

CAUSE NO. 2021-26090

KRM INVESTMENTS, INC.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
	§	
F. KENNETH BAILEY AND	§	
WILLIAM C. PADON,	§	
	§	
Defendants.	§	127 th JUDICIAL DISTRICT

PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

KRM Investments, Inc. (“KRM”) moves for a summary judgment against F. Kenneth Bailey, Jr. (“Bailey”), Defendant, as follows:

SUMMARY OF THE CASE

1. KRM seeks recovery of \$2,194,582.40 principal plus \$42,328.00 accrued interest from Bailey pursuant to the terms of a Promissory Note, as renewed (“Note”) through May 18, 2023, with additional interest accruing at the rate of \$962.00 per day. KRM seeks post-judgment interest at the rate of 18% per annum. Additionally, KRM seeks recovery of its reasonable and necessary attorneys’ fees from Bailey. KRM has dismissed its claim against William C. Padon (“Padon”) without prejudice.

FACTUAL BACKGROUND

2. On or about August 1, 2019, Bailey, as Maker, and KRM, as Payee, executed a Third Renewal Promissory Note (“Note”).

3. On April 4, 2023, KRM foreclosed its First Lien Deed of Trust on various properties that had been pledged by Bailey as collateral for repayment of the Note.

4. After applying the proceeds of the sale to Bailey's indebtedness to KRM, as of May 5, 2023, Bailey owed KRM \$2,194,582.40 principal, \$42,328.00 interest with interest accruing at the rate of \$962.00 per day.

5. By demand letter dated November 13, 2020, KRM made demand upon Bailey to pay to KRM the indebtedness that Bailey owed to KRM pursuant to the Note.

6. Bailey has not paid the indebtedness.

7. All conditions precedent to KRM's right to enforce the terms of the Note have been performed or have occurred.

Summary Judgment Evidence

8. KRM's summary judgment evidence consists of a true and correct copy of the Note which is attached to the Declaration of Kenneth R. Melber, President of KRM, which is attached hereto as Exhibit A. KRM's summary judgment evidence also includes the Declaration of Robert J. Kruckemeyer, attorney for KRM, which is attached hereto as Exhibit B. The summary judgment evidence attached to this Motion proves the following:

9. That on or about August 1, 2019, that KRM, as Payee, loaned Bailey, as Maker, the principal amount of \$3,006,129.82, pursuant to the Note.

10. That the maturity date on the Note was November 1, 2020.

11. That the Note has not been paid as agreed and therefore the Note is in default.

12. That by letter dated November 13, 2020, KRM demanded that Bailey make the past due payments on or before 3:00 P.M., Houston time on Friday, November 23, 2020. Bailey did not make the payment as demanded.

13. That on April 4, 2023, KRM foreclosed its security interest in properties that Bailey had pledged to secure the repayment of the Note.

14. That at the foreclosure sale, KRM recovered \$2,850,000.00 which was applied to

property taxes, late fees, interest and principal reduction. After paying the property taxes, late fees and interest the principal due on the Note was reduced in the amount of \$811,547.42.

15. That Bailey defaulted on his obligation to make payments to KRM under the terms of the Note.

16. That because of Bailey's failure to pay the Note, KRM has been required to hire Robert J. Kruckemeyer to assist it in collecting the indebtedness owed to KRM.

17. That, demand having been made, KRM is entitled to recover its reasonable and necessary attorneys' fees herein pursuant to Tex. Civ. Prac. & Rem. Code § 38.001 *et seq.*

18. That KRM has incurred reasonable and necessary attorneys' fees in the amount of \$7,500.00.

ARGUMENT AND AUTHORITIES

A. Standard for Granting Summary Judgment

19. KRM seeks affirmative relief against Bailey. For KRM to obtain summary judgment on its claims for affirmative relief, KRM must show that there are no genuine issues of material fact and that it is entitled to summary judgment as a matter of law. In deciding whether there is a disputed material fact issue, evidence favorable to the non-movant will be taken as true. Further, every reasonable inference must be indulged in favor of the non-movant and any doubts resolved in its favor. *Nixon v. Mr. Property Management Company, Inc.*, 690 S.W. 2d 546 (Tex. 1985). KRM has brought causes of action against Bailey for breach of contract and attorneys' fees.

B. KRM's Claims Against Defendant

1. Breach of Contract

20. To recover on its cause of action for breach of contract against Bailey, KRM must prove the following:

- (1) The existence of a valid contract;
- (2) That Plaintiff performed or tendered performance;
- (3) That Defendant breached the contract; and
- (4) That Plaintiff was damaged as a result.

Southwell v. University of the Incarnate Word, 974 S.W. 2d 351 (Tex. App.— San Antonio 1998, pet denied).

21. KRM has submitted summary judgment evidence conclusively establishing each of these elements. KRM has submitted the Declaration of Kenneth R. Melber, the President of KRM. Mr. Melber's Declaration establishes the existence of the Note, the amounts KRM recovered from the foreclosure of the pledged collateral, and the amounts currently due from Bailey to KRM pursuant to the Note. In addition, KRM has submitted the Declaration of Robert J. Kruckemeyer, attorney for the KRM. Attached to the Declaration of Mr. Kruckemeyer is the demand letter sent to the Defendant.

22. Accordingly, KRM has proved all elements of its cause of action against Bailey for breach of contract and KRM is entitled to judgment as a matter of law.

2. Attorneys' Fees

23. KRM is entitled to recover its attorneys' fees because it has proved its entitlement to recovery on its breach of contract claim. Tex. Civ. Prac. & Rem. Code § 38.001 *et seq.* By letter dated November 13, 2020, demand was made upon Bailey to pay the amounts due and owing to KRM. The Declaration of Mr. Kruckemeyer establishes the following:

- A. Because of Bailey's breach of contract, KRM has been required to hire Robert J. Kruckemeyer to assist it in collecting the indebtedness owed to KRM by Bailey;

B. Demand having been made, KRM is entitled to recover its reasonable and necessary attorneys' fees herein pursuant to Tex. Civ. Prac. & Rem. Code §38.001 *et seq.*; and

C. KRM has incurred reasonable and necessary attorneys' fees in the amount of \$7,500.00 through summary judgment, it will incur additional attorneys' fees of \$25,000.00 should the Defendant appeal the judgment to the Court of Appeals and the appeal is unsuccessful, and that KRM will incur further attorneys' fees of \$25,000.00 should the Defendant appeal the Court of Appeals opinion to the Texas Supreme Court and that appeal is unsuccessful.

24. KRM has proved all elements of its cause of action against Bailey for attorneys' fees and is entitled to judgment as a matter of law.

INTEREST

25. The Note allows KRM to charge interest at the rate of 18% per annum on all amounts owed post maturity. Section 304.002 of the Texas Finance Code entitled, Judgment Interest Rate: Interest Rate or Time Price Differential in Contract, reads as follows:

A money judgment of a court of this state on a contract that provides for interest or time price differential earns post-judgment interest at a rate equal to the lesser of:

- (1) the rate specified in the contract, which may be a variable rate; or
- (2) 18 percent a year.

Accordingly, KRM is entitled to post-judgment interest at the rate of 18% per annum.

CONCLUSION

Accordingly, KRM requests that the Court enter an interlocutory summary judgment in its behalf on KRM's causes of action for breach of contract and attorneys' fees and that KRM have and recover judgment against Bailey as follows:

1. The outstanding amount of principal due under the terms of the Note which is \$2,194,582.40 principal plus outstanding interest in the amount of \$42,328.00 from April 4, 2023, through May 18, 2023.
2. Prejudgment interest on the Note in the amount of \$962.00 per day from May 18,

2023, until the date of judgment;

3. Post judgment interest at the rate of 18% per annum;
4. Cost of suit;
5. Attorneys' fees in the sum of \$7,500.00 through the granting of the summary judgment; in the event an appeal to the Court of Appeals is made but is unsuccessful, reasonable attorney's fees would be an additional \$25,000.00; in the event an appeal is made to the Texas Supreme Court is made but is unsuccessful, reasonable attorney's fees would be an additional \$25,000.00, and
6. Such other and further relief to which the KRM may be justly entitled.

Respectfully submitted,

/S/ Robert J. Kruckemeyer
Robert J. Kruckemeyer
State Bar No. 11735700
244 Malone Street
Houston, Texas 77007
Ph: (713) 600-7574
Fax: (713) 600-7579
Email: Bob@kruckemeyerlaw.com

ATTORNEYS FOR PLAINTIFF,
KRM INVESTMENTS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Plaintiff's Motion for Interlocutory Summary Judgment* has been sent to all counsel of record by electronic service, certified mail, return receipt requested, facsimile, and/or hand delivery, on this the 18th day of May, 2023.

/S/ Robert J. Kruckemeyer
Robert J. Kruckemeyer

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Robert Kruckemeyer on behalf of Robert Kruckemeyer
Bar No. 11735700
bob@kruckemeyerlaw.com
Envelope ID: 75789032
Filing Code Description: Motion (No Fee)
Filing Description: Motion (No Fee)
Status as of 5/19/2023 7:01 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Robert Kruckemeyer		bob@kruckemeyerlaw.com	5/18/2023 3:57:51 PM	SENT
MICHAEL TKRUCKEMEYER		mike@kruckemeyerlaw.com	5/18/2023 3:57:51 PM	SENT
Nick Fernelius		Nick.Fernelius@trialattorneytx.com	5/18/2023 3:57:51 PM	SENT
Steve Fernelius		Steve.Fernelius@trialattorneytx.com	5/18/2023 3:57:51 PM	SENT
Gabrielle Martinez		Gabrielle.Martinez@trialattorneytx.com	5/18/2023 3:57:51 PM	SENT
Kym Virgadamo		Kym.virdgadamo@trialattorneytx.com	5/18/2023 3:57:51 PM	ERROR

CAUSE NO. 2021-26090

KRM INVESTMENTS, INC.,

Plaintiff,

v.

