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MEMORANDUM

TO: Clients and Friends of the Firm

FROM: J. Alton Alsup

DATE: April 13, 2005

SUBJECT: Understanding Compliance Requirements for the 1-Day Preclosing Disclosure of Actual Fees and Charges for Texas Home Equity Loans

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I. Introduction: The Compliance Challenge of the 1-Day Preclosing Disclosure

A Texas constitutional amendment that went into effect in September, 2003 requires home equity lenders to provide borrowers an advance written itemization of actual closing costs. The amendment to Section 50(a)(6)(M), Article XVI, of the Texas Constitution requires mortgage lenders under a home equity extension of credit to provide a pre-closing written disclosure to the borrower itemizing the actual fees, points, interest, costs, and other charges that will be charged to the borrower at closing and prohibits the loan closing to occur before one business day after the date the owner of the homestead receives the final written itemized disclosure. The disclosure, referred to in this memorandum as the 1-Day Preclosing Disclosure or the Preclosing Disclosure, is required by the terms of new subdivision (M)(ii), which reads as follows:

> "(M) is closed not before:
> . . .
> (ii) one business day after the date that the owner of the homestead receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provided the documentation to the owner or the lender may modify previously provided documentation on the date of closing; and . . ."
>
> [Note: Former section 50(a)(6)(M)(ii) containing the one-year equity loan seasoning requirement has been renumbered as section 50(a)(6)(M)(iii) and is otherwise unchanged.]

Although this disclosure requirement may be satisfied simply by requiring the settlement agent to deliver a final HUD-1 Settlement Statement to the borrower at least a day prior to the scheduled closing date, compliance has proven challenging for a Texas home mortgage industry more accustomed to determining final closing costs and preparing the final settlement statement only an hour or so prior to a scheduled home loan closing. Of course, the federal Real Estate Settlement Procedures Act (RESPA) also requires that the settlement agent permit borrowers to inspect the HUD-1 Settlement Statement during the business day preceding the scheduled date of closing, but under the federal regulations the settlement statement may be a preliminary disclosure of those fees and charges then known to the settlement agent and estimates may be

revised on the date of closing to reflect actual costs. Also, courts have construed the federal rule as not requiring that the HUD-1 actually be delivered to the borrower on the business day preceding a scheduled closing, but instead it is construed as merely requiring that the HUD-1 be made available for the borrower's inspection at the offices of the title company or other settlement agent during regular business hours on the preceding business day.

The Texas constitutional requirement that the lender disclose *actual* fees and charges a day in advance of closing has ended the customary industry practice of estimating certain charges in advance and amending the HUD-1 Settlement Statement at closing once all invoices from various vendors and service providers are received and exact figures are determined. When there is any variance between fees and charges disclosed in advance of closing and final cost figures, it now appears that revised final figures must again be itemized and disclosed and closings generally must be rescheduled to a later day. Moreover, borrowers now may be required to physically appear at the title company conducting the closing on three separate occasions just to consummate a Texas home equity loan: first, to pick-up copies of the final HUD-1 Settlement Statement itemizing actual fees and charges; next (at least one business day later), to execute the promissory note, deed of trust, and other closing documents; and, finally (at least three-business days later), to pick-up their check for net loan proceeds once the federal and state rescission periods have run.

One notable exception to the timing requirement for delivery of the new disclosure arises if "a bona fide emergency or other good cause exists" and the lender obtains the written consent of the owner. In that event only, the lender may satisfy the disclosure requirements of new section 50(a)(6)(M)(ii) by providing the written itemization of actual charges to the homeowner (or modifying a previously provided itemization) on the date of closing. Significantly, key terms as "business day," "bona fide emergency" and "good cause," which were used but undefined in the constitutional amendments, have now been defined by an interpretive rule adopted by the Finance Commission and the Credit Union Commission in 7 TAC Chapter 153 discussed in section II. B. of this memorandum.

The legislature in enacting subdivision (M)(ii) surely could not have intended such a complex and burdensome compliance scheme, but failure to strictly comply with the disclosure requirements exposes a mortgage lender to a claim of lien invalidity under the strict compliance standards traditionally applied by Texas courts when construing homestead rights. Moreover, failure to comply with this disclosure obligation may require the lender to undertake a costly curative procedure to avoid loss of all principal and interest on the loan under the draconian Section 50(a)(6)(Q)(x) forfeiture provision if challenged by the borrower, which most often may occur in a foreclosure or bankruptcy action. This memorandum is intended to provide our clients a better understanding of the compliance requirements of Section 50(a)(6)(M)(ii) in light of practical industry experience gained since its September, 2003 effective date, title insurance protections against the compliance risk since adopted by the Department of Insurance, and new interpretive rules recently adopted by the Joint Financial Regulatory Agencies. We also outline in this memorandum suggested procedures and various document forms that mortgage lenders may adopt to reasonably assure their compliance with these constitutional disclosure requirements.

