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ELIZABETH MURRAY-KOLB

OPINION COMMITTEE *Guadalupe County Attorney*

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July 18, 2008

FILE # ML-45769-08
I.D. # 45769

Office of the Attorney General

Attn: Opinions

P.O. Box 12548

Austin, Texas 78711-2548

Via CMRRR No. 7005 1160 0001 8579 8275

RQ-0728-GA

RE: Request for Opinion

QUESTION: Whether documents filed pursuant to Section 12.0011(b)(2) of the Texas Property Code are to be indexed according to the names on the "attached document" or names appearing on the "paper affidavit or other document..." to which that document appears as an attached Exhibit. Comparing Section 12.0011 with the indexing/recording provisions of Sections 192.001 and 193.001 of the Texas Local Government Code, there is an apparent conflict.

Dear Sir or Madam:

FACTUAL BACKGROUND:

HB 732, codified as Section 12.0011 of the Texas Property Code, became effective September 1, 2007. Unfortunately, due to the "newness" of the Statute, there is no case law or AG Opinion that addresses issues that have been created by the passage of said section.

Included with this request (Exhibit 1) is a copy of the "Statement of Intent" from the author/sponsor of the bill. It clearly appears that the purpose of the bill was to prevent the recording of faxed, e-mailed or otherwise electronically submitted documents unless they strictly comply with the electronic recording statutes referenced in part "(c)" of the Statute. You will note that on the "Statement of Intent", the original version of the Bill was less specific with reference to compliance with electronic recording laws.

The statute, as passed, fails to specifically state how a document that meets the requirements of part "(b)(2)" is to be indexed. Exhibit (2) attached to this request is a copy of a document submitted for recording. The "Correction Addendum" alters the legal description contained in a Warranty Deed and is solely signed by an officer of a Title Company. Exhibit (3) attached to this request is an "Affidavit of Missing Assignment of Mortgage/Deed of Trust" and does not even contain an attached document, yet clearly alters the legal position of the parties to the original Mortgage/Deed of Trust. The

Legislature apparently did not foresee the filing of these type documents or similar such documents and there is the real possibility that the actual Grantor(s) or Grantee(s) may be totally unaware that some type of "correction document" has been submitted for recording by a Title Company and/or a Lender. More importantly, since Exhibit (3) does not even contain an attached document, the "Affidavit of Missing Assignment of Mortgage/Deed of Trust" would customarily be indexed in the name of the signer (the Title Company Officer) and would therefore never show up when searching the indexes under the names of the original Grantor(s) or Grantee(s).

A far more serious un-intended consequence would be for someone to submit a document such as "Affidavit of Missing Warranty Deed" and then attach a copy of what appears to be a genuine Deed, but is in fact a forgery. Should that document be indexed using the names appearing on the Warranty Deed, the innocent parties may find themselves in the same nightmare as those who have suffered identify theft.

LEGAL ANALYSIS:

Section 12.0011(b) states: A paper document concerning real or personal property may not be recorded ***OR SERVE AS NOTICE OF THE PAPER DOCUMENT UNLESS...*** (emphasis added);

Section 12.0011(b)(2) states (as a requirement for filing): ***THE PAPER DOCUMENT*** is attached as an exhibit to a paper affidavit ***OR OTHER DOCUMENT*** that has an original signature...(emphasis added).

The statute's terminology defines the circumstance for there to be "...notice of the paper document". The "Paper Document" for which there is to be "Notice" may be attached as an exhibit to a paper affidavit *or other document* with original signatures, etc.

There obviously cannot be "*notice of the paper document*" that has been "attached" unless that paper document is indexed referencing the parties on that paper document.

Consequently, and in light of the language used in the Statute, it is my belief that the document submitted for filing could (perhaps should) be indexed according to the names appearing on any Exhibit attached to the originally signed document. That would be the only way one could search the names of the original Grantor(s) / Grantee(s) and find this subsequently filed document. If the document is only indexed using the name of the signor of the document containing an original signature, then only a search of that person's name will result in locating the document that has been corrected or supplied (if missing) as the case may be.

