ALTERNATIVES TO FORECLOSURE – IDEAS AND FORMS

MICHAEL BAUCUM
Baucum Law Firm PLLC
1100 N.W. Loop 410, #260
San Antonio, Texas 78213-2253
1-210-451-8140
1-210-349-3523 (Fax)
michael@baucumlawfirm.com

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CHAPTER 12

MICHAEL BAUCUM was born in Charleston, Mississippi and grew up in San Antonio. He is married to Laura Bertetti Baucum, also an attorney. They have two daughters, Emily who recently graduated from Northwestern University and is now an Emmy Award winning reporter at WOAI in San Antonio, and Laurie, a May 2010 graduate of St. Mary's School of Law, who also practices with the Baucum Law Firm. After his graduation from Southwest Texas State University in 1968, Michael entered St. Mary's University School of Law. He earned a J.D. degree in 1971, and was admitted to the State Bar of Texas that same year. Michael began his legal career in a general practice with two older lawyers, gaining valuable experiences from these seasoned veterans. The Baucum Law Firm concentrates in the area of transactional real estate.

Michael has published articles and spoken on the following topics:

1. "Pitfalls in Residential Builders and Mechanics Lien Contracts, State Bar of Texas Advanced Real Estate Seminar 1985.
2. "The Attorney's Roles in Closing a Real Estate Transaction," State Bar of Texas Advanced Real Estate Seminar 1986.
3. "Ethical Considerations for the Real Estate Practitioner," Texas Land Title Institute, 1992.
4. "The Real World: Grievances and Complaints against Real Estate Attorneys," Texas Land Title Association's Land Title Institute, 1993.
5. "Churches and Other Associations. Conveyancing and Borrowing Transactions Involving Churches and Associations," Texas Land Title Association's Texas Land Title Institute, 1994.
6. "Community Property Survivorship Agreements" Texas Land Title Institute, 1995.
7. "Practical Foreclosure Skills" State Bar of Texas Advanced Real Estate Drafting Course, 1998.
8. "Disclosures Upon Contracting For and Closing of Residential Sales" State Bar of Texas Advanced Real Estate Seminar 1999.
9. "As Is" Clauses in Acquisition Contracts and Conveyances", State Bar of Texas Advanced Real Estate Drafting Seminar, 1999.
10. "Internet for Transactional Real Estate Lawyers, State Bar of Texas Real Estate Drafting", 2001
11. "As Is" Update Prudential 2002
12. "Monolithic Buyer meets the Small Town Lawyer", (with Ted W. Hejl) State Bar of Texas Advanced Real Estate Course, 2003.
13. "As Is Update", State Bar of Texas Advanced Real Estate Course, 2004
14. "Cemeteries and the Real Estate Developer", State Bar of Texas Advanced Real Estate Law Course, 2005.
15. "As Is" Update 2008, State Bar of Texas Advanced Real Estate Law Course, 2008
16. "Confidentiality and Non-Circumvention Agreements", State Bar of Texas Advanced Real Estate Drafting Course, 2011.
17. "Protecting the Lender on the Sale of REO, Mortgage Lending Institute, 2012 with Kathryn E. Allen
18. "Laws Remembered and Laws Forgotten: A Refresher on the Property Code, with Joe F. Wheat, Mortage Lending Institute, 2013.
19. Panelist, Advanced Real Estate Strategies on Construction Law Issues, 2013.
20. Weird Leases, Advanced Real Estate Law Seminar, 2014

In addition to authoring the articles above, Michael continues to serve on the faculty of the State Bar of Texas Practice Skills Seminar and Boot Camp in real estate. He has been involved with the Texas Center for Legal Ethics and Professionalism, and is a frequent speaker at local and state bar legal seminars and other legal seminars. Michael was active in the Texas Land Title Association where he served on the Special Claims Counsel Committee. He has served on the member of the Planning Committee for the Texas Land Title Institute, a seminar presented annually by the Texas Land Title Association and St. Mary's University School of Law. He spoke at that seminar in 1992, 1993, 1994, 1995, and 2006. He was on the planning committee for the State Bar of Texas Advanced Real Estate Drafting Course for 2000, 2001,and 2002. He spoke at that seminar in 1998, 1999, 2000 and 2011. He has spoken on a wide variety of subjects to the San Antonio Real Estate Discussion Group. He was the Co-Course Director for the State Bar of Texas Advanced Real Estate Seminar in July, 2004 with Rhonda Jolley. His proudest achievement is the many years he has devoted to the Real Estate Skills Seminars, Real Estate Boot Camp and Real Estate 101 for the State Bar of Texas, which he has worked on since 1989. He has received numerous awards from the State Bar of Texas for his work in continuing education to the Bar. He is also deeply involved in mentoring law students who are interested in the area of real estate.

Michael is certified as a specialist in Commercial and Residential Real Estate Law by the Texas Board of Legal Specialization. He is a member of the State Bar of Texas Real Estate, Probate, and Trust Section, and was recognized as a Super Lawyer by his peers in Texas Monthly Magazine in 2003, 2007, 2008, 2009, 2010, 2011, 2012, 2013 and again in 2014.

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This presentation does not address some issues peculiar to residential lending such as short sales, federal government mandated workouts, etc.

This presentation also honors the work of Bill Locke, Martin Novak, and Dominique Marshall Varner.

The premise of this presentation is to give you some alternatives to non-judicial foreclosure. There are many reasons a note holder may wish to avoid foreclosure, and there are many reasons a defaulting borrower may want to avoid a foreclosure. This topic is not going to be an exhaustive review of the techniques but rather should act as a check list for you and your client in determining if alternatives exist. There are extensive treatments (articles and otherwise) in the State Bar of Texas seminar articles data base and in State Bar of Texas publications.

The two primary sources for information are **Texas Foreclosure**, 3rd Addition and the **State Bar of Texas Real Estate Forms Manual**. I have included articles from these sources and I have also included some forms from my own practice which may vary slightly from the SBOT forms. Please note that in this presentation I have heavily relied on **Texas Foreclosure** and wish to credit Bill Locke, Martin Novak and particularly Dominique Marshall Varner for the treatment of this area in the book, from which I have heavily borrowed.

The factual basis is there is a troubled or defaulted loan. For a number of reasons which will be described below, the lender may not want to foreclose, or wants non-judicial foreclosure to be its last resort.

As described in **Texas Foreclosure**, "A negotiated restructuring of the existing credit relationship may provide a quicker resolution of a defaulted loan than a judicial or nonjudicial foreclosure actively resisted by the borrower or mortgagor, but to be successful the negotiated restructuring normally requires that the borrower

(1) has access to material additional assets that can be pledged to secure the defaulted debt in consideration for a reinstatement, restructuring, or forbearance agreement, and/or

(2) realistically can be expected to realize sufficient cash flow in the future to service a restructured debt payment plan.

Even where the lender doubts that such is true, the lender may still wish to engage in negotiations with the borrower concerning the default, both to explore possible areas of agreement and to collect further information concerning the borrower's circumstances." **Texas Foreclosure** @ §3.03.

Why would a lender be reluctant to foreclose, looking first at some of these alternatives?

1. the degree to which the lender is financially dependent on realizing immediate payment from the borrower;

2. the existence of other business relationships with the borrower that would be affected by the lender's action on this particular debt;

3. the borrower's availability and willingness to discuss an agreed resolution to the default;

4. casualty damage to the mortgaged property;

5. significant renovations to the mortgaged property that could be required under the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101–12213, to facilitate a post foreclosure resale of the collateral;

6. suspected or known environmental problems with the mortgaged property that may affect the value of the collateral;

7. the lender's ability to realize payment more easily through a guarantor than through pursuit of the borrower or foreclosure of the mortgaged property;

8. the availability of other borrower assets to bolster the existing credit relationship;

9. competition with other creditors of the borrower for access to the borrower's assets (including the relative lien position of the lender in the lender's existing collateral);

10. the nature of any defenses or counterclaims available to the borrower in light of the documentation or administration of the lender's loan;

11. the likelihood of the borrower resisting collection efforts through bankruptcy or other court action; and

12. the likelihood that any arrangement with the borrower might be set aside as a preference by a third-party action, such as an involuntary bankruptcy filing against the borrower.

Bankruptcy Risk: In analyzing the best way to proceed with collection, the lender may also be faced with a number of factors that are beyond the lender's control. The most commonly encountered of these factors is the unilateral right of the borrower and the mortgagor to file for bankruptcy and thereby stay all collection activities until the lender can obtain a lift of stay through bankruptcy proceedings. There are, however, many other borrower circumstances that can affect the lender's decision as to how best to enforce a loan in default.

Military Service: The Servicemembers Civil Relief Act of 2003, codified at 50 U.S.C. app. §§ 501–597b, protects military personnel from foreclosure actions arising out of loan defaults attributable to military service by suspending the lender's collection rights while the servicemember is on active duty and for nine months after discharge from active duty.

Divorce: The borrower or mortgagor may be involved in a divorce action. If so, the filing of a divorce action or the granting of a divorce after the execution of the mortgage and before the proposed deed-of-trust foreclosure sale does not suspend or prohibit a lender from nonjudicially foreclosing its lien. *See Mussina v. Morton*, 657 S.W.2d 871, 874 (Tex. App.—Houston [1st Dist.] 1983, no writ). However, the appointment of a receiver by a family law court does. *Texas American Bank/West Side v. Haven*, 728 S.W.2d 102, 104 (Tex. App.—Fort Worth 1987, writ. dism'd w.o.j.); *see also Texas Trunk Railway Co. v. Lewis*, 16 S.W. 647, 649 (Tex. 1891).

Guardianship: Similarly, a deed of trust executed by a guardian for a minor may not be foreclosed except pursuant to court order. *Crowley v. Redmond*, 41 S.W.2d 274, 278 (Tex. Civ. App.—Fort Worth 1931), *aff'd*, 70 S.W.2d 1113 (Tex. 1934).

Death of Mortgagor: The death of the mortgagor prior to foreclosure creates an enormous risk for the lender without first resolving the estate, as the foreclosure sale could be set aside by the subsequent opening of a dependent administration within four years of the mortgagor's death.

Drug Enforcement Laws: The lender's interest in the mortgaged property may be threatened or lost through illegal activities(of the borrower or others) on or related to the mortgaged property, as more than 140 different federal forfeiture statutes and several Texas statutes allow the government to seize a defendant's interest in property.

Residential Lease: The lender's freedom to deal with the mortgaged property post foreclosure may be restricted by residential leases granted by the mortgagor under applicable federal laws. (Note that is an area of changing law.)

Federal Liens: The lender may not wish to deal with the issues of a federal tax lien or a federal criminal fine affecting title to the Property.

So, the lender has decided that it wishes to attempt to enter into some agreement which would avoid non-judicial foreclosure, and finds the following alternatives:

1. Deed in Lieu of Foreclosure (requires borrower cooperation)
2. Sell the Note
3. Receivership-agreed (requires borrower cooperation)
4. Loan Modification Agreement (requires borrower cooperation)
5. Bankruptcy-Agreed (requires borrower cooperation)
6. Receivership
7. Involuntary Bankruptcy

GETTING STARTED

Once the lender has decided to attempt some sort of workout, the next obstacle with doing some sort of workout is getting the borrower to engage in the workout discussion. This is often problematic as the borrower will know they are in trouble but does not understand anything about the legal process. And often the borrower will be extremely suspicious of anything suggested by the lender. And from the standpoint of the attorney of the lender, you must tread carefully to avoid (i) the borrower believing you represent both lender and borrower or (ii) claims of overreaching or even fraud by the borrower. It is at this stage that many lender attempts to use a foreclosure alternative fail. So in order to do this you should have a written agreement (See Form 3-2) which sets out the ground rules of the attempt to work something out.

What are the elements of such an agreement:

- Agreement in writing signed by both parties
- Acknowledgment that this is a negotiation and that the underlying loan documentation remains in place until there is a further and formal written modification of the loan.
- Designation of key principals who will negotiate, with authority to bind.

In the event that a decision to try to work something out occurs after a foreclosure has started, you would want to use a Foreclosure Forbearance Agreement (SBOT Form 3-2). This document gives the lender the opportunity to get the borrower to confirm important things like the loan balance, amount of arrearage, that a default has occurred, tolling of limitations, waiver or release of claims.

Again I would give the caveat that it takes a certain amount of sophistication of the borrower to enter into an agreement such as this, and getting the agreement negotiated and signed means that the lender is perhaps no closer to getting paid, and the borrower is probably still not making payments.

LOAN MODIFICATION AGREEMENT

If you are able to get past these points then hopefully some sort of agreement can be reached concerning a modification of loan terms lender and borrower would enter into a Reinstatement, Modification, Renewal and Extension Agreement (Form SBOT 3-3). This particular form tries to cover all the bases in a single document. I have found in my practice that it is better to have separate (more focused) forms for different situations.

For instance there can be a payment moratorium, payment reduction, interest rate reduction, interest deferral, extension of term.

This also gives the note holder an opportunity to correct things which it wishes had been in the original note terms: late charges, tax and insurance escrow, etc.

DEED IN LIEU OF FORECLOSURE

Form SBOT 3-10 and BSB Deed in Lieu Agreement for Deed in Lieu of Foreclosure

The deed in lieu of foreclosure is a conveyance of the mortgaged property by the mortgagor to the lender (or to a person designated by the lender) in full or partial satisfaction of the debt owing on the secured promissory note, outside of a nonjudicial foreclosure sale.

While there was common law deed in lieu of foreclosure in use, in 1995 the Legislature adopted Texas Property Code §51.006 in 1995, which reads:

(a) This section applies to a holder of a debt under a deed of trust who accepts from the debtor a deed conveying real property subject to the deed of trust in satisfaction of the debt.

(b) The holder of a debt may void a deed conveying real property in satisfaction of the debt before the fourth anniversary of the date the deed is executed and foreclosed under the original deed of trust if:

(1) the debtor fails to disclose to the holder of the debt a lien or other encumbrance on the property before executing the deed conveying the property to the holder of the debt in satisfaction of the debt; and

(2) the holder of the debt has no personal knowledge of the undisclosed lien or encumbrance on the property.

(c) A third party may conclusively rely upon the affidavit of the holder of a debt stating that the holder has voided the deed as provided in this section.

(d) If the holder elects to void a deed in lieu of foreclosure as provided in this section, the priority of its deed of trust shall not be affected or impaired by the execution of the deed in lieu of foreclosure.

(e) If a holder accepts a deed in lieu of foreclosure, the holder may foreclose its deed of trust as provided in said deed of trust without electing to void the deed. The priority of such deed of trust shall not be affected or impaired by the deed in lieu of foreclosure.

Advantages of Deed in Lieu:

Again from ***Texas Foreclosure***:

A deed in lieu of foreclosure attempts to satisfy the following desires of the borrower, the mortgagor, and the lender:

(1) the lender obtains immediate control and use of the mortgaged property,

(2) the parties are permitted to choose the tax year in which the transfer will occur,

(3) the expenses incident to a foreclosure may be reduced,

(4) the stigma to the borrower of having lost property through a foreclosure sale is eliminated,

(5) the lender avoids the possibility of competitive bidding by third parties at the foreclosure sale,

(6) future attacks by the borrower against a nonjudicial sale as a wrongful foreclosure are avoided,

(7) the risk of the borrower's filing bankruptcy may be limited, and

(8) the lender may recover the collateral when foreclosure is precluded because of (a) the death of a mortgagor whose estate is not in independent administration or (b) the mortgagor and the mortgaged property are subject to the **Servicemembers Civil Relief Act** (see generally 50 U.S.C. app. §§ 501–96).