II. Regulatory Developments Since September, 2003 Effective Date

A. Texas Department Of Insurance Adopts Amendments To Procedural Rules And Modifications Of Forms Of T-42 And T-42.1 Endorsements To Address 1-Day Preclosing Disclosure Requirements

The Texas Department of Insurance, effective April 1, 2004, adopted amendments to Procedural Rule P-47 and to the insuring forms of the Equity Loan Mortgage Endorsement (T-42) and the Supplemental Coverage Equity Loan Mortgage Endorsement (T-42.1), Basic Manual of Rules, Rates, and

Forms for the Writing of Title Insurance in the State of Texas (the "Basic Manual"), to conform to the new home equity reform measures approved by voters in September, 2003 as Proposition 16, including the new 1-Day Preclosing Disclosure. The amendments made technical corrections to references to applicable law, conformed these documents to insure future advances under home equity lines of credit (HELOCs), and revised the endorsement forms to ensure compliance with the new requirements for the 1-Day Preclosing Disclosure of actual fees and charges by title insurance companies or title insurance agents who close home equity loans. The promised benefit to mortgagees is insurance protection against the risk of claimed lien invalidity arising out of the failure of the title company or title agent to timely and accurately provide a preclosing disclosure of actual fees and charges as required by section 50(a)(6)(M)(ii) in accordance with the lender's written closing instructions. As amended, the form of T-42.1 Endorsement adds a new subdivision (l) that insures the mortgagee against:

> (l) Failure of the Company or its Title Insurance Agent to provide the owner a copy of the final settlement statement prepared by the Company or its Title Insurance Agent itemizing the actual fees, points, interest, costs and charges collected or disbursed by the Company or its Title Insurance Agent at least one calendar day before the business day or subsequent calendar day that the owner executed the insured mortgage and the promissory note secured thereby. As used in this paragraph (l), the term business day shall have the meaning assigned to such term by the Texas Finance Commission and/or the Texas Credit Union Commission pursuant to the authority granted such agencies by sections 11.308 and 15.413 of the Texas Finance Code, respectively.

However, paragraph B. 12 of amended Procedural Rule P-47 requires the title company or agent to delete subdivision (l) as an insured risk if in fact the title company or agent fails for any reason to timely provide each owner with a copy of the preclosing disclosure:

> Final Disclosure of Fees
> The Company must delete subparagraph (l) of paragraph 1 of the Supplemental Coverage Equity Loan Mortgage Endorsement (T-42.1) if the Company or its Title Insurance Agent does not provide each owner with a copy of the final settlement statement at least one calendar day before the business day or subsequent calendar day that the owner executes the insured mortgage and the promissory note secured thereby. As used in this item 12, the term business day shall have the meaning assigned to such term by the Texas Finance Commission and/or the Texas Credit Union Commission pursuant to the authority granted such agencies by sections 11.308 and 15.413 of the Texas Finance Code, respectively.

Lenders, therefore, should include in their written closing instructions the specific instruction that a home equity loan may not be closed by the company or agent unless it is prepared to issue the T-42.1 endorsement without striking subdivision (l). This practice should either assure lenders of the insuring protections of the T-42.1, as amended by new subdivision (l) or alert them that a new or modified one-day disclosure of actual fees and charges must be provided to the owner and the loan then rescheduled for closing on the next day or another day thereafter.

B. The Joint Financial Regulatory Agencies Adopt a Final Rule Interpreting Section 50(a)(6)(M)(ii) Preclosing Disclosure Provisions

As one of their first official acts under their newly delegated rulemaking authority, the Joint Financial Regulatory Agencies comprised of the Texas Finance Commission and the Texas Credit Union Commission (the "Commissions") adopted official home equity lending interpretations (the Home Equity Lending Interpretations) at a joint agency meeting held December 18, 2003. The power to interpret constitutional home equity lending provisions was expressly delegated to the Texas Finance Commission (with respect to constitutionally authorized home equity lenders) and to the Credit Union Commission (with respect to the credit union lenders regulated by that commission) by SB 1067, which amended Chapters 11 and 15 of the Texas Finance Code to that effect as of September 29, 2003.

The Home Equity Lending Interpretations are codified in the Texas Administrative Code (TAC) at 7 TAC Chapter 153. These interpretations are based on and replace the informal *Regulatory Commentary on Equity Lending Procedures* by the Joint Financial Regulatory Agencies dated and issued October 7, 1998, with few substantive revisions. The Commissions subsequently adopted extensive interpretations in 7 TAC §§153.13 effective as of January 8, 2004 of new section 50(a)(6)(M)(ii) requiring a *Preclosing Disclosure* of actual fees and charges that will be charged at closing, which reads in its entirety as follows:

§153.13. *Preclosing Disclosures: Section 50(a)(6)(M)(ii*).
An equity loan may not be closed before one business day after the date that the owner of the homestead receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing.

(1) A lender may satisfy the disclosure requirement of this section by delivery to the borrower of a properly completed Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A.

(2) An owner may consent to receive the preclosing disclosure on the date of closing in the case of a bona fide emergency occurring before the date of the extension of credit. An equity loan secured by a homestead in an area designated by Federal Emergency Management Agency (FEMA) as a disaster area is an example of a bona fide emergency if the homestead was damaged during FEMA's declared incident period.

(3) To modify timing of the disclosure, the lender should obtain written consent from the owner that:

(A) describes the emergency;

(B) specifically states that the owner consents to receive the preclosing disclosure on the date of closing; and

(C) bears the signature of all of the owners entitled to receive the preclosing disclosure.

(4) A *de minimis* variance can be good cause at the owner's option. An owner who has received a preclosing disclosure may consent to receive a subsequent or modified preclosing disclosure on the date of closing under the good cause standard if:

(A) the actual disclosed fees, costs, points and charges on the date of closing do not vary from the initial preclosing disclosure by more than the greater of:

(i) $100 of the amount charged at closing or

(ii) 0.125 percent of the principal amount of the equity loan at closing; or

(B) one or more items in subparagraph (A) of this paragraph is less than the disclosed rate or amount on the initial preclosing disclosure.

