

CAUSE NO. D-1-GN-16-000360

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
MILLENNIUM CLOSING SERVICES,	§	
LLC, d/b/a MILLENNIUM TITLE,	§	
Defendant.	§	53 <sup>rd</sup> JUDICIAL DISTRICT

**NOTICE OF OBJECTION TO SPECIAL MASTER’S RECOMMENDATION  
AND REQUEST FOR HEARING**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, JAW Homes, Inc., Movant, and files this Notice of Objection to the Recommendation Made by the Tom Collins, Special Master (Master), on Movant’s Motion to Permit Foreclosure in the above-styled and numbered cause. As grounds therefore, Movant would state as follows:

**I.**

1.1 Movant filed a Motion to Permit Foreclosure of its first lien deed of trust on the property located at 8158 Westwind Court, North Richland Hills, Texas and at 8413 Spence Court, North Richland Hills, Texas.

**II.**

2.1 On April 4, 2016, the Master issued its recommendation to the Court that Movant’s Motion to Permit Foreclosure be denied. Movant now timely files this objection to the Recommendation of Special Master and requests a full hearing before the Court.

### III.

3.1 The issue before the Master at the time of the hearing (March 31, 2016) was whether or not there was equity in reference to either of the two properties that would benefit the Special Deputy Receiver (SDR).

3.2 As found by the Special Master, the action of Nancy Carroll resulted in two liens being filed on each of the two properties with competing lienholders.

3.3 In reference to 8158 Westwind Court, the evidence was clear and convincing that there was no equity in the Westwind Court that would benefit the SDR. The two notes, which are secured by Westwind Court, would total in excess of \$581,000.00 with the Tarrant County Tax Appraisal District value of \$318,000.00, thereby indicating a lack of equity in the approximate sum of \$263,000.00.

3.4 In reference to 8413 Spence Court, the evidence was also clear and convincing that there was no equity that would benefit the SDR. The total indebtedness in reference to Spence Court is the approximate sum of \$755,000.00, with the Tarrant County Appraisal District value of \$423,000.00, leaving an equity deficiency of \$332,000.00.

### IV.

4.1 The Master's findings and conclusions that evidence of the lack of equity was not clear and convincing is in error.

4.2 The Master's position that there may exist other sources of funds to pay on one or both of the liens per property (i.e., errors and omissions insurance, title insurance, Texas Title Insurance Guaranty Association) does not address the

issue that those payors would be subrogated to the position of the lender to whom payments were made. Such payments would not constitute equity for the benefit of the SDR, but would merely change the identity of the lienholder.

**V.**

5.1 The SDR has not taken possession of the two properties, nor undertaken any action to sell either of the two properties set forth above, and, in fact, has not even had an inventory as to what assets the SDR may be in charge of.

WHEREFORE PREMISES CONSIDERED, Movant prays that the Court disregard the Master's recommendation and that the Court grant the Movant's Motion to Permit Foreclosure and for such other and further relief to which the Movant may be entitled, both at law and in equity.

Respectfully submitted,

/s/David R. Casey

DAVID R. CASEY

State Bar No. 03957000

1840 Norwood Plaza, Suite 102

Hurst, Texas 76054

drc@davidcasey-atty.com

817-282-0702

817-280-0430 (Facsimile)

ATTORNEY FOR JAW HOMES, INC.

## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been served on the following parties by the method below in accordance with Tex. R. Civ. P. 21(a) on this 5<sup>th</sup> day of April, 2016.

Via e-Service:

[specialmasterclerk@tdi.texas.gov](mailto:specialmasterclerk@tdi.texas.gov)

Special Master's Clerk  
Texas Department of Insurance  
Rehabilitation & Liquidation Oversight  
P.O. Box 149104  
Austin, TX 78714-9104

Via e-Service:

[James.Kennedy@tdi.texas.gov](mailto:James.Kennedy@tdi.texas.gov)

James Kennedy  
Texas Department of Insurance  
P.O. Box 149104  
Austin, TX 78714-9104

Via e-Service:

[Kimberly.Hammer@tdi.texas.gov](mailto:Kimberly.Hammer@tdi.texas.gov)