F. KENNETH BAILEY AND
WILLIAM C. PADON,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

127th JUDICIAL DISTRICT

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT A

CAUSE NO. 2021-26090

KRM INVESTMENTS, INC.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
	§	
F. KENNETH BAILEY AND	§	
WILLIAM C. PADON,	§	
	§	
Defendants.	§	127 th JUDICIAL DISTRICT

DECLARATION OF KENNETH R. MELBER

My name is Kenneth Melber, my date of birth is April 10, 1943, and my address is 8681 Louetta Road, Suite 220, Spring, Texas 77379 USA.

I am President of KRM Investments, Inc. (“KRM”), and in that capacity, I act as the Custodian of Records with respect to F. Kenneth Bailey’s (“Bailey”) indebtedness to KRM. I am authorized on behalf of KRM to make this declaration, and every statement contained herein is within my personal knowledge and true and correct.

On or about August 1, 2019, Bailey, as Maker, and KRM, as Payee, executed a Third Renewal Promissory Note (“Note”). A true and correct copy of the Note is attached hereto as Exhibit 1.

The maturity date on the Note was November 1, 2020.

The Note has not been paid as agreed and therefore the Note is in default.

By letter dated November 13, 2020, KRM demanded that Bailey make the past due payments on or before 3:00 P.M., Houston time on Friday, November 23, 2020. Bailey did not make the payment as demanded.

On April 4, 2023, KRM foreclosed its First Lien Deed of Trust on various properties that

had been pledged by Bailey as collateral for repayment of the Note.


After applying the proceeds of the sale to Bailey's indebtedness to KRM, as of May 18, 2023, Bailey owed KRM \$2,194,582.40 principal, \$42,328.00 interest with interest accruing at the rate of \$962.00 per day.

Bailey has not paid the indebtedness.

I declare under penalty of perjury that the facts stated herein are within my personal knowledge and are true and correct.

Executed in Harris County, Texas, on May 18, 2023.

KRM INVESTMENTS, INC.



Kenneth R. Melber
President

CAUSE NO. 2021-26090

KRM INVESTMENTS, INC.,

Plaintiff,

v.

F. KENNETH BAILEY AND
WILLIAM C. PADON,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

127th JUDICIAL DISTRICT

**DECLARATION OF KENNETH R. MELBER IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 1

**THIRD RENEWAL
PROMISSORY NOTE**

\$3,006,129.82

August 1, 2019

FOR VALUE RECEIVED, F. KENNETH BAILEY, JR. (the "**Maker**"), whose address is 5555 San Felipe St., Suite 900, Houston, Texas 77056 (jointly and severally if more than one) promises to pay to the order of **KRM INVESTMENTS, INC.** (the "**Payee**") at 8681 Louetta Rd., Suite 220, Spring, Texas 77379, the principal amount of **THREE MILLION SIX THOUSAND ONE HUNDRED TWENTY-NINE AND 82/100 DOLLARS (\$3,006,129.82)**, together with interest on the unpaid principal balance hereof from time to time outstanding until maturity at the rate of sixteen percent (16%) per annum (hereafter referred to as the "**Stated Rate**"); provided further, however, that in no event shall interest on this Note ever be charged or paid at a rate greater than the maximum nonusurious rate permitted by applicable federal or Texas law from time to time in effect, whichever shall permit the higher lawful rate (the "**Highest Lawful Rate**"). If at any time or times the Stated Rate would exceed the Highest Lawful Rate but for the limitation in the preceding sentence, interest shall thereafter accrue on the unpaid balance hereof at the Highest Lawful Rate until the total amount of interest accrued on the unpaid balance hereof shall equal the amount of interest which would have accrued if the Stated Rate had at all times been in effect at which time the interest rate hereon shall return to and accrue at the Stated Rate unless the Stated Rate is greater than the maximum nonusurious rate permitted by applicable federal or Texas law.

If at maturity or final payment of this Note the total amount of interest paid or accrued under the foregoing provisions is less than the total amount of interest which would have accrued if a varying rate per annum equal to the Stated Rate had at all times been in effect, then Maker agrees to pay to Payee, an amount equal to the difference between (a) the lesser of (i) the amount of interest which would have accrued on this Note if the Highest Lawful Rate had at all times been in effect, or (ii) the amount of interest which would have accrued if a varying rate per annum equal to the Stated Rate had at all times been in effect, and (b) the amount of interest accrued in accordance with the other provisions of this Note.

Interest hereon shall be computed on the basis of a 365- or 366-day year, as applicable. At all such times, if any, as Chapter 303 of the Texas Finance Code ("**Chapter 303**") shall establish the Highest Lawful Rate, the Highest Lawful Rate shall be the "**highest rate ceiling**" (as defined in Chapter 303) from time to time in effect; but Payee may from time to time, as to current and future balances, implement any other ceiling under Chapter 303, and/or revise the index, formula or provision of law used to compute the Highest Lawful Rate on this Note by notice to Maker, if and to the extent

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Third Renewal Promissory Note
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permitted by, and in the manner provided in, Chapter 303. All calculations of interest at the Highest Lawful Rate shall be made on the basis of a 365 or 366 day year, as applicable.

Because of the possibility of irregular periodic balances of principal, premature payment, and the variable nature of the interest rate, the total interest that will accrue on this Note cannot be determined in advance. Payee does not intend to charge or collect usurious interest, and to prevent such an occurrence, Payee will, at the Maturity Date, or at the time payment is demanded by the Payee, determine the total amount of interest that can lawfully be charged or collected by applying the Highest Lawful Rate of interest to the full periodic balances of principal for the period each is outstanding and unpaid and compare such amount with the total interest that has accrued under the terms of this Note, and, if necessary, to prevent usury, reduce the total amount of interest payable by Maker to the lesser amount. If, for any reason whatever, the interest paid on this Note shall exceed the Highest Lawful Rate, the holder of this Note shall refund to the payor or, at the option of such holder, credit on the principal hereof such portion of said interest as may be necessary to cause the interest paid on this Note to equal the Highest Lawful Rate and no more. In no event shall the Maker, its successors and assigns, be liable to pay any amount of interest on this Note which is in excess of the Highest Lawful Rate. All sums paid or agreed to be paid to the holder or holders hereof for the use, forbearance or detention of the indebtedness evidenced hereby shall, to the extent permitted by applicable federal or Texas law, be amortized, prorated, allocated and spread throughout the full term of this Note.

Notwithstanding any term or provision of this Note to the contrary, Maker confirms to Payee that neither Maker nor its legal counsel, if any, is aware that this Note, or the transaction in connection which this Note was issued, is or maybe usurious in any respect. To induce Payee to make the loan evidenced by this Note, Maker agrees with and covenants to Payee that if at any time Maker believes or discovers that any term or provision of this Note or any action taken by Payee in connection with Note is or may be in violation of the usury laws or any other applicable law, Maker will immediately give notice to Payee specifying with particularity the nature and extent of any such potential violation of the usury laws or any other applicable law, and afford to Payee a reasonable period (which in no event will be less than sixty (60) days) within which to cure same. Maker agrees with and covenants to Payee that in no instance will Maker make any claim, bring any suit, prosecute or otherwise assert any cause of action, claim, counterclaim, or defense in respect of any violation of the usury laws or any other applicable law, unless, as a condition precedent thereto, Maker has given to Payee such notice and afforded to Payee such opportunity to cure as provided herein.

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Third Renewal Promissory Note
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Maker may at any time pay the full amount or any part of this Note without the payment of any premium or fee. All payments and prepayments hereon shall be applied first to accrued interest, with the balance to principal in inverse order of maturity.

Interest on the outstanding principal balance of this Note shall be due and payable monthly, as it accrues, commencing on November 1, 2019 and continuing on the first (1st) day of each month thereafter until the Maturity Date. The outstanding principal balance of this Note, together with any accrued and unpaid interest, shall be due and payable in full on November 1, 2020 (the "**Maturity Date**").

Payments which are more than ten (10) days past due shall incur a late charge (a "**Late Charge**") of five percent (5%) of the payment amount. All past due principal of and interest on this Note shall bear interest at the Highest Lawful Rate; provided, however, that if applicable law does not establish a Highest Lawful Rate then all past due principal hereof and accrued interest hereon shall bear interest at the rate of eighteen percent (18%) per annum

In addition to all principal and accrued interest on this Note, Maker agrees to pay (a) all reasonable costs and expenses incurred by all owners and holders of this Note in collecting this Note through reorganization, bankruptcy or any other proceedings and (b) reasonable attorneys' fees when and if this Note is placed in the hands of any attorney for collection.

Any check, draft, money order or other instrument given in payment of all or any portion hereof may be accepted by the holder hereof and handled in collection in the customary manner, but the same shall not constitute payment hereunder or diminish any rights of the holder hereof except to the extent that actual cash proceeds of such instrument are unconditionally received by the holder and applied to this indebtedness in the manner elsewhere herein provided.

If the date for any payment or prepayment hereunder falls on a day which is not a Business Day, then for all purposes of this Note (excluding the computation of interest due which shall be computed as of the recited due date), the same shall be deemed to have fallen on the next following Business Day.