(5) An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing if *another good cause* exists. A condition that would cause the owner substantial financial hardship if the equity loan were not allowed to close on the scheduled date of closing is an example of other good cause.

(6) An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or any calendar day thereafter.

The Commissions clarified through this §153.13 interpretation that a home equity loan may be closed during normal business hours on the first business day after the calendar day on which the required Preclosing Disclosure is provided the owner o*r on any calendar day thereafter*. The requirement that the closing occur during normal business hours would seem to apply only if the loan is closed on the first business day after notice, which under the adopted definition of *business day* may be a Saturday. If so, closings occurring on a calendar day after the first business day should not be restricted to normal business hours. Presumably, *normal business hours* refer to the usual and customary hours of the title company, mortgage lender, or attorney at law acting as settlement agent and conducting the loan closing. The rationale for such a rule and for restricting its application to the first business day on which closing could occur is to assure that sufficient time for cool reflection by the owner passes between the time of delivery of the notice of actual fees and charges and the loan closing. Importantly, the timing of delivery of the Preclosing Disclosure under this interpretation is not restricted and may occur at any hour on any calendar day.

The Commissions also set standards for the circumstances that may constitute a bona fide emergency or another good cause under section 50(a)(6)(M)(ii) and thereby permit the lender, with the written consent of the owner, to provide the Preclosing Disclosure to the owner, or to modify a previously provided Preclosing Disclosure, on the scheduled date of closing so that the closing is not unnecessarily delayed. In that regard, the Commissions by rule determined that a *de minimis* variance in the fees and charges can be a good cause at the owner's option. The Commissions in §153.13(4) adopted a *de minimis* variance test under which very minor variances that occur between actual fees and charges disclosed on the final HUD-1 Settlement Statement at loan closing and the same fees and charges disclosed in the Preclosing Disclosure may be permitted.

Although the precise formulation of the *de minimis* test is elusive, it appears conservatively that a closing may proceed at the owner's option on the scheduled closing date *if* (1) any actual fee or charge at closing is less than the amount disclosed in the Preclosing Disclosure, and (2) no other one fee or charge, or the aggregate of all other fees and charges, do not exceed the greater of $100 or .125 percent (one-eighth of one percent) of the principal loan amount. Accordingly, by way of example, a final HUD-1 Settlement Statement for a $150,000 home equity loan disclosing actual fees and charges at closing would satisfy the *de minimis* test if (ignoring any fee or charge that is less than the amount disclosed in the Preclosing Disclosure) (1) no single fee or charge disclosed in the Preclosing Disclosure and (2) the total of all other fees and charges disclosed in the Preclosing Disclosure do not exceed the sum of $187.50 (i.e., one-eighth percent of $150,000).

The Home Equity Lending Interpretations are significant not only for the general interpretive guidance they provide the mortgage lending industry, but also because the interpretations provide "safe harbor" protections to mortgage lenders who perform acts or omissions in good faith reliance on the Commissions' official interpretations that may later be determined by a court or other authority to violate the Texas Constitution. Section 50(u) in that regard provides that any act or omission by a lender does not constitute a violation of any provision of those subsections if the act or omission conforms to an official interpretation of the provision that is in effect at the time of the act or omission and made by a state agency to which the power of interpretation is delegated or an interpretation made by a Texas or federal appellate court. Appellate courts generally defer to a regulatory agency's interpretations of statutes when the agency has been delegated interpretive authority by Congress or a state's legislature unless the agency's interpretation is found by the reviewing court to conflict with the "plain meaning" of the statute. Even in those cases, however, no provision of the constitution otherwise imposing liability on a mortgage lender for a violation would be found to apply to any act done or omitted in good faith conformity with an official interpretation of that provision by the Commissions even if the interpretation

were subsequently amended, rescinded, or determined by a court or other authority to violate the Texas Constitution.

III. Recommended Compliance Procedures for Mortgage Lenders

The 1-Day Preclosing Disclosure is one of the 25, or more, exacting constitutional conditions that mortgage lenders extending home equity credit must comply with to create a valid lien on Texas homestead properties. These conditions, sometimes referred to as the "Ten Commandments" of home equity lending as it were, are set out in Section 50(a)(6), Article XVI, of the Texas Constitution. Our clients have sought guidance on how mortgage lenders may comply with the 1-Day Preclosing Disclosure requirements (i) without unnecessarily delaying home equity closings for days on end because of minor variances that routinely occur in the disclosed amounts of one or more itemized charges, often because of daily interest charges that accrue with the passage of time or last minute invoices received from service providers and (ii) without needlessly burdening homeowners by requiring that all homeowners personally appear at the title agency's office on multiple occasions just to close on a Texas home equity loan.

Homeowners seeking a Texas home equity loan too often are required to personally appear at the offices of the title insurance agency serving as settlement agent on a business day prior to the scheduled date of closing to receive, and acknowledge receipt of, the final HUD-1 Settlement Statement itemizing actual fees and charges to be charged at closing. This is a needlessly burdensome procedure that imposes a third separate occasion on which homeowners must now personally appear at the title company offices in order to close on a Texas home equity loan. Most often this additional appearance requires that one or more of the homeowners make special arrangements to absent themselves from work for the hour or two required to meet and travel to the designated title agency office for this purpose. Title agencies also are ill equipped to administer the additional "foot traffic" and process by which homeowners arrive at their offices unannounced and are corralled in the lobby while waiting to receive and acknowledge receipt of a copy of the final HUD-1 for a particular transaction, which in any case may not be available at that precise moment, and thereafter to respond to questions invariably posed by consumers seeking explanations of fees and charges itemized on the disclosure document.