Kimberly Hammer  
Texas Department of Insurance  
P.O. Box 149104  
Austin, TX 78714-9104

Via e-Service:

[Vicente.Aguillon@tdi.texas.gov](mailto:Vicente.Aguillon@tdi.texas.gov)

Vicente Aguillon  
Texas Department of Insurance  
Rehabilitation and Oversight  
P.O. Box 149104  
Austin, TX 78714-9104

Via e-Service:

[Cynthia.Morales@texasattorneygeneral.gov](mailto:Cynthia.Morales@texasattorneygeneral.gov)

Cynthia Morales  
Assistant Attorney General  
Financial, Litigation, Tax & Charitable Trusts  
Office of the Texas Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

Via Email:

[rachel.obaldo@texasattorneygeneral.gov](mailto:rachel.obaldo@texasattorneygeneral.gov)

Rachel Obaldo  
Assistant Attorney General  
Bankruptcy and Collections Division  
Office of the Texas Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

Via First Class Mail:

Internal Revenue Service  
Special Procedures Branch  
P.O. Box 250  
300 East 8<sup>th</sup> Street, Suite 352  
Mail Stop 5022US  
Austin, TX 78701

Via First Class Mail:

Internal Revenue Service  
Centralized Insolvency Operation  
P.O. Box 7346  
Philadelphia, PA 19101-7346

Via e-Service:

[Kergin@burtonhyde.com](mailto:Kergin@burtonhyde.com)

Kergin B. Bedell  
Burton & Hyde, PLLC  
311 West 5<sup>th</sup> Street, Suite 100  
Austin, TX 78701

Via e-Service:

[jason@vandykelawfirm.com](mailto:jason@vandykelawfirm.com)

Jason Lee Van Dyke  
The Van Dyke Law Firm  
200 Chisholm Place #250  
Plano, TX 75075  
*Counsel for Maverick Title of Texas, LLC*

Via e-Service:  
Kimberly A. Yelkin  
Gardere Wynne Sewell LLP  
3000 One American Center  
600 Congress Avenue  
Austin, TX 78701

Via e-Service:  
Marisol M. Saenz  
Gardere Wynne Sewell LLP  
3000 One American Center  
600 Congress Avenue  
Austin, TX 78701

Via e-Service:  
[bburner@mwlaw.com](mailto:bburner@mwlaw.com)  
Burnie Burner  
Mitchell Williams  
500 W. 5<sup>th</sup> Street, Suite 1150  
Austin, TX 78701  
*Counsel for Texas Title Insurance  
Guaranty Association*

Via e-Service:  
[bmccandless@mwlaw.com](mailto:bmccandless@mwlaw.com)  
Bruce McCandless, III  
Mitchell Williams  
500 W. 5<sup>th</sup> Street, Suite 1150  
Austin, TX 78701  
*Counsel for Texas Title Insurance  
Guaranty Association*

Via e-Service:  
[brad@hrrpc.com](mailto:brad@hrrpc.com)  
Brad Repass  
Haynie, Rake, Repass & Klimko, P.C.  
14643 Dallas Parkway, Suite 550  
Dallas, TX 75254  
*Counsel for Scott Schambacher, Avondale  
Development Group, 1601 AF Ltd. and  
Affiliates*

Via e-Service:  
[alaporte@hanszenlaporte.com](mailto:alaporte@hanszenlaporte.com)  
[cconry@hanszenlaporte.com](mailto:cconry@hanszenlaporte.com)  
Anthony L. Laporte  
Christopher S. Conry  
Hanszen LaPorte, LLP  
11767 Katy Freeway, Suite 850  
Houston, TX 77079-1729  
*Counsel for First Funding  
Investments, Inc.*

Via e-Service:  
[cfuller@fullerlaw.org](mailto:cfuller@fullerlaw.org)  
Christopher Fuller  
4612 Ridge Oak Drive  
Austin, TX 78731

Via e-Service:  
[phil@philmeyerlaw.com](mailto:phil@philmeyerlaw.com)  
Philip A. "Phil" Meyer  
City Centre One  
800 Town and Country Blvd.  
Suite 300  
Houston, TX 77024

/s/David R. Casey  
DAVID R. CASEY