

# EXHIBIT "A"

No. 2022-54765

EDDIE C. LINDSEY,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
VS.	§	HARRIS COUNTY, T E X A S
	§	
WBL SPO I, LLC and	§	
WORLD BUSINESS LENDERS, LLC,	§	
	§	
Defendants.	§	152ND JUDICIAL DISTRICT

## **WBL SPO I, LLC'S ORIGINAL THIRD-PARTY PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, WBL SPO I, LLC ("WBL"), complaining of LEGACY AIRWAYS, LLC, and for its causes of action and claims for relief would respectfully show the court the following:

### I.

#### **DISCOVERY CONTROL PLAN**

1. Discovery is intended to be conducted under Level 2 of Rule 190, TEX. R. CIV. P. Pursuant to Rule 47(c)(4), TEX. R. CIV. P., WBL affirmatively pleads that it seeks monetary relief of over \$200,000.00, but not more than \$1,000,000.00, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorneys' fees.

### II.

2. Third-Party Defendant LEGACY AIRWAYS, LLC ("Legacy") is a Florida limited liability company which may be served by serving its Registered Agent, Dulin Hassett PC, at its Registered Office, 2525 Robinhood Street, Houston, Harris County, Texas 77005.

3. The amount in controversy is within the jurisdictional limits of this honorable court.

4. Venue is proper in Harris County, Texas, pursuant to Chapter 15 of the Texas Civil Practice and Remedies Code.

### III.

5. On or about May 7, 2020, Legacy, as maker, executed and delivered to Axos Bank, its successors and assigns, a Business Promissory Note and Security Agreement in the original principal amount of \$220,000.00 (hereinafter referred to as the “Note”). The Note provides that Nevada law shall govern the terms of the subject business loan and enforcement of the Note.

6. To secure the payment of the Note, Lindsey executed and delivered to Axos a Continuing Guaranty in which he absolutely and unconditionally guaranteed payment of the Note. As further security for the Note, [1] Legacy granted Axos a security interest in all of its personal property, and [2] Lindsey granted Axos a deed of trust lien in real property located at 2700 Spring Creek Drive, Spring, Harris County, Texas 77373.

7. On or about May 14, 2020, Axos assigned the Note and Continuing Guaranty to World Business Lenders, LLC.

8. On or about May 15, 2020, World Business Lenders, LLC assigned the Note and Continuing Guaranty to WBL. WBL is the owner and holder of the Note and Continuing Guaranty.

9. Legacy defaulted in its payment of the Note in that it failed to pay the weekly installments as they came due.

10. On or about September 13, 2021, Legacy and WBL entered into a certain Amendment to Business Promissory Note and Security Agreement (“Amendment”). Pursuant to

the terms of the Amendment, Legacy was required to pay weekly payments in the amount of \$1,989.88 each for a certain specified period of time, followed by weekly payments in the \$3,300.79 each for a certain specified period of time, followed by a final balloon payment that was due and payable on May 10, 2022. The Note, as amended, shall hereinafter be referred to as the “Note.”

11. Legacy defaulted in its payment of the Note in that it failed to pay the weekly installments as they came due. The last payment from Legacy was posted on October 19, 2021.

12. On November 11, 2021, on account of Legacy’s default, WBL sent a written notice of acceleration to Legacy and Lindsey in which WBL made demand of them to pay the entire unpaid balance of the Note. Legacy and Lindsey failed and refused to pay the accelerated loan balance.

13. By its own terms, the Note matured on May 10, 2022.

14. On May 27, 2022, Plaintiff’s attorneys made demand of Legacy and Lindsey to pay the Note in full. However, Legacy and Lindsey failed to pay the Note in full.

15. Pursuant to the terms of the deed of trust, WBL scheduled a foreclosure sale for September 6, 2022.

16. On or about August 26, 2022, Lindsey purportedly executed a certain Special Warranty Deed in which he purportedly conveyed the subject real property (2700 Spring Creek Drive, Spring, Harris County, Texas 77373) to Spring Creek Trust II, Justina De Pasquale as Trustee. The deed was recorded in the Real Property Records of Harris County on September 13, 2022 under Clerk’s File No. RP-2022-460362.

17. Four days later, on August 30, 2022, Lindsey swore out an affidavit in which he testified, inter alia, that he was the owner of the subject real property (2700 Spring Creek Drive, Spring, Harris County, Texas 77373).

18. On August 31, 2022, Lindsey filed the instant lawsuit in order to stop the September 6, 2022 foreclosure sale.

19. On August 31, 2022, Ancillary Judge Tonya Garrison signed a Temporary Restraining Order which prohibited WBL from selling the subject real property at the September 6, 2022 foreclosure sale.

20. The principal amount of \$204,202.36, plus interest, NSF fees, and prepayment premium, remains due and owing on the Note.

### THIRD-PARTY CLAIM

#### IV.

### BREACH OF CONTRACT AGAINST LEGACY

21. WBL restates the factual allegations set forth in paragraphs 5-20 above.

22. WBL would show that a contract was formed by and between Axos Bank and Legacy; that WBL has succeeded to all of Axos Bank's contract rights; that Legacy has breached the contract; that Legacy's breach of contract has damaged WBL in the principal amount of \$204,202.36 plus interest, NSF fees and prepayment premium; and that all conditions precedent for recovery for breach of contract have been satisfied.

#### V.

### FORECLOSURE OF SECURITY INTEREST

23. WBL restates the factual allegations set forth in paragraphs 5-20 above.

24. WBL would show that, on account of Legacy's default, it is entitled to foreclose its security interest in all of Legacy's personal property. Accordingly, WBL requests a judgment for foreclosure of its security interest in all of Legacy's personal property so that WBL can sell the property and apply the sales proceeds to the debt. In connection therewith, WBL requests an Execution and Order of Sale and a writ of possession.

VI.

INTEREST

25. WBL would show that it is entitled to recover prejudgment and post-judgment interest at the maximum rates allowed by Nevada law which governs enforcement of the Note.

VII.

ATTORNEYS' FEES

26. WBL, more than thirty (30) days prior to the trial of this action, made written demand of Legacy to pay the sums which are due and owing; however, Legacy has failed and refused, and continues to fail and refuse, to pay the sums demanded by WBL. As a result of Legacy's refusal to pay the amounts which are due and owing to WBL, WBL has been forced to employ the undersigned attorneys to file this lawsuit, and WBL is entitled to reasonable attorneys' fees associated with legal services rendered in the prosecution and collection thereof. Recovery of reasonable attorneys' fees is authorized under the terms of the Note and/or the pertinent provisions of Nevada law which governs enforcement of the Note.

WHEREFORE, PREMISES CONSIDERED, WBL SPO I, LLC prays that Third-Party Defendant LEGACY AIRWAYS, LLC be cited to appear and answer herein, and that upon final hearing, WBL SPO I, LLC have Judgment of, from and against Third-Party Defendant LEGACY AIRWAYS, LLC, jointly and severally, for the following:

1. for damages in the principal amount of \$204,202.36 plus NSF fees and prepayment premium;
2. for prejudgment interest;
3. for reasonable attorneys' fees;
4. for costs of court herein expended;
5. for lawful post-judgment interest on the unpaid principal balance;
6. for lawful post-judgment interest on court costs and attorneys' fees;

7. for foreclosure of its security interest in the personal property collateral;
8. for such other and further relief, general and special, at law or equity, to which WBL SPO I, LLC may be justly entitled.

Respectfully submitted,

WELLS & CUELLAR, P.C.

*/s/ James E. Cuellar*

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