Any of the following events shall be considered an "**Event of Default**" as that term is used herein:

- (a) Default is made in the payment or prepayment when due of any installment of principal or interest hereon;

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- (b) Any representation or warranty made in the security agreements which secure payment hereof proves to have been incorrect as of the date when made or deemed made;
- (c) Default is made in the due observance or performance in any material respect by the Maker or any guarantor of any of the covenants or agreements contained herein or any document, instrument or agreement securing payment hereof;
- (d) An involuntary case or other proceeding shall be commenced against the Maker or any guarantor which seeks liquidation, reorganization or other relief with respect to the Maker's or guarantor's debts or other liabilities under any bankruptcy, insolvency or similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for any substantial part of the property of the Maker or guarantor and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of thirty (30) days after actual notice to the Maker or guarantor, as applicable of the commencement of such proceeding;
- (e) Should the Maker or guarantor commence a voluntary case or other proceeding seeking liquidation, reorganization or other similar relief with respect to itself or its debts or other liabilities under any bankruptcy, insolvency or similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official or if the Maker or guarantor shall make a general assignment for the benefit of its creditors or shall fail generally to pay its debts as they become due; or
- (f) Should the Maker or guarantor fail within thirty (30) days to bond, pay or otherwise discharge any judgment or order for payment of money in excess of \$25,000.00 that is not otherwise being satisfied in accordance with its terms and is not stayed on appeal or otherwise being appropriately contested in good faith.

It is understood and agreed that time is of the essence of this Note and that on default in the payment of any installment of principal or interest, or any part thereof when due, or upon the occurrence of an Event of Default, then, the holder hereof, at its or his sole option, may: accelerate the unpaid balance of the principal and all accrued interest due and declare the same due and payable immediately without presentment or demand for payment of any past due installment of principal or interest or of any remaining unpaid balance of principal or interest and without notice of intent to

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accelerate the payment of the unpaid balance of the principal or all accrued interest due under the terms of this Note. Failure of the holder to exercise its option to accelerate the maturity of this Note shall not constitute a waiver of its right to exercise the same at any other time.

If an Event of Default should occur, Maker and all endorsers, guarantors and sureties severally waive notice of any kind (including, but not limited to, notice of dishonor, notice of protest, notice of intent to accelerate and notice of acceleration), demand, presentment for payment, protest in the filing of suit hereon for the purpose of fixing liability and consent that the time for payment hereof may be extended and re-extended from time to time without notice to them or any of them, and severally agree that his, her or its liability on or with respect to this Note shall not be affected by any release or change in any security at any time existing nor by the failure to perfect or maintain perfection of any security interest in said security nor by the release of any party primarily or secondarily liable hereon.

Maker warrants and represents to Payee and to all other owners and/or holders of any indebtedness evidenced hereby that (a) all loans evidenced by this Note are and shall be "business loans" as such term is used in the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, and (b) such loans are for business, commercial, investment or other similar purposes and not primarily for personal, family, household or agricultural use, as such terms are used in Chapter One.

This Note shall be deemed to be a contract made under the laws of the State of Texas and (except as provided hereinabove with regard to the applicability of federal law) shall be governed by and construed in accordance with such laws.

This Note (the "Third Renewal Note") is given as a renewal, extension, modification and rearrangement of, but not as a novation of or as a substitution for, the sums left due and owing by the Maker to the Payee pursuant to the terms of that one certain Line of Credit Promissory Note dated June 28, 2011, in the original principal amount of **ONE MILLION SEVEN HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$1,720,000.00)**, executed by **F. KENNETH BAILEY, JR.**, as Maker, made payable to the order of **TIM CAREY**, as Payee, pursuant to the terms and conditions therein provided (the "Original Note"). The outstanding balance of the Original Note as of July 31, 2019 is principal of **TWO MILLION THREE HUNDRED EIGHTY-SEVEN THOUSAND FOUR HUNDRED SIXTY-FOUR AND 22/100 (\$2,387,464.22)** and accrued and unpaid interest of **SIX HUNDRED EIGHTEEN THOUSAND SIX HUNDRED SIXTY-FIVE AND 60/100 DOLLARS (\$618,665.60)** as of July 31, 2019 which the Maker hereby acknowledges and agrees to pay.

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**Third Renewal Promissory Note
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The Original Note is additionally secured by those certain Guaranty Agreements dated executed by **BAILEY FOUR CANYON RANCH PROPERTIES, LTD.** and **WILLIAM C. PADON** in favor of Original Lender (the "Guaranties").

Said Original Note is also secured by a Deed of Trust and Security Agreement ("Deed of Trust") executed by **BAILEY FOUR CANYON RANCH PROPERTIES, LTD.** for the benefit of the Original Lender securing payment of the Original Note recorded on July 6, 2011 in the Official Public Records of Tyler County, Texas under County Clerk's File No. 11 2778 covering the property more particularly described on *Exhibit "A"* attached hereto and made part hereof ("Mortgaged Property").

The Original Note, Guaranties and Deed of Trust were transferred and assigned effective November 6, 2013 from **TIM CAREY** (the "Original Lender"), as Assignor, to **KRM INVESTMENTS, INC.** (the "Lender"), as Assignee, and are evidenced by that certain Transfer of Note and Lien dated effective November 6, 2013 recorded in the Official Public Records of Tyler County, Texas under County Clerk's File No. 14 0846. The Original Note was endorsed by the Original Lender to the order of the Lender effective November 6, 2013.

The Original Note was renewed by that certain instrument captioned First Renewal, Extension and Modification of Note and Deed of Trust dated effective October 1, 2015 by and among **F. KENNETH BAILEY** and **BAILEY FOUR CANYON RANCH PROPERTIES, LTD.**, a Texas limited partnership and **KRM INVESTMENTS, INC.** recorded on October 16, 2015 in the Official Public Records of Tyler County, Texas under County Clerk's File No. 15-4281 (Vol 1134, Pg. 602 *et seq.*) (the "First Renewal Note").

The Original Note was again renewed by that certain instrument captioned Second Renewal, Extension and Modification of Note and Deed of Trust dated effective April 15, 2016 by and among **F. KENNETH BAILEY** and **BAILEY FOUR CANYON RANCH PROPERTIES, LTD.**, a Texas limited partnership and **KRM INVESTMENTS, INC.** recorded on May 12, 2016 in the Official Public Records of Tyler County, Texas under County Clerk's File No. 16-1353 (Vol 1134, Pg. 602 *et seq.*) (the "Second Renewal Note").

KRM INVESTMENTS, INC. is the current owner and holder of the Original Note and the liens securing the Original Note.

This "Third Renewal Note" is entitled to all of the benefits, guaranties, security interests and liens securing payment of the Original Note, the First Renewal Note and the Second Renewal Note. The Original Note is hereby acknowledged by the Maker hereof to be a valid and binding obligation enforceable in accordance with its respective

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Third Renewal Promissory Note
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terms. The holder of this Third Renewal Note is expressly subrogated to all rights, titles, powers, equities, guaranties, security interests, liens and estates which accrue to the benefit of the Original Note, the First Renewal Note and the Second Renewal Note including the Deed of Trust lien against the Mortgaged Property. Should an Event of Default occur suit may be brought directly on this Third Renewal Note without the necessity of producing the Original Note. **Exhibit "B"** attached hereto and incorporated herein is hereby acknowledged by the Maker to be a true and correct copy of the Original Note and the Maker agrees that this copy is enforceable as an original obligation against the Maker. Payee may bring suit directly on this Third Renewal Note as evidence of Maker's obligation to pay.

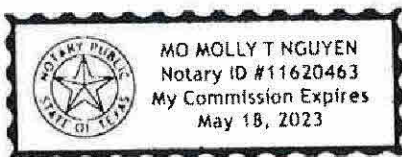
EXECUTED this 25th day of September, 2019. EFFECTIVE August 1, 2019.

MAKER:

F. Kenneth Bailey, Jr.
F. KENNETH BAILEY, JR.

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 25 day of September, 2019 by **F. KENNETH BAILEY, JR.**



[Signature]
Notary Public in and for
The State of Texas

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Third Renewal Promissory Note
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Exhibit "A"

Tract One: Being the South 46.17 acre tract, and being 46.17 acres of land, more or less, out of a called 105.2 acre tract (found by resurvey to contain 111.42 acres) in the I. Gaunt Survey, Abstract No. 297, Tyler County, Texas. The said 46.17 acres of land, more or less, being more particularly described by metes and bounds in Exhibit "A" attached hereto and incorporated herein for all purposes.

Tract Two: Being the North 46.17 acre tract, and being 46.17 acres of land, more or less, out of a called 105.2 acre tract (found by resurvey to contain 111.42 acres) in the I. Gaunt Survey, Abstract No. 297, Tyler County, Texas. The said 46.17 acres of land, more or less, being more particularly described by metes and bounds in Exhibit "B" attached hereto and incorporated herein for all purposes.

Tract Three: Field notes of a 276.22 acre tract of land in the I. Gaunt Survey, Abstract No. 297, and the T. C. Holt Survey, Abstract No. 349, Tyler County, Texas, and being all of a called 1.62 , 17.46 and a called 54.8 acre tract, and all of a called 191.4 acre tract. Said 276.22 acres of land, more or less, being more particularly described by metes and bounds in Exhibit "C" attached hereto and incorporated herein for all purposes.