This tiresome process begs for an alternative means of delivery that is fast, flexible, and less burdensome. Although delivery by certified mail is impractical because of the narrow window available between the time that actual fees and charges data are available and the scheduled closing date, electronic delivery via facsimile transmission or e-mail is commonplace today and within the capabilities of most homeowners to receive communications by such means. But mortgage lenders and secondary market investors of Texas home equity loans have been reluctant to pioneer procedures that rely on an electronic means of delivery in absence of interpretive guidance by the Commissions that validates delivery by such means as satisfying the (M)(ii) preclosing disclosure requirements. In recent rulemaking adopting §153.13, the Commissions declined commenters' appeals, including that of this firm, to expressly authorize facsimile and e-mail transmissions as acceptable modes of delivery, but indirectly recognized electronic delivery as an acceptable means in their commentary, which reads in part as follows:

> "Three commenters requested that the interpretation in Section 153.13 expressly allow for the electronic delivery of the preclosing disclosure by email or facsimile if the owner gives written consent to the electronic delivery and the receipt of the preclosing disclosure is acknowledged by all owners at the closing. The Commissions considered this request and determined that it is not necessary to delineate specific acceptable methods of delivery. The Commissions believe that the lenders should have flexibility in the methods of delivering the preclosing disclosure. Accordingly, the Commissions have not strictly proscribed [sic] the means of delivery. A lender is not prohibited from sending the preclosing disclosure by electronic means and may require acknowledgment of the receipt of the disclosure at the closing, if it desires to further protect its interests."

Our firm accordingly recommends that mortgage lenders establish written internal procedures that, if faithfully followed, should reasonably assure mortgage lenders' compliance with the 1-Day Preclosing Disclosure requirements of Section 50(a)(6)(M)(ii) by timely delivery of the final HUD-1 Settlement Statement either via fax transmission, courier delivery, or personal delivery at the settlement agent's office:

1. *Consent of Borrower to Receive Preclosing Disclosure via FAX*. The procedures should include informing the borrower in writing at the loan commitment stage of the constitutional requirements for delivery of the 1-Day Preclosing Disclosure of actual fees and charges and of the cooperative role the borrower must play in assuring timely receipt of the required disclosure at least one day before the scheduled closing in order to avoid delay in closing the loan. The procedures in that regard should call for all owners of the homestead at the time of loan application (i) to elect as a matter of personal convenience to receive the final itemized disclosure of actual fees and charges at least one day in advance of the scheduled closing date for their home equity loan at one, or more, fax numbers designated by the homeowners; (ii) to acknowledge that successful transmission of the final itemized disclosure of actual fees and charges to the attention of *any owner* of the homestead at any of the fax numbers authorized by the owners will constitute effective receipt of the disclosure *by all owners* of the homestead; (iii) to acknowledge that if the fax transmission of the final itemized disclosure of actual fees and charges fails for any reason, whether because of service or technical failures or the error, omission, or negligence of any person, each owner of the homestead must personally appear at a designated office of the title insurance company or title agent serving as settlement agent for the home equity loan before the close of business on the business day immediately preceding the scheduled date of closing to receive and acknowledge receipt of the disclosure; and (iv) to acknowledge that if the owners fail for any reason to receive the final itemized disclosure of actual fees and charges either by facsimile transmission or by appearing in person on a day prior to the scheduled date of closing, the date of closing must be rescheduled for a later date that is at least one business day after the disclosure is received by Borrower. Exhibit A titled "Consent of Borrower to Receive Advance Disclosure of Actual Fees and Charges By Facsimile Transmission" is a sample form of one approach to obtaining the borrower's express consent to receive the disclosure via fax transmission and cooperating in satisfying the disclosure requirement to avoid a delay in closing. The consent form should be signed by all owners and spouses of owners of the homestead property to evidence that, by agreement as provided in its Paragraph 2, a single successful fax transmission of the required 1-Day Preclosing Disclosure to an authorized number shall constitute effective receipt by all parties entitled to the notice.

2. *Supplemental Closing Instructions to Settlement Agent.*. The procedures next should include supplementing written closing instructions to the settlement agent to (i) authorize the settlement agent in each case to close a home equity loan on the first business day only after satisfying the (M)(ii) preclosing disclosure requirements; (ii) instruct the settlement agent to satisfy the (M)(ii) preclosing disclosure requirements by providing a copy of the final HUD-1 Settlement Statement to the owners of the homestead on any day preceding the scheduled date of closing, preferably by commercial courier delivery or via facsimile transmission to a fax number earlier authorized in writing by the borrower, and to maintain a receipt or other evidence of delivery; and (iii) instruct the settlement agent not to close the loan unless issuing a commitment to insure the lien with a Form T-42.1 endorsement without deletion of subdivision (l), which insures the lender against a claim of lien invalidity should the title company or agent fail for any reason to timely provide each owner with a copy of the final HUD-1 Settlement Statement in accordance with the lenders' instructions. Exhibit B is a sample form of an "Addendum to Closing Instructions from Lender" that our clients may consider adapting for this purpose. The sample instructions set out requirements for assuring compliance with the early disclosure requirements of Section

50(a)(6)(M)(ii). Paragraph 6 in particular insists on affirmative protection for this risk by requiring that subdivision (l) of the amended T-42.1 endorsement be issued without deletion.