The question still remains however as to what you call the document being indexed. Should the Clerk use the title of the document containing the original signature, to wit: "affidavit", "notice to public", "etc." or make a reference to whatever correction has been submitted (e.g. "Correction Warranty Deed")? The last possibility would necessarily require a Clerk to analyze the "attached document".

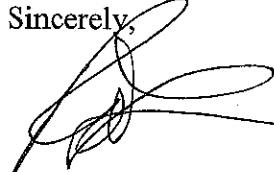
Section 192.001 of the Local Government Code identifies documents that are to be filed by a County Clerk. Section 193.001 sets forth the manner of recording a document and specifically states that an instrument "acknowledged or proved in the manner prescribed by law..." requires the Clerk to make a record of the "parties to the instrument".

The only "instrument" that has been "acknowledged or proved according to law" when that instrument is filed pursuant to Section 12.0011(b)(2) of the Property Code is

that portion of the document containing an original signature. Hence, is the Clerk only required to note the parties to the "instrument" containing the original signature(s)? Furthermore, Section 193.003 requires a Clerk to create a cross-index of Grantors and Grantees for any document relating to real property. There is no "Grantor" or "Grantee" on an Affidavit signed by one person and containing an exhibit or attachment, albeit there might be a reference to the parties to the document attached to the affidavit. It should be noted that Exhibit (3) attached to this request does not even provide a copy of any document. A County Clerk would essentially have to assume that the signatory is telling the truth with respect to the content of the alleged "missing document" and the identity of any Grantor or Grantee.

The recording/indexing requirements placed upon a County Clerk pursuant to Sections 192.001, 193.001 and 193.003 LGC are, in my belief, at odds with the situation created by the terminology of Section 12.0011 of the Texas Property Code. As much as I would like to provide case law analysis, there is simply no case law or other legal review subsequent to the enactment of Section 12.0011 and which attempts to reconcile the filing/recording/indexing statutes of the Local Government Code with this new provision in the Property Code. It is hoped that the conclusions you reach in this matter will provide guidance to all County Clerks in Texas.

Sincerely,



Robert E. Etlinger
Asst. County Attorney

Copy To: Ms. Teresa Kiel, County Clerk, Guadalupe County, Texas

BILL ANALYSIS

Senate Research Center
80R7345 EJI-F

H.B. 732
By: Krusee (Ogden)
Jurisprudence
4/17/2007
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

With the arrival of electronic means of communication and information transfer, business models and methods for doing business have evolved to take advantage of the speed, efficiencies, and cost benefits of electronic technologies. The real estate industry and consumers benefited from the passage of the Uniform Electronic Transaction Act; however some confusion still remains regarding the acceptance of paper copies of an electronic document. Some county clerks have questioned whether a document, specifically a real estate document, that has been faxed, emailed, or copied is an original document containing original signatures and notary seals.

H.B. 732 prohibits a paper document concerning real or personal property from being recorded or serving as notice of the paper document unless certain actions are taken.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 12, Property Code, by adding Section 12.0011, as follows:

Sec. 12.0011. INSTRUMENTS CONCERNING PROPERTY: ORIGINAL SIGNATURE REQUIRED FOR CERTAIN INSTRUMENTS. (a) Defines "paper document."

(b) Prohibits a paper document concerning real or personal property from being recorded or serving as notice of the paper document unless the paper document contains an original signature or signatures that are acknowledged, sworn to with a proper jurat or according to law; or is attached as an exhibit to a paper affidavit that has an original signature or signatures, that are acknowledged, sworn to with a proper jurat, or proved according to law.

(c) Prohibits an original signature from being required for an electronic instrument or other document that complies with the requirements of certain other laws.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2007.

EXHIBIT 1

15/ITC/MUH/0708134-MTKB

After Recording Return To:
Independence Title Company
9442 Capital of Texas Hwy., Suite 100
Austin, TX 78759

Bk Vol Pg
80010032 OPR 3369 40

CORRECTION ADDENDUM

This Correction Addendum is made and given by the undersigned to correct and be made part of the following indicated document(s) ("Affected Documents") as they relate to the referenced transaction and error(s)/Mistake(s) therein:

Referenced Transaction:

Date: March 22, 2007

Property legal:

Lot 38, Block A, EAGLEPOINT, according to the map or plat thereof, recorded in Volume 7, Page 377, Plat Records, Hays County, Texas and in Volume 5, Page 359A, Plat Records, Guadalupe County, Texas. (Subject property both in Hays and Guadalupe County, Texas.)