Tex. Prop. Code § 51.003 may further make the use of deeds in lieu of foreclosure an attractive alternative. If the lender expects the debtor to contest the issue of fair market value and if the potential deficiency judgment does not justify the costs and uncertainty of a jury trial, the lender may want to accept a deed in lieu of foreclosure rather than go through the delay and expense of a trial.

The court in Morrison interpreted a deed in lieu of foreclosure coupled with an agreement by the lender-grantee to apply the net proceeds to be later derived from its subsequent sale of the property against the borrower's note. The court rejected the borrower's argument that it was entitled to a determination of the fair market value of the property under §51.003 of the Texas Property Code to reduce the deficiency.

The court also rejected the argument that the deed in lieu was a disguised mortgage with a power of sale. The court stated that adequate consideration existed for the deed in lieu of foreclosure sale, even though no credit was given at the time of the deed in lieu, as the mortgagor avoided the negative effect on its credit that a foreclosure would have had. ***Morrison***, 266 S.W.3d at 94.

Adoption of § 51.006 of the Texas Property Code has given additional comfort to lenders because it allows the lender to void the deed in lieu of foreclosure and proceed with foreclosure if undisclosed liens and encumbrances are subsequently discovered. See **Tex. Prop. Code** § 51.006(b). The statute further provides that the priority of the lender's deed of trust is not affected or impaired by the acceptance of the deed in lieu of foreclosure. **Tex. Prop. Code** § 51.006(d).

Disadvantages of Deed in Lieu:

The deed in lieu of foreclosure is not free from problems. Unless voluntarily agreed to between the borrower and the lender, the transfer of the mortgaged property from the mortgagor to the lender, without a foreclosure sale, does not establish a value or determine the amount of the deficiency on the promissory note. Without an agreement about deficiency, the deed in lieu of foreclosure will probably be deemed an extinguishment of the debt.

Problem of Junior Lienholders and Other Junior Encumbrances: <u>A deed in lieu is not a foreclosure!!</u>

A deed in lieu of foreclosure is basically a sales transaction as of the date of the deed where the owner/borrower conveys the property back in settlement of the debt. Junior lienholders are <u>not extinguished</u> as in the case of a foreclosure sale.

In ***Flag-Redfern Oil Co. v. Humble Exploration Co.***, 744 S.W.2d 6 (Tex. 1987), after the date of the deed of trust, the mortgagor conveyed an undivided one-half interest in the minerals to Flag-Redfern's predecessor in title. After the mineral conveyance, the mortgagor conveyed the mortgaged property, including all the mineral estate, to the lender for the stated consideration of the satisfaction of the original debt. After Humble acquired the property from the successors in interest of the lender, Humble discovered the prior mineral conveyance and brought suit to determine ownership of the interest. The Texas Supreme Court held that the deed in lieu of foreclosure did not cut off the conveyance of the one-half interest in the mineral estate. Additionally, the court stated, "There is no such deed as a deed in lieu of foreclosure." Flag-Redfern, 744 S.W.2d at 8.The court noted that "it would be unfair to allow parties to make private conveyances, although judicially efficient, to the detriment of unknowing parties by foreclosing their right to bid at a trustee sale; to redeem their interests; to insist on the marshalling of assets." The court also noted that notice is an integral part of judicial and nonjudicial foreclosure of a deed of trust. Flag-Redfern, 744 S.W.2d at 9.The court further drew a distinction between cases involving a vendor's lien and those involving solely a deed-of-trust lien. The court concluded that deed-in-lieu transactions involving a vendor's lien include the right of rescission with the implied right to cut off the interests of intervening purchasers, whereas deed-of-trust transactions do not. Flag-Redfern, 744 S.W.2d at9. (See also § 3.5:4 below, concerning vendor's liens.)The court noted that the cases cited by Humble (Jones, 583 S.W.2d 821; North Texas Building & Loan Ass'n, 86 S.W.2d 738;and Yett v. Houston Farms Development Co., 41 S.W.2d 305 (Tex. Civ. App.—Galveston 1931, writ ref'd)) would have supported a different result in Flag-Redfern had the "deed in lieu" been in satisfaction of a vendor's lien mortgage. The court stated that in such cases—

[a] deed conveying land but coupled with a lien for the unpaid purchase money equates [to] an executory contract that will ripen into a title in the purchaser when the obligation to pay the purchase money is met. Whiteside v. Bell,347 S.W.2d 568 (Tex. 1961). Default can lead to recission [sic] of the contract. This can be accomplished through foreclosure, or privately when the vendee executes a deed reconveying the property. Flag-Redfern, 744 S.W.2d at 9.But having accepted a deed in lieu of foreclosure, the lender/deed-in-lieu grantee in a deed-of-trust transaction may face an unpleasant choice, as it did in Flag-Redfern. Assuming the lender's right to foreclose is still legally available (as the court noted was the case in Flag-Redfern), to cut off the intervening interests, the lender would have to foreclose its lien and subject the property to public bidding. If the debt is not significant compared with the then-current market value of the mortgaged property, the lender may not be the high bidder, and significant surplus sales proceeds may remain that would have to be distributed to all successors to the borrower (in Flag-Redfern, for example, to both Humble and Flag-Redfern).

Problems with Deed in Lieu Process:

The Property will remain subject to judgements, involuntary liens, federal tax liens and other federal liens. The grantee may become responsible for tenant deposits.

Conducting Nonjudicial Foreclosure after Accepting Deed in Lieu of Foreclosure:

Texas Property Code §51.006 provides that the holder of a debt that accepts a deed in lieu of foreclosure in satisfaction of the debt may void the deed in lieu before the fourth anniversary of the date the deed in lieu is executed and foreclose under the original deed of trust. The holder may both accept a deed in lieu of foreclosure and proceed with foreclosure under its deed of trust without electing to void the deed. The priority of the deed of trust is not affected or impaired by the deed in lieu of foreclosure. Tex. Prop. Code § 51.006(e).

BUT DON'T DO THESE!!

Self Help #1:

At one time some T exas lenders tried to circumvent the time delays and procedures involved in foreclosing a deed of trust by requiring that at closing of the loan the borrower deliver a signed but undated quitclaim or deed conveying the mortgaged property to the lender . In the event of a subsequent default by the borrower, the lender would then date and file the instrument in the public records and thus acquire record title to the mortgaged property.

Title 2 of the Texas Business and Commerce Code was amended, effective Septemberl, 2011, by adding new chapter 21 that regulates residential foreclosure consulting services and chapter 21A that regulates the execution of deeds in transactions involving residential real estate, such as expressly prohibiting a seller or lender in a *residential* real estate transaction from requiring that the purchaser or borrower execute a deed or quitclaim conveying the real estate back to the seller or lender as security.

See Tex. Bus. & Com. Code § 21A.002(a), (c). Such instruments can be voided on an action brought within four years of the date the deed was recorded. *See* Tex. Bus. & Com. Code § 21A.002(c). The only statutory protections for third parties when such a deed is voided are for (1) successors in title to the purchaser who acquired the property without notice of the violation and (2) lenders who without notice of the violation extended credit based on a deed executed in violation of the statute. *See* Tex. Bus. & Com. Code § 21A.002(b).

Self Help #2:

Unlike the self-help repossession of personal property allowed under §9.609 of the Texas Business and Commerce Code, Texas law does not recognize self-help repossession of real estate. If the deed of trust contains no clause authorizing the lender to take possession of the mortgaged property prior to foreclosure, the only remedy afforded to the lender under a deed of trust is the right of nonjudicial foreclosure the lender bargained for. The lender who wrongfully exercises self-help repossession exposes itself to a variety of counterclaims. See, for example, Lighthouse Church of Cloverleaf v. Texas Bank, 889 S.W.2d 595 (Tex. App.—Houston [14th Dist.] 1994, writ denied), where the court (construing former §9.503, now §9.609) found that the repossessing lender had committed trespass by changing the locks on the doors of its borrower (a church) and posting guards to ensure that church members did not break back into the church for services.

AGREED BANKRUPTCY OR RECEIVERSHIP TO LIQUIDATE ASSETS

Agreed bankruptcies (such as the 2009 Chapter 11 bankruptcy filing of General Motors where, with federal assistance, General Motors negotiated agreements with many of its creditors prior to entering bankruptcy that were ratified by the bankruptcy court against the opposition of other creditors) and receiverships are ways that borrowers and lenders may freeze collection activities by third parties, arrange for an orderly disposition of claims against the debtor's property, and (in bankruptcy) even discharge claims against the debtor and/or obtain time for implementation of a reorganization of the debtor's business affairs. The Bankruptcy Code provides an automatic stay on all actions or proceedings, including nonjudicial foreclosure sales, against the debtor in bankruptcy or his mortgaged property. See 11 U.S.C. § 362. The stay of action also includes a stay of demanding payments, accelerating the debt, posting for or proceeding with foreclosure, filing suit against the debtor, repossessing or otherwise obtaining or perfecting liens against the property of the debtor, exercising any right of offset, and most other collection efforts. 11 U.S.C. § 362(a)(4). A foreclosure sale knowingly made in violation of the automatic stay can expose the lender to liability for actual and punitive damages. 11 U.S.C. § 362(k)(1). It is very important to run a bankruptcy check on a borrower before proceeding with a loan workout or foreclosure action so as not to be exposed to liability for violating the automatic stay.

In a receivership, the court appoints a receiver over the debtor's or mortgagor's property, which is held in custodia legis. The effect is that any action related to the property must be approved by the court that appointed the receiver. In Pratt v. Amrex, Inc., 354 S.W.3d 502 (Tex. App.—San Antonio 2011, pet. denied), the court held that the first lien mortgagee had no authority to foreclose its deed of trust against real property held in custodia legis by a receiver without the permission of the court that appointed the receiver. Pratt, 354 S.W.3d at 506 (citing First Southern Properties, Inc. v. Vallone, 533 S.W.2d 339, 341 (Tex. 1976).

A voluntary receivership is accordingly a means by which the lender and borrower may stop action against the mortgaged property by third parties and arrange for an orderly disposition of the mortgaged property without going through a bankruptcy proceeding.

If you are involved in a transaction involving a receivership where there will at some point be title insurance, get the underwriter involved from the very beginning. Receiverships are second only to tax lien sales in the list of things title companies don't like to insure. The problem is that no one (and particularly judges) understand the procedure.

If you are considering a receivership please see the following:

Receivership--Closing and Insuring Transactions, Texas Land Title Institute, 2012, Richard D. Worsham, Underwriting Counsel, First American Title National Commercial Services, Houston

Looking at a Receivership Issue? Here's What You Need to Know, 34th Annual Advanced Real Estate Law SBOT, 2012, Randolph L. Burns

Fidelity National Title Group, Underwriting Bulletin No. FNTG-TX-2013-03

Don't try these at home! Attorneys considering bankruptcies or receiverships pre-negotiated by the lender and borrower should consult with attorneys specializing in those areas of law.

ANOTHER CHOICE-SELL THE NOTE

Some lenders just don't want the drama of a foreclosure or they really don't want to end up owning the foreclosed property. In some cases there is a market for the note itself. Often however there will be a discount demanded by a buyer. There are people who are willing to step into the shoes of the buyer. This can be on a grand scale---for instance USAA has a special unit which buys distressed loans for long term gain. There are a number of hedge funds which will buy distressed notes. See Form SBOT 3-4 attached. The due diligence issues are extremely complex for the note purchaser and the discounting will be substantial in most cases.

ATTACHED FORMS: each of the forms denoted SBOT are available in electronic form in State Bar of Texas publications.

SBOT FORM 3-2 FORECLOSURE FORBEARANCE AGREEMENT

This Foreclosure Forbearance Agreement ("Agreement") is made and entered into effective as of **[] ("Effective Date") by and between [] ("Borrower") [, [] ("Guarantor"),] and [] ("Lender").**

Lender has loaned to Borrower, and Borrower has borrowed from Lender, the amount of $[] ("Loan") in accordance with the terms of a certain Loan Agreement dated [] ("Loan Agreement").

The Loan is evidenced, in part, by a certain promissory note dated [] executed by Borrower and payable to the order of the original Lender in the original principal amount of $[] ("Note").

The Loan is secured by the Security Documents (as that term is defined in the Loan Agreement), which Security Documents include a certain deed of trust ("Deed of Trust") dated [] executed by [] as "Grantor" to [] as "Trustee" for the benefit of Lender as beneficiary and recorded in [] of the real property records of [] County, Texas.

Guarantor has guaranteed the payment of the Note and other obligations of Borrower to current Lender under the Loan Agreement in accordance with the terms and provisions of a certain Guaranty dated as of [] and executed by Guarantor in favor of Lender.

Borrower defaulted in the performance of the Note, Loan Agreement, and/or Security Documents, and Lender caused the maturity of the Note to be accelerated in accordance with the Note, the Security Documents, and all applicable law effective as of [].

The Note matured and became fully due and payable on [].

Despite written demand for payment by Lender, Borrower has failed and refused to pay the amounts due and owing on the Note.

Thereafter, Lender instructed the Trustee to proceed with a nonjudicial foreclosure of the collateral pledged under the Deed of Trust. Pursuant to such instruction, the Trustee has posted the Deed of Trust for a public nonjudicial foreclosure to be conducted on [], in [] County, Texas, at [].

[Borrower has/Borrower and Guarantor have] requested that Lender forbear from exercising the rights and remedies to which Lender is entitled under the Deed of Trust and

the Security Documents in order to allow Borrower time to attempt to secure refinancing of the indebtedness evidenced and secured thereby or to sell the property securing the Loan and thereby pay all amounts due and owing to Lender.

[Borrower has/Borrower and Guarantor have] requested that Lender forbear from exercising the rights and remedies to which Lender is entitled under the Deed of Trust and the Security Documents in consideration of the payment to Lender of the Forbearance Fee described in paragraph 3. below.

Lender has agreed, subject to the terms and conditions set forth in this Agreement, to temporarily forbear enforcement of its rights under the Note, the Loan Agreement, the Deed of Trust, and the Security Documents.

Therefore, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower [, Guarantor,] and Lender agree as follows:

Incorporation of Recitals. The foregoing recitals are acknowledged by the parties to be true and correct and are incorporated by reference for all purposes.

Defined Terms. Capitalized terms not otherwise defined herein will have the meaning set forth in the Loan Agreement and/or the Security Documents, as applicable.

Forbearance Fee. As consideration for and as a condition to Lender's agreement to forbear from exercising its rights to proceed with foreclosure under the Deed of Trust and the Security Documents, Borrower agrees to pay to Lender a nonrefundable forbearance fee in the amount of $[] ("Forbearance Fee") on or before [].

