

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:  
  
WOODBRIIDGE GROUP OF COMPANIES, LLC,  
*et al.*,<sup>1</sup>  
  
Debtors.

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WOODBRIIDGE GROUP OF COMPANIES, LLC  
and WOODBRIDGE MORTGAGE  
INVESTMENT FUND 3A, LLC,  
  
Plaintiffs,  
  
vs.  
  
TIMOTHY J. SPAIN,  
  
Defendant.

Chapter 11  
  
Case No. 17-12560 (KJC)  
  
(Jointly Administered)

Adversary Proceeding  
No. 18-\_\_\_\_\_ (KJC)

**ADVERSARY COMPLAINT FOR (I) AVOIDANCE AND RECOVERY OF  
AVOIDABLE TRANSFERS; (II) DISALLOWANCE OF CLAIM PENDING  
RECOVERY OF AVOIDABLE TRANSFERS; (III) DECLARATORY RELIEF  
REGARDING LACK OF VALID, PERFECTED, ENFORCEABLE SECURITY  
INTEREST; AND (IV) AVOIDANCE OF ANY ASSERTED SECURITY  
INTERESTS OR OTHER LIENS**

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<sup>1</sup> The last four digits of Woodbridge Group of Companies, LLC's federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14140 Ventura Boulevard #302, Sherman Oaks, California 91423. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of this information may be obtained on the website of the Debtors' noticing and claims agent at [www.gardencitygroup.com/cases/WGC](http://www.gardencitygroup.com/cases/WGC), or by contacting the undersigned counsel for the Debtors.

Plaintiffs Woodbridge Group of Companies, LLC (“Woodbridge Group”) and Woodbridge Mortgage Investment Fund 3A, LLC (“Fund 3A,” and together with Woodbridge Group, “Plaintiffs”), as and for their complaint against defendant Timothy J. Spain (“Defendant”), hereby allege as follows:

**NATURE OF THE ACTION**

1. Plaintiffs and hundreds of affiliated entities are debtors and debtors-in-possession (collectively, the “Debtors”) in a series of jointly administered chapter 11 cases styled *In re Woodbridge Group of Companies, LLC, et al.*, Case No. 17-12560 (KJC) (Bankr. D. Del.) (collectively, the “Bankruptcy Case”) arising out of a long-running Ponzi scheme. On October 26, 2018, the Court entered an order confirming the Debtors’ *First Amended Joint Chapter 11 Plan of Liquidation of Woodbridge Group of Companies, LLC and Its Affiliated Debtors* (the “Plan”), under which the vast majority of prepetition noteholder claims are treated as Class 3 Standard Note Claims. Class 3 Standard Note Claims are unsecured claims under the Plan, and the holders of such claims will receive recoveries based on a netting process calculated by subtracting the aggregate amount of all Prepetition Distributions received by the claimholder from the Outstanding Principal Amount of each Note Claim.<sup>2</sup>

2. Defendant is a holder of a Class 6 Non-Debtor Loan Note Claim (the “Claim”), which is one of a small minority of Note Claims arising from the “Riverdale” segment of the Debtors’ prepetition operations. Like holders of Class 3 Standard Note Claims, holders of Class 6 Non-Debtor Loan Note Claims do not have valid, enforceable, perfected liens or security

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<sup>2</sup> All capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan or the *Disclosure Statement for the First Amended Joint Chapter 11 Plan of Liquidation of Woodbridge Group of Companies, LLC and Its Affiliated Debtors* (the “Disclosure Statement”), as applicable. All references to and descriptions of the Plan herein are qualified in their entirety by the Plan itself and by the Disclosure Statement, and nothing herein is intended to, or shall be construed to, modify the Plan or the Disclosure Statement.

interests, as detailed below. Recognizing this, the Debtors gave holders of Class 6 claims (including Defendant) the option of voluntarily consenting to the reclassification of their Claim as a Class 3 Standard Note Claim, whereupon: (i) the Claim would be treated as if it had always been part of Class 3; (ii) Defendant would have affirmatively agreed to be bound by the Schedule of Principal Amounts and Prepetition Distributions reflected on the Ballot; and (iii) Defendant would have agreed to release all asserted Liens against any Estate Assets.

