B 10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT Middle District of Florida, Jacksonville Div.

PROOF OF CLAIM

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

Case Number: 3:09-BK-07047-JAF

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Brad Stuckey and Kelly Stuckey

☐ Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent:

Michael Boltz
Boltz Law, 1400 Woodloch Forest Dr., ste.575, The Woodlands, TX 77380

CLAIM FILED
JACKSONVILLE, FLORIDA

Telephone number: (832) 381-3070

Court Claim Number: _____ (*If known*)

Filed on: _____

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

JAN 29 2010

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

Telephone number:

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

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

1. Amount of Claim as of Date Case Filed: $ 128,687.41

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: Fraud in securing loan
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 2575

3a. Debtor may have scheduled account as: unknown
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☑ Real Estate ☐ Motor Vehicle ☐ Other
Describe: Home loan purchase

Value of Property: $ 128,687.41 **Annual Interest Rate** 10.74

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $ _____ **Basis for perfection:** recorded/Mtge

Amount of Secured Claim: $ 128,687.41 **Amount Unsecured:** $ _____

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

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See instruction 7 and definition of "redacted" on reverse side.)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

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

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

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

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

☑ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$ 2,425.00

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

Date: 01/26/2010

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

FOR COURT USE ONLY

T, B & W Mortgage Corp.

00823

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

No. **09-05-04549**

U.S. BANK, N.A. Plaintiff, v. KELLY STUCKEY and BRAD STUCKEY Defendants, Counter plaintiffs and Third Party Plaintiffs v. U.S. BANK, N.A. Counter Defendant, TAYLOR BEAN AND WHITAKER MORTGAGE CORP., Third Party Defendant, and D. J. BIRDSELL d/b/a D. J. BIRDSELL, INC. and FACTORY DIRECT HOMES, REDMAN HOMES, INC. d/b/a CHAMPION HOMES OF TEXAS and ALAMO TITLE COMPANY	§	IN THE DISTRICT COURT MONTGOMERY COUNTY, TEXAS 9th JUDICIAL DISTRICT

DEFENDANTS' ORIGINAL ANSWER, COUNTERCLAIM, THIRD PARTY CLAIMS, MOTION TO DESIGNATE RESPONSIBLE THIRD PARTIES AND REQUEST FOR DISCLOSURE

COMES NOW, Defendants, Kelly Stuckey and Brad Stuckey and in response to U.S. Bank, N.A.'s claims files this Original Answer, Counterclaim, Third Party Claims And Request For Disclosure against US Bank, N.A., Taylor Bean and Whitaker Mortgage Corp., D. J. Birdsell d/b/a D. J. Birdsell, Inc. and Factory Direct Homes, Redman Homes, Inc. d/b/a Champion Homes of Texas and Alamo Title Co. a/k/a Alamo Title Company Of Harris County, Inc. and would show the Court the following:

I. DISCOVERY

1. Discovery in this matter is intended to be conducted under Level 2 of the Texas Rules of Civil Procedure.

II. PARTIES

2. Defendants, Counter Plaintiff and Third Party Plaintiff, Kelly Stuckey and Brad Stuckey (collectively referred to as "**Stuckey**") are residents of Montgomery County Texas.

3. Counter Defendant U.S. Bank, N.A. ("**US Bank**") made an appearance and therefore may be served pursuant to TRCP Rule 21 and 21a to its attorney of record.

4. Third Party Defendant Taylor Bean and Whitaker Mortgage Corp. ("**TBW**") is a foreign corporation doing business in Texas and may be served by serving its Registered Agent C T Corporation System, 350 N St Paul Street, Dallas, TX 75201.

5. Third Party Defendant D. J. Birdsell d/b/a D. J. Birdsell, Inc. and Factory Direct Homes ("**Birdsell**") is an individual resident of Montgomery County, Texas and may be served at 11455 Outpost Cove Dr., Willis, TX 77318-5485 or any other location where Defendant can be found.

6. Third Party Defendant Redman Homes, Inc. d/b/a Champion Homes of Texas ("**Redman**") is a foreign corporation doing business in Texas and may be served by serving its Registered C T Corporation System, 350 N St Paul Street, Dallas, TX 75201.

7. Third Party Defendant Alamo Title Company a/k/a Alamo Title Company Of Harris County, Inc. ("**Alamo**") is a domestic corporation and may be served by serving its Registered Agent C T Corporation System, 350 N St Paul Street, Dallas, TX 75201.

III. VENUE

8. Venue is proper in Montgomery County, Texas because all or a part of Counter Plaintiffs causes of action arose in Montgomery County, Texas, Counter Plaintiff's claims include Deceptive Trade Practices Act claims which occurred in Montgomery County where Counter Plaintiff resides and because it is the county in which the U.S. Bank Manufactured Home Note was executed which is the basis of this suit.

IV. FACTS COMMON TO ALL CAUSES OF ACTION

9. Birdsell advertised and operated a sells outlet under the trade name Factory Direct Homes to sell the manufactured homes manufactured by Redman using models, brochures and forms. Birdsell contracted the sale of Redman homes including the 2008 Redman Manufactured Home; Serial No. 124000H12300A/B (the "Stuckey Home"). Once Birdsell received the down payment and completed forms, Birdsell expedited delivery, received the Stuckey Home and delivered it, oversaw the installation of the Redman manufactured home upon Stuckey's real property and received the acceptance of Redman's manufactured home from Stuckey, and otherwise represented Redman during all phases of the transaction. Birdsell solicited the loan transactions for US Bank and TBW and was an agent of each with apparent, express and incidental authority to commit the acts that caused damages to the Stuckey. On information and belief, Plaintiff alleges that Birdsell worked with Gene Tudor, an employee of US Bank to solicit loans through US Bank that were improper and to operate outside of the promised and acceptable lending standards. Redman, US Bank and TBW accepted the benefits of Birdsell's conduct and thereby ratified Birdsell's conduct making them liable for the consequences of even unauthorized conduct under the doctrine of *respondeat superior*.

10. Birdsell and Ted Talbot operating under name of Southwest Lending represented to the Stuckey in their own behalf and in behalf of US Bank and TBW that Birdsell would assist and guide Stuckey to purchase the Stuckey Home from Redman with a temporary chattel loan and mortgage with US Bank and that the temporary loan and security interest of US Bank would be "taken out", that is, paid off and released by a 30 year loan from IndyMac Bank, F.S.B. Loan No. 128021994 with 7.177% interest. IndyMac never made the loan but was replaced by Birdsell and Ted Talbot with a loan from TBW. Birdsell showed up at the closing and Alamo gave him the loan funds from the TBW loan that were to pay off the US Bank loan and release any lien against the manufactured home and real property of Stuckey. US Bank said it did not receive the funds. US Bank and TBW have each asserted a debt and a lien against the Stuckey Home based on the described transaction. Based upon belief, information and accepted practices, it is believed that TBW instructed Alamo at closing to clear all liens that might affect its alleged secured interests, so that only the TBW loan and lien would remain. At closing, Alamo delivered to Birdsell $172,664.03 from the TBW loan proceeds thereby paying all claims of US Bank. However, US Bank is now suing Stuckey in this case on its alleged debt and a lien against the Stuckey Home. Likewise, TBW filed a lien against the Stuckey Home and real property to which it is affixed and is asserting a lien for the same property.

11. On information and belief, Stuckey alleges that Birdsell conducted similar fraud against other purchasers before the Stuckey transaction and that Birdsell was an unlicensed to sell manufactured homes and was accused of other acts of crime and misconduct and that each counter defendant and third party defendant knew or should have known this information before exposing Stuckey and themselves to the foreseeable malfeasance and injuries caused by Birdsell.

12. It is further believed that in furtherance of the conspiracy and the tort claims, that first US Bank loan payment was on October 15, 2007, but that Birdsell paid US Bank the monthly installments against the alleged US Bank loan until after the closing and then ceased making payments, after which US Bank filed its lien claim and got a Lien Certificate on April 16, 2008, which is approximately two months after the TBW closing and lien claims.

13. US Bank provided loan applications to Birdsell who assisted in completing them. US Bank authorized and designated Birdsell to act as its agent to accept notice of termination under the 3 Day Termination provision in the claimed loan. Birdsell was US Bank's designated agent responsible for dealing with its borrowers and recording the lien documents. By failing to record the US Bank lien, Birdsell and US Bank hid US Bank's lien claim and set up the payment to Birdsell of the money received at closing. On information and belief, Stuckey believes that Birdsell was working with Gene Tudor, US Bank's employee or agent in Wisconsin in the continuing plan and scheme to defraud purchasers.

14. As a consequence of the foregoing, Stuckey suffered mental anguish as a result of the particularly disturbing events which includes having their loan money stolen and having two sets of liens against their home and two mortgage claimants demanding payment of their loans. Stuckey was involved in a special relationship with each other party herein based on the contractual relationships of the parties. Further Stuckey has been harassed, badgered and threatened with debt claims and foreclosure which has caused prolonged, severe and extreme mental anguish, fear and emotional distress in the past and future, loss of personal credit reputation, indebtedness if proven of $128,687.41, and has caused Stuckey to make personal and family sacrifices.