Tract Four: Being two (2) tracts of land, as follows: Tract 1, being 69 acres of land, more or less, out of and a part of the T. C. Holt Survey, Abstract 349, Tyler County, Texas, and Tract 2, being 11.891 acres of land, more or less, out of and a part of the C. G. Crenshaw Survey, Abstract No. 187, Tyler County, Texas. The said 69 acres of land, more or less, and the said 11.891 acres of land, more or less, being more particularly described by metes and bounds in Exhibit "D" attached hereto and incorporated herein for all purposes.

Exhibit "A"

TRACT I: (46.17 Acres South Tract)

BEING a 46.17 acre tract of land, out of a called 109.2 acre tract, (found by re-survey to contain 111.42 acres) in the I. Gaunt Survey, Abstract No. 297, Tyler County, Texas, the said 46.17 acre tract, being described as follows:

BEGINNING at a 2" Iron Pipe at the Southwest corner of the Gaunt Survey, from which a Pine Stump bears N. 41 deg. 00 min. E 13.50 feet.

THENCE N 02 deg. 16 min. 43 sec. E along and with the West line of the Gaunt Survey, 1370.36 feet to a concrete monument, for corner in the center of the beginning of a 50.00 feet wide Road Easement, from which a 10" Pine bears N 75 deg. 00 min. E 1.30 feet, and a 11" Black Jack Oak bears S 40 deg. 00 min. E 31.90 feet.

THENCE S 87 deg. 21 min. 00 Sec. E along and with the center of said Easement, 1461.62 feet to a concrete monument, for corner at the End of same, in the West line of a 17.46 acre tract, from which a 16" Pin Oak bears South 17.20 feet, and a 8" Red Oak bears N 35 deg. 00 min. E 27.00 feet.

THENCE S 02 deg. 16 min. 43 sec. W along and with the West line of the 17.46 acre tract, 1381.30 feet to a concrete monument, at the Southwest corner of same, in the South line of the Gaunt Survey, from which a 13" Pine bears N 03 deg. 10 min. W 36.50 feet, and a 15" Pine bears N 46 deg. 30 min. E 30.00 feet.

THENCE N 86 deg. 55 min. 18 sec. W along and with the said South line, 1461.73 feet to the place of BEGINNING containing 46.17 acres of land, of which 0.84 of a acre is in the above mentioned Road Easement.

TOGETHER with that certain 50' roadway easement described in Exhibit "C" of the Agreed Judgment to Partition Real Property filed for record in the office of the District Clerk of Tyler County, Texas, under Cause No. 10,085 and such cause being styled: SIDNEY JACK MARTINDALE, JR., ET AL VS. GILBERT WRIGHT, TOGETHER with any and all other easements of record which grant access to and from a public roadway in regard to the subject property.

Exhibit "B"

TRACT II: (46.17 Acres North Tract)

BEING a 46.17 acre tract of land out of a called 105.2 acre tract (found by re-survey to contain 111.42 acres) in the I. Gaunt Survey, Abstract No. 297, Tyles County Texas, the said 46.17 acre tract, being described as follows:

BEGINNING at a 2" Iron Pipe at the Northwest corner of the Gaunt Survey, from which a Pine Stump bears S 60 deg. 30 min. E 25.00 feet.

THENCE S 02 deg. 16 min. 43 sec. W along and with the West line of the said Gaunt Survey, 1370.38 feet, to a concrete monument for corner, in the center of the beginning of a 50.00 feet wide Road Easement, from which a 10" Pine bears N 75 deg. 00 min. E 1.30 feet, and a 11" Black Jack Oak bears S 40 deg. 00 min. E 31.90 feet.

THENCE S 87 deg. 21 min. 00 sec. E along and with the center of said Easement, 1461.62 feet to a concrete monument, for corner at the End of same, in the West line of a 17.46 acre tract, from which a 16" Pin Oak bears South 17.20 feet and a 8" Red Oak bears N 35 deg. 00 min. E 27.00 feet.

THENCE N 02 deg. 16 min. 43 sec. E along and with the West line of the 17.46 acre tract, 1381.30 feet to a concrete monument, at the Northwest corner of same, in the North line of the Gaunt Survey, from which a 11" Hickory bears S 53 deg. 30 min. W 10.10 feet, and a 11" White Oak bears S 03 deg. 00 min. W 12.60 feet.

THENCE N 87 deg. 46 min 41 sec. W along and with the said North line, 1461.59 feet, the place of BEGINNING containing 46.17 acres of land of which 0.84 of a acre is in the above mentioned Road Easement.

TOGETHER WITH A 50' ROAD AND DRIVEWAY EASEMENT ACROSS THE FOLLOWING DESCRIBED TRACT III FOR ACCESS TO TRACTS I AND II ABOVE.

Exhibit "C"

TRACT III:

FIELD NOTES of a 276.22 acre tract, of land in the I. Gaunt Survey Abstract No. 297, and the T. C. Holt Survey, Abstract No. 349, Tyler County Texas, said 276.22 acre tract being all of a 1.62, 17.46, and a called 54.8 acre tract, in the I. Gaunt Survey, and being all of a called 191.4 acre tract, more or less in the T. C. Holt Survey, being the same tracts conveyed to Lonnie Bee Grissom, by Deeds Recorded in Volume 445, Page 98 et seq, Volume 456, Page 634 et seq, and Volume 457, Page 432, et seq, of the Tyler County Deed Records, and being described as one tract, containing 276.22 acres of land, as follows to-wit:

BEGINNING at a Iron Axle at the Southwest corner of the above mentioned 191.4 acre tract, same being the most Westerly Southwest corner of the T. C. Holt Survey, the Northwest corner of the L. G. McGoughey Survey, Abstract No. 461, and in the East line of the T. C. Mann Survey, Abstract No. 1042.

THENCE N 01°26'00"E along and with the most Southerly West line of the said 191.4 acre tract, and the most Westerly West line of the said Holt Survey, and the East line of the said Mann Survey, 645.56 feet to a Concrete Monument, at a Northwest and Northeast corner of same, in the South line of the said Gaunt Survey, at the Southeast corner of the above mentioned 1.62 acre tract and the Southwest corner of the said 54.8 acre tract from which a 15" Hickory bears S 73°00'E 13.89 feet.

THENCE N 88°55'18"W with the South line of the said Gaunt Survey, and the North line of the said Mann Survey, and the South line of the said 1.62 acre tract, at 19.97 feet pass the Southwest corner of the said 1.62 acre tract, and the Southeast corner of the said 17.46 acre tract, and at a total distance of 294.72 feet to a Concrete Monument, at the Southwest corner of the said 17.46 acre tract from which a 13" Pine bears N 03°10'W 36.50 feet, and a 15" Pine bears N 46°50'E 30.00 feet.

THENCE N 00°16'43"E along and with the West line of the said 17.46 acre tract, 2762.60 feet to a Concrete Monument, at the Northwest corner of same, in the most Northerly North line of the said Gaunt Survey, from which a 11" Hickory bears S 53°30'W 10.10 feet, and a 11" White Oak bears S 03°00'W 12.60 feet.

THENCE S 89°46'41"E along and with the North line of the said 17.46 acre tract, and the most Northerly North line of the said Gaunt Survey, 299.49 feet to a Iron Pipe at the Northeast and most Northerly Northeast corner of same in the West line of the C. G. Crenshaw Survey, Abstract No. 187, from which a 14" White Oak bears N 11°27'W 33.60 feet, and a 7" Sweet Gum bears N 54°42'W 14.70 feet.

THENCE S $01^{\circ}11'16''$ E along and with the East line of the said 17.46 acre tract, and the most Northerly East line of the said Gaunt Survey, and the West line of the said Crenshaw Survey, 285.75 feet to a Concrete Monument, at a Angle corner, a "ELL" corner and Southwest corner of same, and the Northwest corner of the said 54.8 acre tract, from which a 7" Sweet Gum bears S $41^{\circ}30'W$ 13.90 feet, a 16" Pine bears N $67^{\circ}30'E$ 28.70 feet, a 15" Sweet Gum bears S $33^{\circ}30'E$ 21.20 feet, and a 14" Sweet Gum bears N $46^{\circ}45'W$ 8.85 feet.

THENCE S $89^{\circ}12'46''E$ along and with the North line of the said 54.8 acre tract, same being the most Southerly North line of the said Gaunt Survey, and the South line of the said Crenshaw Survey at 969.44 feet pass the Northeast corner of the said 54.8 acre tract, same being Northwest corner of the said 191.4 acre tract, and the most Southerly Northeast corner of the said Gaunt Survey, and a Northwest corner of the said Holt Survey, and at a total distance of 2652.56 feet to a Concrete Monument, at the Southeast corner of the said Crenshaw Survey, and a "ELL" corner of the said Holt Survey, and the Southwest corner of the F. W. Boykin 61 acre tract.

THENCE N $86^{\circ}15'37''E$ along and with a South line of the said 69 acre tract, and continuing with the North line of the said 191.4 acre tract, 953.32 feet to a Iron Rod at a "ELL" corner and the Northeast corner of same.

THENCE S $02^{\circ}06'20''E$ along and with a East line of the said 191.4 acre tract, and a West line of the said 69 acre tract, at 1191.67 feet cross the center of a County Maintained Graded Road and at a total distance of 1413.89 feet to a Iron Rod at a Southeast corner of the said 191.4 acre tract, same being a "ELL" corner of the F. W. Boykin 595.4 acre tract.

THENCE N $89^{\circ}54'29''W$ along and with a South line of the said 191.4 acre tract and a North line of the said 595.4 acre tract, at 141' feet cross the center of the said Graded Road, and at a total distance of 243.26 feet to a Iron Rod at a "ELL" corner and a Northwest corner of same, from which a 24" Red Oak bears North 5.56 feet.