3. Holders of Class 6 claims overwhelmingly elected to reclassify into Class 3. Of the 51 Class 6 Ballots that were returned, 39 chose to opt-in to Class 3. Defendant, however, did not return his Ballot, and thus declined to opt-in to Class 3. Accordingly, as contemplated by Section 3.7 of the Plan, Plaintiffs bring this action to (i) avoid and recover monies previously paid to Defendant as fictitious profits, (ii) disallow Defendant's Claim pending repayment of the fictitious profits Defendant received prepetition; and (iii) obtain a final determination that Defendant's Claim is not actually secured by any perfected security interest. Granting this relief will result in the reclassification of Defendant's Class 6 Claim as a Class 3 Standard Note Claim, *see* Plan § 3.7, and will require Defendant to repay all fictitious profits he received prepetition before he receives any recovery on his Class 3 Standard Note Claim.

#### **JURISDICTION AND VENUE**

4. The Court has jurisdiction over this adversary proceeding under sections 157 and 1334 of the Judicial Code (28 U.S.C. §§ 157 & 1334) and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This adversary proceeding is a "core" proceeding within the meaning of section 157(b)(2)(A), (K), and (O) of the Judicial Code (28 U.S.C. § 157(b)(2)(A), (K), & (O)). Plaintiffs consent to the entry of a final judgment by this Court to the extent that it is later

determined that the Court, absent consent of the parties, cannot enter final orders or judgments in this adversary proceeding consistent with Article III of the United States Constitution.

5. Venue of this adversary proceeding is proper in this Court pursuant to sections 1408 and 1409 of the Judicial Code (28 U.S.C. §§ 1408 & 1409).

### **THE PARTIES**

6. Plaintiffs are among the hundreds of Debtors in the Bankruptcy Case. Plaintiffs filed voluntary petitions on December 4, 2017 (the "Petition Date"), and are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

7. Defendant is a creditor of Fund 3A, having invested \$100,000 (one hundred thousand dollars) on or about September 7, 2017. He is a party to that certain *Loan Agreement* dated as of September 7, 2017 (the "Loan Agreement"), a true and correct copy of which is attached hereto as **Exhibit A**. He is specified as "Lender" under that certain *Promissory Note* dated as of September 7, 2017 (the "Promissory Note"), a true and correct copy of which is attached hereto as **Exhibit B**. In total, Defendant received \$952.77 (nine hundred fifty two dollars and seventy seven cents) in purported interest payments (the "Transfers"), as reflected on the schedule of prepetition distributions attached hereto as **Exhibit C**. The precise Transfers – including the transferor and the date and amount of each transfer – are detailed in Exhibit C. Defendant did not return his Ballot, and thus declined to make the election described in Paragraph 2.

### **FACTUAL BACKGROUND**

8. As the Court determined in its order confirming the Plan, since at least July 2012 and continuing until shortly before they sought bankruptcy protection, the Debtors were operated

as a Ponzi scheme perpetrated by Robert Shapiro. As part of this fraud, Shapiro used the Debtors to raise over one billion dollars from approximately 10,000 investors, who were told that they were investing money to be loaned with respect to particular properties owned by third parties, that those properties were worth substantially more than the loans against the properties, and that they would have the benefit of a stream of payments protected by security interests in the Debtors' loans to those third parties.

9. In reality, these statements were lies. The vast majority of investors' money was not used to make loans to third-party borrowers, and was instead commingled and used for an assortment of expenses, including maintaining a lavish lifestyle for Shapiro and his family, brokers' commissions, overhead (largely for selling even more Notes and Units to investors), and payment of principal and interest to existing investors. The money that was used to acquire property (almost always owned by a disguised affiliate) cannot be traced to any specific investor. These are typical characteristics of Ponzi schemes.

10. Defendant is among a small minority of investors who received documentation (here, the Loan Agreement and the Promissory Note) that purports to pertain to real property that was or is actually owned by a third-party, rather than by a disguised affiliate of the Debtors. Notwithstanding such documentation, however, the money that Defendant invested cannot actually be traced to any specific real property, but was instead comingled with other investors' funds and Defendant does not have a security interest that is legally enforceable in this Bankruptcy Case; nor do any other holders of Note Claims.