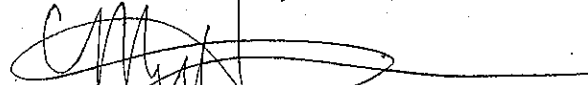
Affected Document(s): Affixation Affidavit Regarding Manufactured (and Factory Built) Housing Unit, Deed of Trust, and Warranty Deed

Errors/Mistakes: **Deed of Trust** filed under document No. 70008907 was recorded with the incorrect block number.

Matters to be corrected:

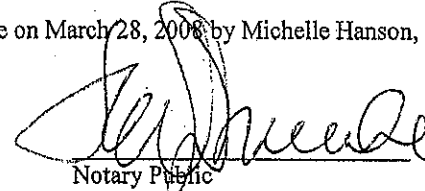
- ❖ The block in the legal description should be: **Block "A"**
- ❖ Record all documents in Guadalupe County. The property lies in both Hays and Guadalupe Counties and the documents were only filed in Hays County.

Executed this 28th day of March, 2008.



Michelle Hanson, Escrow Officer
Independence Title Co.

This instrument was acknowledged before me on March 28, 2008 by Michelle Hanson, Escrow Officer for Independence Title Co.



Notary Public



EXHIBIT 2

12/10/04

#16 / ITC / 0702134 / ARB / mmH

After recording please return to:
BSM FINANCIAL, L.P. C/O NATIONWIDE TITLE
CLEARING, INC.

[Company Name]
Attn: FINAL DOCS UNIT

[Name of Natural Person]
2100 ALT 19 NORTH

[Street Address]
PALM HARBOR, FL 34683

[City, State Zip Code]

(Space Above This Line For Recording Data)

DEED OF TRUST

FHA Case No.
495-4611292-703
MIN: 100098900070215985

THIS DEED OF TRUST ("Security Instrument") is made on **March 22, 2007**. The grantor is **SANDRA G PACHECO, A MARRIED PERSON, JUAN PACHECO SIGNING PRO FORMA TO PERFECT LIEN ONLY.**

whose address is **925 GRANDVIEW DR, SAN MARCOS, TX 78666**

("Borrower"). The trustee is **G. TOMMY BASTIAN** whose address **15000 SURVEYOR BLVD., SUITE 100, ADDISON, TX 75244**

("Trustee"). The lender is **BSM FINANCIAL, L.P. DBA GOLD FINANCIAL**

which is organized and existing under the laws of **Texas**, and whose address is **1301 CENTRAL EXPRESSWAY SOUTH, SUITE 200, ALLEN, TX 75013**

("Lender"). The beneficiary under this Security Instrument is Mortgage Electronic Registration Systems, Inc. ("MERS"). MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS. Borrower owes Lender the principal sum of **seventy eight thousand five hundred eighty six and NO/100ths Dollars (U.S. \$ 78,586.00)**.

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on **April 1, 2037**. This Security Instrument secures to Lender; (a) the repayment of the debt evidenced by the Note, with interest, and all **Loan No: 7021598**

FHA Texas Security Instrument (MERS Modified)
—THE COMPLIANCE SOURCE, INC.—
www.compliancesource.com



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Hays County

renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under Paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably warrants grants and conveys to Trustee, in trust, with power of sale, the following described property located in HAYS County, Texas:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

HUD Data Plate#1 NTA 987268
HUD Data Plate#2 987269
HUD Data Plate#3
which has the address of 925 GRANDVIEW DR

SAN MARCOS, Texas 78666 ("Property Address")
(City) (Zip Code)

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

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

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

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

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

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

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

Loan No: 7021598

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

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

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

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

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

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

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

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

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

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

Loan No: 7021598

FHA Texas Security Instrument (MERS Modified)

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to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

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

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

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

9. **Grounds for Acceleration of Debt.**

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

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

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

(b) **Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including section 341(d) of the Garn-St Germain Depository Institutions Act of 1982, 12 U.S.C. § 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all the sums secured by this Security Instrument if:

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

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

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

(d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) Mortgage Not Insured. Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

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

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


12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the term of this Security Instrument or the Note without that Borrower's consent.

