MATHES JAMES D II & LAURIE A**  
 11374 ASTON HALL DR S  
 JACKSONVILLE, FL 32246-0695

**Primary Site Address**  
 11374 S ASTON HALL DR  
 Jacksonville FL 32246

**Official Record Book/Page**  
 09022-00766

**Title #**  
 8421

**11374 S ASTON HALL DR**

**Property Detail**

RE #	165262-3845
Tax District	GS
Property Use	0100 SINGLE FAMILY
# of Buildings	1
Legal Desc.	51-38 20-2S-28E .260 SUTTON LAKES UNIT 4
Subdivision	05132 SUTTON LAKES UNIT 4

**Value Summary**

	2009 Certified	2010 In Progress
Value Method	CAMA	CAMA
Building Value	\$145,790.00	\$128,282.00
Extra Feature Value	\$460.00	\$350.00
Land Value (Market)	\$25,000.00	\$25,000.00
Land Value (Agric.)	\$0.00	\$0.00
Just (Market) Value	\$171,250.00	\$153,632.00
Assessed Value (A10)	\$171,250.00	\$153,632.00
Exemptions	\$0.00	See below
Taxable Value	\$171,250.00	See below

The sale of this property may result in higher property taxes. For more information go to [Save Our Homes](#) and our [Property Tax Estimator](#). Property values, exemptions and other information listed as 'In Progress' are subject to change. These numbers are part of the 2010 working tax roll and will not be certified until October. [Learn how the Property Appraiser's Office values property.](#)

**Taxable Values and Exemptions – In Progress**

If there are no exemptions applicable to a taxing authority, the Taxable Value is the same as the Assessed Value listed above in the Value Summary box.

County/Municipal Taxable Value  
 No applicable exemptions

SJRWMD/FIND Taxable Value  
 No applicable exemptions

School Taxable Value  
 No applicable exemptions

**Sales History**

Book/Page	Sale Date	Sale Price	Deed Instrument Type Code	Qualified/Unqualified	Vacant/Improved
09022-00766	7/10/1998	\$111,900.00	SW - Special Warranty	Qualified	Improved
08773-02036	10/15/1997	\$116,800.00	WD - Warranty Deed	Unqualified	Vacant
00051-00038	6/9/1997	\$100.00	PB - Plat Book	Unknown	Vacant

**Extra Features**

LN	Feature Code	Feature Description	Bldg.	Length	Width	Total Units	Value
1	PVCR1	Paving Concrete	1	0	0	192.00	\$350.00

**Land & Legal**

**Land**

LN	Code	Use Description	Zoning	Front	Depth	Category	Land Units	Land Value
1	0190	RES POND LD 3-7 UNITS PER AC	PUD	80.00	107.00	Common	1.00	\$25,000.00

**Legal**

LN	Legal Description
1	51-38 20-2S-28E .260
2	SUTTON LAKES UNIT 4
3	LOT 40

**Buildings**

**Building 1**

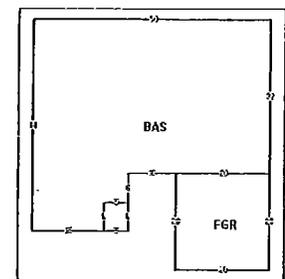
Building 1 Site Address  
 11374 S ASTON HALL DR  
 Jacksonville FL 32246

Building Type	0101 - SFR 1 STORY SOH
Year Built	1998

Type	Gross Area	Heated Area
Base Area	1810	1810
Finished Open Porch	30	0
Finished Garage	400	0
Total	2240	1810

Element	Code	Detail
Exterior Wall	17	17 C.B. Stucco
Roofing Structure	3	3 Gable or Hip
Roofing Cover	3	3 Asph/Comp Shingle
Interior Wall	5	5 Drywall
Int Flooring	14	14 Carpet
Int Flooring	8	8 Sheet Vinyl
Heating Fuel	3	3 Gas
Heating Type	4	4 Forced-Ducted
Air Conditioning	3	3 Central

Element	Code	
Stories	1.000	
Bedrooms	3.000	
Baths	2.000	
Rooms / Units	1.000	



**2009 Notice of Proposed Property Taxes (Truth in Millage Notice)**

Taxing District	Assessed Value	Exemptions	Taxable Value	Last Year	Proposed	Rolled-back
General Govt Ex B&B	\$171,250.00	\$0.00	\$171,250.00	\$669.96	\$1,587.95	\$1,587.95
Public Schools: By State Law	\$171,250.00	\$0.00	\$171,250.00	\$531.48	\$870.64	\$942.54
By Local Board	\$171,250.00	\$0.00	\$171,250.00	\$254.62	\$427.78	\$451.55
FL Inland Navigation Dist	\$171,250.00	\$0.00	\$171,250.00	\$2.72	\$5.91	\$6.42
Water Mgmt Dist. SJRWMD	\$171,250.00	\$0.00	\$171,250.00	\$32.83	\$71.21	\$80.45
School Board Voted	\$171,250.00	\$0.00	\$171,250.00	\$0.00	\$0.00	\$0.00
General Gov Voted	\$171,250.00	\$0.00	\$171,250.00	\$0.00	\$0.00	\$0.00
			Totals	\$1,491.61	\$2,963.49	\$3,068.91
	<b>Just Value</b>	<b>Assessed Value</b>	<b>Exemptions</b>	<b>Taxable Value</b>		
Last Year	\$196,746.00	\$128,967.00	\$50,000.00	\$78,967.00		
Current Year	\$171,250.00	\$171,250.00	\$0.00	\$171,250.00		

**Property Record Card (PRC)**

The Property Appraiser Office provides available historical record cards (PRC). The Property Appraiser's Office no longer uses PRCs; therefore, there will be no PRCs available from 2006 forward. You must set your browser's Page Set Up for printing to Landscape to print these cards.

[2005](#) | [2004](#) | [2003](#) | [2002](#) | [2001](#) | [2000](#) | [1999](#) | [1998](#)

**More Information**

[Parcel Tax Record](#) | [GIS Map](#) | [Map this property on Google Maps](#)