Payment on Debt. As [further] consideration for and as a condition to Lender's agreement to forbear from exercising its rights under the Deed of Trust and the Security Documents, Borrower agrees to pay to Lender on or before [] the amount of $[] for application against the fees, expenses, accrued interest, and/or principal unpaid and owing to Lender under the Note, the Loan Agreement, and the Security Documents ("Debt Payment"). The Debt Payment will be applied by Lender in the following manner:

Fees and expenses reimbursable to Lender:	**$[]**
Accrued, unpaid interest on Note:	**$[]**
Reduction of principal balance of Note:	**$[]**

Stipulation of Amounts Due. Borrower [, Guarantor,] and Lender hereby stipulate and agree that, assuming that the Debt Payment is made in full on [], after the application of the Debt Payment the total unpaid balance of the debt owing by Borrower to Lender under the Note, the Loan Agreement, and the Security Documents will be as follows:

Principal balance:	**$[]**
Accrued interest:	**$[]**
Lender's fees and expenses:	**$[]**

[Borrower hereby agrees and stipulates/Borrower and Guarantor, jointly and severally, hereby agree and stipulate] that the total amount shown as due and owing above is just, due, owing, unpaid, and subject to no offsets, deductions, credits, charges, defenses, or claims of any kind or character.

Forbearance by Lender. **In consideration of and conditioned on the payment of [the Forbearance Fee/the Debt Payment/the Forbearance Fee and the Debt Payment], Lender agrees to instruct the Trustee to pass over and not conduct the nonjudicial foreclosure of the Deed of Trust currently scheduled for [].**

No Waiver by Lender. **Nothing in this Agreement will be deemed to constitute a waiver by Lender of any right, remedy, claim, demand, or cause of action that Lender now has or will acquire, or that has arisen or will arise, under this Agreement, the Loan Agreement, the Note, and/or the Security Documents. Without limitation of the foregoing, [Borrower acknowledges and stipulates/Borrower and Guarantor acknowledge and stipulate] that at any time on or after [] Lender may (a) cause the Deed of Trust to be reposted for a public nonjudicial foreclosure sale and/or (b) proceed with any other right or remedy provided under this Agreement, the Loan Agreement, or the Security Documents for default by Borrower.**

Continuation of Default. **[Borrower expressly stipulates and agrees/Borrower and Guarantor, jointly and severally, expressly stipulate and agree] that the execution of this Agreement does not constitute a cure of the prior default by Borrower under the Loan Agreement, Note, and Security Documents and that after giving effect to this Agreement (a) Borrower remains in default of its obligations under the Loan Agreement, Note, and Security Documents; and (b) the entire unpaid balance of the Note remains mature, due, and owing.**

Further Default by Borrower. **[Borrower agrees and stipulates/Borrower and Guarantor, jointly and severally, agree and stipulate] that if before [] [Borrower/Borrower or Guarantor] breaches any provision of this Agreement, the Loan Agreement, and/or any of the Loan Documents, Lender may immediately proceed to enforce any right or remedy available to it for default in the payment of the Note, without the necessity of giving [Borrower/Borrower or Guarantor] (a) any notice of such default or (b) any period of time in which to cure such default that might otherwise be provided for under the Loan Agreement, Note, and/or Security Documents, it being agreed that all such notices and cure period of every kind are hereby waived and released, unless and until such time that Lender by further written agreement reinstates the Note. Without limitation of the foregoing, Lender's agreement to forbear enforcement of its rights and remedies under the Security Documents will automatically terminate, without further notice to [Borrower/Borrower or Guarantor], if Borrower fails to—**

a. continue to make monthly payments in the amount of $[] on the Note on or before the [] day of each calendar month, commencing [] [; and/;]

b. continue to comply with all other terms and conditions of the Loan Agreement and the Security Documents and allow no other defaults or events of default to occur under the terms of the Loan Agreement [./;/; and]

Tolling of Limitations. [Borrower hereby stipulates and agrees/Borrower and Guarantor, jointly and severally, hereby stipulate and agree] that, from [] through [], the statute of limitations governing enforcement of the Note and the Loan Documents will be and is hereby tolled, notwithstanding that the Note has matured and is fully due and payable. As a result of the foregoing, [Borrower agrees/Borrower and Guarantor, jointly and severally, agree] that Lender will have the full statutory limitations period in which to enforce its rights under the Loan Documents and that such statutory limitations period will begin to run on []. [Borrower hereby expressly waives and agrees/Borrower and Guarantor, jointly and severally, hereby expressly waive and agree] not to assert any claims or defenses to enforcement of the Note and/or the Loan Documents based on the statute of limitations for enforcement of the Note and/or the Loan Documents commencing to run before [].

Reaffirmation. [Borrower, in its capacity as debtor, grantor, mortgagor, or assignor/Borrower and Guarantor, jointly and severally, in their capacities as debtors, grantors, mortgagors, or assignors] under the Security Documents, hereby confirm[s] and agree[s] that [its/their] liabilities under the Security Documents are and will remain enforceable against [Borrower/Borrower and Guarantor, jointly and severally,] in accordance with their terms; are, and will continue to be, in full force and effect; will not be reduced, altered, limited, or lessened; will be increased by and secure the full amount of the Note; and are hereby confirmed, ratified, extended, and increased in all respects. [Borrower stipulates and agrees/Borrower and Guarantor, jointly and severally, stipulate and agree] that this Agreement will not impair the Security Documents or any liens or security interests securing the Note; that such liens and security interests will not in any manner be waived, released, or extinguished; and that such liens and security interests are hereby acknowledged to be valid and subsisting and are hereby renewed and extended to secure payment of the Note and all other obligations under the Loan Agreement.

[Borrower does/Borrower and Guarantor, jointly and severally, do] hereby fully release, acquit, and forever discharge Lender and its officers, directors, attorneys, employees, and/or shareholders from any and all Claims. [Borrower does/Borrower and Guarantor, jointly and severally, do] hereby represent and warrant to Lender that Borrower is the owner and holder of each of the Claims, and [Borrower is/Borrower and Guarantor, jointly and severally, are] fully authorized to execute and deliver this release without the necessity of obtaining the consent or joinder of any other person. As used in this section, the term "Claims" means any and all claims, actions, causes of action, suits, disputes, controversies, debts, offset rights, defenses to payment, losses, damages, and demands of any nature, known or unknown, whether in contract or in tort, at law or in equity, for money damages, dues, recovery of property, or specific performance or any other redress or recompense that may have accrued or may ever accrue, may have been had, may be now possessed, or may or will be possessed in the future by or on behalf of

[Borrower/Borrower and/or Guarantor, whether jointly or severally,] against Lender or its officers, directors, attorneys, employees, or shareholders by reason of, or arising from or out of, the Note, the Loan Agreement, the documents executed in connection with or securing the Note, or the loan transaction evidenced by the Note. The term "Claims" specifically includes, without limitation, claims based (in whole or in part) on the theories of misrepresentation, fraud, duress, tortious interference with contract, tortious interference with business opportunity, usury, lender liability, deceptive trade practices, breach of fiduciary duty, breach of funding commitment, conspiracy, violation of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of emotional distress, libel, and slander.

This Agreement will become effective as of the Effective Date when, and only when, Lender will have received each of the following in form and substance satisfactory to Lender and its counsel:

1. Counterparts of this Agreement executed by Borrower [, Guarantor,] and Lender.

2. The forbearance fee.

3. The principal reduction payment.

4. State and local lien searches for [Borrower/Borrower and Guarantor] that disclose no adverse liens or claims having been filed against [Borrower/Borrower and Guarantor].

5. Personal financial statements dated as of [] for [Borrower/Borrower and Guarantor].

6. An opinion of counsel to [Borrower/Borrower and Guarantor] of form and substance reasonably satisfactory to Lender concerning the legality and enforceability of each of the material provisions of this Agreement.

7. Certificates of the secretary or assistant secretary of [Borrower/Borrower and Guarantor] setting forth (a) resolutions of [its/their] board of directors in form and substance satisfactory to Lender with respect to the authorization of all instruments and agreements to be executed by [Borrower/Borrower and Guarantor, respectively,] provided herein and the [officers of Borrower/respective officers of Borrower and Guarantor] authorized to sign such agreements and instruments and (b) specimen signatures of the officers so authorized.

8. Such other documents as Lender may reasonably have requested at any time at or before the execution hereof.

9. Payment by Borrower of all fees and expenses (including, without limitation, attorney's fees) incurred by Lender in preparation and negotiation of this Agreement.

[Borrower hereby reaffirms/Borrower and Guarantor hereby reaffirm] that, as of the Effective Date of this Agreement, the representations and warranties of [Borrower/Borrower and Guarantor] set forth in the Loan Agreement are true and correct on the date hereof as though made on and as of the date of this Agreement. In addition, [Borrower hereby represents and warrants/Borrower and Guarantor hereby represent and warrant] to Lender as follows:

1. Each of the terms and conditions of the Loan Documents are in full force and effect, and there are no claims or offsets against, or defenses or counterclaims to, Lender's enforcement of the Note and Security Documents.

2. This Agreement constitutes the legal, valid, and binding obligation of [Borrower/Borrower and Guarantor] and is enforceable against [Borrower/Borrower and Guarantor] in accordance with its terms.

3. The consideration received and to be received by [Borrower/Borrower and Guarantor] under this Agreement is adequate and sufficient in all respects.

4. This Agreement is being entered into by [Borrower/Borrower and Guarantor] voluntarily, and [Borrower has/Borrower and Guarantor have] relied on the advice of [its/their] independent legal counsel in evaluating whether to enter into this Agreement.

5. The information and documents to be furnished by or on behalf of [Borrower/Borrower and Guarantor] to Lender under this Agreement are and will be true, accurate, and complete in all respects.

6. There is no material fact that [Borrower has/Borrower and Guarantor have] failed to disclose to Lender that could have a material adverse effect on the financial condition of [Borrower/Borrower and Guarantor] during the term of this Agreement, and there are no actions, suits, or proceedings pending or threatened against [Borrower/Borrower and Guarantor], other than as specifically set forth on Schedule 1 attached hereto. There are no outstanding or unpaid judgments against [Borrower/Borrower and Guarantor] other than as set forth on Schedule 1.

7. The information set forth on Schedule 1 concerning unpaid taxes or tax liens affecting [Borrower/Borrower and Guarantor] is true, accurate, and complete and is not misleading due to the omission of any material facts. The payment terms set forth on Schedule 1 relating to the unpaid taxes have been agreed to by the applicable taxing authority in writing, and such payment terms have been fully met by [Borrower/Borrower and Guarantor] as of the Effective Date.

8. No representation or warranty by [Borrower/Borrower and Guarantor] contained herein, and no document, statement, exhibit, certificate, or schedule furnished or to be furnished by [Borrower/Borrower and Guarantor] to Lender, contains or will contain any untrue statement of a material fact or omits or will omit a material fact necessary to make a statement or fact recited therein not misleading.

The continuing validity in all respects of the representations and warranties by [Borrower/Borrower and Guarantor] set forth in this Agreement will be a condition

precedent to the performance by Lender of its obligations and agreements under this Agreement. If any of the foregoing representations and warranties by [Borrower/Borrower and Guarantor] should, at any time, prove to be inaccurate in any respect, Lender's forbearance obligations under this agreement will immediately terminate.

Parties Bound. This Agreement will be binding on and inure to the benefit of Borrower, [Guarantor,] Lender, and their respective permitted successors and assigns, as provided in the Loan Agreement.

Counterparts. This Agreement will be executed in any number of counterparts, all of which taken together will constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart.

Governing Law. This Agreement will be deemed to be a contract under the laws of the state of Texas and for all purposes will be governed by, and construed in accordance with, the laws of Texas and the applicable laws of the United States of America. This Agreement has been entered into in [] County, Texas, and shall be performable for all purposes in [] County, Texas. Courts within the state of Texas will have jurisdiction over any and all disputes arising under or pertaining to this Agreement, and venue in any such dispute will be in the county or judicial district of the Lender's principal place of business.

[]

[]

SUBSCRIBED AND SWORN TO before me on by [].

Notary Public, State of Texas

SBOT FORM 3-3 REINSTATEMENT, MODIFICATION AND EXTENSION AGREEMENT

Reinstatement, Modification, Renewal, and Extension Agreement

This reinstatement, modification, renewal, and extension agreement ("Agreement") is entered into by [] **("Lender") and [] ("Borrower").**

Lender is the holder of the promissory note ("Note") dated [], in the original principal amount of $[] executed by [], originally payable to the order of [].

The Note is secured by the following instruments ("Security Documents"):

Deed of Trust. The Note is secured by a deed of trust and security agreement executed by Borrower to [], Trustee, dated [], recorded in [] of the real property records of [] County, Texas ("Deed of Trust"). The Deed of Trust encumbers real property located in [] County, Texas, improvements situated thereon, and other property, as described in the Deed of Trust ("Property") and includes the property described as follows: [].

Assignment of Rents. The Note is secured by an assignment of rent executed by Borrower to Lender, dated [], recorded in [] of the real property records of [] County, Texas ("Assignment of Rent").

Assignment of Leases. The Note is secured by an assignment of leases dated [], recorded in [] of the real property records of [] County, Texas ("Assignment of Leases").

Guaranty. The Note is secured by a guaranty agreement ("Guaranty") given to Lender by [] ("Guarantor").

The Note and the Security Documents are collectively referred to as the Loan Documents.

Borrower is in default under the terms of the Loan Documents. Lender accelerated the maturity of the Note on [] and demanded payment in full of all amounts owed thereunder, as set forth in the notice to Borrower dated []. Lender caused the Trustee of the Deed of Trust to post the Property for foreclosure sale to be held on [].

Borrower has requested and Lender has agreed to (1) accept payment of the delinquent installments on the Note and reinstate the Loan Documents to the same extent as if no default had occurred and (2) modify certain provisions of the Note and Loan Documents, as provided in this Agreement.

Therefore, for valuable consideration, the receipt and sufficiency of which are acknowledged, Borrower and Lender agree as follows:

Receipt of Amounts. **Lender acknowledges receipt as of the execution of this Agreement of the following amounts:**

a. Installments due in the amount of $[] each for the months of [] [] through [] [] totaling $[].

b. Late charges to date assessed under the terms of the Loan Documents of $[].

c. Reimbursement to Lender of reasonable attorney's fees of $[], as authorized by section 38.001 of the Texas Civil Practice and Remedies Code and the Loan Documents.

d. Title insurance endorsement fee of $[] paid to the Title Company and recording fees of $[].

Reinstatement. **The Loan Documents, as modified by this Agreement, are reinstated as if no default had occurred. Hereafter, principal and accrued interest on the Loan Documents will be due and payable as provided for in the Note, as modified by this Agreement. This Agreement will not prejudice Lender's exercise of the rights conferred by the Loan Documents in the event of a future default, including the right to again accelerate the maturity date of the Loan Documents.**

Borrower (a) expressly assumes payment of all amounts due and owed under the Loan Documents; (b) acknowledges that Borrower is primarily liable for the payment of the indebtedness evidenced by, and performance of the obligations of, the Loan Documents; (c) extends and renews the Loan Documents as provided for in this Agreement; (d) agrees that the extension and renewal will not affect or impair the Loan Documents; and (e) promises to pay to the order of Lender the indebtedness evidenced by the Note according to its terms, as modified by this Agreement.