11. Class 6 Non-Debtor Loan Note Claims were separately classified in the Plan on account of a procedural issue related to the determination of their secured status. The comprehensive settlement embodied in the Plan eliminates all intercompany liens and thereby

vitiates the need to separately litigate whether any particular Class 3 Standard Note Claim is or is not secured. As the Disclosure Statement explains, however, this feature of the Plan does not moot the issue of whether any Class 6 Non-Debtor Loan Note Claim is or is not secured:

The Plan's comprehensive compromise and settlement resolves [the security interest] issue by providing that any Intercompany Claims that could be asserted by one Debtor against another Debtor will be extinguished immediately before the Effective Date with no separate recovery on account of any such Claims and any Intercompany Liens that could be asserted by one Debtor regarding any Estate Assets owned by another Debtor will be deemed released and discharged on the Effective Date. As a result of this elimination of such Intercompany Claims and Intercompany Liens, there is no further need to litigate about whether any given Noteholder has a perfected security interest or not, nor about whether any given Noteholder has any specialized interest in any particular property (a very limited exception to this statement exists for the Noteholders with Non-Debtor Loan Note Claims, which will retain the ability to litigate whether they have enforceable security interests regarding the applicable non-debtor loans, although the Debtors do not believe any of these parties will ultimately prevail in such litigation). [Disclosure Statement at pp. 64–65.]

12. The vast majority of creditors holding Class 6 Non-Debtor Loan Note Claims elected on their Ballots to be reclassified as holders of Class 3 Standard Note Claims, thereby avoiding the need for further litigation. Defendant, however, did not so elect – hence the filing of this adversary proceeding to fully and finally resolve the issue of secured status, as contemplated in the Plan. *See* Plan § 3.7.

13. Finally, Defendant does not have any valid, perfected, enforceable security interest. At most, the Loan Agreement and Promissory Note purport to grant a security interest in one Plaintiff's interest in a third-party loan. Perfection of such a security interest requires either: (i) the filing of a UCC-1 with the Delaware Secretary of State (as that Plaintiff is a Delaware entity), or (ii) possession of the underlying third-party loan documents. Defendant has filed no UCC-1, and does not have possession of the underlying loan documents. As such, Defendant is not properly classified or treated as a secured creditor in this Bankruptcy Case.

**FIRST CLAIM FOR RELIEF**

**Avoidance and Recovery of Actual Intent Fraudulent Transfers (Bankruptcy Code)**

14. Plaintiffs reallege and incorporate herein Paragraphs 1 through 13, as if fully set forth herein.

15. The Transfers constituted transfers of Plaintiffs' property.

16. The Transfers were made by Plaintiffs with actual intent to hinder, delay, or defraud their creditors insofar as such transfers were prepetition distributions of fictitious profits from the Ponzi scheme.

17. The Transfers were made to or for the benefit of Defendant.

18. As a result of the foregoing, Plaintiffs are entitled to judgment pursuant to Bankruptcy Code sections 548(a), 550(a), and 551: (a) avoiding the Transfers free and clear of any claimed interest of Defendant, (b) directing that the Transfers be set aside, and (c) recovering such Transfers or the value thereof from Defendant for the benefit of the estate of Plaintiffs.

**SECOND CLAIM FOR RELIEF**

**Avoidance and Recovery of Constructive Fraudulent Transfers (Bankruptcy Code)**

19. Plaintiffs reallege and incorporate herein Paragraphs 1 through 13, as if fully set forth herein.

20. The Transfers constituted transfers of Plaintiffs' property.

21. The Transfers were made by Plaintiffs for less than reasonably equivalent value at a time when Plaintiffs (i) were insolvent; and/or (ii) were engaged or about to engage in business or a transaction for which any capital remaining with Plaintiffs were an unreasonably small capital; and/or (iii) intended to incur, or believed that Plaintiffs would incur, debts beyond their ability to pay as such debts matured.

22. The Transfers were made to or for the benefit of Defendant.

23. As a result of the foregoing, Plaintiffs are entitled to judgment pursuant to Bankruptcy Code sections 548(a), 550(a), and 551: (a) avoiding the Transfers free and clear of any claimed interest of Defendant, (b) directing that the Transfers be set aside, and (c) recovering such Transfers or the value thereof from Defendant for the benefit of the estate of Plaintiffs.

### **THIRD CLAIM FOR RELIEF**

#### **Avoidance and Recovery of Actual Intent Voidable Transactions (State Law)**

24. Plaintiffs reallege and incorporate herein Paragraphs 1 through 13, as if fully set forth herein.

25. The Transfers constituted transfers of Plaintiffs' property.

26. The Transfers were made by Plaintiffs with actual intent to hinder, delay, or defraud their creditors insofar as such transfers were prepetition distributions of fictitious profits from the Ponzi scheme.