THENCE S $00^{\circ}13'39''E$ along and with a East line of the said 191.4 acre tract, and a West line of the said 595.4 acre tract, at 1233' feet cross the center of a Gulf States Utilities Co. Power Line Right of Way, and at a total distance of 1870.07 feet to a Iron Rod at the Southeast corner of the said 191.4 acre tract, and a Southwest corner of the said 595.4 acre tract, in the most Northerly South line of the said Holt Survey.

THENCE N $87^{\circ}48'00''W$ along and with the South line of the said 191.4 acre tract, same being the most Northerly South line of the said Holt Survey, at 985' feet cross the center of the said Power Line, Right of Way, and at a total distance of 3464.13 feet to the place of BEGINNING containing 276.22 acres of land, of which 74.32 acres lie within the said Gaunt Survey, and 201.90 acres lie within the said Holt Survey.

Exhibit "D"

TRACT IV:

TRACT #1:

Being a part of the T. C. Holt Survey, Abstract 349 in Tyler County, Texas and being 69 acres, more or less, described as follows:

BEGINNING at a corner of the West side of Twin Lake Road on the South side of J. M. Anderson Survey and 234 vrs West of the Southeast corner of said survey;

THENCE in a southwesterly direction with said Twin Lake Road to a stake on the East line of the E. A. Fletcher tract;

THENCE North 2° W with the East line of the said Fletcher tract 489 vrs to a stake for corner;

THENCE West at 191 vrs to the East edge of pond in all 333 vrs to corner;

THENCE North 567 vrs to a stake at the original Northwest corner of said Holt Survey;

THENCE East at 114 vrs to Mill Creek at 742 vrs to the PLACE OF BEGINNING, containing 69 acres, more or less.

TRACT #2:

Being a part of the C. G. Crenshaw Survey, Abstract No 187, Tyler County, Texas, described as follows:

BEGINNING at a concrete monument for the SE corner of said C. G. Crenshaw Survey, said monument has a metal disk in top stamped "S.E. Cor C G Crenshaw - Kirby" from which a 7" white bay brs N 20° 46' vrs, a 5" tupelo gum brs N 23° 00' W 5.73 vrs, an 11" tupelo gum brs S 67° 25' W 8.2 vrs, and a 9" tupelo gum brs S 5° 12' W 6.0 vrs;

THENCE N 89° 45' 02" W along and with S line of said C. G. Crenshaw Survey 212.92 vrs to a corner monument with metal disk in top stamped "C G Crenshaw - Kirby" from which a 14" beech brs S 74° 10' W 1.7 vrs and a 20" red oak brs N 44° 10' E 10.6 vrs;

THENCE along and with meanders of a fence as follows:

1. N 14° 04' E 52.0 vrs to a concrete monument with metal disk in top stamped "C G Crenshaw - Kirby" from which a 22" red oak brs S 47° 28' W 7.65 vrs and a 21" white oak brs N 40° 07' E 3.8 vrs.
2. N 17° 05' E 124.0 vrs to a concrete monument with metal disk in top stamped "C G Crenshaw - Kirby" from which a 19" white oak brs S 69° 45' W 7.73 vrs and a pin oak brs N 14° 08' E 15.5 vrs.
3. N 19° 00' E 143.0 vrs to a concrete monument with metal disk in top stamped "C G Crenshaw - Kirby" from which an 11" pine brs S 74° 23' W 4.8 vrs and a 6" pin oak brs N 33° 30' W 10.1 vrs.
4. N 22° 00' E 87.0 vrs to a concrete monument with metal disk in top stamped "C G Crenshaw - Kirby" from which a 20" black gum brs S 37° 49' W 5.55 vrs and a 10" pine brs N 65° 33' W 8.32 vrs.
5. N 25° 00' E 61.0 vrs to a concrete monument with metal disk in top stamped "C G Crenshaw - Kirby" from which a 20" white oak brs N 36° 30' W 4.15 vrs and a 13" white oak brs S 72° 38' W 3.6 vrs.
6. N 21° 05' E 141.50 vrs to a concrete monument with metal disk in top stamped "C G Crenshaw - Kirby" from which an 11" pin oak brs N 20° 35' W 2.9 vrs and a 4" white oak brs S 71° 00' W 6.9 vrs.
7. N 18° 32' E 42.26 vrs to a concrete monument at the point of intersection of said fence with E line of said C. G. Crenshaw Survey, said monument has metal disk in top stamped "C G Crenshaw - Kirby" from which a concrete monument for the SW corner of J. M. Anderson Survey brs N 00° 11' 23" W 11.8 vrs, (from said concrete monument for the SW corner of said J. M. Anderson Survey, a 19" beech brs N 28° 00' W 2.0 vrs, a 7" pine brs S 16° 45' E 14.34 vrs, a 15" pine brs S 54° 55' W 17.8 vrs, an 8" pine brs N 81° 30' E 4.83 vrs and an 11" white oak brs N 19° 50' W 11.54 vrs).

THENCE S 00° 11' 23" East along and with said E line of said C. G. Crenshaw Survey 549.79 vrs to PLACE OF BEGINNING, containing 11.891 acres of land, more or less.

Exhibit "B"

LINE OF CREDIT PROMISSORY NOTE

\$1,720,000.00

June 28, 2011

FOR VALUE RECEIVED, F. KENNETH BAILEY, JR. whose address is 440 Louisiana, Suite 2100, Houston, Texas 77002 (the "Maker") (jointly and severally if more than one), promises to pay to the order of TIM CAREY (the "Payee") at 8681 Louetta Rd., Suite 220, Spring, Texas 77379, the principal amount of ONE MILLION SEVEN HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$1,720,000.00), or the aggregate unpaid amount of all loans and advances hereunder, whichever is the lesser amount, together with interest on the unpaid principal balance hereof from time to time outstanding until maturity at 16% per annum (the "Stated Rate"); provided further, however, that in no event shall interest on this Note ever be charged or paid at a rate greater than the maximum nonusurious rate permitted by applicable federal or Texas law from time to time in effect, whichever shall permit the higher lawful rate (the "Highest Lawful Rate"). If at any time or times the Stated Rate would exceed the Highest Lawful Rate but for the limitation in the preceding sentence, interest shall thereafter accrue on the unpaid balance hereof at the Highest Lawful Rate until the total amount of interest accrued on the unpaid balance hereof shall equal the amount of interest which would have accrued if the Stated Rate had at all times been in effect at which time the interest rate hereon shall return to and accrue at the Stated Rate unless the Stated Rate is greater than the maximum nonusurious rate permitted by applicable federal or Texas law.

ADVANCES HEREUNDER SHALL BE MADE AT THE ABSOLUTE DISCRETION OF THE PAYEE. MAKER UNDERSTANDS AND AGREES THAT THE PAYEE IS NOT OBLIGATED TO ADVANCE OR LOAN ANY FUNDS HEREUNDER UNLESS THE PAYEE HAS CONSENTED TO THE SPECIFIC ADVANCE AND CONSEQUENTLY MAKER SHOULD NOT DETRIMENTALLY RELY ON THE AVAILABILITY OF ADVANCES HEREUNDER. The unpaid principal balance of this Note at any time shall be the total amounts loaned or advanced hereunder by the Payee, less the amount of payments or prepayments of principal made hereon by or for the Maker.

All loans or advances and all payments or prepayments made hereon may be endorsed by the Payee at any time on a schedule which may be attached hereto and if attached, shall be deemed to be made a part hereof for all purposes; provided, however, that the failure to attach a schedule or to make a notation thereon with respect to any loan or advance shall not limit or otherwise affect the obligation of the Maker with respect to such loan or advance and a payment of principal hereon by the Maker shall not be affected by the failure to make a notation thereof on said schedule. Absent manifest error, the records of the Payee or any subsequent holder shall be conclusive as to amounts owed, both principal and interest hereunder.

If applicable, the Maker and the Payee expressly agree, pursuant to Article 15.10(b) of Chapter 15 ("Chapter 15") of the Texas Credit Code, that Chapter 15 shall not apply to this Note or to any advance evidenced by this Note and that this Note and all loans or advances hereunder shall not be governed by or subject to the provisions of Chapter 15 in any manner whatsoever.

Interest hereon shall be computed on the basis of a 365- or 366-day year, as applicable. At all such times, if any, as Chapter One of the Texas Credit Code ("Chapter One") shall

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**Exhibit "B" to
\$3,006,129.82
Third Renewal Promissory Note
Page 1 of 6**

establish the Highest Lawful Rate, the Highest Lawful Rate shall be the "indicated rate ceiling" (as defined in Chapter One) from time to time in effect; but Payee may from time to time, as to current and future balances, implement any other ceiling under Chapter One, and/or revise the index, formula or provision of law used to compute the Highest Lawful Rate on this Note by notice to Maker, if and to the extent permitted by, and in the manner provided in, Chapter One. All calculations of interest at the Highest Lawful Rate shall be made on the basis of a 365 or 366 day year, as applicable.