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

14. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

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



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Hays County

16. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this Paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

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

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

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

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

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

18. **Foreclosure Procedure.** If Lender requires immediate payment in full under Paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 18 including, but not limited to, reasonable attorneys' fees and costs of title evidence. For the purposes of this Paragraph 18, the term "Lender" includes any holder of the Note who is entitled to receive payments under the Note.

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

Trustee shall deliver to the purchaser Trustee's deed conveying indefeasible title to the Property with covenants of general warranty from Borrower. Borrower covenants and agrees to defend generally the purchaser's title to the Property against all claims and demands. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and

Loan No: 7021598

FHA Texas Security Instrument (MERS Modified)

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Hays County

attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Property is sold pursuant to this Paragraph 18, Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at that sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ possession or other court proceeding.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. § 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Release. Upon payment of all sums secured by this Security Instrument, Lender shall provide a release of this Security Instrument to Borrower or Borrower's designated agent in accordance with applicable law. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under applicable law.

20. Substitute Trustee; Trustee Liability. All rights, remedies and duties of Trustee under this Security Instrument may be exercised or performed by one or more trustees acting alone or together. Lender, at its option and with or without cause, may from time to time, by power of attorney or otherwise, remove or substitute any trustee, add one or more trustees, or appoint a successor trustee to any Trustee without the necessity of any formality other than a designation by Lender in writing. Without any further act or conveyance of the Property the substitute, additional or successor trustee shall become vested with the title, rights, remedies, powers and duties conferred upon Trustee herein and by applicable law.

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

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

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

23. Purchase Money; Ovelty of Partition; Renewal and Extension of Liens Against Homestead Property; Acknowledgment of Cash Advanced Against Non-Homestead Property. [Check box as applicable.]

Purchase Money.

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

Ovelty of Partition.

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

Renewal and Extension of Liens Against Homestead Property.

The Note is in renewal and extension, but not in extinguishment, of the indebtedness described on the attached Renewal and Extension Exhibit which is incorporated by reference. Lender is expressly subrogated to all

Loan No: 7021598

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rights, liens and remedies securing the original holder of a note evidencing Borrower's indebtedness are renewed and extended to the date of maturity of the Note in renewal and extension of the indebtedness.

Acknowledgment of Cash Advanced Against Non-Homestead Property.

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

24. Loan Not a Home Equity Loan. The Loan evidenced by the Note is not an extension of credit as defined by Section 50(a)(6) or Section 50(a)(7), Article XVI, of the Texas Constitution. If the Property is used as Borrower's residence, then Borrower agrees that Borrower will receive no cash from the Loan evidenced by the Note and that any advances not necessary to purchase the Property, extinguish an owelty lien, complete construction, or renew and extend a prior lien against the Property, will be used to reduce the balance evidenced by the Note or such Loan will be modified to evidence the correct Loan balance, at Lender's option. Borrower agrees to execute any documentation necessary to comply with this Paragraph 24.

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

- Condominium Rider
- Planned Unit Development Rider
- Graduated Payment Rider
- Growing Equity Rider
- Other [specify] _____
- Manufactured Housing Unit Rider to Security Instrument

[Signatures on Following Page]
BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

Printed Name: [Please Complete]

Sandra G Pacheco (Seal)
SANDRA G PACHECO
-Borrower
[Printed Name]

Printed Name: [Please Complete]

Juan Pacheco (Seal)
JUAN PACHECO
-Borrower
[Printed Name]

Printed Name: [Please Complete]

(Seal)
-Borrower
[Printed Name]

(Seal)
-Borrower
[Printed Name]

Loan No: 7021598
FHA Texas Security Instrument (MERS Modified)
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Hays County

(Space Below This Line For Acknowledgment)

State of Texas

County of **HAYS**

§
§
§

Before me, Jill A. Menchaca, a Notary Public,
on this day personally appeared **SANDRA G PACHECO and JUAN PACHECO**

known to me (or proved to me on the oath of DRIVERS LICENSE or through
(description of identity card or other document)) to be
the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same
for the purposes and consideration therein expressed.