3. *Borrower's Acknowledgment at Closing of Timely Receipt of Preclosing Disclosure.* Finally, the procedures should include obtaining the written acknowledgment of the borrower at closing that the 1-Day Preclosing Disclosure was in fact timely received and the disclosure requirement satisfied. Exhibit C titled "Owner's Affidavit Acknowledging Lender's Compliance with Constitutional Requirement to Provide Owner Early Final Itemized Disclosure of Actual Fees and Charges" is a sample form that may be considered for adaptation for use in the usual case in which the early disclosure of the HUD-1 Settlement Statement is accurate. This sample form assumes that the fees and charges reflected on the final HUD-1 Settlement Statement as earlier disclosed to the homestead owner(s) have not varied in any respect, and cannot vary even if a change were beneficial to the owner(s). Exhibit C is in affidavit form to underscore its importance to the consumer and hopefully establish prima facie evidence of compliance. The two blanks appearing in paragraphs 2 and 3 should be completed with the dates of the calendar day immediately preceding the scheduled date of closing and the actual date of closing, respectively.

4. *Borrower's Acknowledgment of Bona Fide Emergency or Other Good Cause*. Alternatively, if relying for compliance on delivery of the 1-Day Preclosing Disclosure on the actual date of closing based on a *bona fide* emergency or a good cause under the *de minimis variance* test discussed in section II. B. of this memorandum, the procedures should include obtaining written acknowledgment by the borrower at closing evidencing that the lender satisfied either of those requirements. When minor variance(s) in the disclosed itemized fees and charges occur and the lender and borrower seek to invoke the *de minimis variance* test adopted by the Commissions in 7 TAC section 153.13 as a basis for conducting the closing on the scheduled closing date, a sample form of acknowledgment of compliance with those requirements and written consent to receive the disclosure or a modification of an earlier disclosure on the closing date is set forth as Exhibit D. Exhibit D assumes what arguably may be the most conservative of interpretations on how the *de minimis variance* test would be applied by the courts in determining if the several requirements of section 153.13 have been met. Exhibit E similarly is intended for use in the rare instances in which a bona fide emergency has occurred prior to the date of closing that would permit the borrower to waive the right to receive the disclosure one day in advance of closing. This sample form calls for the description of the bona fide emergency to be written by the borrower entirely by hand. While this is not a requirement at law, the provision is patterned in part on the requirements under Regulation Z for a consumer desiring to waive the right of rescission under the Truth in Lending Act based on the occurrence of a bona fide personal financial emergency, which regulations generally prohibit preprinted forms for this purpose.

5. *Optional Supplemental Language to 12-Day Notice to Inform Borrowers of Preclosing Disclosure Requirement*. The promulgated form of notice required by Section 50(a)(6)(M)(i) that commences a 12-day "cooling off" period before a home equity loan may be closed, commonly referred to as the "12-Day Notice," is intended to disclose to homeowners the many constitutional conditions to the loan. Ironically, the Proposition 16 home equity reform amendment revising the form of 12-Day Notice, which was intended to clear up the ambiguities in disclosures left by prior legislatures, failed itself to take into account and disclose the requirements of new section 50(a)(6)(M)(ii) for a one-day advance disclosure of actual fees, points, interest, costs, and charges that will be charged to the borrower at closing. Exhibit F incorporates suggested supplemental language that mortgage lenders may consider adopting as part of their form of 12-Day Notice given at loan application to properly disclose the requirements for the 1-Day Preclosing Disclosure. The authority for lenders to supplement the form of the 12-Day Notice to incorporate this disclosure is provided in 7 TAC §153.51and

sample language that could be incorporated is suggested in the form. Any supplemental language based on the Texas Supreme Court's instructions in *Stringer v. Cendant Mortgage Corporation* that may appear in any form of 12-Day Notice under review should now be deleted in its entirely since that language has been superseded by the promulgated legend of the revised form to the effect that the notice is only a summary of the borrower's constitutional rights and that the borrower's rights are governed by the substantive provisions of the constitution itself.

Exhibits.

EXHIBIT A

CONSENT OF BORROWER TO RECEIVE ADVANCE DISCLOSURE OF ACTUAL FEES AND CHARGES BY FACSIMILE TRANSMISSION

[Section 50(a)(6)(M)(ii), Article XVI, Texas Constitution]

The Texas Constitution provides that a home equity loan may not be closed before one business day after the date that the homestead owner receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing.

BY SIGNING BELOW, the undersigned Borrower, whether one or more, constituting all of the owners of the homestead and the spouses of the owners, understands and agrees that in connection with this home equity loan:

1. Lender will provide, or will instruct the title company or agency serving as settlement agent for this home equity loan to provide, a final form of HUD-1 Settlement Statement to Borrower itemizing the actual fees, points, interest, costs, and charges that will be charged at closing of this Loan at least one day in advance of the scheduled closing date for this home equity loan.