V. GENERAL DENIAL

15. Defendant generally denies the allegations in plaintiff's original petition.

VI. VERIFIED DENIALS

16. Defendant denies plaintiff's allegation that all conditions precedent have been performed or have occurred. Plaintiff failed to cause the release of its claims by funding through a "take out" or delivery of the TBW funds to US Bank. Plaintiff failed to perform its promises and to conduct within the required standards of care required of its special relationship and its promises.

17. Defendant has reason to believe that the power of attorney that caused the lien is proper or not genuine or that the lien is not proper or not genuine.

18. The loan and lien is without consideration or the required consideration failed in whole or in part as set out in paragraph 15.

VII. AFFIRMATIVE DEFNSES

19. Defendant is not liable to plaintiff because:

A. plaintiff assumed the risk.

B. plaintiff's own acts or omissions proximately caused or contributed to plaintiff's injuries.

C. of estoppel.

D. of failure of consideration.

E. of fraud.

F. of absence of license by Birdsell.

G. of payment.

H. of consent.

I. of ratification.

J. the injury was the result of the criminal act of Birdsell.

VIII. MOTION TO DESIGNATE RESPONSIBLE THIRD PARTIES

20. Defendant files this motion for leave to designate a responsible third party. Plaintiff is US Bank; defendant is Kelly Stuckey and Brad Stuckey; the responsible third party is Birdsell and Alamo.

21. Plaintiff sued defendant for non-payment of a promissory note and for replevin.

22. This case is not set for trial.

23. As set out above, Birdsell's misrepresentations and not delivering the closing funds to TBW caused the non-delivery of the TBW funds to US Bank. Birdsell's conduct, acts and omissions constitute numerous torts, negligence and his applicable legal standard of care.

24. As set out above, Alamo had actual knowledge that Birdsell defrauded similar purchasers in the past by using similar devices and failed to disclose this information to Stuckey when such information was material and would have prevented the claims set out by plaintiff. Alamo committed to Stuckey that Stuckey's Manufactured Home and real property would only have the TBW lien against it or failed to disclose the limitation of its services and insurance coverage. If it turns out that the U. S. Bank claimed lien is valid or superior to the TBW claimed lien, then Alamo's fault is a material or the sole cause of the Plaintiff's alleged damages. If Alamo failed to disclose to Stuckey any limitation in protecting Stuckey's Manufactured Home and real property from multiple liens it breached its commitment and duty to Stuckey. In both events, Alamo violated an applicable legal standard of care.

25. Defendant attaches affidavit to this motion as **Exhibit "A"** to establish facts not apparent from the record and incorporates them by reference.

26. Birdsell and/or Alamo are responsible third parties within the meaning of Texas Civil Practice & Remedies Code section 33.011(6) because each caused or contributed to the harm for which recovery of damages is sought by U. S. Bank.

27. For these reasons, defendant asks the court to grant their motion for leave to designate the identified responsible third parties.

IX. DEFENDANT'S ATTORNEY'S FEES

28. Defendant is entitled to recover all costs and reasonable and necessary attorney fees through trial and in the event of a successful appeal to the Texas Court of Appeals, or an Application for Writ of Error to the Texas Supreme Court and as the Court deems equitable and just, as provided by: (a) Section 17.50(d) of the Texas Business and Commerce Code; (b) Chapter 38 of the Texas Civil Practice and Remedies Code; (c) the terms of the alleged U. S. Bank Note and, (d) common law.

X. COUNTERCLAIMS and THIRD PARTY CLAIMS

For the purposes of this Counterclaim and Third Party Claims Kelly Stuckey and Brad Stuckey will be designated as "**Plaintiff**" and Counter Defendant US Bank, Third Party Defendant TBW, Redman, Birdsell and Alamo will be referred to as "**Defendant**" or "Defendants") collectively or as they may be individually identified to above and specifically incorporate paragraphs 8-13 and 22-24 in support hereof.

DECEPTIVE TRADE PRACTICES
(Against US Bank, Redman, Birdsell and Alamo only)

28. Plaintiff would show that Defendants engaged in certain false, misleading and deceptive acts, practices and/or omissions actionable under the Texas Deceptive Trade Practices

- Consumer Protection Act (Texas Business and Commerce Code, Chapter 17.41, et seq.), as alleged below.

29. Unconscionable Action or Course of Action. Defendants engaged in an "unconscionable action or course of action" to the detriment of Plaintiff as that term is defined by Section 17.45(5) of the Texas Business and Commerce Code, by taking advantage of the lack of knowledge, ability, experience, or capacity of Plaintiff to a grossly unfair degree.

30. Violations of Section 17.46(b). Defendants violated Section 17.46(b) of the Texas Business and Commerce Code, in that Defendants:

(a) caused confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(b) caused confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;

(c) represented that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;

(d) represented that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

(e) represented that a guarantee or warranty confers or involves rights or remedies which it does not have or involve; and

(f) failed to disclose information concerning goods or services which was known at the time of the transaction with the intention to induce the consumer into a transaction into which the consumer would not have entered had the information been

disclosed.

31. Breach of Warranties. Plaintiff would show that the following warranties were breached and therefore actionable under Section 17.50(a)(2) of the Texas Business and Commerce Code:

(a) express warranties;

(b) the implied warranty of merchantability, and

(c) the implied warranty of fitness for specific purpose.

32. Producing Cause. Plaintiff would show that the acts, practices and/or omissions complained of were the producing cause of Plaintiff's damages more fully described below.

33. Reliance. Plaintiff would further show the acts, practices and/or omissions complained of under Section 17.46(b) of the Texas Business and Commerce Code were relied upon by Plaintiff to Plaintiff's detriment.

34. Written Notice. Plaintiff gave Defendants 60 days' written notice of these claims.

COMMON LAW FRAUD

35. Plaintiff further shows that Defendants made material false representations to Plaintiff with the knowledge of their falsity or with reckless disregard of the truth with the intention that such representations be acted upon by Plaintiff, and that Plaintiff relied on these representations to his detriment.

36. Plaintiff would further show that Defendants concealed or failed to disclose material facts within the knowledge of Defendants, that Defendants knew that Plaintiff did not have knowledge of the same and did not have equal opportunity to discover the truth, and that

Defendants intended to induce Plaintiff to enter into the transaction made the basis of this suit by such concealment or failure to disclose.

37. As a proximate result of such fraud, Plaintiff sustained the damages described more fully below.

NEGLIGENCE

38. In the course of the transactions between Plaintiff and Defendants, Defendants owed Plaintiff a duty of at least ordinary care.

39. Plaintiff would show that Defendants failed to exercise the duty of ordinary care and that the acts and/or omissions of Defendants were the proximate cause of the injuries and damages to Plaintiff described more fully below, for which Plaintiff seeks recovery.

NEGLIGENT MISREPRESENTATION

40. Defendants supplied false information in the course of their business, profession or employment, or in the course of a transaction in which Defendants have a pecuniary interest, that such information was supplied by Defendants for the guidance of Plaintiff in the transactions described above which was justifiably relied upon by Plaintiff. Defendants failed to exercise reasonable care or competence in obtaining or communicating such information and that such failure was the proximate cause of the injuries, pecuniary losses and damages suffered by Plaintiff and described more fully below.

41. Plaintiff therefore asserts a cause of action for negligent misrepresentation against Defendants, as provided by Federal Land Bank Association of Tyler v. Sloane, 825 S.W.2d 439 (Tex. 1991).

BREACH OF CONTRACT

42. Plaintiff would further show that the actions and/or omissions of Defendants described herein constitute breach of contract, which proximately caused the direct and consequential damages of Plaintiff described below, and for which Plaintiff hereby sues. All conditions precedent for Plaintiff to recover on Plaintiff's claims have been performed or occurred.

AGENCY
(Applicable to only US Bank and Redman)

43. At and during the time of the acts and/or omissions complained of herein, all acts and/or omissions committed by Birdsell were the acts and omissions of US Bank and Redman. The complained of acts and omissions of Birdsell are attributable to US Bank and Redman because those acts and omissions were committed by Birdsell as the agent, representative or employee of US Bank and Redman and because they occurred within the scope of the actual or apparent authority of the agent on behalf of said Defendant or were adopted, ratified or said principal accepted the benefits of the acts and omissions. US Bank and Redman are therefore liable to Plaintiff for the acts and/or omissions of Birdsell by virtue of such agency relationship, vicarious liability and the doctrine of respondeat superior or as may otherwise be shown at time of trial.

NEGLIGENT ENTRUSTMENT
(Applicable to only US Bank and Redman)

44. As set out above, Birdsell was not licensed to sell manufactured homes and had a prior history fraud and it is believed that Birdsell has been and is being criminally prosecuted for failure to have a license and for fraudulent sells activities in selling manufactured homes and this information was known or should have been known by US Bank and Redman.

45. US Bank entrusted Birdsell with its forms, solicitation of manufactured home loans for US Bank, certain steps in loan processing, recording its liens, advising potential borrowers regarding loans from US Bank and other loan related activities to finance manufactured homes. In fact US Bank's case is based on its specialized lending for manufactured homes and is suing on its document entitled "**U S Bank Manufactured Home Note**".