Given under my hand and seal of office this 22nd day of March, 2007, A.D.,

Jill A. Menchaca
Signature of Officer [Printed Name]

(Seal)

Title of Officer

My Commission Expires:



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LINDA C. FRITSCHE, County Clerk
Hays County

Loan No: 7021598

PACHECO

EXHIBIT "A" - LEGAL DESCRIPTION - PAGE 1 of 1
LOT 38, BLOCK 1 EAGLEPOINT, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED
IN VOLUME 7, PAGE 377, PLAT RECORDS, HAYS COUNTY, TEXAS AND IN VOLUME 5,
PAGE 359A, PLAT RECORDS, GUADALUPE COUNTY, TEXAS. (SUBJECT PROPERTY BOTH
IN HAYS AND GUADALUPE COUNTY, TEXAS.)
INCLUDES MANUFACTURED HOUSING UNIT(S) DESCRIBED AS FOLLOWS:

MAKE: HOMES BY OAKWOOD
MODEL: 1767
WIDTH: 28
LENGTH: 52
SERIAL #: HOTX09910193 A & B
YEAR: 2000

SAID UNIT(S) ATTACHED TO THE LAND IN A PERMANENT MANNER SO AS TO BE
RENDERED AN IMMOVABLE FIXTURE AND AN INTEGRAL PART OF THE SUBJECT PROPERTY.

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Hays County

FHA/VA CASE NO:495-4611292-703
MIN: 100098900070215985

(Attach to Security Instrument)

**MANUFACTURED HOUSING UNIT RIDER TO THE
MORTGAGE / DEED OF TRUST / SECURITY INSTRUMENT**
(Manufactured Housing Unit to Become Affixed)

THIS RIDER is made this 22nd day of March, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage/Deed of Trust/Security Instrument (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to BSM FINANCIAL, L.P. DBA GOLD FINANCIAL

of the same date (the "Note") and covering the land described in the Security Instrument as: (the "Note Holder")

SEE EXHIBIT 'A' ATTACHED HERETO AND MADE A PART HEREOF

[Legal Description]

which currently has the address of:

925 GRANDVIEW DR, SAN MARCOS, TX 78666

[Property Address]

together with the Manufactured Housing Unit described as follows which shall be a part of the real property:

Make: HOMES BY OAKWOOD
Model: 1767
Year: 2000
Serial Number(s): HOTX09910193 A & B
Width & Length: 28 x 52

LAND AND HOME MATTERS. Owner acknowledges that the land and manufactured home covered by this Security Instrument are to be treated as real property for all purposes under Texas law and that the parties have elected to not be governed by Chapter 347 of the Texas Finance Code.

MODIFICATIONS. In addition to the covenants and agreements made in the Security Instrument, Borrower(s) further covenant and agree as follows, for themselves, their heirs and assigns to the Note Holder:

Loan No: 7021598

Manufactured Housing Unit Rider to the Mortgage/Deed of Trust/Security Instrument
(Manufactured Housing Unit to Become Affixed) (Texas)

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A. Property:

Property shall encompass the Manufactured Housing Unit described above that is or that will become affixed to the land legally described herein.

B. Additional Covenants of Borrower(s):

- (a) Borrower(s) covenant and agree that Borrower(s) will comply with all State and local laws and regulations regarding the affixation of the Manufactured Housing Unit to the land described herein including, but not limited to, surrendering the Certificate of Title (if required) and obtaining the requisite governmental approval and accompanying documentation necessary to classify the Manufactured Housing Unit as real property under State and local law.
- (b) That the Manufactured Housing Unit described above shall be, at all times, and for all purposes, permanently affixed to and part of the land legally described herein and shall not be removed from said land.
- (c) Borrower(s) covenant that affixing the Manufactured Housing Unit to the land legally described herein does not violate any zoning laws or other local requirements applicable to manufactured homes.
- (d) In the event state or local law does not provide for a surrender of title, Borrower grants Lender a security interest in the Manufactured Housing Unit and shall execute such documents as Lender may request to evidence Lender's security interest therein.