Acknowledgment of Outstanding Balance. **The parties acknowledge that the outstanding principal balance of the Note as of the date of this Agreement, after the application of the installments paid to Lender as referenced in paragraph 1. above, is $[].**

Renewal and Extension of Maturity. **The Note is renewed, and the maturity of the Note is extended to [] (the "Extended Maturity Date").**

Modification of Interest Rate. **The annual interest rate provided for in the Note is amended so that interest will be charged as of the date of this Agreement at the lesser of (a) the highest lawful rate, as defined below, or (b) [] percent per year. The highest lawful rate is the maximum interest rate permitted under the laws of the state of Texas, which will be the rate ceiling from time to time in effect as provided for in the Texas Finance Code, as amended, and as may be superseded by federal law. To the extent permitted by and in accordance with applicable law, any holder of the Note will have the right to change the applicable rate ceiling from time to time.**

Note Payment Schedule. **From the effective date of this Agreement, principal and interest will be payable as follows: [].**

Usury Savings Clause. **No provisions of this Agreement or the Loan Documents will require the payment of or permit the collection, application, or receipt of interest in excess of the maximum permitted by applicable state or federal law. If any interest in excess of the maximum permitted by applicable law is provided for by this Agreement or the Loan Documents, or will be adjudicated to be so provided for, the provisions of this paragraph will govern, and neither Borrower nor any endorsers of the Note will be obligated to pay such interest to the extent it is in excess of the maximum permitted by applicable law. It is expressly stipulated that the intent of Borrower and Lender is to comply with the usury and other laws relating to the Loan Documents at all times. If Lender or other holder of the Note ever receives, collects, or applies as interest any such excess, the excess interest will be applied to reduce the unpaid principal balance of the Note. If such application pays in full the principal balance of the Note, any remaining excess will be paid to Borrower and the provisions of the Loan Documents will immediately be deemed reformed and the amounts thereafter collectively reduced, without the necessity of executing any new document, so as to comply with the applicable law while permitting the fullest recovery of the amounts called for by this Agreement and the Loan Documents. In determining if the interest paid or payable under any specific contingency exceeds the maximum allowed by applicable law, Borrower and Lender or other holder of the Note will, to the extent permitted by applicable law, amortize, prorate, allocate, and spread the total amount of interest throughout the entire term of the Note so that the amount or rate of interest charged for any period during the term of the Note is to the greatest extent possible less than the maximum amount or rate of interest allowed by applicable law during the relevant period. Notwithstanding the foregoing, if at any time the law is changed so as to permit the charging of a higher amount or rate of interest than was permitted before the law changed, then to the extent permitted by law, references in the Loan Documents to "applicable law" for purposes of determining the maximum amount or rate of interest that can be charged will refer to the law as amended to allow the greater amount or rate of interest.**

Release and Waiver of Usury Claims. **In consideration of the Lender's reinstatement of the Loan, the settlement of the matters disputed by Borrower, and the other benefits received by Borrower, Borrower waives, releases, and terminates all claims or rights to claim that Lender or any other party has charged, collected, or received usurious interest under the Loan Documents but only to the extent permitted by applicable law.**

Release and Waiver of Other Claims. **In consideration of (a) Lender's acceptance of payment of the delinquent installments on the Note, (b) the modification of the Loan Documents, and (c) the other benefits received by Borrower, Borrower releases, relinquishes, and discharges Lender and its predecessors, successors, assigns, agents, officers, directors, employees, and representatives from any claims or causes of action that Borrower may have against Lender and its predecessors, successors, assigns, agents, officers, directors, employees, and representatives with respect to transactions occurring before the date of this Agreement relating to the Loan Documents, including any loss, cost, or damage connected with the actions or omissions of Lender and its predecessors, successors, assigns, agents, officers, directors, employees, and representatives, but only to the extent permitted by applicable law.**

Arbitration. The Loan Documents are amended to provide that any controversy or claim relating to the Loan Documents or this Agreement, any act or omission of Borrower and Guarantor with respect to Lender, and any act or omission of Lender with respect to Borrower or Guarantor, including but not limited to claims arising from an alleged tort, will at the request of Lender be determined by arbitration under the auspices and rules of the American Arbitration Association, in accordance with the Texas General Arbitration Act if applicable, otherwise in accordance with the Federal Arbitration Act. Judgment on the award rendered by the arbitrator will be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy will not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration. Nothing in this paragraph limits the right of Lender to foreclose against or sell any real or personal property collateral or the Property or to obtain provisional or ancillary remedies from a court of competent jurisdiction before, after, or during the pendency of any arbitration. The arbitration will be commenced by filing a demand for arbitration on the other party or parties and the American Arbitration Association. The arbitrator will be a person who is qualified to make decisions in commercial lending matters and, if possible, will be an attorney. The arbitration proceeding will be held in [], Texas. The arbitrator will maintain the privacy of the hearings and have the power to exclude witnesses, other than a party, during the testimony of other witnesses. The prevailing party in the arbitration proceeding will be entitled to reasonable attorney's fees, costs, and necessary expenses incurred in connection with such proceeding, as determined by the arbitrator.

Miscellaneous

a. Except as modified under this Agreement, the provisions of the Loan Documents will continue in full force and effect. Borrower acknowledges and reaffirms its liability to Lender under the Loan Documents. If any inconsistency exists between this Agreement and the terms of the Loan Documents, this Agreement will govern.

b. Borrower agrees to pay all costs and expenses incurred by Lender in connection with the execution and administration of this Agreement and the reinstatement and modification of the Loan Documents and any other documents executed in connection herewith.

c. Any default by Borrower in the performance of its obligations under this Agreement constitutes a default under the Loan Documents and will allow Lender to exercise all of its remedies set forth in the Loan Documents.

d. Lender does not, by its execution of this Agreement, waive any rights it may have against any person not a party to this Agreement.

e. This Agreement may be executed in multiple counterparts, each of which constitutes an original instrument, but all of which constitute the same agreement.

Notice Pursuant to Section 26.02 of the Texas Business and Commerce Code.

EXECUTED ON [].

BORROWER:

[], []

LENDER:

[], []

CONSENTED TO BY GUARANTOR:

[]

APPROVED BY COUNSEL:

BORROWER'S ATTORNEY

[]
ATTORNEY FOR []
STATE BAR NO.:
[E-MAIL]
[]
[]
[]

LENDER'S ATTORNEY

[]
ATTORNEY FOR []
STATE BAR NO.:
[E-MAIL]
[]
[]
[]

GUARANTOR'S ATTORNEY

SBOT FORM 3-4 LOAN PURCHASE AGREEMENT

This Loan Purchase Agreement ("Agreement") is executed this [] **(the "Effective Date"), by and between [], superior lienholder ("Seller"), and [], junior lienholder ("Purchaser"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.**

A. Recitals

Loan. Seller is the owner and holder of a certain promissory note in the stated principal amount of $[] dated [] (the "Note") executed and delivered by [] (such party, together with any other party obligated to pay the Loan (hereinafter defined), being hereinafter referred to as the "Borrower") evidencing the loan more particularly described therein (the "Loan").

Security Documents. The Loan is secured by, among other things, the lien and security interests of a certain deed of trust (the "Deed of Trust") more particularly described on Schedule 1, and the Deed of Trust encumbers real property and improvements located in the state of Texas, county of [], as more particularly described on Exhibit A attached hereto and made a part hereof (the "Mortgaged Property").

Intent of Purchaser. Purchaser desires to purchase the Note and the Loan from Seller, together with all of Seller's right, title, and interest in, to, and under all documents and instruments evidencing, securing, or pertaining in any respect to the Loan as more particularly described on Schedule 1 (collectively, the "Loan Documents") on the terms and subject to the conditions set forth herein.

B. Agreements

Sale and Purchase. Seller agrees to sell, convey, and assign to Purchaser, and Purchaser agrees to purchase and accept from Seller, for the Purchase Price (as hereinafter defined) on the terms and conditions set forth in this Agreement, the Note, the Loan, and all the rights, title, and interest of Seller in, to, and under the Loan Documents.

Purchase Price; Earnest Money

Purchase Price. The purchase price ("Purchase Price") to be paid by Purchaser to Seller for the Loan is $[]. The Purchase Price will be delivered by Purchaser to [] ("Escrow Agent") in immediately available cash funds (by wire transfer or delivery of other immediately available funds) at the Closing (as hereinafter defined) for delivery to Seller upon the consummation of the Closing.

Deposit of Earnest Money with Escrow Agent. Within two business days (hereinafter defined) after the execution of this Agreement by Seller, Purchaser, and Escrow Agent, Purchaser will pay to Escrow Agent the amount of $[] (the "Earnest Money") by check drawn on immediately

available good funds or by wire transfer of immediately available funds in accordance with the wiring instructions set forth below. Escrow Agent will, promptly on receipt, place the Earnest Money in one or more federally insured interest-bearing accounts, with interest thereon to be added to principal as additional Earnest Money and disbursed in the same manner under this Agreement as principal. Interest earned on the Earnest Money will be reportable under Purchaser's taxpayer identification number. If Purchaser fails to timely deliver the Earnest Money, then Seller, as its sole remedy, may terminate this Agreement by delivering to Purchaser written notice thereof.

Preclosing Payments and Prorations at Closing. **From the Effective Date until Closing, any payments of principal with respect to the Loan due or received by Seller will be transferred to Purchaser or will be credited against the Purchase Price. Notwithstanding the preceding sentence, if the Closing does not occur, the payments will remain the property of Seller. The parties agree to prorate current interest as of the Closing Date with Seller receiving accrued interest through the date preceding the Closing Date. If Seller is collecting and escrowing, or has collected and escrowed, funds for the purpose of applying them toward the annual payments of real estate taxes, hazard insurance premiums, private mortgage insurance premiums, or any other purposes permitted under the terms of the Loan Documents, an amount equal to all such funds (to the extent such funds are in existence on the Closing Date and have not been applied by Seller to any obligations or expenses) will be credited against the Purchase Price. The credit to Purchaser will be deemed a transfer of the funds held in escrow by Seller to Purchaser, and Purchaser will assume all obligations, whether fiduciary, reporting, or otherwise, associated with being the escrow agent of such funds to the extent first arising and accruing after Closing. Seller does not and will not as of Closing Date make any representation or warranty regarding the adequacy of the escrow or the amounts necessary to satisfy the obligations intended to be paid from escrow.**

Independent Contract Consideration. **In addition to all other amounts under this Agreement, on its execution of this Agreement, Purchaser will pay to Seller an amount equal to $100 (the "Independent Contract Consideration"), which Seller and Purchaser hereby acknowledge and agree has been bargained for and agreed to as consideration for Seller's execution and delivery of this Agreement. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided for in this Agreement and will not be refunded in any event.**

Items to Be Provided by Seller. **Within five days after the Effective Date, Seller will provide the following for Purchaser for review at Seller's offices and, at Purchaser's option, copying:**

Loan Documents. **Copies of the Loan Documents, to the extent they are in Seller's possession.**

Evaluation Materials. **Such other documents (the "Evaluation Material") pertaining to the Loan and/or the Mortgaged Property in Seller's actual possession or control including documents such as property operating statements, mortgagee title insurance policies, and other material pertaining to the Loan to the extent they (1) are not subject to any confidentiality agreement prohibiting the delivery thereof by Seller to Purchaser, (2) do not contain any confidential valuations prepared by Seller (provided, however, that Purchaser**

will be entitled to review and copy any property valuation for the Mortgaged Property prepared by independent third parties), (3) do not relate to Seller's internal approval and review process, and (4) do not contain information about Seller that is proprietary or confidential.

Inspection

Inspection Period. Purchaser will have a period beginning on the Effective Date and ending at 5:00 CENTRAL TIME ON THE DATE THAT IS [] CALENDAR DAYS AFTER THE EFFECTIVE DATE (THIS PERIOD BEING HEREIN CALLED THE "INSPECTION PERIOD") TO MAKE SUCH EXAMINATIONS, STUDIES, INSPECTIONS, AND INVESTIGATIONS ("INSPECTIONS") REGARDING THE LOAN, THE LOAN DOCUMENTS, AND THE MORTGAGED PROPERTY AS PURCHASER MAY DESIRE.

ACCESS TO MORTGAGED PROPERTY. NOTHING CONTAINED HEREIN WILL AUTHORIZE ANY INSPECTION OF THE MORTGAGED PROPERTY BY PURCHASER THAT WOULD NOT BE PERMITTED UNDER THE TERMS AND PROVISIONS OF THE LOAN DOCUMENTS.

INSPECTION EXPENSES. ANY INSPECTION FEE, APPRAISAL FEE, ENGINEERING FEE, OR OTHER EXPENSE OF ANY KIND INCURRED BY PURCHASER RELATING TO, OR IN CONNECTION WITH, ANY INSPECTIONS WILL BE SOLELY PURCHASER'S EXPENSE.

RISKS. PURCHASER WILL MAKE SUCH EXAMINATION, REVIEW, AND INVESTIGATION OF THE FACTS AND CIRCUMSTANCES NECESSARY TO EVALUATE THE LOAN, THE LOAN DOCUMENTS, AND THE MORTGAGED PROPERTY AS IT DEEMS NECESSARY OR APPROPRIATE TO FORM A BASIS FOR ITS EVALUATION OF THE PURCHASE OF THE LOAN. PURCHASER IS ASSUMING ALL RISK WITH RESPECT TO THE COMPLETENESS, ACCURACY, OR SUFFICIENCY OF THE LOAN, THE LOAN DOCUMENTS, AND ANY INFORMATION PERTAINING TO THE MORTGAGED PROPERTY. PURCHASER FURTHER ACKNOWLEDGES THAT IN ACQUIRING THE LOAN, PURCHASER IS ASSUMING THE RISK OF FULL OR PARTIAL LOSS THAT IS INHERENT IN THE CREDIT, COLLATERAL, AND COLLECTIBILITY RISK ASSOCIATED WITH THE QUALITY AND CHARACTER OF THE LOAN.

TERMINATION EXCEPT FOR SURVIVAL OBLIGATIONS. IF PURCHASER, IN ITS SOLE AND ABSOLUTE DISCRETION, IS NOT SATISFIED WITH THE RESULTS OF ITS INSPECTIONS FOR ANY REASON WHATEVER, PURCHASER WILL HAVE THE RIGHT, AS PURCHASER'S SOLE AND EXCLUSIVE REMEDY, TO TERMINATE THIS AGREEMENT BY GIVING WRITTEN NOTICE OF TERMINATION TO ESCROW AGENT AND SELLER ON OR BEFORE THE EXPIRATION OF THE INSPECTION PERIOD. ON SUCH TERMINATION, NEITHER PARTY HERETO WILL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EXCEPT FOR THOSE OBLIGATIONS THAT EXPRESSLY SURVIVE TERMINATION OF THIS AGREEMENT (THE "SURVIVAL OBLIGATIONS"), AND ESCROW AGENT WILL DISBURSE THE EARNEST MONEY TO PURCHASER AND NOTIFY SELLER OF THE TERMINATION OF THIS AGREEMENT. IF, EXCEPT AS OTHERWISE PROVIDED HEREIN, PURCHASER DOES NOT ELECT TO TERMINATE THIS AGREEMENT DURING THE INSPECTION PERIOD BY NOTICE IN WRITING TO ESCROW AGENT AND SELLER BEFORE THE EXPIRATION OF THE INSPECTION PERIOD, PURCHASER WILL BE DEEMED TO HAVE WAIVED ITS RIGHT TO TERMINATE THIS AGREEMENT UNDER THIS SECTION B.4.