27. The Transfers were made to or for the benefit of Defendant.

28. Each Plaintiff that made one or more of the Transfers has at least one creditor with an allowable unsecured claim for liabilities, which claim remained unsatisfied as of the Petition Date.

29. The Transfers are avoidable under applicable law – California Civil Code section 3439.04(a)(1) and/or comparable provisions of law in other jurisdictions that have adopted the Uniform Voidable Transactions Act, the Uniform Fraudulent Transfer Act, or the Uniform Fraudulent Conveyance Act – by a creditor holding an allowed unsecured claim and thus by Plaintiffs pursuant to Bankruptcy Code section 544(b).



30. As a result of the foregoing, Plaintiffs are entitled to judgment pursuant to Bankruptcy Code sections 544(b), 550(a), and 551: (a) avoiding the Transfers free and clear of any claimed interest of Defendant, (b) directing that the Transfers be set aside, and (c) recovering such Transfers or the value thereof from Defendant for the benefit of the estate of Plaintiffs.

#### **FOURTH CLAIM FOR RELIEF**

##### **Avoidance and Recovery of Constructive Voidable Transactions (State Law)**

31. Plaintiffs reallege and incorporate herein Paragraphs 1 through 13, as if fully set forth herein.

32. The Transfers constituted transfers of Plaintiffs' property.

33. The Transfers were made by Plaintiffs for less than reasonably equivalent value at a time when Plaintiffs (i) were insolvent; and/or (ii) were engaged or was about to engage in business or a transaction for which any capital remaining with Plaintiffs were an unreasonably small capital; and/or (iii) intended to incur, or believed that they would incur, debts beyond their ability to pay as such debts matured.

34. The Transfers were made to or for the benefit of Defendant.

35. At the times of, and/or subsequent to, each of the Transfers, each Plaintiffs that made one or more of the Transfers has at least one creditor with an allowable unsecured claim for liabilities, which claim remained unsatisfied as of the Petition Date.

36. The Transfers are avoidable under applicable law – California Civil Code section 3439.04(a)(2) and/or comparable provisions of law in other jurisdictions that have adopted the Uniform Voidable Transactions Act, the Uniform Fraudulent Transfer Act or the Uniform Fraudulent Conveyance Act – by a creditor holding an allowed unsecured claim and thus by Plaintiffs pursuant to Bankruptcy Code section 544(b).

37. As a result of the foregoing, Plaintiffs are entitled to judgment pursuant to Bankruptcy Code sections 544(b), 550(a), and 551: (a) avoiding the Transfers free and clear of any claimed interest of Defendant, (b) directing that the Transfers be set aside, and (c) recovering such Transfers or the value thereof from Defendant for the benefit of the estate of Plaintiffs.

**FIFTH CLAIM FOR RELIEF**

**Avoidance and Recovery of Preferential Transfers**

38. Plaintiffs reallege and incorporate herein Paragraphs 1 through 13, as if fully set forth herein.

39. The Transfers constituted transfers of Plaintiffs' property.

40. The Transfers were made to or for the benefit of Defendant on account of an antecedent debt and while Plaintiffs were insolvent. The affirmative assertion that Plaintiffs were insolvent at the times of the Transfers is not intended to and does not shift the burden of proof or alter the presumption of insolvency provided by Bankruptcy Code section 547(f).

41. By virtue of the Transfers, Defendant received more than Defendant would have received if the Transfers had not been made and Defendant received a distribution pursuant to a chapter 7 liquidation.

42. As a result of the foregoing, Plaintiffs are entitled to judgment pursuant to Bankruptcy Code sections 547(b), 550(a), and 551: (a) avoiding the Transfers free and clear of any interest of Defendant, (b) directing that the Transfers be set aside, and (c) recovering the Transfers or the value thereof from Defendant for the benefit of the estates of Plaintiffs.

**SIXTH CLAIM FOR RELIEF**

**Objection to Claim (Bankruptcy Code Section 502(d))**

43. Plaintiffs reallege and incorporate herein Paragraphs 1 through 42, as if fully set forth herein.

44. The Claim is not allowable because:

- a. Defendant has received property, including one or more of the Transfers, recoverable under Bankruptcy Code section 550; and/or
- b. Defendant has received a transfer, including one or more of the Transfers, avoidable under Bankruptcy Code section 544, 547, or 548.

45. In either event, the Claim must be disallowed under Bankruptcy Code section 502(d) unless and until Defendant has fully repaid the amount, or turned over any such property, for which he is liable under Bankruptcy Code section 550.