2. Borrower as a matter of personal convenience has elected to receive the final itemized disclosure of actual fees and charges by facsimile transmission on a day preceding the scheduled date of closing in accordance with this agreement at one of the following fax numbers:

   [Do not provide a number that requires a voice call before faxing]

   Preferred Fax Number: (__) _____
   Alternative Fax Number: (__) _____
   Telephone Number, if needed: (__) _____

   Successful transmission of the final itemized disclosure of actual fees and charges to the attention of any owner of the homestead at either the Preferred Fax Number or Alternative Fax Number provided by Borrower above will constitute effective receipt of the disclosure by all owners of the homestead and the spouses the owners. Borrower assumes the risk that non-public personal information about Borrower may be accessed by or disseminated to unauthorized third parties by virtue of the fax transmissions hereby authorized and waives any right or claim of right against the Lender, or any title company or agent acting under the Lender's instructions, arising out of acts authorized by this agreement under the Gramm-Leach-Bliley Act, the Electronic Communications Privacy Act, or other federal or state laws of privacy.

3. If the fax transmission of the final itemized disclosure of actual fees and charges fails for any reason, whether because of service or technical failures or the error, omission, or negligence of any person, Borrower, including each owner of the homestead and the spouse of each owner, understands that Borrower must personally appear at a designated office of the title insurance company or agent serving as settlement agent for this home equity loan before the

close of business on a day not later than the day immediately preceding the scheduled date of closing to receive and acknowledge receipt of the disclosure.

4. If Borrower fails for any reason to receive the final itemized disclosure of actual fees and charges either by facsimile transmission or by appearing in person on a day prior to the scheduled date of closing as provided by this agreement, Borrower understands that the date of closing must be rescheduled for a later date that is at least one business day after the disclosure is received by Borrower.

When the Borrower is more than one person, this instrument shall read as though pertinent verbs, nouns and pronouns were changed to correspond.

_____	_____
BORROWER **DATE**	**BORROWER** **DATE**
_____	_____
BORROWER **DATE**	**BORROWER** **DATE**

Exhibit B

ADDENDUM TO CLOSING INSTRUCTIONS FROM LENDER

COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS APPLICABLE TO TEXAS HOME EQUITY LOANS TO PROVIDE HOMESTEAD OWNER EARLY FINAL ITEMIZED DISCLOSURE OF ACTUAL FEES AND CHARGES
[Section 50(a)(6)(M)(ii), Article XVI, Texas Constitution]

SAMPLE MORTGAGE COMPANY
(the "Lender")

THIS ADDENDUM TO CLOSING INSTRUCTIONS FROM LENDER (the "Addendum") supplements and amends the enclosed Closing Instructions from Lender and any other addenda thereto (the "Closing Instructions"). If the instructions contained in this Addendum conflict, or appear to conflict, with the Closing Instructions, this Addendum controls, and you are instructed to follow the instructions set forth in this Addendum. Please call the Lender's designated Closer for this Loan identified in the Closing Instructions if you have any questions or require clarification about your instructions before proceeding with Loan settlement.

SPECIAL INSTRUCTIONS TO SETTLEMENT AGENT

Effective for Texas home equity loan closings occurring on or after September 29, 2003, amendments to Section 50(a)(6), Article XVI, Texas Constitution, provide that a home equity loan may not be closed before one business day after the date that the homestead owner receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. This Addendum sets forth your instructions regarding procedures you must follow to assure compliance with this constitutional requirement.

1. **Advance Receipt of Final HUD-1**. You must provide, and the owner of the homestead must receive and acknowledge, a copy of the final HUD-1 Settlement Statement itemizing the actual fees, points, interest, and costs that will be charged at closing in connection with this Loan at least one calendar day before the date of closing of this Loan. You must retain and remit for our permanent files a signed receipt or other written evidence of the date and time of delivery of the final HUD-1 Settlement Statement by the owner of the homestead. For this purpose, "owner of the homestead" means all record title holders of the secured property and their spouses who also occupy the property as their homesteads, regardless of whether the spouses are borrowers obligated to sign the promissory note evidencing the Loan or are record title holders of the homestead property.

2. **Authorized Date of Closing**. You are authorized to close this Loan only on a day that is at least one business day after the date that you provided each homestead owner a copy of the final HUD-1 Settlement Statement for this Loan itemizing the actual fees, points, interest, and costs that will be charged at closing. For this purpose, a "business day" means any calendar day except Sunday and the following federal legal public holidays: New Year's Day, Martin Luther King's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. If the scheduled date of closing for this Loan is not an authorized date of closing, this Loan must be rescheduled for closing on an authorized date of closing.

3. **No Changes in Fees and Charges.** The final HUD-1 Settlement Statement you prepare in connection with the closing of this Loan must be identical to the advance copy of the HUD-1 Settlement Statement you provided the owner of the homestead. You are not authorized to close this Loan if any of the fees, points, interest, and costs itemized on the final HUD-1 Settlement Statement you prepare in connection with this Loan differ in any respect from the fees, points, interest, and costs itemized on the advance copy of the HUD-1 Settlement Statement you provided the owner of the homestead. No changes in the type or amount of any fees, points, interest, and costs itemized in the advance copy of the HUD-1 Settlement Statement you provided the owner of the homestead may be made without the prior written approval of the Lender. If a change is made in the HUD-1 Settlement Statement with the prior written approval of the Lender, you must provide each owner of the homestead a copy of the revised HUD-1 Settlement Statement and reschedule the closing of this Loan for the first business day or a subsequent calendar day after the date of receipt of the revised HUD-1 Settlement Statement by the last of the owners of the homestead to receive the revised HUD-1 Settlement Statement.