BY SIGNING THIS, Borrower(s) agree to all of the above.

Sandra G. Pacheco (Seal)
SANDRA G PACHECO -Borrower

Juan Pacheco (Seal)
JOAN PACHECO -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

Loan No: 7021598

Manufactured Housing Unit Rider to the Mortgage/Deed of Trust/Security Instrument
(Manufactured Housing Unit to Become Affixed) (Texas)

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Loan No: 7021598

PACHECO

EXHIBIT "A" - LEGAL DESCRIPTION - PAGE 1 of 1
LOT 38, BLOCK 1 EAGLEPOINT, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED
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IN HAYS AND GUADALUPE COUNTY, TEXAS.)
INCLUDES MANUFACTURED HOUSING UNIT(S) DESCRIBED AS FOLLOWS:

MAKE: HOMES BY OAKWOOD
MODEL: 1767
WIDTH: 28
LENGTH: 52
SERIAL #: HOTX09910193 A & B
YEAR: 2000

SAID UNIT(S) ATTACHED TO THE LAND IN A PERMANENT MANNER SO AS TO BE
RENDERED AN IMMOVABLE FIXTURE AND AN INTEGRAL PART OF THE SUBJECT PROPERTY.

Filed for Record in:
Hays County
On: Mar 29, 2007 at 12:09P
Document Number: 70008907
Amount: 64.00
Receipt Number: 167799
89
Christina Sanchez, Deputs
Linda Fritscher, County Clerk
Hays County

I, LINDA C. FRITSCHE, COUNTY CLERK,
HAYS COUNTY, TEXAS do hereby certify that this is
a true and correct copy as same appears of record
in my office. Witness my hand and seal of office on:



March 21, 2008

LINDA C. FRITSCHE
HAYS COUNTY CLERK
BY DEPUTY

Lynn Curry

ENV
→

Record and Return to:
Washington Mutual Bank
8168-8170 Baymeadows Way West
Jacksonville, FL 32256
Attn: Lien Release/ JAXF1020
Loan No: 5965270241

AFFIDAVIT OF MISSING ASSIGNMENT OF MORTGAGE/DEED OF TRUST

Based upon a search of the property records, the Assignment of Mortgage/Deed of Trust from H.S.R. Construction Inc. to Washington Mutual Bank, FA (ASSIGNEE) was not recorded and is unobtainable. The below-described Note and Mortgage/Deed of Trust is currently serviced by

WASHINGTON MUTUAL BANK

Said Mortgage/Deed of Trust dated April 18, 1997, recorded in the County of Guadalupe, State of Texas, is more particularly described as follows:

ORIGINAL GRANTOR: Douglas K. Berger and Brenda K. Berger, Husband and Wife

ORIGINAL TRUSTEE: Allan B. Polunsky

ORIGINAL BENEFICIARY: Old Kent Mortgage Company

ORIGINAL AMOUNT: \$287,700.00

RECORDED: April 23, 1997

INSTRUMENT NO: 5029

BOOK/LIBER: 1265 PAGE: 982

PROPERTY ADDRESS: 132 Paseo Del Rio Seguin, TX 78155

PARCEL ID NO: 30869

DATE: August 17, 2006

WASHINGTON MUTUAL BANK

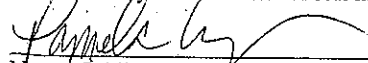


G. Y. Austin, Lien Release Assistant Secretary

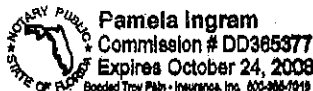
STATE OF FLORIDA
COUNTY OF DUVAL

On August 17, 2006 before me, the undersigned, personally appeared G. Y. Austin, Lien Release Assistant Secretary, OF WASHINGTON MUTUAL BANK, Personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the state of Florida, County of Duval.

WITNESS my hand and official seal in said County and State this August 17, 2006.



Notary Public



This Instrument was prepared by LaToya Sykes, Washington Mutual Bank, 8168-8170 Baymeadows Way West, Jacksonville, FL 32256

EXHIBIT 3