46. Redman is in the business of manufacturing and selling manufactured homes and sold the subject manufactured home through Birdsell.

47. The sale of manufactured homes is controlled by the Texas Manufactured Housing Act, Texas Occupation Code, §§ 1201.001 et seq, ("**TMHA**") which requires that all sales persons engaged in the sell oh a manufactured home be licensed, TMHA § 1201.101.(b).

48. ***Negligence Entrustment*** Birdsell was negligent at the time of plaintiff's injury.

49. ***Negligence Per Se*** In addition to other counts, the negligence described above violates TMHA § 1201.101.(b).

50. ***Negligent Supervision*** In alternative or in addition, said Defendants negligently supervised, trained or retained Birdsell.

51. Birdsell's negligence proximately caused injury to plaintiff, which resulted in the damages set out below. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

52. Plaintiff's injury resulted from defendant's gross negligence, which entitles plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

STATUTORY FRAUD
(Applicable to only US Bank and Birdsell)

53. The acts and omissions of said Defendants constitute Statutory Fraud pursuant to the Texas Business & Commerce Code section 27.01 et seq. as follows:

A. Plaintiff and Defendant were parties to a transaction involving real estate or securities;
B. During the transaction, Defendant made one or more false representations of material fact to Plaintiff;
C. Defendant made the false representations for the purpose of inducing Plaintiff to enter into a contract;
D. Plaintiff relied on Defendant's false representations by entering into the contract;
E. Defendant's false representations directly and proximately caused pecuniary injury and damages to Plaintiff;
F. Defendant's misrepresentations were made with actual awareness of the falsity of Defendant's representation or promise, which entitles Plaintiff to exemplary damages under section 27.01(c), and
G. Plaintiff is entitled to recover reasonable and necessary attorney fees, expert witness fees, and costs for copies of depositions under Texas Business & Commerce Code section 27.01(e), and
H. Plaintiff additionally seeks damages described more fully below.

UNLAWFUL LIENS
(Applicable to only US Bank and TBW)

54. As a result of US Bank and TBW's conflicting liens and assertions that their lien was public record, one of them filed a false lien. Additionally, US Bank had actual knowledge and imputed knowledge through Birdsell of the false basis of its lien and nonetheless encumbered Plaintiff's property.

55. Filing a false lien violates Texas Civil Practices & Remedy Code (TRCP) §12.002 and Texas Government Code §51.901(a)(2) and (c).

56. Plaintiff seeks all relief afforded by these statutes and as pled below, which are statutorily cumulative, not in the alternative to other relief requested

DECLARATORY JUDGMENT

57. There exists a genuine, matured and material controversy between the parties herein that would be terminated by the granting of declaratory judgment.

58. Plaintiff is entitled to relief based on the foregoing facts because plaintiff is an interested person under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by statute or contract, which may determine a question of construction, or validity arising under the instrument, statute, ordinance, contract, or franchise by declaration of rights, status, or other legal relations thereunder. Plaintiff therefore requests that declaratory judgment be entered.

59. The controversies that should be resolved by the Court's declaration that:

A. US Bank's lien is invalid or void and must be dissolved;

B. US Bank's lien is inferior to TBW's lien;

C. The court should determine the rights between Plaintiff, US Bank and TBW based upon the multiple alleged contracts and claims, and

D. US Bank's note should be voided as to Plaintiff and US Bank should only look to Birdsell for payment.

60. Plaintiff is entitled to recover reasonable and necessary attorney fees that are equitable and just under Texas Civil Practice & Remedies Code ("TCPRC") Section 37.009 because this is a suit for declaratory relief.

SUIT TO QUIET TITLE

61. US Bank and TBW have conflicting lien claims against Plaintiff's real property and the fixtures thereon.

62. Plaintiff requests the Court to determine the lien rights among the contending parties and to adjudge the priorities among the conflicting lien claims and to order dissolution of all unlawful claims.

CIVIL CONSPIRACY

63. Defendant Birdsell, in combination with US Bank, agreed to:

A. acquire loans, commissions and loan funds that were improper and to receive loan funds that should have been delivered to the borrower or distributed to "take out" lenders and/or

B. by unlawful means acquire loans, commissions and loan funds.

64. Defendant knew that the agreed acts would result in harm to plaintiff.

65. To accomplish the object of their agreement, Defendant made false statements to Plaintiff and delayed in filing lien claims and filed different lien claims than were represented so that Alamo would not discover the indebtedness that should have been discharged.

66. These agreements proximately caused injury to Plaintiff for which Plaintiff seeks recovery as set out below.

XI. DAMAGES

ECONOMIC AND ACTUAL DAMAGES

67. Plaintiff sustained the following economic and actual damages as a result of the actions and/or omissions of Defendants described hereinabove:

(a) Out-of-pocket expenses, including but not limited to all loan application fees, survey charges, inspections fees, closing costs and other expenses associated with Defendant's unlawful activities;

(b) undue payments, and

(c) statutory damages.

OTHER DAMAGES

68. Plaintiff would further show that acts and/or omissions of Defendants complained of herein were a producing cause and a proximate cause of the following damages sustained by Plaintiff:

(a) lost income.

(b) lost opportunities to invest the money owed and the loss of profits from opportunities that could not be exercised due to a lack of money to act..

DAMAGES FOR MENTAL ANGUISH

69. Plaintiff would further show that the false, misleading and deceptive acts, practices and/or omissions described hereinabove were committed "knowingly," as provided by Section 17.45(9) of the Texas Business and Commerce Code, in that Defendants had actual awareness of the falsity, deception, or unfairness of such acts, practices, and/or omissions.

70. As a result of such acts, practices and/or omissions, Plaintiff sustained a high degree of mental pain and distress of such nature, duration and severity that would permit the recovery of damages for mental anguish pursuant to Section 17.50(b) of the Texas Business and Commerce Code, and for which Plaintiff hereby sues in an amount in excess of the minimum jurisdictional limits of this Court.

MULTIPLE DAMAGES

71. As alleged hereinabove, Plaintiff would show that the false, misleading and deceptive acts, practices and/or omissions complained of herein were committed "knowingly" in that Defendants had actual awareness of the falsity, deception, or unfairness of such acts, practices, and/or omissions therefore Plaintiff is entitled to treble Plaintiff's actual damages.

72. Plaintiff further avers that such acts, practices, and/or omissions were committed "intentionally" in that Defendants specifically intended that Plaintiff act in detrimental reliance on the falsity or deception or in detrimental ignorance of the unfairness.

73. Therefore, Plaintiff is entitled to recover treble both mental anguish damages and actual damages as provided by 17.50(b)(1) of the Texas Business and Commerce Code.

EXEMPLARY DAMAGES

74. Plaintiff would further show that the acts and omissions of Defendants complained of herein were committed knowingly, willfully, intentionally, with actual awareness, and with the specific and predetermined intention of enriching said Defendants at the expense of Plaintiff. In order to punish said Defendants for such unconscionable overreaching and to deter such actions and/or omissions in the future, Plaintiff also seeks recovery from Defendants for exemplary damages as provided by Section 41.003(1) of the Texas Civil Practice and Remedies Code.

XII. ATTORNEY'S FEES

75. Request is made for all costs and reasonable and necessary attorney's fees incurred by or on behalf of Plaintiff herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just and as provided by: (a) Section 17.50(d) of the Texas Business and Commerce Code; (b) Chapter 38 of the Texas Civil Practice and Remedies Code; (c) §12.006, The Texas Government Code; (d) §51.902 of the TB&CC, (e) TCPRC" Section 37.009 (f) §27.01(e) of the Texas Property Code and (g) common law.

XIII. REQUEST FOR DISCLOSURE

76. Under Texas Rule of Civil Procedure 194, Kelly Stuckey and Brad Stuckey as Defendants and Counter Plaintiff, requests Plaintiff disclose, within 30 days of the service of this request, the information or material described in Rule 194.2 and as Third Party Plaintiffs that each Third Party Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

XIV PRAYER

WHEREFORE, PREMISES CONSIDERED, For these reasons, Kelly Stuckey and Brad Stuckey as Defendants ask the court to dismiss Plaintiff's suit and all causes of with prejudice or to render final judgment that Plaintiff take nothing, assess costs against Plaintiff, and award all other relief to which Defendant is entitled. Kelly Stuckey and Brad Stuckey as Counter and Third Party Plaintiff respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Counter and Third Party Plaintiff against Defendants, jointly and severally, for all damages requested herein in an amount in excess of the minimum jurisdictional limits of the Court, together with prejudgment and post judgment interest at the maximum rate allowed by law for the maximum period allowed, the requested attorney's fees, costs of court, and such other and further relief to which the Plaintiff may be entitled at law or in equity, whether pled or unclad.

Respectfully submitted,

BOLTZ LAW

By: _____

Michael Boltz SBN 02580300
1400 Woodloch Forest Dr., Suite 575
The Woodlands, Texas 77380
Tel 832-381-3070 Fax 832-218-2400
Attorneys for Kelly Stuckey and Brad Stuckey

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all counsel of record pursuant to Rule 21a, T.R.C.P. on June 15, 2009.