TERMINATION, DEFAULT, AND REMEDIES

SELLER'S REMEDIES. IF PURCHASER FAILS OR REFUSES TO CONSUMMATE THE PURCHASE OF THE LOAN UNDER THIS AGREEMENT AT THE CLOSING FOR ANY REASON, OTHER THAN TERMINATION OF THIS AGREEMENT BY PURCHASER UNDER A RIGHT TO TERMINATE EXPRESSLY SET FORTH IN THIS AGREEMENT, THAT EVENT WILL CONSTITUTE A DEFAULT BY PURCHASER HEREUNDER AND SELLER MAY, AS SELLER'S SOLE AND EXCLUSIVE REMEDY, TERMINATE THIS AGREEMENT BY GIVING WRITTEN NOTICE TO PURCHASER BEFORE OR AT THE CLOSING, WHEREUPON NEITHER PARTY HERETO WILL HAVE ANY FURTHER RIGHT OR OBLIGATION HEREUNDER, OTHER THAN THE SURVIVAL OBLIGATIONS, AND ESCROW AGENT WILL DISBURSE TO SELLER THE EARNEST MONEY, WHICH WILL CONSTITUTE LIQUIDATED DAMAGES FOR PURCHASER'S DEFAULT UNDER THIS AGREEMENT (WITH THE EXCEPTION OF ANY DEFAULT UNDER THE SURVIVAL OBLIGATIONS, IN WHICH EVENT SELLER'S REMEDIES WILL NOT BE LIMITED AS PROVIDED HEREIN). IT IS AGREED THAT THE EARNEST MONEY REPRESENTS A REASONABLE FORECAST OF JUST COMPENSATION FOR THE HARM THAT WOULD BE CAUSED TO SELLER BY SUCH A DEFAULT; THAT THE HARM THAT WOULD BE CAUSED BY SUCH A DEFAULT IS ONE THAT IS IMPRACTICAL AND EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO CALCULATE; AND THAT PAYMENT OF THE EARNEST MONEY ON SUCH A DEFAULT WILL CONSTITUTE FULL SATISFACTION OF PURCHASER'S OBLIGATIONS HEREUNDER, OTHER THAN THE SURVIVAL OBLIGATIONS. OTHER THAN RECEIPT OF THE EARNEST MONEY, IN NO EVENT WILL SELLER BE ENTITLED TO CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES OR SPECIFIC PERFORMANCE FROM PURCHASER DUE TO PURCHASER'S DEFAULT HEREUNDER.

PURCHASER'S REMEDIES. IF SELLER FAILS OR REFUSES TO CONSUMMATE THE SALE OF THE LOAN UNDER THIS AGREEMENT AT THE CLOSING, OR IF SELLER FAILS TO PERFORM ANY OF SELLER'S OTHER OBLIGATIONS HEREUNDER, WHEN REQUIRED, EITHER BEFORE OR AT THE CLOSING, FOR ANY REASON OTHER THAN THE TERMINATION OF THIS AGREEMENT BY SELLER UNDER A RIGHT TO TERMINATE EXPRESSLY SET FORTH IN THIS AGREEMENT OR PURCHASER'S FAILURE TO PERFORM PURCHASER'S OBLIGATIONS UNDER THIS AGREEMENT, PURCHASER WILL HAVE THE RIGHT, AS PURCHASER'S SOLE AND EXCLUSIVE REMEDIES, TO EITHER (1) TERMINATE THIS AGREEMENT BY GIVING WRITTEN NOTICE THEREOF TO SELLER BEFORE OR AT THE CLOSING OR (2) SEEK AND ENFORCE SPECIFIC PERFORMANCE OF THIS AGREEMENT. IF PURCHASER ELECTS TO TERMINATE THIS AGREEMENT UNDER CLAUSE (1) ABOVE, ON SUCH TERMINATION NEITHER PARTY HERETO WILL HAVE ANY FURTHER RIGHT OR OBLIGATION HEREUNDER, OTHER THAN THE SURVIVAL OBLIGATIONS, AND ESCROW AGENT WILL DELIVER THE EARNEST MONEY TO PURCHASER. IN NO EVENT WILL PURCHASER BE ENTITLED TO RECEIVE CONSEQUENTIAL, PUNITIVE, SPECIAL, OR OTHER DAMAGES, SUCH DAMAGES BEING HEREBY EXPRESSLY WAIVED AND RELEASED.

CLOSING

CLOSING DATE. THE CLOSING ("CLOSING") OF THE SALE OF THE LOAN BY SELLER TO PURCHASER WILL OCCUR AT THE OFFICES OF ESCROW AGENT OR ANY OTHER MUTUALLY ACCEPTABLE LOCATION, ON THE DATE THAT IS [] CALENDAR DAYS AFTER THE EXPIRATION OF THE INSPECTION PERIOD OR SUCH EARLIER DATE AS PURCHASER MAY REQUEST ON TWO BUSINESS DAYS' PRIOR NOTICE TO SELLER (THE "CLOSING DATE"). IF THE CLOSING HAS NOT

OCCURRED BY [], SELLER MAY TERMINATE THIS AGREEMENT, WHEREUPON NEITHER PARTY WILL HAVE ANY FURTHER RIGHT OR OBLIGATION HEREUNDER, OTHER THAN THE SURVIVAL OBLIGATIONS, AND ESCROW AGENT WILL PROMPTLY DISBURSE THE EARNEST MONEY TO SELLER, EXCEPT TO THE EXTENT EXPRESSLY OTHERWISE PROVIDED IN THIS AGREEMENT.

ACTIONS AT CLOSING. AT THE CLOSING, ALL THE FOLLOWING WILL OCCUR AND BE DEEMED CONCURRENT CONDITIONS PRECEDENT:

SELLER'S ACTIONS. SELLER, AT SELLER'S SOLE COST AND EXPENSE, WILL DELIVER OR CAUSE TO BE DELIVERED TO ESCROW AGENT THE FOLLOWING:

DELIVERY OF NOTE WITH RESTRICTED ENDORSEMENT. THE ORIGINAL EXECUTED NOTE, TOGETHER WITH ANY ALLONGES OR PRIOR ENDORSEMENTS THERETO, WHICH SHALL BE ENDORSED "PAY TO THE ORDER OF [], WITHOUT RECOURSE OR WARRANTY, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES MADE BY THE UNDERSIGNED IN THAT CERTAIN LOAN PURCHASE AGREEMENT DATED AS OF [] BETWEEN THE UNDERSIGNED AND []."

DELIVERY OF EXECUTED ASSIGNMENT. AN ASSIGNMENT (THE "ASSIGNMENT") FOR THE LOAN DOCUMENTS AND RELATED RIGHTS AND LIENS IN THE FORM OF EXHIBIT B ATTACHED HERETO WITH ALL BLANKS APPROPRIATELY COMPLETED.

DELIVERY OF UCC ASSIGNMENTS. ONE OR MORE UCC-3 ASSIGNMENT OF FINANCING STATEMENT FORMS (THE "UCC-3") EVIDENCING THE ASSIGNMENT TO PURCHASER OF ALL SELLER'S RIGHT, TITLE, AND INTEREST IN AND TO ANY SECURITY INTERESTS IN PERSONAL PROPERTY AND FIXTURES CREATED BY THE LOAN DOCUMENTS AND HELD BY SELLER THAT ARE IN EFFECT ON THE CLOSING DATE.

DELIVERY OF LOAN DOCUMENTS. THE ORIGINALS OF THE OTHER LOAN DOCUMENTS, INCLUDING ANY ORIGINAL MORTGAGEE TITLE POLICY IN SELLER'S POSSESSION OR CONTROL.

EXECUTION OF CLOSING STATEMENT. A SETTLEMENT STATEMENT ("CLOSING STATEMENT") PREPARED BY ESCROW AGENT, SETTING FORTH THE PURCHASE PRICE, CLOSING EXPENSES, AND ANY ADJUSTMENTS AND PRORATIONS CALLED FOR BY THIS AGREEMENT.

II. *PURCHASER'S ACTIONS*. PURCHASER, AT PURCHASER'S SOLE COST AND EXPENSE, WILL DELIVER OR CAUSE TO BE DELIVERED TO ESCROW AGENT THE PURCHASE PRICE, LESS THE AMOUNT OF THE EARNEST MONEY HELD BY ESCROW AGENT AND LESS THE AMOUNT OF ANY CREDIT ACCRUING TO PURCHASER UNDER SECTION B.2.C. ABOVE.

III. *ESCROW AGENT'S ACTIONS.* AT THE CLOSING, ESCROW AGENT, ON RECEIPT OF ALL ITEMS TO BE DELIVERED IN ACCORDANCE WITH SECTIONS B.6.B.I. AND B.6.B.II. ABOVE, WILL SIMULTANEOUSLY (A) DELIVER TO SELLER THE PURCHASE PRICE AND ONE FULLY EXECUTED COUNTERPART OF THE ASSIGNMENT DESCRIBED IN SECTION B.6.B.I.(B) ABOVE; (B) DELIVER TO PURCHASER THE NOTE ENDORSED BY SELLER, THE UCC-3, AND ANY ORIGINAL LOAN DOCUMENTS; AND (C) DELIVER ANY ENDORSEMENT TO THE MORTGAGEE TITLE POLICY REQUESTED BY PURCHASER THAT IS AVAILABLE UNDER APPLICABLE TITLE INSURANCE RULES AND REGULATIONS (ON PURCHASER'S PAYMENT FOR SAME).

IV. *CLOSING COSTS.* SELLER AND PURCHASER WILL EACH PAY ONE-HALF OF THE ESCROW FEE CHARGED BY ESCROW AGENT. SELLER AND PURCHASER WILL PAY THEIR RESPECTIVE ATTORNEY'S FEES FOR THE NEGOTIATION AND DRAFTING OF THIS AGREEMENT AND THE DOCUMENTS DESCRIBED IN SECTIONS B.6.B.I. AND B.6.B.II. ABOVE. SELLER WILL PAY THE COST OF ALL RECORDING FEES, AND PURCHASER WILL PAY FOR THE COST OF ANY TITLE INSURANCE COVERAGE OR ENDORSEMENTS THAT PURCHASER ELECTS TO OBTAIN, ALONG WITH ANY TRANSFER TAX, MORTGAGE TAX, OR DOCUMENT STAMP TAXES INCURRED IN CONNECTION WITH THIS TRANSACTION.

CONDITIONS PRECEDENT TO PERFORMANCE BY PURCHASER

CONDITIONS. PURCHASER'S OBLIGATIONS UNDER THIS AGREEMENT WILL BE CONTINGENT AND SPECIFICALLY CONDITIONED ON THE FOLLOWING:

COMPLETED ACTIONS. SELLER WILL HAVE, IN ALL MATERIAL RESPECTS, DELIVERED, PERFORMED, OBSERVED, AND COMPLIED WITH ALL THE ITEMS, INSTRUMENTS, DOCUMENTS, COVENANTS, AGREEMENTS, AND CONDITIONS REQUIRED BY THIS AGREEMENT TO BE DELIVERED, PERFORMED, OBSERVED, AND COMPLIED WITH BY SELLER BEFORE OR AS OF THE CLOSING.

NO MATERIAL MISREPRESENTATIONS. THE REPRESENTATIONS MADE BY SELLER IN SECTION B.9. BELOW WILL BE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON THE DATE HEREOF AND AS OF THE CLOSING DATE, EXCEPT AS OTHERWISE CONTEMPLATED BY THIS AGREEMENT OR CONSENTED TO IN WRITING BY PURCHASER (IT BEING UNDERSTOOD THAT REPRESENTATIONS THAT SPEAK AS OF A SPECIFIED DATE WILL CONTINUE TO SPEAK AS OF THE DATE SPECIFIED).

NO MATERIAL ADVERSE CHANGES. THERE WILL HAVE OCCURRED NO MATERIAL ADVERSE CHANGE IN (1) THE PHYSICAL CONDITION OF THE MORTGAGED PROPERTY, (2) THE STATUS OF TITLE TO THE MORTGAGED PROPERTY FROM THAT DISCLOSED IN ANY COMMITMENT OBTAINED BY PURCHASER DURING THE INSPECTION PERIOD, OR (3) THE FINANCIAL CONDITION OF ANY MAJOR TENANTS OF THE MORTGAGE PROPERTY.

NO MODIFICATIONS TO LOAN. THE LOAN HAS NOT BEEN MODIFIED OR AMENDED AFTER THE EFFECTIVE DATE UNLESS PRIOR WRITTEN CONSENT WAS OBTAINED FROM PURCHASER.

ELECTION IF CONDITIONS NOT SATISFIED. IF ANY CONDITIONS DESCRIBED IN SECTION B.7.A. ABOVE HAVE NOT BEEN SATISFIED AT OR BEFORE THE CLOSING, PURCHASER WILL HAVE THE OPTION, AS PURCHASER'S SOLE AND EXCLUSIVE REMEDIES, AT OR BEFORE THE CLOSING, TO EITHER (1) TERMINATE THIS AGREEMENT BY WRITTEN NOTICE TO SELLER, WHEREUPON THE EARNEST MONEY WILL BE RETURNED TO PURCHASER AND NEITHER PARTY HERETO WILL HAVE ANY FURTHER RIGHT OR OBLIGATION HEREUNDER, OTHER THAN THE SURVIVAL OBLIGATIONS AND PURCHASER'S RIGHT TO PURSUE THE REMEDY PROVIDED IN SECTION B.5.B. ABOVE, IF APPLICABLE, OR (2) WAIVE SUCH CONDITION AND CLOSE THE PURCHASE OF THE LOAN IN ACCORDANCE WITH THE TERMS HEREOF.

CONDITIONS PRECEDENT TO PERFORMANCE BY SELLER

CONDITIONS. SELLER'S OBLIGATIONS UNDER THIS AGREEMENT WILL BE CONTINGENT AND SPECIFICALLY CONDITIONED ON THE FOLLOWING:

COMPLETED ACTIONS. PURCHASER WILL HAVE, IN ALL MATERIAL RESPECTS, DELIVERED, PERFORMED, OBSERVED, AND COMPLIED WITH ALL THE ITEMS, INSTRUMENTS, DOCUMENTS, COVENANTS, AGREEMENTS, AND CONDITIONS REQUIRED BY THIS AGREEMENT TO BE DELIVERED, PERFORMED, OBSERVED, AND COMPLIED WITH BY PURCHASER BEFORE OR AS OF THE CLOSING.

NO MATERIAL MISREPRESENTATION. THE REPRESENTATIONS AND WARRANTIES MADE BY PURCHASER IN SECTION B.11. BELOW WILL BE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON THE EFFECTIVE DATE AND AS OF THE CLOSING DATE, EXCEPT AS OTHERWISE CONTEMPLATED BY THIS AGREEMENT OR CONSENTED TO IN WRITING BY SELLER (IT BEING UNDERSTOOD THAT REPRESENTATIONS AND WARRANTIES THAT SPEAK AS OF A SPECIFIED DATE WILL CONTINUE TO SPEAK AS OF THE DATE SPECIFIED).