**SEVENTH CLAIM FOR RELIEF**

**Declaratory Judgment Regarding Lack of Valid, Perfected, Enforceable Security Interest**

46. Plaintiffs reallege and incorporate herein Paragraphs 1 through 13, as if fully set forth herein.

47. An actual controversy has arisen and exists between Plaintiffs and Defendant regarding whether Defendant has any valid, perfected, enforceable security interest in any property of the Debtors' estates. Defendant was provided the opportunity to voluntarily consent to being treated the same as all other investors who were defrauded by Shapiro's Ponzi scheme, but he declined that opportunity, thus necessitating this adversary proceeding.

48. The controversy between Plaintiffs and Defendant is real and immediate, not actual or hypothetical, and its resolution will determine Defendant's entitlements under the Plan.

49. This Court has the power and authority to resolve the controversy.

50. Plaintiffs are entitled to a declaration that Defendant has no valid, perfected, enforceable security interest in any property of the Debtors' estates.

### **EIGHTH CLAIM FOR RELIEF**

#### **Avoidance of Any Asserted Security Interests or Other Liens**

51. Plaintiffs reallege and incorporate herein Paragraphs 1 through 13, as if fully set forth herein.

52. Bankruptcy Code section 544(a) grants a bankruptcy trustee (which includes Plaintiffs, *see* 11 U.S.C. § 1107(a)) the power to avoid transfers of property of the debtor, including the granting of a security interest or other lien, that would be avoidable by certain parties outside of bankruptcy. More specifically, section 544(a)(1) vests the trustee with the rights, powers, and avoidance abilities of “a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists.” 11 U.S.C. § 544(a)(1). Section 544(a)(3) separately vests the trustee with the rights, powers, and avoidance abilities of “a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.” *Id.* § 544(a)(3).

53. Whether because of the lack of perfection or otherwise, any security interests or other liens that Defendant could assert with respect to any property of the Debtors or their bankruptcy estates would be avoidable under applicable non-bankruptcy law by either a judicial

lien creditor, or a bona fide purchaser of real property, or both. As such, Plaintiffs can similarly avoid any such security interests or liens in the Bankruptcy Case.

54. Plaintiffs are entitled to a judgment avoiding any asserted security interests or other liens asserted by Defendant pursuant to Bankruptcy Code section 544(a).

**PRAYER FOR RELIEF**

By reason of the foregoing, the Court should enter judgment in favor of Plaintiffs and against Defendant:

- a. On the first, second, third, fourth, and fifth claims for relief, (i) avoiding the Transfers free and clear of any claimed interest of Defendant, (ii) directing that the Transfers be set aside, and (iii) ordering Defendant to pay to Plaintiffs the amount of the Transfers;
- b. On the sixth claim for relief, (i) disallowing the Claim under Bankruptcy Code section 502(d) unless and until Defendant has paid the amount, or turned over any such property, for which he is liable under Bankruptcy Code section 550, and (ii) determining the correct amount of the Outstanding Principal Amounts and Prepetition Distributions associated with the Claim for all purposes under the Plan upon repayment of the amount for which Defendant is liable under Bankruptcy Code section 550;
- c. On the seventh claim for relief, (i) declaring that Defendant has no valid, perfected, enforceable security interest in any property of the Debtors' estates, and (ii) reclassifying Defendant's Class 6 Non-Debtor Loan Note Claim as a Class 3 Standard Note Claim;
- d. On the eighth claim for relief, avoiding any security interests or other liens that Defendant may assert regarding any property of the Debtors' estates; and
- e. On all claims for relief, awarding Plaintiffs prejudgment interest as permitted by law, costs of suit, and such other and further relief as may be necessary or appropriate.

Dated: November 16, 2018  
Wilmington, Delaware

/s/ Michael S. Neiburg  
YOUNG CONAWAY STARGATT & TAYLOR, LLP  
Sean M. Beach (No. 4070)  
Edmon L. Morton (No. 3856)  
Michael S. Neiburg (No. 5275)  
Ian J. Bambrick (No. 5455)  
Rodney Square, 1000 North King Street  
Wilmington, Delaware 19801  
Tel: (302) 571-6600  
Fax: (302) 571-1253

-and-

KLEE, TUCHIN, BOGDANOFF & STERN LLP  
Kenneth N. Klee (*pro hac vice*)  
Michael L. Tuchin (*pro hac vice*)  
David A. Fidler (*pro hac vice*)  
Jonathan M. Weiss (*pro hac vice*)  
1999 Avenue of the Stars, 39th Floor  
Los Angeles, California 90067