_____
Michael Boltz

VERIFICATION

STATE OF TEXAS §
MONTGOMERY COUNTY §

Before me, the undersigned notary, on this day personally appeared Brad Stuckey, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

"My name is Brad Stuckey. I am capable of making this verification. I have read the Original Answer, Counterclaim, and Third Party Claim And Request For Disclosure. The facts stated in it are within my personal knowledge and are true and correct."

Brad Stuckey

Sworn to and subscribed before me by Brad Stuckey on June 15, 2009.

Notary Public in and for the State of Texas

My commission expires: 12/10/09

RYAN A. BOSTICK
Notary Public, State of Texas
My Commission Expires
December 10, 2011

STATE OF TEXAS §
MONTGOMERY COUNTY §

AFFIDAVIT OF BRAD STUCKEY

Before me, the undersigned notary, on this day personally appeared Brad Stuckey, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

1. "My name is Brad Stuckey. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. "D. J. Birdsell ("Birdsell") represented to me and my wife that he was working with US Bank and that we needed to purchase Redman manufactured home by taking out a temporary chattel loan and mortgage with US Bank and that the temporary loan and security interest of US Bank would be "taken out", that is, paid off and released by a 30 year loan at a loan closing at Alamo Title Co. ("Alamo"). He arranged both the US Bank loan and the Taylor Bean and Whitaker ("TBW"). Birdsell showed up at the closing and Alamo gave him the loan funds from the TBW loan that was to pay off the US Bank loan and release any lien against the manufactured home and real property we purchased. US Bank said it did not receive the funds from Birdsell. If Birdsell would have paid the US Bank it would have no claim to base this lawsuit. Now both US Bank and TBW have each asserted a debt and a lien against our property based on the described transaction."

3. "Only after the closing, did Alamo informed me that it knew that Birdsell had defrauded similar purchasers in the past by using similar devices. If I would have known this I would have not completed the TBW loan or I would have gotten legal counsel, but I would have not closed as I did. Alamo represented to me that Alamo through its title search and the policy it got for me that our manufactured home and real property would have only the TBW lien against them. I was not told until after closing that Alamo was claiming that it only intended to do a title search on the land and not on the manufactured home which was many times more valuable than the land. If I would have known this I would have not completed the loan or would have gotten legal counsel, but I would have not closed as I did."

Brad Stuckey

Sworn to and subscribed before me by Brad Stuckey on June 15, 2009.

RYAN A. BOSTICK
Notary Public, State of Texas
My Commission Expires
December 10, 2011

Notary Public in and for the State of Texas

My commission expires: 12/10/11

NO. 09-05-04549

Service Copy

U.S. BANK, N.A.	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	MONTGOMERY COUNTY, TEXAS
	§	
KELLY STUCKEY AND	§	
BRAD STUCKEY	§	
	§	
Defendants.	§	9th JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

U.S. Bank, N.A. ("U.S. Bank") hereby complains of Kelly Stuckey and Brad Stuckey ("Defendants") and would show the Court the following:

I. DISCOVERY

1. Discovery in this matter is intended to be conducted under Level 2 of the Texas Rules of Civil Procedure.

II. PARTIES

2 Defendant Kelly Stuckey is an individual resident of Montgomery County, Texas and may be served at 22390 White Oak Drive, Conroe, TX 77306 or any other location where Defendant can be found.

3 Defendant Brad Stuckey is an individual resident of Montgomery County, Texas and may be served at 22390 White Oak Drive, Conroe, TX 77306 or any other location where Defendant can be found.

III. VENUE

4. Venue is proper in Montgomery County, Texas because all or a part of Plaintiff's causes of action arose in Montgomery County, Texas and because it is the county in which the U.S. Bank Manufactured Home Note was executed which is the basis of this suit.

IV. FACTS COMMON TO ALL CAUSES OF ACTION

5. On or about September 15, 2007, Defendants executed a U.S. Bank Manufactured Home Note (the "Contract"). Attached as *Exhibit "A"* and incorporated for all purposes hereto is a true and correct copy of the Contract. The Contract was secured by a security interest in a 2008 Redman Manufactured Home; Serial No. 124000H12300A/B (the "Manufactured Home") as reflected in the attached *Exhibit "B"* which is incorporated for all purposes hereto. U.S. Bank is the present servicer of the Contract.

6. Defendants defaulted on the Contract and were sent notice of their default and given a right to cure. Attached as *Exhibit "C"* and incorporated for all purposes hereto is a true and correct copy of the Notice of Default and Right to Cure. Defendants failed to cure the default and U.S. Bank accelerated the remaining balance of the Contract. Attached as *Exhibit "D"* and incorporated for all purposes hereto is a true and correct copy of the Acceleration letter.

7. As of May 1, 2009, after all just and lawful offsets there was due and owing, the amount of $128,687.41 in principal and interest, with interest continuing to accrue from that date until the date of Judgment at the rate of 10.740% per annum.

V. SUIT ON THE CONTRACT

8. As set forth above, Defendants have defaulted on the Contract and have failed to cure the default within the time allowed; therefore, the Contract has been accelerated. All conditions precedent to U.S. Bank's recovery on the Contract have occurred. Accordingly, U.S. Bank sues Defendants for the accelerated amount plus prejudgment interest..

VI. SUIT FOR POSSESSION

9. Defendants have defaulted on their Contract and, therefore, U.S. Bank is entitled to possession of the Manufactured Home. Accordingly, U.S. Bank requests that this Court, upon final hearing, enter Judgment requiring the sheriff or constable of the county where such Manufactured Home is located to attach the Manufactured Home and deliver possession to U.S. Bank with the proceeds from any sale to be applied to the Judgment. Alternatively, U.S. Bank requests that this Court enter Judgment requiring the Sheriff of such County to attach the Manufactured Home, sell it, and apply the proceeds to the Judgment.

VII. ATTORNEYS FEES

10. Pursuant to the terms of the Contract, U.S. Bank is entitled to a Judgment for its reasonable and necessary attorneys fees. Accordingly, U.S. Bank sues for its reasonable and necessary attorneys fees for a trial on this matter and in the event of a successful appeal to the Texas Court of Appeals, or an Application for Writ of Error to the Texas Supreme Court.

WHEREFORE, upon final hearing, U.S. Bank requests that this Court enter Judgment for:

1. Plaintiff's actual damages, plus pre and postjudgment interest;

2. For Judgment requiring the sheriff or constable of the county in which the Manufactured Home is located to attach the Manufactured Home and deliver possession to U.S. Bank, with the proceeds from any sale to apply to the Judgment amount, or alternatively to attach the Manufactured Home, sell the Manufactured Home and apply the proceeds to the Judgment amount;

3. For its reasonable and necessary attorneys fees; and costs to obtain possession.

4. For such other and further relief to which U.S. Bank may be entitled.

Respectfully submitted,

HIGIER ALLEN & LAUTIN, P.C.

By: _____

Richard A. McKinney
State Bar No. 13723430
Daniel Paz
State Bar No. 24027722

5057 Keller Springs Road, Suite 600
Addison, Texas 75001
Telephone: (972) 716-1888
Telecopy: (972) 716-1899

ATTORNEYS FOR PLAINTIFF

Borrower's Name(s) and Addresses:
KELLY STUCKEY
BRAD STUCKEY
22390 WHITE OAK DR
CONROE, TX 77306

TX5

Property Address:
22390 WHITE OAK DRIVE
CONROE, TX 77306

511765166

Lender's Name and Address:
U.S. Bank N. A.

1850 Osborn Ave Oshkosh, WI 54902

Date 09/15/07

1. BORROWER'S PROMISE TO PAY

"I," "me" and "my" means each Borrower who signs this Note, and each other person or legal entity who agrees to pay it, such as a guarantor. "You" and "your" mean the Lender, who is U.S. Bank National Association.

I promise to pay to you, or your order, the principal sum of $ 120065.00 plus interest and other charges as described below. I will make payments toward this debt as provided below in the form of cash, check, money order or electronic payment in U.S. dollars. I understand that you may transfer this Note.

2. INTEREST

Interest will accrue on the unpaid balances of principal remaining from time to time at either the fixed or variable rate as provided below. Interest will begin to accrue on 09/15/07. At that time the simple interest rate, will be 10.740 % per year. This rate will remain in effect until 09/15/27.

☐ Variable (Adjustable Rate): Beginning _____ and thereafter the interest rate on this loan will change (these are the "interest rate change dates") and will then be the sum of the Index rate, described below, and the Margin described below that.

The Index Rate that will determine the interest rate for this loan is known as:

the average of interbank offered rates for one year U.S. dollar denominated deposits in the London market based on the quotation of major banks known as the London Interbank Offered Rate (LIBOR),

as published in the *"Money Rates"* section of The Wall Street Journal.

The Index Rate that will be used for this loan will be the LIBOR rate in effect for this loan _____ days before each of the interest rate change dates. The *LIBOR rate in effect* is determined from the LIBOR value published on the first business day of a calendar month, for the second business day of a calendar month, until the second business day of the next calendar month. (You use this index value in advance of the rate change date because you need to give me advance notice of my payment, which will change if the rate changes.)