Because of the possibility of irregular periodic balances of principal, premature payment, and the variable nature of the interest rate, the total interest that will accrue on this Note cannot be determined in advance. Payee does not intend to charge or collect usurious interest, and to prevent such an occurrence, Payee will, at the Maturity Date, or at the time payment is demanded by the Payee, determine the total amount of interest that can lawfully be charged or collected by applying the Highest Lawful Rate of interest to the full periodic balances of principal for the period each is outstanding and unpaid and compare such amount with the total interest that has accrued under the terms of this Note, and, if necessary, to prevent usury, reduce the total amount of interest payable by Maker to the lesser amount. If, for any reason whatever, the interest paid on this Note shall exceed the Highest Lawful Rate, the holder of this Note shall refund to the payor or, at the option of such holder, credit on the principal hereof such portion of said interest as may be necessary to cause the interest paid on this Note to equal the Highest Lawful Rate and no more. In no event shall the Maker, its successors and assigns, be liable to pay any amount of interest on this Note which is in excess of the Highest Lawful Rate. All sums paid or agreed to be paid to the holder or holders hereof for the use, forbearance or detention of the indebtedness evidenced hereby shall, to the extent permitted by applicable federal or Texas law, be amortized, prorated, allocated and spread throughout the full term of this Note.

Maker may at any time pay the full amount or any part of this Note without the payment of any premium or fee. All payments and prepayments hereon shall be applied first to accrued interest, with the balance to principal.

This Note is due and payable in monthly installments, consisting of interest only, commencing August 1, 2011 and continuing on the first day of each month thereafter until October 1, 2011, when the entire remaining outstanding balance of principal and interest shall be due and payable in full (the "Maturity Date").

All past due principal of and interest on this Note shall bear interest at the lower of eighteen percent (18%) or the Highest Lawful Rate.

In addition to all principal and accrued interest on this Note, Maker agrees to pay (a) all reasonable costs and expenses incurred by all owners and holders of this Note in collecting this Note through reorganization, bankruptcy or any other proceedings and (b) reasonable attorneys' fees when and if this Note is placed in the hands of any attorney for collection.

Each payment and prepayment made by the Maker under this Note shall be in immediately available funds before 2:00 p.m., Houston time, on the date that such payment or prepayment is required to be made. Any payment or prepayment made by the Maker after such

time shall be considered for all purposes (including the calculation of interest, to the extent permitted by law) as having been made on the Payee's next following Business Day.

Any check, draft, money order or other instrument given in payment of all or any portion hereof may be accepted by the holder hereof and handled in collection in the customary manner, but the same shall not constitute payment hereunder or diminish any rights of the holder hereof except to the extent that actual cash proceeds of such instrument are unconditionally received by the holder and applied to this indebtedness in the manner elsewhere herein provided.

If the date for any payment or prepayment hereunder falls on a day which is not a Business Day, then for all purposes of this Note (excluding the computation of interest due which shall be computed as of the recited due date), the same shall be deemed to have fallen on the next following Business Day.

Any of the following events shall be considered an "Event of Default" as that term is used herein:

- (a) Default is made in the payment or prepayment when due of any installment of principal or interest hereon;
- (b) Any representation or warranty made in the security agreements which secure payment hereof proves to have been incorrect as of the date when made or deemed made;
- (c) Default is made in the due observance or performance in any material respect by the Maker or any guarantor of any of the covenants or agreements contained herein or any document, instrument or agreement securing payment hereof;
- (d) An involuntary case or other proceeding shall be commenced against the Maker or any guarantor which seeks liquidation, reorganization or other relief with respect to the Maker's or guarantor's debts or other liabilities under any bankruptcy, insolvency or similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for any substantial part of the property of the Maker or guarantor and such involuntary case or other proceeding shall remain undismitted or unstayed for a period of thirty (30) days after actual notice to the Maker or guarantor, as applicable of the commencement of such proceeding;
- (e) Should the Maker or guarantor commence a voluntary case or other proceeding seeking liquidation, reorganization or other similar relief with respect to itself or its debts or other liabilities under any bankruptcy, insolvency or similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official or if the Maker or guarantor shall make a general assignment for

the benefit of its creditors or shall fail generally to pay its debts as they become due; or

- (f) Should the Maker or guarantor fail within thirty (30) days to bond, pay or otherwise discharge any judgment or order for payment of money in excess of \$25,000.00 that is not otherwise being satisfied in accordance with its terms and is not stayed on appeal or otherwise being appropriately contested in good faith.

It is understood and agreed that time is of the essence of this Note and that on default in the payment of any installment of principal or interest, or any part thereof when due, or upon the occurrence of an Event of Default, then, the holder hereof, at its or his sole option, may: accelerate the unpaid balance of the principal and all accrued interest due and declare the same due and payable immediately without presentment or demand for payment of any past due installment of principal or interest or of any remaining unpaid balance of principal or interest and without notice of intent to accelerate the payment of the unpaid balance of the principal or all accrued interest due under the terms of this Note. Failure of the holder to exercise its option to accelerate the maturity of this Note shall not constitute a waiver of its right to exercise the same at any other time.

If an Event of Default should occur, Maker and all endorsers, guarantors and sureties severally waive notice of any kind (including, but not limited to, notice of dishonor, notice of protest, notice of intent to accelerate and notice of acceleration), demand, presentment for payment, protest in the filing of suit hereon for the purpose of fixing liability and consent that the time for payment hereof may be extended and re-extended from time to time without notice to them or any of them, and severally agree that his, her or its liability on or with respect to this Note shall not be affected by any release or change in any security at any time existing nor by the failure to perfect or maintain perfection of any security interest in said security nor by the release of any party primarily or secondarily liable hereon.

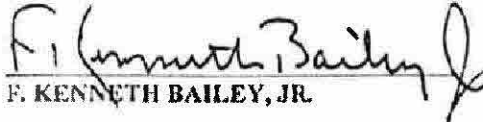
Maker warrants and represents to Payee and to all other owners and/or holders of any indebtedness evidenced hereby that (a) all loans evidenced by this Note are and shall be "business loans" as such term is used in the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, and (b) such loans are for business, commercial, investment or other similar purposes and not primarily for personal, family, household or agricultural use, as such terms are used in Chapter One.

PAYEE SHALL NOT BE OBLIGATED TO ADVANCE ANY FUNDS AGAINST THIS NOTE UNLESS AND UNTIL MAKER HAS COMPLIED WITH ALL PAYEE'S CONDITIONS PRECEDENT TO FUNDING. NOTHING HEREIN OR IN ANY OTHER AGREEMENT, DOCUMENT, INSTRUMENT OR ANY OTHER WRITING EXECUTED AND DELIVERED IN CONNECTION WITH, IS INTENDED TO BE CONSTRUED AS A COMMITMENT ON THE PART OF THE PAYEE TO MAKE ANY LOAN OR ADVANCE UNDER THIS NOTE, EACH LOAN OR ADVANCE UNDER THIS NOTE SHALL BE SUBJECT TO THE LIMITATIONS AND CONDITIONS IMPOSED BY THE PAYEE.

This Note constitutes, in part, an agreement to advance additional funds (pursuant to the terms and subject to the limits herein provided) and, in part, a renewal, extension and modification of the sums left due and owing on that one certain promissory note dated February 10, 2009 in the face amount of \$650,000.00 (the "Original Note") executed by F. Kenneth Bailey, Jr. and The Hawk Club, Ltd., jointly and severally, made payable to the order of JVH Interests, Inc. pursuant to the terms and conditions therein provided, which note was endorsed by JVH Interests, Inc., as Payee to Tim Carey, as Payee, who is also the Payee on this Note. It is the intention of the parties that this Note be afforded the benefits and collateral provided by the Original Note and that this Note be secured by all of the liens, security interests, and deeds of trust securing payment of the Original Note and the owner and holder of this Note be subrogated to the rights of the Original Note and that all guaranties of the Original Note shall also extend to this Note.

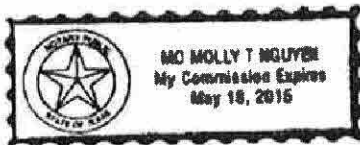
This Note is also secured by a Deed of Trust of even date herewith to Mark A. Padon, Trustee covering that certain real property located in Tyler County, Texas, more fully described on Exhibit "A" attached hereto and incorporated herein for all purposes.

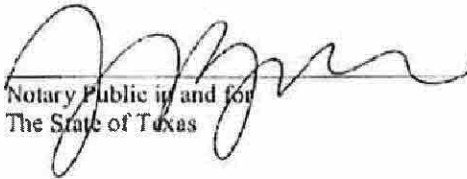
EXECUTED this 19 day of ~~June~~^{July}, 2011. EFFECTIVE June 28, 2011
FKA


F. KENNETH BAILEY, JR.

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on ~~June~~^{July} 19, 2011 by F. KENNETH BAILEY, JR.




Notary Public in and for
The State of Texas

ADVANCE SCHEDULE

<u>Date of Advance</u>	<u>Description of Advance</u>	<u>Amount of Advance</u>	<u>Total of Advances</u>

CAUSE NO. 2021-26090

KRM INVESTMENTS, INC.,

Plaintiff,

v.

F. KENNETH BAILEY AND
WILLIAM C. PADON,

Defendants.

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§
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§
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§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

127th JUDICIAL DISTRICT

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT B

KRM INVESTMENTS, INC.,

Plaintiff,

v.

F. KENNETH BAILEY AND
WILLIAM C. PADON,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

127th JUDICIAL DISTRICT

**DECLARATION OF ROBERT J. KRUCKEMEYER IN SUPPORT OF
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

My name is Robert J. Kruckemeyer, my date of birth is July 14, 1959, and my address is 244 Malone Street, Houston, Texas 77007, USA.

1. I have been licensed to practice law in Texas since 1984, and I am duly admitted to practice in good standing in Texas and in various federal courts, including the Southern, Northern and Eastern districts of Texas.