ELECTION IF CONDITIONS NOT SATISFIED. IF ANY CONDITIONS DESCRIBED IN SECTION B.8.A. ABOVE HAVE NOT BEEN SATISFIED

BY THE CLOSING DATE, SELLER WILL HAVE THE OPTION, AS SELLER'S SOLE AND EXCLUSIVE REMEDIES, AT OR BEFORE THE CLOSING, TO EITHER (1) PURSUE ITS REMEDY AS PROVIDED IN SECTION B.5.A. ABOVE OR (2) WAIVE SUCH CONDITION AND CLOSE THE SALE OF THE LOAN IN ACCORDANCE WITH THE TERMS HEREOF.

REPRESENTATIONS OF SELLER

MATTERS. SELLER HEREBY REPRESENTS AND WARRANTS TO PURCHASER THE FOLLOWING:

EXISTING AND GOOD STANDING. SELLER IS A DULY FORMED AND VALIDLY EXISTING [] UNDER THE LAWS OF THE STATE OF [] AND IS IN GOOD STANDING UNDER THE LAWS OF THE STATE OF [].

AUTHORITY. SELLER HAS ALL REQUISITE POWER AND AUTHORITY TO EXECUTE, DELIVER, AND PERFORM ALL ITS OBLIGATIONS UNDER THIS AGREEMENT AND ALL INSTRUMENTS AND OTHER DOCUMENTS EXECUTED AND DELIVERED BY SELLER IN CONNECTION HEREWITH.

DUE AUTHORIZATION. THE EXECUTION, DELIVERY, AND PERFORMANCE OF THIS AGREEMENT AND ALL INSTRUMENTS AND OTHER DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER IN CONNECTION HEREWITH HAVE BEEN DULY AUTHORIZED BY ALL NECESSARY ACTION ON THE PART OF SELLER AND DO NOT AND WILL NOT (A) REQUIRE ANY CONSENT OR APPROVAL OF ITS SHAREHOLDERS, MEMBERS, OR PARTNERS, WHICHEVER IS APPLICABLE, THAT HAS NOT BEEN OBTAINED, OR (B) VIOLATE ANY LAW, RULE, REGULATION, ORDER, WRIT, JUDGMENT, INJUNCTION, DECREE, DETERMINATION, OR AWARD CURRENTLY IN EFFECT HAVING APPLICABILITY TO SELLER OR ANY PROVISION OF SELLER'S ORGANIZATIONAL DOCUMENTS.

BINDING OBLIGATION. THIS AGREEMENT CONSTITUTES A LEGAL, VALID, AND BINDING OBLIGATION OF SELLER ENFORCEABLE AGAINST SELLER IN ACCORDANCE WITH ITS TERMS, EXCEPT AS LIMITED BY BANKRUPTCY, INSOLVENCY, REORGANIZATION, MORATORIUM, AND OTHER LAWS OF GENERAL APPLICABILITY RELATING TO OR AFFECTING THE ENFORCEMENT OF CREDITORS' RIGHTS AND GENERAL EQUITABLE PRINCIPLES THAT MAY LIMIT THE AVAILABILITY OF EQUITABLE REMEDIES.

BANKRUPTCY. SELLER HAS NOT FILED AND IS NOT PLANNING TO FILE ANY PETITION SEEKING OR ACQUIESCING IN ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR

RELIEF UNDER ANY LAW RELATING TO BANKRUPTCY OR INSOLVENCY, NOR HAS ANY SUCH PETITION BEEN FILED AGAINST SELLER. NO GENERAL ASSIGNMENT OF SELLER'S PROPERTY HAS BEEN MADE FOR THE BENEFIT OF CREDITORS, AND NO RECEIVER, MASTER, LIQUIDATOR, OR TRUSTEE HAS BEEN APPOINTED FOR SELLER OR ANY OF ITS PROPERTIES. SELLER IS NOT INSOLVENT, AND THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT WILL NOT RENDER SELLER INSOLVENT.

NONFOREIGN PERSON. SELLER IS NOT A "FOREIGN PERSON" WITHIN THE MEANING OF SECTIONS 1445 AND 7701 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

OWNER OF LOAN. THE SELLER HAS GOOD TITLE TO AND IS THE SOLE OWNER AND [HOLDER/HOLDER IN DUE COURSE] OF THE NOTE AND THE LOAN, FREE AND CLEAR OF ANY LIENS, CLAIMS, ENCUMBRANCES, OR OTHER CHARGES WHATEVER. THE LOAN AND THE LOAN DOCUMENTS ARE NOT SUBJECT TO ANY PRIOR ASSIGNMENT, CONVEYANCE, TRANSFER, OR PARTICIPATION OR AGREEMENT TO ASSIGN, CONVEY, TRANSFER, OR PARTICIPATE, IN WHOLE OR IN PART.

I. BALANCE AND STATUS OF LOAN. THE OUTSTANDING UNPAID PRINCIPAL BALANCE OF THE LOAN AS OF [] IS $[], AND THE AMOUNT OF ACCRUED UNPAID INTEREST ON THE LOAN AS OF [] IS $[]. AS OF [], SELLER IS HOLDING THE AMOUNT OF $[] IN ESCROW. AS OF THE DATE OF SELLER'S EXECUTION AND DELIVERY OF THIS AGREEMENT, NO DEFAULT IN THE PAYMENT OF THE PRINCIPAL OR INTEREST OF THE LOAN EXISTS. THE NOTE AND THE DEED OF TRUST HAVE NOT BEEN MODIFIED OR AMENDED, EXCEPT UNDER THE DOCUMENTS AND INSTRUMENTS, IF ANY, SET FORTH ON SCHEDULE 1 TO THIS AGREEMENT, AND ALL THE LOAN DOCUMENTS ARE DESCRIBED ON SCHEDULE 1 ATTACHED TO THIS AGREEMENT.

. ENFORCEABILITY. TO THE BEST OF SELLER'S KNOWLEDGE, THE NOTE AND DEED OF TRUST ARE THE LEGAL, VALID, AND BINDING OBLIGATIONS OF THE BORROWER THEREOF, ENFORCEABLE AGAINST BORROWER IN ACCORDANCE WITH THEIR TERMS, EXCEPT AS SUCH ENFORCEMENT MAY BE LIMITED BY BANKRUPTCY, INSOLVENCY, REORGANIZATION, OR OTHER LAWS AFFECTING THE ENFORCEMENT OF CREDITORS' RIGHTS GENERALLY AND BY GENERAL EQUITY PRINCIPLES (REGARDLESS OF WHETHER SUCH ENFORCEMENT IS CONSIDERED IN A PROCEEDING IN EQUITY OR AT LAW).

NO DEFENSE BY BORROWER. BORROWER HAS NO VALID DEFENSE THAT PREVENTS ENFORCEMENT BY THE HOLDER THEREOF OF THE PROVISIONS OF THE NOTE OR DEED OF TRUST OR REALIZATION BY THE HOLDER THEREOF OR ITS ASSIGNS AGAINST THE MORTGAGED PROPERTY THAT ARISES FROM APPLICABLE LOCAL, STATE, OR FEDERAL LAWS, REGULATIONS, OR OTHER REQUIREMENTS PERTAINING TO USURY AND ANY OTHER REQUIREMENT OF ANY FEDERAL, STATE, OR LOCAL LAW INCLUDING, WITHOUT LIMITATION, TRUTH-IN-LENDING, REAL ESTATE SETTLEMENT PROCEDURES, CONSUMER CREDIT PROTECTION, AND EQUAL CREDIT OPPORTUNITY OR DISCLOSURE LAWS APPLICABLE TO THE LOAN. THE LOAN IS NOT SUBJECT TO ANY VALID RIGHT OF RESCISSION, SETOFF, ABATEMENT, DIMINUTION, COUNTERCLAIM, OR DEFENSE THAT PREVENTS ENFORCEMENT BY THE SELLER THEREOF OR ITS ASSIGNS OR THE PROVISIONS OF THE NOTE OR DEED OF TRUST, OR REALIZATION BY THE SELLER THEREOF OR ITS ASSIGNS AGAINST THE MORTGAGED PROPERTY OF THE INTENDED BENEFITS OF THE DEED OF TRUST, AND NO SUCH CLAIMS HAVE BEEN ASSERTED AS OF THE DATE HEREOF WITH RESPECT TO THE LOAN.

DEED OF TRUST PRIORITY/TITLE INSURANCE. TO THE BEST OF SELLER'S KNOWLEDGE, THE DEED OF TRUST IS A VALID PERFECTED DEED OF TRUST, SUBJECT TO ONLY THE EXCLUSIONS, EXCEPTIONS, CONDITIONS, STIPULATIONS, AND LIMITATIONS SET FORTH IN THE LOAN TITLE POLICY, ATTORNEY'S CERTIFICATION OF TITLE, OR OTHER REPORTS OR DOCUMENTS DELIVERED TO PURCHASER UNDER SECTION B.3. ABOVE (SOMETIMES HEREINAFTER REFERRED TO COLLECTIVELY AS THE "REVIEW FILE").

NO MODIFICATION. EXCEPT BY WRITTEN INSTRUMENT OR OTHER WRITTEN DOCUMENTATION LISTED ON SCHEDULE 1, NEITHER SELLER NOR, TO THE BEST OF SELLER'S KNOWLEDGE, ANY PRIOR HOLDER OF THE LOAN HAS (A) MODIFIED THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS; (B) SATISFIED, CANCELED, OR SUBORDINATED THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS IN WHOLE OR IN PART; (C) RELEASED ALL OR ANY MATERIAL PORTION OF THE MORTGAGED PROPERTY FROM THE LIEN OF THE DEED OF TRUST; OR (D) EXECUTED ANY INSTRUMENT OF RELEASE, CANCELLATION, OR SATISFACTION. THE NOTE AND DEED OF TRUST AND ANY DOCUMENTS MODIFYING THEIR TERMS INCLUDED IN THE REVIEW FILE ARE TRUE AND CORRECT COPIES OF THE DOCUMENTS THEY PURPORT TO BE AND HAVE NOT BEEN SUPERSEDED, AMENDED, MODIFIED, CANCELED, OR OTHERWISE CHANGED EXCEPT AS DISCLOSED IN THE REVIEW FILE.

I. REVIEW FILE. THE REVIEW FILE INCLUDES ALL MATERIAL DOCUMENTS IN THE POSSESSION OR CONTROL OF SELLER RELATING TO THE LOAN, OR COPIES THEREOF, INCLUDING ALL CORRESPONDENCE WITH BORROWER.

. DISBURSEMENT OF LOAN PROCEEDS. BORROWER DOES NOT HAVE THE RIGHT TO DISBURSEMENT OF ADDITIONAL LOAN PROCEEDS OR FUTURE ADVANCES WITH RESPECT TO THE LOAN.

CROSS-COLLATERALIZATION. THE LOAN IS NOT SECURED BY THE SAME PROPERTY AS ANY OTHER LOAN PROCEEDS OR FUTURE ADVANCES WITH RESPECT TO THE LOAN.

LITIGATION. THERE IS NO LITIGATION, PROCEEDING, OR GOVERNMENTAL INVESTIGATION PENDING OR ANY ORDER, INJUNCTION, OR DECREE OUTSTANDING, EXISTING, OR RELATING TO THE LOAN OR, TO THE KNOWLEDGE OF SELLER, THE MORTGAGED PROPERTY.

CONDEMNATION. THERE IS NO PENDING OR, TO THE BEST OF SELLER'S KNOWLEDGE, THREATENED CONDEMNATION PROCEEDING OR SIMILAR PROCEEDING AFFECTING THE MORTGAGED PROPERTY OR ANY PART THEREOF THAT COULD HAVE AN ADVERSE EFFECT ON THE CURRENT USE OF THE MORTGAGED PROPERTY FOR ITS INTENDED PURPOSES.

COMPLIANCE WITH LAWS. TO THE BEST OF SELLER'S KNOWLEDGE, NO WRITTEN NOTICE HAS BEEN ISSUED BY ANY GOVERNMENTAL AUTHORITY OR ANY PARTY ENTITLED TO ENFORCE A RESTRICTIVE COVENANT AFFECTING THE MORTGAGED PROPERTY TO THE EFFECT THAT (A) ANY ZONING LAW, ORDINANCE, OR REGULATION WAS VIOLATED AS OF THE DATE OF CLOSING OF THE LOAN BY THE MAINTENANCE, OPERATION, OCCUPANCY, OR USE OF ANY OF THE MORTGAGED PROPERTY SUCH THAT THE VIOLATION WOULD ADVERSELY AFFECT THE CURRENT OPERATION, CURRENT OCCUPANCY, OR CURRENT USE OF THE MORTGAGED PROPERTY; (B) ANY BUILDING OR OTHER FEDERAL, STATE, OR MUNICIPAL LAW, ORDINANCE, OR REGULATION OR ANY RESTRICTIVE COVENANT IS CURRENTLY VIOLATED BY THE CURRENT MAINTENANCE, CURRENT OPERATION, CURRENT OCCUPANCY, OR CURRENT USE OF ANY OF THE MORTGAGED PROPERTY SUCH THAT THE VIOLATION WOULD ADVERSELY AFFECT THE CURRENT OPERATION, CURRENT OCCUPANCY, OR CURRENT USE OF THE MORTGAGED PROPERTY; OR (C) ANY LICENSES, PERMITS, INSPECTIONS, AUTHORIZATIONS, CERTIFICATIONS, AND APPROVALS REQUIRED BY ANY GOVERNMENTAL AUTHORITIES HAVING JURISDICTION

OVER THE OPERATION OF THE MORTGAGED PROPERTY, IN ITS PRESENT MANNER, HAVE NOT BEEN PERFORMED OR ISSUED AND PAID FOR AND ARE NOT IN FULL FORCE AND EFFECT, IN EACH CASE WITHOUT WHICH THE OPERATION OF THE MORTGAGED PROPERTY WOULD BE ADVERSELY AFFECTED.

ADVICE OF COUNSEL. SELLER HAS CONSULTED EXTENSIVELY WITH AND HAS BEEN REPRESENTED BY LEGAL COUNSEL AND ACCOUNTANTS OF ITS OWN CHOICE IN CONNECTION WITH THE MEANING, INTERPRETATION, NEGOTIATION, DRAFTING, AND EFFECT OF THIS AGREEMENT, AND SELLER IS FULLY SATISFIED WITH ITS LEGAL COUNSEL AND ACCOUNTANTS AND THE ADVICE THAT IT HAS RECEIVED FROM EACH OF THEM AS TO THE CONTENTS AND LEGAL EFFECT OF THIS AGREEMENT.

SURVIVAL. THE REPRESENTATIONS OF SELLER SET FORTH IN SECTION B.9.A. ABOVE WILL BE DEEMED TO BE MADE BOTH AS OF THE DATE HEREOF AND AS OF THE CLOSING DATE, EXCEPT TO THE EXTENT THAT SELLER OTHERWISE NOTIFIES PURCHASER IN WRITING AT OR BEFORE CLOSING, AND WILL SURVIVE THE CLOSING OF THIS AGREEMENT.