Example: Let us assume that June 1 and 2 are business days, and that July 1 is also a business day. The LIBOR RATE published on June 1 will be used for all loans whose interest rate change dates occur forty five (45) days after June [illegible] 45 days after July 1.

Margin: My interest rate as of the change dates will equal the Index Rate in effect _____ days before the interest rate change date plus a margin of _____, the total rounded up to the next 1/8th % (0.125%) unless the interest rate cap (next) limits the amount of change in the interest rate.

Rate Caps: My interest rate cannot increase or decrease by more than _____ on any interest rate change date or by more than _____ over the term of this Note.

Substitute Index: If this Index Rate is no longer available, you can choose a new index that is based on comparable information.

Variable Rate Payment Changes: With the first payment due after an interest rate change date (usually a month) my monthly payment amount will be adjusted (assuming there is a rate change) to amortize the debt over the scheduled term to maturity.

Fixed Rate Conversion Option: If I am not in default, I may convert my variable interest rate to a fixed simple interest rate for the remainder of the term of this Note at any time beginning _____ years and ending _____ years from the date of this Note. I must give you written notice of my desire to make this conversion, and pay a non-refundable fixed rate conversion fee of $ _____.

The rate I will convert to will be the fixed rate you are then offering (on the day you receive my written conversion request and the non-refundable conversion fee) on transactions having the same parameters as my original transaction. (U.S. Bank Manufactured Housing Finance rate sheet is where this information will be collected. You will tell me the rate I can convert to when I ask.) The rate you will offer under this conversion rule will not be subject to the limitations on rate increases or decreases that apply while the variable rate is in effect.

If and when I make this conversion, my payments will be adjusted to provide for a payment stream will produce substantially equal monthly payments, at the conversion rate to the originally scheduled maturity date of this Note.

3. ADDITIONAL FINANCE CHARGES

I agree to pay finance charges (in addition to interest) totaling $ 299.00.

Of these charges:

☐ $_____ was paid at or before closing.

☒ $ 299.00 was not paid and is included in the principal amount shown above.

I understand these additional finance charges are fully earned, and if I prepay this Note in full, will not be refunded.

4. FACT ACT NOTICE(S)

You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report.

☐ If Checked: Terms provided reflect an adjustment to the lowest annual percentage rate available for this product. This adjustment reflects a higher rate of interest or finance charge due to information contained in a consumer credit report. You obtained this report from, and I may obtain a free copy of it by contacting:

Expere® © 2004 Bankers Systems, Inc., St. Cloud, MN
US Bank Manufactured Home Note - Form US8-MHN-DHX 3/8/2006

EXHIBIT "A"

tabbies

SEP. 13. 2007 4:25PM US BANK NO. 5536 P. 2

5. POST-MATURITY INTEREST
After maturity the unpaid balance of principal of this Note will continue to earn interest at the same rate in effect at maturity, or, if this is a variable rate note, by the same method of determining the rate as applied before maturity, until this Note is paid in full.

6. PAYMENTS
(A) Time and Place of Payments: I agree to pay this Note as follows:

☑ Monthly: In 240 monthly payments beginning 10/15/07 and on the same day of each month thereafter, of $ 1218.12 each, and a final payment of $ 1218.12 due 09/15/27.

YOU ARE NOT OBLIGATED TO REFINANCE THE FINAL PAYMENT.

If this is a variable (adjustable) rate note, the payment amounts shown in this section will change if and when the rate changes, as provided in section 2 (Variable Rate Payment Changes) and may also change if I elect to convert to a fixed rate (Fixed Rate Conversion Option).

☐ Bi-weekly: In _____ bi-weekly payments (every 14 days) beginning _____ and every 14 days thereafter, in the amount of $ _____ each, and a final payment of $ _____ due _____.

Bi-Weekly Payment Default: I will be in default if any bi-weekly payment is not paid in full on or before its due date. In the event of such default, my payment schedule will change (convert) to monthly payments, effective as of the first day following my last timely bi-weekly payment (the conversion date).

You will recalculate my payment as of the conversion date, based on the interest rate, my principal balance as of that date, and a revised maturity date to provide for substantially equal monthly payments. My monthly payments will begin 30 days after the conversion date, and on the same day of each month thereafter until the new maturity date. My new maturity date will be determined by calculating the number of whole months remaining in the original (bi-weekly) schedule of payments as of the conversion date, and adding those number of months to the conversion date. (My monthly payment will be more than the sum of the two bi-weekly payments.)

(B) Application Of Payments: You will apply each payment I make first to accrued interest, and then to principal. You will credit my payments when you actually receive them; late payments will increase the amount of interest I will have to pay and the amount of my final payment, and will incur a late charge; early payments and prepayments will reduce the interest I will have to pay and my final payment(s).

(C) Place of Payments: I will make my payments to you at
U.S. Bank N.A.
P.O. Box 790179, St. Louis, MO 63179-0179

You may change this place of payment after reasonable notice.

7. I CAN PREPAY
I can prepay this Note in whole or in part at any time without penalty. Any partial prepayment will not excuse or reduce any scheduled payment until this Note is paid in full.

For variable rate transactions, my payment amounts are "scheduled" each following year between 45 and 75 days (approximately) before my interest rate change date, which is a month before my new payment amount is due. If I make a partial prepayment after you schedule my monthly payment for the next year, and before the new rate takes effect, at your discretion, such prepayment may not affect my payment amounts until the next following year (unless this Note is paid in full, of course).

For example: Assume that my rate is variable and can change on July 1 of each year. My rate will be determined by the index value as of the previous May 1. If I make a partial prepayment between May 1, 2005 and July 1, of 2005, that prepayment will not begin to affect my payment amounts until August 1, of 2006.

If I intend to make a prepayment, it is my duty to tell you I am doing so. Any payment designated by me as a prepayment will first reduce any accrued interest, any delinquent principal payments, and any fees that may be owed before the balance of any designated prepayment, is applied to the outstanding principal balance.

8. LOAN CHARGES
If a law which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges agreed to, collected or to be collected in connection with this loan exceed the permitted limits, then:
(i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and
(ii) any sums already collected from me which exceeded permitted limits will be refunded to me.

You 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 prepayment.

9. IF I FAIL TO PAY AS REQUIRED
If the original schedule of payments is every 14 days (bi-weekly), see the section above titled Bi-Weekly Payment Default. The following sections apply to all notes providing for monthly payments, and to notes that provided for bi-weekly payments if the note is converted to monthly payments as provided above.

(A) Default: I will be in default if
(i) I fail to make a scheduled payment in full when it is due; or
(ii) I fail to keep any other promise I have made or a representation I have made and your prospect of payment performance, or realization on any collateral is significantly impaired.
(iii) Due on Sale: You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of a contract for the creation of a transfer or sale of the property securing this Note. This right is subject to the restrictions imposed by federal law and regulations (12 C.F.R. 591), as applicable.

(B) Late Charge for Overdue Monthly Payments: If you have not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to you. The amount of the charge will be
5% of the portion of the required payment not made

(C) Dishonored Payment Charge: If a check, draft or electronic payment on this Note is dishonored by my financial institution, I will pay you a dishonored payment charge of $ 25.00. I will pay this late charge promptly but only once on each late payment.

(D) Acceleration, Cure and Reinstatement: If I am in default, you have all the rights provided by law to collect the amount I owe you. These rights include, for example, subject to state law, and the type of collateral securing this loan:
a. to make the entire unpaid balance of principal due in advance of the scheduled due date (accelerate);
b. to foreclose on property securing this loan;
c. to set off the amount owing against deposit accounts I may have with you;
d. if property securing this loan is not sufficient to pay the debt, then to collect the deficiency from me when permitted by law.

Your rights will be subject to what rights I may have under law to cure a default, reinstate the schedule of payments, and to get notice of any such rights. (Nothing here is intended to misrepresent or diminish the rights I may have by law. The law of the state where the property is located will generally control these issues.)

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(E) No Waiver By You: If I default on this loan but you do not exercise all your rights at that time, you will still have the right to do so if I am in default at a later time.

(F) Payment of Your Costs and Expenses: If you require me to pay immediately in full (acceleration) as described above, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Note and realizing on any property securing it to the extent not prohibited by applicable law.

In the event of my bankruptcy, these costs will include your reasonable attorney's fees for an attorney who is not your salaried employee in the bankruptcy proceedings.

These costs and expenses will include (and not be limited to) your reasonable attorney's fees for an attorney who is not your salaried employee, as provided below (with limitations and exceptions as listed), and as further limited by state law depending on the method of collection or realization on any property securing this Note.

In Arizona, California, Idaho, Illinois, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington and Wyoming these costs will include your reasonable attorney's fees.

In Arkansas these costs will include your reasonable attorney's fees not to exceed 10% of the amount of principal and accrued interest.

In Colorado, Kansas, Maine, North Carolina, Oklahoma and South Carolina these costs will include your reasonable attorney's fees not to exceed 15% of the unpaid debt for collection after default.

In Delaware these costs will include reasonable attorney's fees after default, court costs, alternative dispute resolution costs, and other collection costs, including fees and charges of collection agencies.