2. I am experienced in state and federal court litigation in Texas in general and Harris County in particular. Since 1984, I have concentrated my practice on civil litigation matters that include breach of contract, oil and gas, product liability, shareholder disputes, business divorce, business disputes of all kinds, as well as serious personal injury matters. I have represented both plaintiffs and defendants in these types of cases. I was recognized as the “Litigator of the Week” in the May 14, 2012, edition of Texas Lawyer magazine, and I am a Sustaining Life Fellow of the Texas Bar Foundation.

3. I graduated from St. Louis University in 1981 with a Bachelor of Arts degree in Political Science, *magna cum laude*. In 1984, I received my Juris Doctor from the St. Louis

University School of Law, *cum laude*.

4. I have represented Plaintiff since 2020 in general and in connection with the above-captioned litigation (the "Litigation") beginning in March of 2021. My customary hourly rate in 2021 was \$475/hour and in 2023 rose to \$550.00.

5. Based on my education and experience, described above at paragraphs 2-4, my personal communications with lawyers handling similar types of matters, and my review of court filings, case law, and published literature pertaining to such hourly rates, I am familiar with the hourly rates that lawyers and support staff customarily charge in Houston, Harris County, Texas and elsewhere in complex cases and Litigations, such as this Litigation. Based on the foregoing, I am also familiar with the attorney and support staff time and effort that it takes and can reasonably take to prosecute and defend matters such as the Litigation and what constitutes reasonable and necessary attorneys' fees for doing so. As a result, I am able to offer opinions pertaining to the amount, reasonableness, and necessity of all attorneys' fees sought by Plaintiff in the Litigation. I was also requested to offer opinions pertaining to whether such attorneys' fees are equitable and just.

6. I am familiar with the nature of this case and the work that was performed in the course of this representation. I am familiar with the number of hours spent and the amounts I have charged and what would be a reasonable charge by the Plaintiff's attorneys.

7. I am familiar with and have considered the factors bearing upon the reasonableness of attorneys' fees in Texas, as articulated in Rule 1.04(b) of the Texas Disciplinary Rules of Professional Conduct and the Texas Supreme Court in *Arthur Andersen & Co. v. Perry Equipment*, 945 S.W.2d 812 (Tex. 1997), which are as follows: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to

perform the legal services properly; (2) the likelihood ... that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent on the results obtained or uncertainty of collection before the legal services have been rendered.

8. Specifically, with reference to Paragraph 8 of this Affidavit and to form my opinions with regard to the reasonable and necessary attorneys' fees incurred by Plaintiff in this Litigation, I will address the factors bearing upon the reasonableness of attorneys' fees in Texas, as follows:

a. **The Time and Labor Required, the Novelty and Difficulty of the Questions Involved and the Skill Requisite to Perform the Legal Service Properly.** I have considered the time and labor required to handle Plaintiff's claims which has included, without limitation: (1) determining the proper amount of the claim and the method by which the defendant could be served; (2) filing pleadings; and (3) preparing Plaintiff's Motion for Summary Judgment.

b. **The Likelihood, if Apparent to the Client, That the Acceptance of the Particular Employment Will Preclude Other Employment by the Lawyer.** Plaintiff has agreed to pay me on an hourly fee basis. Plaintiff understands that my working for Plaintiff necessarily precludes me from accepting other employment by other clients.

c. **The Fee Customarily Charged in the Locality for Similar Legal**

Services. I have been practicing law in Harris County since 1984. Based on my education and experience, described above at paragraphs 2-4, my personal communications with lawyers handling similar types of matters, and my review of court filings, case law, and published literature pertaining to such hourly rates, I am familiar with the hourly rates that lawyers and support staff customarily charge in Houston, Harris County, Texas and elsewhere in complex cases and Litigations, such as this Litigation. My hourly rate of \$475.00 in 2021 and now \$550.00 is reasonable.

d. **The Amount Involved and the Results Obtained.** Plaintiff's seeks recovery of \$2,194,582.40 principal together with prejudgment interest in the amount of \$42,328.00 as of May 18, 2023, with interest accruing at the rate of \$962.00 per day pursuant to the agreement. Plaintiff anticipates obtaining a judgment for the amount requested.

e. **The Time Limitations Imposed by the Client or by the Circumstances.** No time limitations have been imposed by the client or by the circumstances.

f. **The Nature and Length of the Professional Relationship with the Client.** I have represented Plaintiff since 2020.

g. **The Experience, Reputation, and Ability of the Lawyer or Lawyers Performing the Services.** As noted above, I have been licensed to practice law in Texas since 1984. I was awarded an AV rating by Martindale-Hubbell in 1999 and have been a member of the Bar Register of Preeminent Lawyers since 2005. I was recognized as the "Litigator of the Week" in the May 14, 2012, edition of Texas Lawyer magazine, and I am a Sustaining Life Fellow of the Texas Bar Foundation.

h. Whether the Fee is Fixed or Contingent on Results Obtained or Uncertainty of Collection Before the Legal Services Have Been Rendered. Plaintiff has agreed to pay me an hourly rate. My compensation is not fixed or contingent on the results obtained. My fees are not affected by the uncertainty of collection before the legal services have been rendered.

9. Attached hereto as Exhibit 1 are the slip lists maintained by me that record the work that I have done on this matter. Some of the time spent as shown on the slip lists was related to AEG's attempts to settle the matter. I have not included that time in the calculation of attorneys' fees for obtaining the summary judgment in this matter. The slip lists for obtaining the summary judgment total \$8,274.51. I have performed additional work this month in finalizing the Motion for Summary Judgment and I anticipate appearing at a hearing on the Motion for Summary Judgment.

10. Attached hereto as Exhibit 2 is a true and correct copy of the demand letter that I sent to Bailey dated November 13, 2020.

11. Based upon my experience, training, and expertise, it is my opinion that Plaintiff's request for attorneys' fees in the amount of \$7,500.00 is reasonable and necessary and equitable and just. Further, in the event an appeal to the Court of Appeals is made but is unsuccessful, reasonable attorney's fees would be an additional \$25,000.00; in the event an appeal is made to the Texas Supreme Court is made but is unsuccessful, reasonable attorney's fees would be an additional \$25,000.00.

I declare under penalty of perjury that the facts stated herein are within my personal knowledge and are true and correct.

May 18, 2023.


Robert J. Kruckemeyer

CAUSE NO. 2021-26090

KRM INVESTMENTS, INC.,

Plaintiff,

v.

F. KENNETH BAILEY AND
WILLIAM C. PADON,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

127th JUDICIAL DISTRICT

**DECLARATION OF ROBERT J. KRUCKEMEYER IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 1

Selection Criteria

Slip.Transaction Dat 1/1/2017 - 5/17/2023
Slip.Classification Open
Clie.Selection Include: KRM-Bailey

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Posting Status	Description	Timekeeper	Activity	Client	Phase/Task	Units	DNB Time	Rate	Rate Info	Slip Value
									Est. Time		Bill Status	
									Variance			
22007	TIME			Bob				1.25		475.00		593.75
	11/12/2020				Manage data			0.00			T	
	Billed	G:12632	12/1/2020	KRM-Bailey				0.00				
					Review loan documents. Work on demand letter. Communicate with Mr. Melber re same.	F. Kenneth Bailey, Jr.		0.00				
22014	EXP			Bob				2		7.50		15.00
	11/13/2020				Postage							
	Billed	G:12632	12/1/2020	KRM-Bailey								
					Postage to deliver certified mail to Bailey and Bailey Four Canyon Ranch Properties.	F. Kenneth Bailey, Jr.						
22015	TIME			Bob				1.50		475.00		712.50
	11/13/2020				Manage data			0.00			T	
	Billed	G:12632	12/1/2020	KRM-Bailey				0.00				
					Finalize and deliver certified mail to Bailey and Bailey Four Canyon Ranch Properties.	F. Kenneth Bailey, Jr.		0.00				
22370	TIME			Bob				0.75		450.00		337.50
	3/10/2021				Manage data			0.00			T	
	Billed	G:12725	4/1/2021	KRM-Bailey				0.00				
					Communicate with Mr. Melber re Ranch Bankruptcy. Make inquiries re same.	F. Kenneth Bailey, Jr.		0.00				
22379	TIME			Bob				1.00		450.00		450.00
	3/11/2021				Manage data			0.00			T	
	Billed	G:12725	4/1/2021	KRM-Bailey				0.00				
					Research re Bailey Four Canyon Ranch bankruptcy. Communicate with Mr. Padon re same.	F. Kenneth Bailey, Jr.		0.00				
22454	TIME			Bob				0.75		450.00		337.50
	4/13/2021				Manage data			0.00			T	
	Billed	G:12746	5/1/2021	KRM-Bailey				0.00				
					Revise demand letter and attend to certified mailing.	F. Kenneth Bailey, Jr.		0.00				
22493	TIME			Bob				1.25		475.00		593.75
	4/25/2021				Manage data			0.00			T	
	Billed	G:12746	5/1/2021	KRM-Bailey				0.00				
					Work on Plaintiff's Original Petition.	F. Kenneth Bailey, Jr.		0.00				