4. **Affidavit of Compliance.** At closing of this Loan, each owner of the homestead must acknowledge in writing on oath (i) that an advance copy of the HUD-1 Settlement Statement itemizing the actual fees, points, interest, costs, and charges to be charged at closing of this Loan was received by each owner and that the date of closing is at least one business day after the date on which the advance copy of the HUD-1 Settlement Statement was received by each, and (ii) that the amounts of the itemized fees, points, interest, costs, and charges on the final HUD-1 Settlement Statement presented to the owner at closing of this Loan are identical to the amounts for such fees, points, interest, costs, and charges earlier disclosed.

5. **No Waiver or Consent Authorized**. You are not authorized to accept a waiver by the owner of the homestead of the owner's constitutional right to receive an advance disclosure of the actual fees, points, interest, costs and charges that will be charged at closing of this Loan or to accept a written consent by the owner of the homestead to receive such a final itemized disclosure or a modification of such a final itemized disclosure on the date of closing based upon the existence of a claimed bona fide emergency or other good cause *except and unless* you are expressly authorized to so by Lender in subsequent written instructions.

6. **Issuance of T-42.1 Endorsement.** You must endorse the mortgagee policy issued to Lender in connection with this Loan with the Supplemental Coverage Equity Loan Mortgage Endorsement (T-42.1) with no deletions, in part affirmatively insuring the Lender against loss sustained under the terms of the policy because of the invalidity or unenforceability of the insured lien on the homestead property securing this Loan arising solely by reason of your failure to provide the owner of the homestead a copy of the final HUD-1 Settlement Statement itemizing the actual fees, points, interest, costs and charges to be charged at settlement at least one calendar day before the date that the owner executed the insured mortgage and the promissory note secured thereby.

EXHIBIT C

OWNER'S AFFIDAVIT ACKNOWLEDGING LENDER'S COMPLIANCE WITH CONSTITUTIONAL REQUIREMENT TO PROVIDE OWNER PRECLOSING FINAL ITEMIZED DISCLOSURE OF ACTUAL FEES AND CHARGES

[Section 50(a)(6)(M)(ii), Article XVI, Texas Constitution]

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned person(s), being all the owners of the homestead property securing this loan and referred to herein as Borrower, whether one or more, who, first being duly sworn according to law, upon oath deposes and says:

1. Borrower understands that the Texas Constitution provides that a home equity loan may not be closed before one business day after the date that the homestead owner receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing.

2. On or before _____ __, 20__, Borrower received from the Lender, or from a title insurance company or agent acting as settlement agent for this Loan, a form of HUD-1 Settlement Statement itemizing the actual fees, points, interest, costs, and charges to be charged at closing of this Loan; and

3. Borrower has since examined and signed at closing of this Loan on _____ __, 20__, the HUD-1 Settlement Statement prepared by the settlement agent, which itemizes the fees, points, interest, costs, and charges actually charged by the Lender and third-parties at closing of this Loan, and the amounts of all such fees and charges are identical to the amounts earlier disclosed.

When the Borrower is more than one person, this instrument shall read as though pertinent verbs, nouns and pronouns were changed to correspond.

CAUTION: THIS IS A SWORN STATEMENT. DO NOT SIGN THIS AFFIDAVIT UNLESS YOU HAVE READ IT AND, ON OATH, YOU BELIEVE IT TO BE TRUE AND CORRECT. IF THE FEES AND CHARGES DISCLOSED TO YOU AT CLOSING TODAY DIFFER IN ANY WAY FROM THE FEES AND CHARGES EARLIER DISCLOSED TO YOU BEFORE THE DATE OF CLOSING, YOU MUST NOT SIGN THIS AFFIDAVIT AND YOU SHOULD ADVISE THE SETTLEMENT AGENT THAT YOU CANNOT SIGN IT.

_____ _____

BORROWER **DATE** **BORROWER** **DATE**

_____ _____

BORROWER **DATE** **BORROWER** **DATE**

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, this _____day of _____, 20____.

_____

Notary Public, State of Texas
Notary Name:_____

EXHIBIT D

OWNER'S AFFIDAVIT CONSENTING TO RECEIVE A MODIFICATION OF THE PRECLOSING DISCLOSURE OF ACTUAL FEES AND CHARGES ON DATE OF CLOSING
[Section 50(A)(6)(M)(II), Article XVI, Texas Constitution]

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned person(s), being the owner(s) of the homestead property securing this loan and referred to herein as Borrower, whether one or more, who, first being duly sworn according to law, upon oath deposes and says:

1. On_____ ___, 20__ Borrower received from the Lender, or from a title insurance company or agent acting as settlement agent for this Loan, an advance copy of the HUD-1 Settlement Statement itemizing the actual fees, points, interest, costs, and charges to be charged at closing of this Loan (the "Preclosing Disclosure"); and

2. At closing of this Loan on _____ ___, 20__, Borrower has received and examined the final HUD-1 Settlement Statement prepared by the settlement agent that itemizes the fees, points, interest, costs, and charges actually charged at closing, and the types of all such fees and charges are identical to the types earlier disclosed to me in the Preclosing Disclosure as acknowledged in paragraph 1 above, and the amounts of all such fees and charges are identical, except as follows:

   Line Item _____ Amount: $_____ *[Fill-in greater or (lesser amount)]*
   Line Item _____ Amount: $_____ *[Fill-in greater or (lesser amoun)t]*
   Line Item _____ Amount: $_____ *[Fill-in greater or (lesser amount)]*
   Line Item _____ Amount: $_____ *[IFill-in greater or (lesser amount)]*

3. The amount of each of the fees and charges itemized in paragraph 2 above is either less than the amount for the fee or charge disclosed on the Preclosing Disclosure and/or none of the fees and charges, individually or in total, exceed the amounts disclosed on the Preclosing Disclosure by more than the greater of $100 or 0.125% of the principal amount of this Loan.