In Florida these costs include your reasonable attorney's fees of ten percent (10%) of the principal sum due on this note or such larger amount as may be reasonable and just.

In Georgia these costs include attorney's fees of 15 percent of the principal and interest then owed. I waive and renounce any exemption I may be entitled to under Georgia law as to any property that secures this debt. I assign any such exemption to you.

In Indiana these costs will include your reasonable attorney's fees; and in any collection efforts, I waive any relief I might be entitled to from evaluation and appraisement.

In Iowa, Nebraska, North Dakota, Ohio, New Hampshire, and West Virginia these costs will not include attorney's fees.

In Louisiana, these costs include your reasonable attorney's fees not to exceed 25% of the unpaid debt after default and referral to an attorney for collection.

In Connecticut, Missouri and Alabama these costs will include your reasonable attorney's fees of the amount due and payable under this Note if it is necessary to bring suit of 15%.

In Texas these costs will include your reasonable attorney's fee if assessed by a court.

10. GIVING OF NOTICES

Unless applicable law requires a different method, 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 to me at the Property Address above or at a different address if I give you a notice of my different address.

Any notice that I must give to you under this Note will be given by delivering it or by mailing it by first class mail to you at the address stated in section 6(C) above or at a different address if I am given a notice of that different address.

11. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. You may enforce your rights under this Note against each person 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.

12. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require you to demand payment of amounts due. "Notice of dishonor" means the right to require you to give notice to other persons that amounts due have not been paid.

13. SECURITY AND INSURANCE

(A) This note is secured by a security interest in a manufactured home.

(B) Insurance: I agree to buy the insurance coverages on the Property securing this Note against the risks and for the amounts you require. I will name you as loss payee on any such policy. If there is an insured loss, you may require added security on this loan if you agree that insurance proceeds may be used to repair or replace the Property.

I agree that if the insurance proceeds do not cover the amounts I still owe you, I will pay the difference.

I will buy the insurance from a firm authorized to do business in the appropriate state. The firm will be reasonably acceptable to you. I will keep the insurance until the debts secured by this agreement are paid.

(C) Collateral Protection Insurance: Unless I provide you with evidence of the insurance coverage required by my agreement with you, you may purchase insurance at my expense to protect your interests in my collateral. This insurance may, but need not, protect my interests. The coverage that you purchase may not pay any claim that I make or any claim that is made against me in connection with the collateral. I may later cancel any insurance purchased by you, but only after providing you with evidence that I have obtained insurance as required by our agreement. If you purchase insurance for the collateral, I will be responsible for the costs of that insurance, including interest at the rate(s) on this Note, and any other charges you may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to my total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own. I agree that the cost of such insurance will be due immediately.

14. MISCELLANEOUS

This Note is a "transferable record" as defined in applicable law relating to electronic transactions. Therefore, the holder of this Note may, on behalf of the maker of this Note, create a microfilm or optical disk or other electronic image of this Note that is an authoritative copy as defined in such law. The holder of this Note may store the authoritative copy of such Note in its electronic form and then destroy the paper original as part of the holder's normal business practices. The holder, on its own behalf, may control and transfer such authoritative copy as permitted by such law.

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This notice applies to Missouri customers specifically and is generally true for all customers:
ORAL AGREEMENTS: Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect you (borrower(s)) and us (creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it.

SECURITY INTEREST IN DEPOSIT ACCOUNTS AT U.S. BANK, N.A. -
Governing law: For purposes of this security interest, we agree that the law of the state of North Dakota will control as to the creation, perfection, and effect of perfection of the interest granted in this paragraph. (Technically speaking, we are agreeing that North Dakota is your jurisdiction, solely for purposes of this security interest in deposit accounts, as provided in N.D. Stat. § 41-9-24.)
Grant: I grant to you a security interest in any and all deposit accounts (demand, time, savings, passbook, and specifically including but not limited to any certificated time accounts) I currently have or hereafter create with you (U.S. Bank, N.A.).
Exception: This grant does not apply to accounts that constitute a part of any qualified retirement plan (such as an Individual Retirement Account), any retail repurchase agreement, or any account where my only right is clearly and solely in a representative capacity.
Secures: This security interest secures the payment of this debt and any other debt I may owe you, now or hereafter.
Usage: You have the right to restrict or prohibit further withdrawals from my accounts, and to apply such funds toward payment of the secured debts. While you have the right to do this at any time, and without notice, it is your present intention to exercise these rights only in the event of my default on this or any other secured obligation, and to provide notice to me.
Setoff: I also acknowledge that you have a right of setoff. This right of setoff, in the event of a conflict with the security interest granted here, will be subordinate to this security interest.
Authentication By U.S. Bank, N.A.: This is intended as an authentication of this control agreement.
U.S. BANK N.A.

DUE ON SALE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, a transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

IF THE PROPERTY IS LOCATED IN FLORIDA: The state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

NOTICE TO COSIGNER
You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The bank can collect this debt from you without first trying to collect from the borrower. The bank can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing* your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

*Garnishment is not a remedy available in Pennsylvania, South Carolina or Texas.

To contact the Lender, U.S. Bank N.A. about this account call
1-800-USBANKS

The following notice applies when the property is located in Texas.
This contract is subject in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, Texas 78705-4207; (800) 538-1579; (512) 936-7600, and can be contacted relative to any inquiries or complaints.

NOTICE TO THE CONSUMER
Do not sign this document before you read it or if it contains any blank spaces.
You are entitled to a copy of the document you sign. Under the law you have the right to pay off in advance the full amount due and obtain a substantial refund of the credit charge. Keep this document to protect your legal rights.

15. GOVERNING LAW
You are a national bank located in Ohio. The interest rate, fees and related charges that you can charge for this loan are pursuant to the law of the state of Ohio, and federal law, regardless of where this loan is made or where I live. As for other issues, the law of my state of residence and the law of the state where any property is located will apply.
The fact that any part of this Note cannot be enforced will not affect the rest of this Note. Any change to this Note or any agreement securing this Note must be in writing and signed by you and me.

SIGNATURES
I agree to the terms set out on pages 1 thru 4 of this agreement. I acknowledge that I have received a copy of this document on today's date.

Signature
X ______________________
Name: KELLY STUCKEY

Signature
X ______________________
Name: BRAD STUCKEY

Signature
X ______________________
Name:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

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US Bank Manufactured Home Note - Form USB-NMH-OHX 3/8/2005

511765166

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Certificate Detail for Certificate # 00262891

Home elected as Personal Property

ISSUE DATE: 04/16/2008

Certificate Number: 00262891
Manufacture Date: 09/20/2007
Date of Sale: 10/18/2007
Date of Certificate: 04/16/2008
Right of Survivorship: NO

New/Used: USED
Number of Sections: 2
Model: REDMAN
Square Feet: 2752
Wind Zone: 1

Currently Installed in MONTGOMERY County

Location of Home
22390 WHITE OAK DR CONROE, TX 77306

Owners		
Current Owner	**Seller**	**Previous Owners**
BRADLEY STUCKEY KELLY STUCKEY 22390 WHITE OAK DRIVE CONROE , TX 77306	DBA FACTORY DIRECT HOMES 21180 US HWY 59 SOUTH NEW CANEY , TX 77357	

Active Mortgage Liens	
Lien Date	**Lien Holder**
10/18/2007	US BANK NA PO BOX 3427 OSHKOSH, WI 54903

Active Tax Liens
No Active Tax Liens

On January 1st of each year, a tax lien comes into existence on a manufactured home in favor of each taxing unit in the jurisdiction where the home is actually located on January 1st. In order to be enforced, any such lien must be recorded with the Manufactured Housing Division as provided by law. You may check our records through our website or contact us to learn of any recorded tax liens. To find out about the amount of any unpaid tax liabilities for a particular year, contact the tax office for the county where the home was actually located on January 1st of that year.

Sections					
	Label	**Serial**	**Weight**	**Width**	**Length**
1	PFS1019277	124000H12300A	34400	16	86
2	PFS1019278	124000H12300B	34400	16	86

Manufacturer
M00006

EXHIBIT "B"

REDMAN HOMES INC [BURLESON]
501 SOUTH BURLESON BOULEVARD
BURLESON, TX 76028

Close Window | Print This Page

usbank.com

CN-OH-W15
PO BOX 1038
Cincinnati, OH 45202

March 17, 2009

Kelly & Brad Stuckey
22390 White Oak Dr.
Conroe, TX 77306

Notice of Default and Right to Cure Default

RE: U.S. Bank Manufactured Home account number 511765166

Dear Mr. & Mrs. Stuckey,

You are now in default on this credit transaction. You have a right to correct this default within 30 days from the postmarked date of this notice.

If you correct the default, you may continue with the contract as though you did not default. Your default consists of: Failure to make a payment.

Cure of default: Within 30 days from the postmarked date of this notice, you may cure your default by paying:

Late Payment	1/18/2009	$1,218.12
Late Payment	2/18/2009	$1,218.12
Late Payment		
Late Fees		$708.96
	Total	**$3,145.20**

Creditor's rights: If you do not correct your default in the time allowed, we may exercise our rights against you under the law, including the right to repossess the collateral.