Slip ID	Dates and Time	Posting Status	Description	Timekeeper	Activity	Client	Phase/Task	Units	DNB Time	Rate	Rate Info	Slip Value
								Est. Time	Variance	Bill Status		
22509	TIME			Bob	Manage data			1.50		475.00		712.50
	4/30/2021							0.00		T		
	Billed	G:12746		5/1/2021	KRM-Bailey			0.00				
			Revise Plaintiff's Original Petition and attend to filing.		F. Kenneth Bailey, Jr.			0.00				
22510	EXP			Bob	Court fees			1		472.01		472.01
	4/30/2021											
	Billed	G:12746		5/1/2021	KRM-Bailey							
			Fee to file Plaintiff's Original Petition.		F. Kenneth Bailey, Jr.							
22864	TIME			Bob	Manage data			1.00		475.00		475.00
	8/12/2021							0.00		T		
	Billed	G:12829		9/1/2021	KRM-Bailey			0.00				
			Work on Motion for Default Judgment and attendant documents.		F. Kenneth Bailey, Jr.			0.00				
22870	TIME			Bob	Manage data			0.75		475.00		356.25
	8/13/2021							0.00		T		
	Billed	G:12829		9/1/2021	KRM-Bailey			0.00				
			Work on Motion for Default Judgment and attendant documents. Communicate with Ms. Hanson re same.		F. Kenneth Bailey, Jr.			0.00				
24800	TIME			Bob	Manage data			0.50		525.00		262.50
	3/31/2023							0.00		T		
	Billed	G:13204		4/2/2023	KRM-Bailey			0.00				
			Communicate with Trial Coordinator re trial setting. Communicate with Mr. Melber re same.		F. Kenneth Bailey, Jr.			0.00				
24887	TIME			Bob	Manage data			2.25		525.00		1181.25
	5/4/2023							0.00		T		
	WIP				KRM-Bailey			0.00				
			Work on Motion for Summary Judgment.		F. Kenneth Bailey, Jr.			0.00				
24894	TIME			Bob	Manage data			2.75		550.00		1512.50
	5/5/2023							0.00		T		
	WIP				KRM-Bailey			0.00				
			Work on Motion for Summary Judgment including Declaration for Mr. Melber and Judgment. Communicate with Ms. Hanson and Mr. Melber re calculations and proceeding against Billy Padon.		F. Kenneth Bailey, Jr.			0.00				
24912	TIME			Bob	Manage data			0.50		525.00		262.50
	5/10/2023							0.00		T		
	WIP				KRM-Bailey			0.00				
			Communicate with Mr. Melber re Summary Judgment and service on Mr. Padon.		F. Kenneth Bailey, Jr.			0.00				
Grand Total												
								Billable	15.75			8274.51

5/18/2023
1:02 PM

THE KRUCKEMEYER LAW FIRM
Slip Listing

Page 3

Slip ID	Timekeeper	Units	Rate	Slip Value
Dates and Time	Activity	DNB Time	Rate Info	
Posting Status	Client	Est. Time	Bill Status	
Description	Phase/Task	Variance		
	Unbillable	0.00		0.00
	Total	15.75		8274.51

CAUSE NO. 2021-26090

KRM INVESTMENTS, INC.,

Plaintiff,

v.

F. KENNETH BAILEY AND
WILLIAM C. PADON,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

127th JUDICIAL DISTRICT

**DECLARATION OF ROBERT J. KRUCKEMEYER IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 2

THE KRUCKEMEYER LAW FIRM

ATTORNEY AT LAW
919 MILAM, SUITE 1500
HOUSTON, TEXAS 77002
(713) 860-0547
bob@kruckemeyerlaw.com
kruckemeyerlaw.com

November 13, 2020

Via Certified Mail R.R.R.

No. 7016 0340 0001 1340 4936

And First Class United States Mail

F. Kenneth Bailey, Jr.
5555 San Felipe St., Suite 900
Houston, Texas 77056

Via Certified Mail R.R.R.

No. 7016 0340 0001 1340 4943

And First Class United States Mail

Bailey Four Canyon Ranch Properties, Ltd.
F. Kenneth Bailey, Jr.
5555 San Felipe St., Suite 900
Houston, Texas 77056

Via Certified Mail R.R.R.

No. 7016 0340 0001 1340 4950

And First Class United States Mail

William C. Padon
2211 Norfolk St., Suite 910
Houston, Texas 77098

Re: Notice of Claim and Demand for Payment of amounts owed to KRM Investments, Inc. (the "Payee") in connection with the following agreements:

- 1) Line of Credit Promissory Note dated June 28, 2011, in the original principal sum of \$1,720,000.00 between Tim Carey as Payee and F. Kenneth Bailey, Jr. ("Bailey") as Maker (the "Original Note");

- 2) Guaranty Agreements dated June 28, 2011 between Tim Carey as Payee and Bailey Four Canyon Ranch Properties, Ltd. and William C. Padon as Guarantors (the "Guaranties");
- 3) Deed of Trust and Security Agreement ("Deed of Trust") executed by Bailey Four Canyon Ranch Properties, Ltd as Grantor and Tim Carey as Beneficiary;
- 4) Assignment dated November 6, 2013 between Tim Carey as Assignor and KRM Investments, Inc. ("KRM") as Assignee whereby the Original Note, Guaranties and Deed of Trust were assigned by Tim Carey to KRM;
- 5) First Renewal, Extension and Modification of the Note and Deed of Trust dated effective October 1, 2015 by and among F. Kenneth Bailey, Jr. and Bailey Four Canyon Ranch Properties, Ltd. and KRM ("First Renewal Note");
- 6) Second Renewal, Extension and Modification of the Note and Deed of Trust dated effective April 15, 2016 by and among F. Kenneth Bailey, Jr. and Bailey Four Canyon Ranch Properties, Ltd. and KRM ("Second Renewal Note"); and
- 7) Third Renewal, Extension and Modification of the Note and Deed of Trust dated effective August 1, 2019 by and among F. Kenneth Bailey, Jr. and Bailey Four Canyon Ranch Properties, Ltd. and KRM ("Third Renewal Note").

**NOTICE OF DEFAULT ON MATURED OBLIGATION
AND DEMAND FOR PAYMENT IN FULL**

Dear Mr. Bailey and Mr. Padon:

This law firm represents KRM Investments, Inc. On or about June 28, 2011, F. Kenneth Bailey, Jr. ("Bailey") as Maker entered into a Line of Credit Promissory Note in the original principal sum of \$1,720,000.00 with Tim Carey as Payee (the "Original Note"). In consideration for Tim Carey making the Loan to Bailey, Bailey Four Canyon Ranch Properties, Ltd. ("BFCRP") and William C. Padon ("Padon") entered into a Guaranty Agreement ("Guaranties") whereby BFCRP and Padon absolutely and unconditionally guaranteed and promised to pay Tim Carey the indebtedness of Bailey on the terms and conditions set forth in the Guaranties.

In additional consideration for Tim Carey making the Loan to Bailey, BFCRP, as Grantor and Tim Carey as Beneficiary entered into a Deed of Trust and Security Agreement ("Deed of Trust") whereby BFCRP pledged certain real property and improvements to Tim Carey to secure repayment of the Original Note.

On or about November 6, 2013, Tim Carey, as Assignor, and KRM Investments, Inc. ("KRM"), as Assignee, entered into an Assignment whereby the Original Note, Guaranties and Deed of Trust were assigned by Tim Carey to KRM.

On or about October 1, 2015, Bailey, BFCRP and KRM entered into a First Renewal, Extension and Modification of the Note and Deed of Trust (“First Renewal Note”).

On or about April 15, 2016, Bailey, BFCRP and KRM entered into the Second Renewal, Extension and Modification of the Note and Deed of Trust (“Second Renewal Note”).

On or about August 1, 2019, , Bailey, BFCRP and KRM entered into the Third Renewal, Extension and Modification of the Note and Deed of Trust (“Third Renewal Note”).

The Third Renewal Note has not been paid as agreed and therefore the Loan is in default.

Accordingly, KRM hereby makes formal demand upon Bailey to honor the terms of the Note and upon BFCRP and Padon to honor the terms of the BFCRP Guaranty and Padon Guaranty and to pay KRM all of the outstanding indebtedness that Bailey owes to KRM.

As of the date of this letter Bailey owes KRM \$3,006,129.82 principal, \$620,660.25 interest with interest accruing at the rate of \$1,317.75 per day. In addition, Bailey owes late fees in the amount of \$26,157.33. Accordingly, KRM demands that Bailey, BFCRP or Padon pay to KRM the sum of \$3,652,947.40 plus the per diem interest that will have accrued as of the date of the payment of the indebtedness to KRM. KRM demands that the payment be made by 3:00 p.m., Houston time, on November 23, 2020. Payment should be directed to Mr. Ken Melber at KRM, 8681 Louetta Road, Suite 220, Spring, Texas 77379.

Should KRM’s attempt to collect the indebtedness as outlined herein, or through other means as allowed pursuant to the agreements with KRM, be insufficient to satisfy the indebtedness to KRM, KRM reserves the right to file a lawsuit to seek recovery of the indebtedness. Please also be advised that in addition to the indebtedness, KRM will seek recovery of its reasonable attorneys’ fees and costs of court.

Repayment of Bailey’s indebtedness to KRM has been guaranteed by BFCRP and Padon. KRM is simultaneously making demand upon Bailey and the guarantors for payment of Bailey’s indebtedness to KRM. Although demand for payment in full has been made on Bailey, BFCRP and Padon, KRM does not intend to collect more than the outstanding indebtedness of Bailey to KRM. Accordingly, BFCRP and Padon should coordinate with Bailey, to ensure that KRM is not paid any more than the total demand set forth herein. Should KRM collect more than it is entitled to receive, KRM will promptly refund the appropriate amounts to the appropriate entities pursuant to the terms of KRM’s agreements with those entities.

If you have any questions regarding this matter, please have your attorney contact the undersigned at your earliest convenience.

Sincerely,



Robert J. Kruckemeyer

RJK:tj
Bailey 111320

cc: Ken Melber