DISCLAIMER OF REPRESENTATIONS OR WARRANTIES BY SELLER. "AS IS,, INCLUDING, WITHOUT ANY LIMITATION, ANY REPRESENTATION THAT THE LOAN DOCUMENTS ARE ENFORCEABLE OR REALIZED ON OR ADEQUATELY SECURE THE LOAN. PURCHASER ACKNOWLEDGES THAT ANY INFORMATION ("”B.10.

REPRESENTATIONS, WARRANTIES, COVENANTS, AND INDEMNIFICATIONS OF PURCHASER

MATTERS. PURCHASER HEREBY REPRESENTS AND WARRANTS TO SELLER THE FOLLOWING:

EXISTENCE AND GOOD STANDING. PURCHASER IS A DULY FORMED AND VALIDLY EXISTING [] UNDER THE LAWS OF THE STATE OF [] AND IS IN GOOD STANDING UNDER THE LAWS OF THE STATE OF [].

AUTHORITY. PURCHASER HAS ALL REQUISITE POWER AND AUTHORITY TO EXECUTE, DELIVER, AND PERFORM ALL ITS OBLIGATIONS UNDER THIS AGREEMENT AND ALL INSTRUMENTS AND OTHER DOCUMENTS EXECUTED AND DELIVERED BY PURCHASER IN CONNECTION HEREWITH.

DUE AUTHORIZATION. THE EXECUTION, DELIVERY, AND PERFORMANCE OF THIS AGREEMENT AND ALL INSTRUMENTS AND OTHER DOCUMENTS TO BE EXECUTED AND DELIVERED BY PURCHASER IN CONNECTION HEREWITH HAVE BEEN DULY AUTHORIZED BY ALL NECESSARY ACTION ON THE PART OF PURCHASER AND DO NOT AND WILL NOT (A) REQUIRE ANY CONSENT OR APPROVAL OF ITS SHAREHOLDERS OR PARTNERS,

WHICHEVER IS APPLICABLE, THAT HAS NOT BEEN OBTAINED OR (B) VIOLATE ANY LAW, RULE, REGULATION, ORDER, WRIT, JUDGMENT, INJUNCTION, DECREE, DETERMINATION, OR AWARD CURRENTLY IN EFFECT HAVING APPLICABILITY TO PURCHASER OR ANY PROVISION OF PURCHASER'S ORGANIZATIONAL DOCUMENTS.

BINDING OBLIGATIONS. THIS AGREEMENT CONSTITUTES A LEGAL, VALID, AND BINDING OBLIGATION OF PURCHASER ENFORCEABLE AGAINST PURCHASER IN ACCORDANCE WITH ITS TERMS, EXCEPT AS LIMITED BY BANKRUPTCY, INSOLVENCY, REORGANIZATION, MORATORIUM, AND OTHER LAWS OF GENERAL APPLICABILITY RELATING TO OR AFFECTING THE ENFORCEMENT OF CREDITORS' RIGHTS AND GENERAL EQUITABLE PRINCIPLES THAT MAY LIMIT THE AVAILABILITY OF EQUITABLE REMEDIES.

BANKRUPTCY. PURCHASER HAS NOT FILED AND IS NOT PLANNING TO FILE ANY PETITION SEEKING OR ACQUIESCING IN ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY LAW RELATING TO BANKRUPTCY OR INSOLVENCY, NOR HAS ANY SUCH PETITION BEEN FILED AGAINST PURCHASER. NO GENERAL ASSIGNMENT OF PURCHASER'S PROPERTY HAS BEEN MADE FOR THE BENEFIT OF CREDITORS, AND NO RECEIVER, MASTER, LIQUIDATOR, OR TRUSTEE HAS BEEN APPOINTED FOR PURCHASER OR ANY OF ITS PROPERTIES. PURCHASER IS NOT INSOLVENT, AND THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT WILL NOT RENDER PURCHASER INSOLVENT.

SERVICING. FROM AND AFTER THE CLOSING DATE, PURCHASER WILL ASSUME ALL OF SELLER'S OBLIGATIONS AND DUTIES, IF ANY, WITH RESPECT TO SERVICING THE LOAN PURCHASED HEREUNDER AND WILL SERVICE THE LOAN IN ACCORDANCE WITH COMMERCIALLY REASONABLE STANDARDS.

ADVICE OF COUNSEL. PURCHASER HAS CONSULTED EXTENSIVELY WITH AND HAS BEEN REPRESENTED BY LEGAL COUNSEL AND ACCOUNTANTS OF ITS OWN CHOICE IN CONNECTION WITH THE MEANING, INTERPRETATION, NEGOTIATION, DRAFTING, AND EFFECT OF THIS AGREEMENT, AND PURCHASER IS FULLY SATISFIED WITH ITS LEGAL COUNSEL AND ACCOUNTANTS AND THE ADVICE THAT IT HAS RECEIVED FROM EACH OF THEM AS TO THE CONTENTS AND LEGAL EFFECT OF THIS AGREEMENT.

SURVIVAL. THE REPRESENTATIONS AND WARRANTIES OF PURCHASER SET FORTH IN SECTION B.11.A. ABOVE WILL BE DEEMED TO BE

MADE BOTH AS OF THE EFFECTIVE DATE AND AS OF THE CLOSING DATE AND WILL SURVIVE THE CLOSING OF THIS AGREEMENT.

BROKERS. OTHER THAN WITH RESPECT TO [], WHICH SELLER AGREES TO PAY A COMMISSION PURSUANT TO A SEPARATE WRITTEN AGREEMENT BETWEEN SELLER AND [], NEITHER SELLER NOR PURCHASER HAS HAD ANY DEALINGS WITH RESPECT TO THE LOAN, THE LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY WITH ANY MORTGAGE OR REAL ESTATE ADVISOR, BROKER, INVESTMENT ADVISORY FIRM OR SALESMAN, OR ANY OTHER PERSON OR CORPORATION, WHETHER KNOWN OR UNKNOWN TO ANY OF THE PARTIES HERETO (EACH A "BROKER"), AND EACH PARTY AGREES TO PAY ALL COMMISSIONS, FEES, OR OTHER COMPENSATION THAT MAY BECOME DUE AND PAYABLE TO ANY SUCH BROKER AS A RESULT OF ITS ACTIONS. EACH PARTY HEREBY INDEMNIFIES THE OTHER PARTY AGAINST AND AGREES TO HOLD THE OTHER PARTY HARMLESS FROM ALL LIABILITY AND CLAIMS TO PAY COMMISSIONS, FEES, OR OTHER COMPENSATION THAT MAY AT ANY TIME BE ASSERTED AGAINST SUCH PARTY FOUNDED IN WHOLE OR IN PART ON (A) A CLAIM THAT THE AFORESAID REPRESENTATION AND WARRANTY OF THE INDEMNIFYING PARTY IS UNTRUE; (B) A CLAIM THAT A BROKER IS OWED ANY SUCH COMMISSIONS, FEES, OR OTHER COMPENSATION DUE TO THE ACTS OF THE INDEMNIFYING PARTY; OR (C) A CLAIM BY ANY BROKER THAT ALLEGES IT DEALT WITH THE INDEMNIFYING PARTY IN CONNECTION WITH THE LOAN AND THE LOAN DOCUMENTS, IN EACH CASE TOGETHER WITH ALL LOSSES, DAMAGES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES, COSTS OF DEPOSITIONS AND OTHER DISCOVERY, COURT COSTS, AND DISBURSEMENTS) RELATING TO SUCH CLAIMS OR ARISING THEREFROM OR INCURRED BY SELLER OR PURCHASER, AS THE CASE MAY BE, IN CONNECTION WITH THE ENFORCEMENT OF THIS INDEMNIFICATION PROVISION. THE PROVISIONS OF THIS SECTION B.12. WILL SURVIVE THE CLOSING AND ANY TERMINATION OF THIS AGREEMENT.

NOTICES. ANY NOTICE OR OTHER COMMUNICATIONS REQUIRED OR PERMITTED UNDER OR GIVEN IN CONNECTION WITH THIS AGREEMENT WILL BE IN WRITING AND WILL BE ADDRESSED AS FOLLOWS:

IF TO SELLER: []

IF TO PURCHASER: []

IF TO ESCROW AGENT: []

ANY SUCH NOTICE OR OTHER COMMUNICATION WILL BE DEEMED GIVEN ON THE OCCURRENCE OF ANY OF THE FOLLOWING: (A) THE FIRST BUSINESS DAY FOLLOWING THE DAY IT WAS SENT BY UNITED STATES EXPRESS MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED; (B) THE FIRST BUSINESS DAY FOLLOWING THE DAY IT WAS SENT BY A NATIONWIDE OVERNIGHT CARRIER SERVICE; (C) THE THIRD BUSINESS DAY FOLLOWING THE DAY IT WAS SENT BY UNITED STATES CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED; OR (D) THE DATE IT WAS DELIVERED BY HAND TO THE ADDRESS ABOVE, FOR WHICH A SIGNED RECEIPT IS GIVEN, WHETHER OR NOT IT WAS ACTUALLY RECEIVED BY THE PERSON TO WHOM DIRECTED. FROM TIME TO TIME EITHER PARTY MAY DESIGNATE ANOTHER

ADDRESS WITHIN THE CONTINENTAL UNITED STATES FOR PURPOSES OF THIS AGREEMENT BY GIVING THE OTHER PARTY NOT LESS THAN TEN DAYS' ADVANCE WRITTEN NOTICE OF SUCH CHANGE OF ADDRESS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. FACSIMILE NUMBERS ARE GIVEN FOR CONVENIENCE ONLY AND DELIVERY BY FACSIMILE OR SIMILAR TRANSMISSION WILL NOT CONSTITUTE NOTICE HEREUNDER.

WAIVER. ANY TERM, CONDITION, OR PROVISION OF THIS AGREEMENT MAY BE WAIVED IN WRITING AT ANY TIME BY THE PARTY THAT IS ENTITLED TO THE BENEFITS THEREOF.

GOVERNING LAW. THE TERMS AND PROVISIONS HEREOF SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE SUBSTANTIVE LAWS OF THE STATE OF [], WITHOUT REGARD TO CONFLICT-OF-LAW PRINCIPLES.

6. BINDING AGREEMENT. THIS AGREEMENT WILL BE BINDING ON THE HEIRS, EXECUTORS, ADMINISTRATORS, PERSONAL REPRESENTATIVES, SUCCESSORS, AND ASSIGNS OF THE PARTIES HERETO.

. CONSTRUCTION. WHENEVER THE CONTEXT SO REQUIRES, REFERENCE TO THE SINGULAR WILL INCLUDE THE PLURAL AND THE PLURAL WILL INCLUDE THE SINGULAR; WORDS DENOTING GENDER WILL BE CONSTRUED TO MEAN THE MASCULINE, FEMININE, OR NEUTER, AS APPROPRIATE; AND SPECIFIC ENUMERATION WILL NOT EXCLUDE THE GENERAL BUT WILL BE CONSTRUED AS CUMULATIVE OF THE GENERAL RECITATION. THE HEADINGS CONTAINED IN THIS AGREEMENT ARE INSERTED FOR CONVENIENCE ONLY AND WILL NOT AFFECT THE MEANING OR INTERPRETATION OF THIS AGREEMENT OR ANY PROVISION HEREOF.

. SEVERABILITY. IF ANY CLAUSE OR PROVISION OF THIS AGREEMENT IS HELD TO BE ILLEGAL, INVALID, OR UNENFORCEABLE UNDER ANY LAW APPLICABLE TO THE TERMS HEREOF, THE REMAINDER OF THIS AGREEMENT WILL NOT BE AFFECTED THEREBY, AND IN LIEU OF EACH SUCH CLAUSE OR PROVISION OF THIS AGREEMENT THAT IS ILLEGAL, INVALID, OR UNENFORCEABLE, SUCH CLAUSE OR PROVISION WILL BE JUDICIALLY CONSTRUED AND INTERPRETED TO BE AS SIMILAR IN SUBSTANCE AND CONTENT TO SUCH ILLEGAL, INVALID, OR UNENFORCEABLE CLAUSE OR PROVISION, AS THE CONTEXT THEREOF WOULD REASONABLY SUGGEST, SO AS TO THEREAFTER BE LEGAL, VALID, AND ENFORCEABLE.

. NO ORAL AGREEMENT.

. TIME OF THE ESSENCE. TIME IS OF THE ESSENCE IN THE EXECUTION AND PERFORMANCE OF THIS AGREEMENT AND EACH PROVISION HEREOF.

. ATTORNEY'S FEES. IF EITHER PARTY SHOULD DEFAULT IN THE PERFORMANCE OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, THE NONDEFAULTING PARTY WILL BE ENTITLED TO RECOVER ALL COSTS, CHARGES, AND EXPENSES OF ENFORCING THIS AGREEMENT, INCLUDING REASONABLE ATTORNEY'S FEES, PARALEGAL FEES, AND COSTS, INCLUDING BUT NOT LIMITED TO ATTORNEY'S AND PARALEGAL FEES INCURRED IN ANY TRIAL OR APPELLATE PROCEEDINGS.

. RULE OF CONSTRUCTION. THE PARTIES ACKNOWLEDGE THAT EACH PARTY AND ITS COUNSEL HAVE REVIEWED THIS AGREEMENT, AND THE PARTIES HEREBY AGREE THAT NORMAL RULES OF CONSTRUCTION, TO THE EFFECT THAT ANY AMBIGUITIES ARE TO BE RESOLVED AGAINST THE DRAFTING PARTY, WILL NOT BE EMPLOYED IN THE INTERPRETATION OF THIS AGREEMENT OR ANY AMENDMENTS OR EXHIBITS HERETO.

. SATURDAY, SUNDAY, OR LEGAL HOLIDAY. IF ANY DATE SET FORTH IN THIS AGREEMENT FOR THE PERFORMANCE OF ANY OBLIGATION BY PURCHASER OR SELLER OR FOR THE DELIVERY OF ANY DOCUMENT OR NOTICE SHOULD BE ON OTHER THAN A BUSINESS DAY, THE COMPLIANCE WITH SUCH OBLIGATION OR DELIVERY WILL BE DEEMED ACCEPTABLE ON THE NEXT FOLLOWING BUSINESS DAY. FOR PURPOSE OF THIS AGREEMENT, THE TERM "BUSINESS DAY" WILL MEAN ANY DAY ON WHICH BANKS IN [] ARE REQUIRED TO BE OPEN FOR BUSINESS.

. FURTHER ASSURANCES. SELLER WILL, WHENEVER AND AS OFTEN AS REASONABLY REQUESTED BY PURCHASER, AND PURCHASER WILL, WHENEVER AND AS OFTEN AS REASONABLY REQUESTED BY SELLER, EXECUTE, ACKNOWLEDGE, AND DELIVER, OR CAUSE TO BE EXECUTED, ACKNOWLEDGED, AND DELIVERED, ALL CONVEYANCES, ASSIGNMENTS, AND OTHER INSTRUMENTS AND DOCUMENTS AS MAY BE REASONABLY NECESSARY TO COMPLETE THE TRANSACTION HEREIN CONTEMPLATED AND TO CARRY OUT THE INTENT AND PURPOSES OF THIS AGREEMENT.