4. Borrower approves these changes and hereby consents to receive a modification of the Preclosing Disclosure on the date of closing in the form of the final HUD-1 Settlement Statement dated this date and containing these approved changes. Borrower further acknowledges that these changes constitute a "good cause" under the Interpretations adopted by the Finance Commission and Credit Union Commission codified in the Texas Administrative Code at 7 TAC §153.13.

CAUTION: THIS IS A SWORN STATEMENT. DO NOT SIGN THIS AFFIDAVIT UNLESS YOU HAVE READ IT AND YOU BELIEVE IT TO BE TRUE AND CORRECT.

_____ _____
BORROWER **DATE** **BORROWER** **DATE**

_____ _____
BORROWER **DATE** **BORROWER** **DATE**

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, this _____day of _____, 20____.

_____
Notary Public, State of Texas
Notary Name:_____

EXHIBIT E

CONSENT TO RECEIVE FINAL ITEMIZED DISCLOSURE OF ACTUAL FEES AND CHARGES AT CLOSING
[Section 50(a)(6)(M)(ii), Article XVI, Texas Constitution]

Borrower understands that the Texas Constitution provides that a home equity loan may not be closed before one business day after the date that the homestead owner receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing (the "Preclosing Disclosure"). Borrower further understands, however, that if a bona fide emergency or another good cause exists and the Lender obtains the written consent of the homestead owner, the Preclosing Disclosure instead may be provided on the date of closing.

BY SIGNING BELOW, the undersigned Borrower, whether one or more, acknowledges that in connection with this Loan:

1. Borrower either did not receive a HUD-1 Settlement Statement or other form of Preclosing Disclosure at least one business day in advance of the closing date for this Loan; or, if received, the final itemized disclosure of the actual fees, points, interest, costs and charges that will be charged at closing of this Loan was inaccurate in one or more respects.

2. A bona fide emergency or other good cause exists and Borrower desires to waive the right to receive the Preclosing Disclosure one day in advance of closing and to consent to receive the Preclosing Disclosure on the date of closing of this Loan. A description of the bona fide emergency or other good cause is written entirely in Borrower's own hand on the reverse side of this instrument or on a separate sheet of paper attached to this instrument. Borrower has made this statement of his/her own free will and the facts set forth in the description of the bona fide emergency or other good cause are true and correct.

3. Borrower has examined and signed on the date of closing of this Loan on _____ __, 20__, the HUD-1 Settlement Statement prepared by the settlement agent that itemizes the actual fees, points, interest, costs, and charges charged by the Lender and third-parties at closing of this Loan.

When the Borrower is more than one person, this instrument shall read as though pertinent verbs, nouns and pronouns were changed to correspond.

_____ _____
BORROWER **DATE** **BORROWER** **DATE**

_____ _____
BORROWER **DATE** **BORROWER** **DATE**

EXHIBIT F

NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION[1]

SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80% OF THE FAIR MARKET VALUE OF YOUR HOME;

(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;

(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3% OF THE LOAN AMOUNT;

(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME **UNLESS IT IS A HOME EQUITY LINE OF CREDIT**;

(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE PRODUCTION OF MILK;

(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME;

(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

(L) THE LOAN MUST BE SCHEDULED TO BE REPAID IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;

(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; **AND MAY NOT CLOSE BEFORE ONE BUSINESS DAY AFTER THE DATE ON WHICH YOU RECEIVE A FINAL ITEMIZED DISCLOSURE OF THE ACTUAL FEES, POINTS, INTEREST, COSTS, AND CHARGES THAT WILL BE CHARGED AT CLOSING[2];** AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE;

(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:

(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT **EXCEPT A DEBT** THAT IS ~~NOT~~ SECURED BY YOUR HOME OR **OWED** TO ANOTHER ~~**DEBT TO THE SAME**~~ LENDER;

(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS LEFT TO BE FILLED IN;

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[1] **Promulgated Form of 12-Day Notice Illustrating Proposition 16 Amendments and Permitted Supplement**

[2] **Underlined portion of (M) is supplemental language apparently inadvertently omitted from the amendments to the promulgated form on notice set forth in Subsection 50(g). Authority to incorporate this or similar constitutional language appears to be granted in 7 TAC §153.51(2) permitting lenders to supplement the form of disclosure "to clarify any discrepancies or inconsistencies."**

(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS YOU SIGN AT CLOSING;

(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY AS PROVIDED BY SECTION 50 (a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

® IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND REBORROW MONEY UNDER THE LINE OF CREDIT;

(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN AN AMOUNT OF AT LEAST $4,000;

(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD, SOLICITATION CHECK, OR SIMILAR DEVICE TO OBTAIN ADVANCES UNDER THE LINE OF CREDIT;

(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LINE OF CREDIT IS ESTABLISHED;

(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT AT ANY TIME EXCEEDS 50 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE BALANCE IS LESS THAN 50 PERCENT OF THE FAIR MARKET VALUE; AND

(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE LINE OF CREDIT.

THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE.

THE UNDERSIGNED ACKNOWLEDGE RECEIPT OF THE FOREGOING NOTICE ON _____ ____, 200_.

_____ Owner/Borrower

_____ Owner/Borrower

_____ Owner/Borrower

_____ Owner/Borrower