If you have any questions, please call our office toll-free, at 877-620-3710 between the hours of 8:00 a.m. and 9:00 p.m. EST Monday through Friday.

If this default was caused by your failure to make a payment or payments, and you want to pay by mail, please send a check or money order; do not send cash. If you intend to make your payment by mail or at a U.S. Bank branch, it is imperative that you call us prior to doing so at the number listed above so that we can update our records accordingly and make sure that your payment is credited.

Sincerely,

Nicholas Hauser
U.S. Bank Retail Collections
877-620-3710

HIGIER ALLEN & LAUTIN P.C.

Attorneys & Counselors

5057 Keller Springs Road | Suite 600 | Addison, Texas | 75001

p: 972.716.1888 | *f:* 972.716.1899

www.higierallen.com

May 4, 2009

CM 91 7108 2133 3936 2504 9169
& REGULAR MAIL
Kelly Stuckey
22390 White Oak Drive
Conroe, TX 77306

CM 91 7108 2133 3936 2504 9176
& REGULAR MAIL
Brad Stuckey
22390 White Oak Drive
Conroe, TX 77306

RE: U.S. Bank, N.A., its successors, subsidiaries or predecessors ("U.S. Bank"), Account No. MHL511765166; U.S. Bank Manufactured Home Note (the "Contract") dated September 15, 2007 payable by Kelly Stuckey and Brad Stuckey ("Buyers"), secured by a 2008 Redman Manufactured Home, Serial No. 124000H12300A/B (the "Manufactured Home")

Dear Mr. and Ms. Stuckey:

This law firm represents U.S. Bank, N.A. ("U.S. Bank") with respect to the Contract. U.S. Bank is the servicer of the Contract. On or about, March 17, 2009 U.S. Bank sent you a Notice that the Contract was past due and that U.S. Bank would accelerate maturity of the Contract after thirty (30) days if the default was not cured. As of May 1, 2009, the default had not been cured. Accordingly, on that date U.S. Bank accelerated the maturity of the Contract. The amount due and owing as of the date of this letter, is $128,687.41 plus accrued unpaid interest of 10.740% per annum from May 1, 2009 through today (the "Accelerated Balance"). Interest continues to accrue on the Accelerated Balance from that date at the contract rate until paid.

U.S. Bank intends to file a lawsuit to obtain judgment for the amounts due and owing as well as for possession of the collateral with any proceeds from the sale of the collateral to be applied to any judgment rendered.

W:\1910\281\noa-ltr.wpd

This communication is from a debt collector and this is an attempt to collect a debt and any information obtained will be used for that purpose.

Unless you dispute the validity of this debt, or any portion of it, within 30 days after you receive this notice, we will assume that it is valid.

If you notify us in writing within the 30 day period that you dispute this debt or any portion of it, we will obtain verification of the debt or a copy of any judgment and mail it to you.

If the above creditor is not your original creditor and you submit a written request within the 30 day period for the name and address of the original creditor, we will supply such information to you.

If you do dispute this debt in writing in the 30 day period, we will suspend collection until we send you verification.

Please contact me if you have any questions regarding this matter.

Very truly yours,

HIGIER ALLEN & LAUTIN, P.C.

By: _____
Richard A. McKinney

RAM/css

14608215 2007-131122 473-11-1095 14

FILED BY
ALAMO TITLE COMPANY

After Recording Return To:
~~ALAMO TITLE~~
~~1002 VILLAGE SQUARE DR, # A~~
~~TOMBALL , TX , 77375~~
Taylor Bean & Whitaker
1417 N. Magnolia Ave
Ocala FL 34475

Notice of Confidentiality Rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your social security number or your driver's license number.

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN: 100029500021325752

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated **November 07, 2007**, together with all Riders to this document.

(B) "Borrower" is **Bradley Earl Stuckey and Kelly ~~Gendra~~ Stuckey, Husband and Wife, As Community Property**

KS Genora

Borrower is the grantor under this Security Instrument.

(C) "Lender" is **Taylor, Bean & Whitaker Mortgage Corp.**
Lender is a a **Florida Corporation** organized and existing under the laws of FL. Lender's address is **1417 North Magnolia Ave, Ocala, FL 34475**. Lender includes any holder of the Note who is entitled to receive payments under the Note.

(D) "Trustee" is **Tommy Bastian, Barrett Burke Wilson Castle Daffin & Frappier, L.L.P.**

Trustee's address is **15000 Surveyor Blvd., Suite 100, Addison, TX 75001**

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

(F) "Note" means the promissory note signed by Borrower and dated **November 07, 2007** . The Note states that Borrower owes Lender **One Hundred Eighty Three Thousand Four Hundred Forty Eight and no/100** Dollars (U.S. **$183,448.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **December 01, 2027** .

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

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

(I) "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	☐ Other(s) [specify]
☐ 1-4 Family Rider	☐ Biweekly Payment Rider	

(J) "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.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "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.

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

(N) "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.

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

(P) "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.

(Q) "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.

(R) "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.

TRANSFER OF RIGHTS IN THE PROPERTY

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

Montgomery
[Name of Recording Jurisdiction]

See Attached Exhibit A.

which currently has the address of 22390 White Oak Drive
[Street]

Conroe , Texas 77306 ("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 seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

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

EXHIBIT "A" 25 473-11-1098

METES AND BOUNDS DESCRIPTION OF 6.0000 ACRES – BRADLEY EARL & KELLY GENDRA STUCKEY

A TRACT OR PARCEL OF LAND CONTAINING 6.0000 ACRES BEING THAT SAME TRACT CONVEYED TO C. C. BOWMAN, ET UX PAULINE BOWMAN IN INSTRUMENT IN VOLUME 630, PAGE 851 OF THE DEED RECORDS OF MONTGOMERY COUNTY BEING OUT OF THE BEASLEY PRUETT SURVEY, ABSTRACT 419 IN MONTGOMERY COUNTY, TEXAS, AND OUT OF THE SOUTHWESTERLY CORNER OF THAT ORIGINAL PARENT 98.515 ACRE TRACT CONVEYED TO ALTON HUES BY EDWIN T. SMITH, SR, ET AL IN INSTRUMENT DATED AUGUST 2, 1966 RECORDED IN VOLUME 623, PAGE 648 OF THE DEED RECORDS OF MONTGOMERY COUNTY SAID 6.0000 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS TO-WIT:

BEGINNING at a 5/8 inch iron rod found at a fence corner marking the Southwest corner of the herein described 6.0000 acre tract and marking the Southwest corner of said original parent Alton Hues 98.515 acre tract and the lower Northwest corner of the Antoine E. Dabb 12.030 acre tract described in instrument dated July 14, 2006 recorded in Film Code 135-11-1719 of the Clerk Records of Montgomery County in the Easterly boundary of the Robert E. and Lisa Lee 21.26 acre tract in instrument dated May 2, 2001 recorded in Film Code 875-00-0283 of the Clerk Records of Montgomery County;

THENCE North (basis for bearings) and with a fence line of the East boundary of said Lee Tract and the West boundary of the herein described tract originally conveyed to Bowman a distance of 715.79 ft. to a 3/8 inch iron rod found at the Northwest corner of the herein described 6.0000 acre tract and marking the Southwest corner of the Robert E. and Lisa Lee Tract at an old fence corner;

THENCE East with the upper South boundary of said Lee Tract passing a 1 inch iron rod found at 319.21 ft. a total distance of 349.21 ft. to a nail in the centerline of White Oak Drive (60 ft. road right-of-way described in Volume 630, Page 760 of the Deed Records of Montgomery County);

THENCE South 01 degrees 18 minutes 00 seconds East with the centerline of said White Oak Drive a distance of 112.00 ft. to a nail found at an angle point in said centerline;

THENCE East a distance of 19.14 ft. to a nail found at the lower Northeast corner of the herein described tract and marking the Northwest corner of said Dabb 12.030 acre tract;

THENCE South with the West boundary of said Dabb Tract and the East boundary of said original C. C. Bowman Tract passing a 2 inch iron bar at 30.00 ft. and continuing with an old fence line a distance of 595.74 ft. to a 3/8 inch iron rod found at the Southeast corner of the herein described tract at a fence corner and marking a re-entrant corner of said Dabb Tract;

THENCE West with an old fence line and the lower North boundary of said Dabb Tract a distance of 378.94 ft. to the PLACE OF BEGINNING and containing 6.0000 acres of land and being known as 22390 White Oak Drive, Conroe, Texas 77303.

473-11-1099

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

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

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

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

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

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

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.

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

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

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

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

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

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.

473-11-1101

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

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

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if 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.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument,

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

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

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

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

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

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

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

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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

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

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period,

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

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

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

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

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

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

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

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. 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.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

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

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

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

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

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

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

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

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,

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any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

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

If Lender invokes the power of sale, Lender or Trustee shall give notice of the time, place and terms of sale by posting and filing the notice at least 21 days prior to sale as provided by Applicable Law. Lender shall mail a copy of the notice to Borrower in the manner prescribed by Applicable Law. Sale shall be made at public vendue. The sale must begin at the time stated in the notice of sale or not later than three hours after that time and between the hours of 10 a.m. and 4 p.m. on the first Tuesday of the month. Borrower authorizes Trustee to sell the Property to the highest bidder for cash in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying indefeasible title to the Property with covenants of general warranty from Borrower. Borrower covenants and agrees to defend generally the purchaser's title to the Property against all claims and demands. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Property is sold pursuant to this Section 22, Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at that sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession or other court proceeding.

23. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall provide a release of this Security Instrument to Borrower or Borrower's designated agent in accordance with Applicable Law. 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. **Substitute Trustee; Trustee Liability.** All rights, remedies and duties of Trustee under this Security Instrument may be exercised or performed by one or more trustees acting alone or together. Lender, at its option and with or without cause, may from time to time, by power of attorney or otherwise, remove or substitute any trustee, add one more trustees, or appoint a successor trustee to any Trustee without the necessity of any formality other than a designation by Lender in writing. Without any further act or conveyance of the Property the substitute, additional or successor trustee shall become vested with the title, rights remedies, powers and duties conferred upon Trustee herein and by Applicable Law.

Trustee shall not be liable if acting upon any notice, request, consent, demand, statement or other document believed by Trustee to be correct. Trustee shall not be liable for any act or omission unless such act or omission is willful.

25. **Subrogation.** Any of the proceeds of the Note used to take up outstanding liens against all or any part of the Property have been advanced by Lender at Borrower's request and upon Borrower's representation that such amounts are due and are secured by valid liens against the Property. Lender shall be subrogated to any and all rights, superior titles, liens and equities owned or claimed by any owner or holder of any outstanding liens and debts, regardless of whether said liens or debts are acquired by Lender by assignment or are released by the holder thereof upon payment.

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26. Partial Invalidity. In the event any portion of the sums intended to be secured by this Security Instrument cannot be lawfully secured hereby, payments in reduction of such sums shall be applied first to those portions not secured hereby.

27. Purchase Money; Owelty of Partition; Renewal and Extension of Liens Against Homestead Property; Acknowledgment of Cash Advanced Against Non-Homestead Property. Check box as applicable:

☐ **Purchase Money.**

The funds advanced to Borrower under the Note were used to pay all or part of the purchase price of the Property. The Note also is primarily secured by the vendor's lien retained in the deed of even date with this Security Instrument conveying the Property to Borrower, which vendor's lien has been assigned to Lender, this Security Instrument being additional security for such vendor's lien.

☐ **Owelty of Partition.**

The Note represents funds advanced by Lender at the special instance and request of Borrower for the purpose of acquiring the entire fee simple title to the Property and the existence of an owelty of partition imposed against the entirety of the Property by a court order or by a written agreement of the parties to the partition to secure the payment of the Note is expressly acknowledged, confessed and granted.

☐ **Renewal and Extension of Liens Against Homestead Property.**

The Note is in renewal and extension, but not in extinguishment, of the indebtedness described on the attached Renewal and Extension Exhibit which is incorporated by reference. Lender is expressly subrogated to all rights, liens and remedies securing the original holder of a note evidencing Borrower's indebtedness and the original liens securing the indebtedness are renewed and extended to the date of maturity of the Note in renewal and extension of the indebtedness.

☐ **Acknowledgment of Cash Advanced Against Non-Homestead Property.**

The Note represents funds advanced to Borrower on this day at Borrower's request and Borrower acknowledges receipt of such funds. Borrower states that Borrower does not now and does not intend ever to reside on, use in any manner, or claim the Property secured by this Security Instrument as a business or residential homestead. Borrower disclaims all homestead rights, interests and exemptions related to the Property.

28. Loan Not a Home Equity Loan. The Loan evidenced by the Note is not an extension of credit as defined by Section 50(a)(6) or Section 50(a)(7), Article XVI, of the Texas Constitution. If the Property is used as Borrower's residence, then Borrower agrees that Borrower will receive no cash from the Loan evidenced by the Note and that any advances not necessary to purchase the Property, extinguish an owelty lien, complete construction, or renew and extend a prior lien against the Property, will be used to reduce the balance evidenced by the Note or such Loan will be modified to evidence the correct Loan balance, at Lender's option. Borrower agrees to execute any documentation necessary to comply with this Section 28.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 through 13 of this Security Instrument and in any Rider executed by Borrower and recorded with it.

Bradley Earl Stuckey (Seal) -Borrower

Kelly Genora Stuckey (Seal) -Borrower

KS Genora

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

State of Texas
County of Harris

This instrument was acknowledged before me on November 9, 2007 (date) by Bradley Earl Stuckey & Kelly Genora Stuckey (person[s] acknowledging).

BONNIE S MASON
Notary Public, State of Texas
My Commission Expires
August 15, 2010

Bonnie S Mason
Notary Public

My commission expires:

Manufactured Housing Credit Application

This application is designed to be completed by the Dealer with the Applicant's assistance. Co-Applicant information must be provided when the income or assets of a person other than the Applicant (including the Applicant's spouse) will be used as a basis for qualification.

PROPERTY INFORMATION AND PROPOSED CREDIT BREAKDOWN

Description of home sold:

Product type: Multi New
Year: 2008
Manufacturer: REDMAN
Model: RIVERA
Length: 80
VIN: TBD
Source: ☐ Kelly ☐ NADA ☐ Invoice Page
Base W/S:
Dealer Installed:

Description of Trade-In: ☒ No Trade-In

Product type:
Year:
Manufacturer:
Model:
Length:
VIN:
Trade-In Allowance $ 0.00
Pay-Off $ 0.00

Cash Selling Price (including applicable sales tax)	$ 125911.00	Financed Fees	$ 454.00
Down Payment		Amount Requested	$ 120065.00
Cash Down	$ 6300.00	Term in Months	240
Manufacturer's Rebate	$ N/A		
Net Trade-In	$ 0.00		
Total Down Payment	$ 6300.00		

APPLICANT INFORMATION

Applicant	Co-Applicant
Applicant's Name (include Jr. or Sr. if applicable): KELLY STUCKEY	Co-Applicant's Name (include Jr. or Sr. if applicable): BRAD STUCKEY
Social Security Number: -2544	Social Security Number: -3903
Home Phone (incl. area code): ( ): -9442	Home Phone (incl. area code): ( ): -9442
Date of Birth: /71	Date of Birth: /71
☒ Married ☐ Unmarried (include single, divorced, widowed) ☐ Separated	☒ Married ☐ Unmarried (include single, divorced, widowed) ☐ Separated
Dependents (not listed by Co-Applicant) no. 2 ages	Dependents (not listed by Applicant) no. ages
Present Address (street, city, state, ZIP) ☒ Own ☐ Rent 10 No. Yrs.	Present Address (street, city, state, ZIP) ☒ Own ☐ Rent 10 No. Yrs.
22390 WHITE OAK DR CONROE, TX 77306	22390 WHITE OAK DR CONROE, TX 77306
Mailing Address, if different from Present Address	Mailing Address, if different from Present Address
Landlord's Name and Address	Landlord's Name and Address
If residing at present address for less than two years, complete the following:	
Former Address (street, city, state, ZIP) ☐ Own ☐ Rent ____ No. Yrs.	Former Address (street, city, state, ZIP) ☐ Own ☐ Rent ____ No. Yrs.

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the Federal Government for certain types of credit related to a dwelling in order to monitor the creditor's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a creditor may discriminate neither on the basis of this information, nor on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, under Federal regulations, this creditor is required to note the information on the basis of visual observation or surname. If you do not wish to furnish the information, please check the box below. (Creditor must review the above material to assure that the disclosures satisfy all requirements to which the creditor is subject under applicable state law for the particular type of credit applied for.)

APPLICANT: ☐ I do not wish to furnish this information.			CO-APPLICANT: ☐ I do not wish to furnish this information.		
Ethnicity:	☐ Hispanic or Latino	☒ Not Hispanic or Latino	Ethnicity:	☐ Hispanic or Latino	☒ Not Hispanic or Latino
Race:	☐ American Indian or Alaska Native	☐ Asian ☐ Black or African American	Race:	☐ American Indian or Alaska Native	☐ Asian ☐ Black or African American
	☐ Native Hawaiian or Other Pacific Islander	☒ White		☐ Native Hawaiian or Other Pacific Islander	☒ White
Sex:	☒ Female	☐ Male	Sex:	☐ Female	☒ Male

BOLTZ LAW

Attorney Mediator Arbitrator ✻✻✻ Licensed in Texas, Illinois & New Mexico

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E-mail: Boltz@BoltzLaw.com

January 26, 2010

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

___ Fax
___ total pages sent
_X_ Certified mail No. 71603820353006134581

Re: Case No. 3:09-BK-07047-JAF In Re Taylor Bean & Whitaker Mortgage Corp, US Bankruptcy Court Middle District of Florida

Dear BMC Group :

Enclosed please find Brad and Kelly Stuckey's Proof of Claim. Please process the claim and file stamp and return the extra copy of the Proof of Claim form in the enclosed self addressed envelope as proof of receipt.

Sincerely,

By: _____
Michael Boltz

CC: Brad & Kelly Stuckey