. AMENDMENTS. THIS AGREEMENT WILL NOT BE AMENDED EXCEPT BY A WRITING SIGNED ON BEHALF OF THE PARTY TO BE CHARGED WITH SUCH AMENDMENT.

. NO THIRD-PARTY BENEFICIARIES. NO PERSON OR ENTITY NOT A PARTY TO THIS AGREEMENT WILL HAVE ANY THIRD-PARTY BENEFICIARY CLAIM OR OTHER RIGHT HEREUNDER OR WITH RESPECT THERETO.

. EXHIBITS. EACH EXHIBIT REFERRED TO IN THIS AGREEMENT IS ATTACHED HERETO, AND EACH SUCH EXHIBIT IS HEREBY INCORPORATED BY REFERENCE AND MADE A PART HEREOF AS IF FULLY SET FORTH HEREIN.

. ASSIGNMENT. PURCHASER WILL NOT ASSIGN ANY OF ITS RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT TO ANY PERSON OR ENTITY THAT IS NOT AN AFFILIATE OF PURCHASER WITHOUT SELLER'S PRIOR WRITTEN CONSENT, WHICH SELLER MAY WITHHOLD IN ITS SOLE DISCRETION. ANY ASSIGNMENT OF THIS AGREEMENT BY PURCHASER IN VIOLATION OF THIS PROVISION WILL BE CONSIDERED NULL AND VOID AND WILL CONSTITUTE A DEFAULT BY PURCHASER UNDER THIS AGREEMENT. NO ASSIGNMENT BY PURCHASER WILL RELEASE PURCHASER FROM ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT. THE FOREGOING NOTWITHSTANDING, PURCHASER MAY, WITH NOTICE TO SELLER, ASSIGN ITS RIGHTS AND OBLIGATIONS HEREUNDER TO AN AFFILIATE OF PURCHASER WITHOUT SELLER'S CONSENT. AS USED HEREIN, AN "AFFILIATE" WILL MEAN ANY ENTITY CONTROLLED BY, UNDER COMMON CONTROL WITH, OR THAT CONTROLS PURCHASER. NO ASSIGNMENT WILL RELIEVE PURCHASER FROM THE OBLIGATIONS AND LIABILITIES OF THE PURCHASER HEREUNDER.

EXECUTED AS OF (ALTHOUGH NOT NECESSARILY ON) THE EFFECTIVE DATE.

[]

[]

ESCROW AGENT ACKNOWLEDGES ITS RECEIPT OF A COUNTERPART OF THIS AGREEMENT EXECUTED BY SELLER AND PURCHASER ON []. ESCROW AGENT HEREBY AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT WITH RESPECT TO THE RETENTION AND DISPOSITION OF THE EARNEST MONEY AND THE OTHER FUNDS AND INSTRUMENTS DEPOSITED WITH ESCROW AGENT PURSUANT TO THIS AGREEMENT.

[]

SBOT FORM 3-010 DEED IN LIEU OF FORECLOSURE

Warranty Deed in Lieu of Foreclosure

Date:

Grantor:

Grantor's Mailing Address []:

Grantee:

Grantee's Mailing Address []:

Note

Date:

Amount:

Maker:

Payee:

Final Maturity Date:

Terms of Payment (optional):

Property (including any improvements):

Exceptions to Conveyance and Warranty:

1. Lien of deed of trust, security agreement, and financing statement dated [], in favor of [], Trustee, recorded in [] of the real property records of [] County, Texas.

2. Vendor's lien and superior title reserved in and transferred in the deed recorded in [] of the real property records of [] County, Texas.

Grantor, in consideration of the cancellation and extinguishment of $[] (the "Obligations") of the unpaid balance on the Note and for other valuable consideration and subject to the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, located in [] County, Texas, to have and to hold it to Grantee and Grantee's heirs, executors, administrators, successors, and assigns forever. Grantor binds

Grantor and Grantor's heirs, executors, administrators, successors, and assigns to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person who lawfully claims the Property or any part thereof, subject to the liens and other matters herein set forth or referenced.

Grantor and Grantee agree to the following:

1. This Warranty Deed and the conveyances being made by it are being executed, delivered, and accepted in lieu of foreclosure of the deed of trust, security agreement, and financing statement described below and will be interpreted and construed as an absolute conveyance to Grantee of all right, title, and interest in the Property, including specifically but without limitation any equity or rights of redemption of Grantor or others in or to the Property.

2. Notwithstanding the cancellation of the Obligations, this Warranty Deed is subject to the provisions of Tex. Prop. Code § 51.006 for four years from the date of execution by Grantor, and to the liens and security interests (the "Liens") that evidence or secure the payment of the Note, including without limitation the lien and security interest of the deed of trust, security agreement, and financing statement dated [], in favor of [], Trustee, recorded in [] of the real property records of [] County, Texas, and the vendor's lien and reservation of superior title contained in the deed recorded in [] of the real property records of [] County, Texas.

3. Neither Grantor nor Grantee intend there to be, and there will not be, a merger of any of the Liens with the title or other interest of Grantee by virtue of this conveyance. The parties expressly provide that each interest in the Liens will remain separate and distinct from the title to the Property.

4. The title and other interest of Grantee in the Property under this Warranty Deed will not merge with the Liens. For the purpose of priority between intervening or inferior liens, claims, or encumbrances on or against the Property and the Liens, all rights of Grantee to exercise its remedies of foreclosure by private power of sale or by judicial foreclosure of any of the Liens or any other remedies are expressly preserved and, for purposes of limitations and any other applicable time-bar defenses, are expressly extended by this Warranty Deed.

5. The priority of the Liens is intended to be and will remain in full force and effect, and nothing in this Warranty Deed or in any instruments executed in connection with this Warranty Deed will be construed to subordinate the priority of the Liens to any other liens or encumbrances.

6. This Warranty Deed is made by Grantor and accepted by Grantee in accordance with the provisions of Texas Property Code section 51.006, with the intent that, in addition to the rights, powers, and privileges granted to Grantee under this Warranty Deed, Grantee will also hold and enjoy all rights, powers, and privileges bestowed on a "holder of a debt" under that statute.

7. The acceptance of this Warranty Deed by Grantee is expressly conditioned on the representation and warranty of Grantor that title to the Property is a good and indefeasible title, free and clear of all liens and encumbrances of any nature. If title to the Property is not good and indefeasible as stated above, then, at Grantee's sole option, Grantee may, in addition to any other remedy available to it under this Warranty Deed or at law or in equity, reinstate the Obligations, and any cancellation of the Obligations and any qualifications on the Liens, as stated above, will be null and void for all purposes.

8. This conveyance and the warranty of title contained herein are additionally made and accepted subject to the Exceptions to Conveyance and Warranty, to the extent that they still affect the Property.

9. Ad valorem taxes on the Property commencing as of [] are assumed by Grantee.

When the context requires, singular nouns and pronouns include the plural and the masculine gender includes the feminine gender; Grantor includes Grantor's heirs, successors, and assignees; and Grantee includes Grantee's heirs, successors, and assignees.

Dated [].

[]
Grantor

[]
Grantee

This instrument was acknowledged before me on [] by [].

[SEAL] []

My commission expires: []

After recording return to: []

BSBA FORM DEED IN LIEU

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

The Preparer of this document has made no investigation of the following matters: The accuracy of the legal description used herein; whether the Grantor is the correct owner of the property; whether the party signing on behalf of the Grantor is authorized to sign on behalf of the Grantor; any title matters whatsoever. This instrument was prepared based on information furnished by the parties, and no independent title search has been made.

GENERAL WARRANTY DEED IN LIEU OF FORECLOSURE

THE STATE OF TEXAS *
*   KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF ____________ *

THAT ABC ASSETS, LLC, a Texas limited liability company ("Grantor"), in consideration of the following: (1) the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration to Grantor, in hand paid by JOE DEBTOR ("Grantee"), whose address is 510 *************, Windcrest, TX 78239; and (2) in further consideration of the cancellation and extinguishment of that certain Promissory Note (the "Note"), dated February 1, 2008, in the original principal amount of $165,000.00, executed and delivered by ABC Assets, LLC, to JOE DEBTOR (all such indebtedness under the Note or instruments securing the payment of the Note being collectively called the "Indebtedness"), the receipt and sufficiency of which are hereby acknowledged and confessed, has GRANTED, BARGAINED, SOLD AND CONVEYED, and by these presents does hereby GRANT, BARGAIN, SELL AND CONVEY unto Grantee, all of the following: (i) the real property (the "Land") legally described as:

Lots _________, in Block Number Three Hundred Eight (308), situated in the City of _____________, ____________ County, Texas, as per plat or map of record in Volume 34, page 1, of the Plat Records of ____________ County, Texas;

(ii) all benefits, privileges, easements, tenements, leases, rentals, hereditaments thereon or in anywise appertaining thereto, and any and all right, title and interest of Grantor in and to adjacent roads and rights-of-way (collectively, the "Rights and Appurtenances"); and (iii) all buildings, structures, fixtures and other improvements located on the Land (collectively, the "Improvements"). The Land, Improvements and Rights and Appurtenances are hereinafter collectively referred to as the "Property."

The conveyance of the Property by this General Warranty Deed is being made and accepted subject only to those exceptions and encumbrances of record in the Records of ____________ County, Texas, (the "Permitted Exceptions") incorporated herein by this reference.

TO HAVE AND TO HOLD the Property, together with all and singular any other rights and appurtenances thereto in anywise belonging unto Grantee, its legal representatives, successors and assigns FOREVER; and Grantor does hereby bind itself and its legal representatives, successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property, subject to the matters described above, unto Grantee, its legal representatives, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

BUT IT IS HEREBY EXPRESSLY ACKNOWLEDGED AND AGREED that:

A. This General Warranty Deed, and the conveyances being made hereby, are being executed, delivered and accepted in lieu of foreclosure, and that the same shall be interpreted and construed the same as a foreclosure of the Liens (as defined below) and as an absolute conveyance to Grantee of all right, title and interest of Grantor in the Property, including specifically but without limitation, any equity or rights of redemption of Grantor in the Property (or any portion thereof or interest therein).

B. Notwithstanding the cancellation and extinguishment of the Indebtedness (as described above) and other provisions hereof, all of the liens and security interests that evidence or secure the payment of the Note (collectively, the "Liens") are NOT RELEASED or RELINQUISHED in any manner or respect whatsoever, but the Liens shall remain valid and continuous and in full force and effect, unless and until released by written instrument (the "Release") executed by Grantee, or its legal representatives, successors or assigns, and recorded in the Official Public Records of Real Property of ____________ County, Texas. The Deed of Trust (as defined below) is hereby expressly amended to provide that the cancellation of the Note pursuant to this General Warranty Deed shall not cause the termination of the Deed of Trust, but the same shall continue in full force and effect notwithstanding such cancellation, until released by written instrument as described in the preceding sentence. Such Release may be made as, if and when Grantee, or its legal representatives, successors and assigns, shall determine in the exercise of its sole discretion. The Liens include, without limitation, (i) the Vendor's Lien retained in that certain Warranty Deed dated February 1, 2008, filed in the Office of the County Clerk of ____________ County, Texas, under Clerk's File No. 98818, Real Property Records of ____________ County, Texas, securing the payment of the Note, and (ii) that certain Deed of Trust (the "Deed of Trust") dated February 1, 2008, in favor of Richard E. Schmidt, Trustee.

C. Grantor and Grantee specifically intend that there shall not be a merger of any of the Liens with the title or other interest of Grantee in the Property, under any circumstances connected with this conveyance. Grantor and Grantee expressly provide that the interest of Grantee in and to (1) the Liens, and (2) title or other interest of Grantee in the Property, shall remain at all times SEPARATE AND DISTINCT. Such liens shall merge <u>ONLY</u> under one (1) or more of the following conditions:

(1) The foreclosure of the Liens; or

(2) The sale of the Property pursuant to the power of sale granted in the Deed of Trust; or

(3) Grantee, its legal representatives, successors and assigns, shall execute and file in the Official Public Records of Real Property of ____________ County, Texas, the Release or other instrument specifically agreeing to permit the merger of the Liens with the title or other interests of Grantee in the Property. In this regard, such interests shall not be merged in the event of the sale of the Property by Grantee, its legal representatives, successors or assigns, or the granting or acceptance of additional liens or interests in the Property, unless a separate written Release is executed and filed for public record, as prescribed in subsection C.(3) above.

D. Any and all rights of Grantee to exercise its remedies of foreclosure of any of the Liens (either by judicial foreclosure or non-judicial foreclosure), together with any other remedies available to Grantee, are expressly preserved hereby, but not for purposes of personal deficiency liability of Grantor. For the purpose of permitting Grantee to exercise such rights and remedies, Grantor and Grantee agree that the statute of limitations applicable with respect to the exercise of such rights is hereby tolled and extended so that the exercise of such rights and remedies shall not be limited under any applicable time bar defense.

E. The priority of the Liens is intended to be and shall remain in full force and effect, and nothing herein or in any instruments executed in connection herewith shall be construed to subordinate the priority of the Liens to any other liens or encumbrances whatsoever.

F. Grantor acknowledges and agrees that the conveyance of the Property pursuant hereto is an absolute conveyance of all of Grantor's right, title and interest in and to the Property and is not intended (now, or in the future) to constitute a deed of trust, mortgage, trust conveyance, or other security agreement of any nature whatsoever. Grantor hereby acknowledges that, after the conveyance hereunder, Grantor shall have no further interest or claim with respect to the Property, including, without limitation, the rights to the following:

(1) The right to manage the Property;

(2) The right to occupy or use the Property in any manner;

(3) The right to receive any revenues from the Property;

(4) The right to receive any proceeds from the sale, transfer, financing or operation of the Property; or

(5) The right to repurchase, redeem, or regain any right, title or interest in the Property, or in any portion thereof.

G. Grantee specifically reserves all its rights under Sec. 51.006 of the Property Code.

Ad valorem taxes on the Property commencing as of ________________________ are expressly assumed by the Grantee.

Grantor warrants and represents to Grantee that it has disclosed to Grantee the existence of any and all superior or inferior liens or other encumbrances on the land and Grantee accepts this Deed in Lieu of Foreclosure in reliance on this warranty.

DATED this ______ day of __________________, 2011.

GRANTOR:

ABC ASSETS, LLC

BY:_______________________________________
____________, MANAGING MEMBER

THE STATE OF TEXAS *
*
COUNTY OF _______________ *

This instrument was acknowledged before me on the ______ day of ______________, 2011, by ____________, Managing Member of ABC Assets, LLC, a Texas limited liability company, on behalf of said Company.

____
NOTARY PUBLIC, STATE OF TEXAS

JOE DEBTOR has joined in the execution of this General Warranty Deed for the sole purpose of evidencing its acceptance of same.

GRANTEE:

____
JOE DEBTOR

THE STATE OF TEXAS *
*
COUNTY OF ________________ *

This instrument was acknowledged before me on the ______ day of ________________, 2011, by JOE DEBTOR.

____
NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING RETURN TO:

JOE DEBTOR
510 Balfour Drive
Windcrest, TX 78239

PREPARED IN THE LAW OFFICE OF:

BAUCUM STEED BARKER
1100 N.W. Loop 410,# 260
San Antonio, TX 78213