*Counsel to Plaintiffs*

Property ID : Belcher Street - Baldwin, NY  
Principal : \$100,000.00  
Int. Rate : 7.00%

## LOAN AGREEMENT

**THIS LOAN AGREEMENT** (this "Agreement") made on this September 7, 2017, by and between **TIMOTHY J. SPAIN**, an individual having an address of 1040 North Gardner Street, Unit 2, West Hollywood, California 90046 (hereinafter referred to as the "Lender") and **WOODBIDGE MORTGAGE INVESTMENT FUND 3A, LLC**, a Delaware limited liability company, having an office at 14225 Ventura Boulevard, Suite 100, Sherman Oaks, California 91423 ("Woodbridge").

### WITNESSETH:

**WHEREAS**, Lender wishes to make a loan (the "Loan") to Woodbridge to fund, in part, a loan to a third-party borrower, as more fully defined below (the "Pledged Loan"); and

**WHEREAS**, Lender advanced to Woodbridge a portion of the funds that, with other funds from Woodbridge, will be used to make the Pledged Loan; and

**WHEREAS**, Lender acknowledges that Woodbridge has executed or intends to execute other notes and loan agreements to fund the Pledged Loan on a pari passu basis with other lenders; and

**WHEREAS**, Woodbridge and Lender have agreed to the foregoing transaction on the terms and conditions and in reliance upon the representations and warranties of Woodbridge and Lender hereinafter set forth:

**NOW, THEREFORE**, in consideration of the foregoing and in further consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Lender has agreed to lend Woodbridge the sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00). The foregoing obligation shall be evidenced by Woodbridge's promissory note to Lender, in the original principal amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00), in the form of Exhibit A hereto and made a part hereof (as the same may be amended or modified from time to time, the "Note"), with appropriate insertion of dates.

The Note shall bear interest at a rate equal to seven and 00/100 percent (7.00%) per annum, subject to such default rates as may be set forth in the Note; provided, however, that the rate of interest charged thereunder shall never exceed the maximum amount, if any, allowable by law. Interest shall be payable as provided in the Note and shall be charged on the daily outstanding principal balance on the basis of the actual days elapsed and on a three hundred sixty (360) day year.

Interest shall be payable as provided in the Note. The entire outstanding principal balance of the Note shall be due and payable in full on January 1, 2019 unless sooner prepaid. Woodbridge may prepay the Note without penalty at any time.

2. **Security Interest**. Woodbridge hereby grants to the Lender a security interest in all of the Woodbridge's present and future right, title and interest in and to any and all of the following (the "Collateral"):

- (a) That certain loan in the principal amount of Two Hundred Twenty-Eight Thousand and 00/100 Dollars (\$228,000.00) (the "Pledged Loan") extended or to be extended to 2708 Belcher, LLC (the "Borrower") secured by a first priority lien on the real property located at 2708 Belcher Street, Baldwin, New York 11510 (the "Premises");
- (b) The promissory note evidencing the Pledged Loan (the "Underlying Note");
- (c) The mortgage or deed of trust securing the Pledged Loan with an interest in the Premises (the

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Principal : \$100,000.00  
Int. Rate : 7.00%

“Underlying Mortgage”); and

- (d) Title insurance policies and such other instruments or documentation as may be executed and delivered to Woodbridge in conjunction with the Pledged Loan (said Underlying Note, Underlying Mortgage and other associated loan documents collectively hereafter referred to as the “Loan Documents”).
- (e) Upon the consummation of the Pledged Loan, Woodbridge will execute and deliver to Lender collateral assignment documents substantially in the form attached hereto as Exhibits B and C.
- (f) Lender acknowledges that they are only providing the financing for a portion of the Pledged Loan and, therefore, Woodbridge retains the right to execute other notes, loan agreements, assignments, and collateral assignments in favor of other lenders as may be necessary to fund the Pledged Loan secured by the Collateral on a pari passu basis with such other lenders. Lender further agrees that it, and any such other lenders, shall execute an Intercreditor Agreement substantially in the form attached hereto as Exhibit D in order to confirm that their interests in the Collateral are of equal priority.

### **3. Representations and Warranties.**

(a) Woodbridge represents and warrants to Lender that Woodbridge has or will have good and marketable title to the Pledged Loan and the Collateral free from any adverse liens, security interests or encumbrances on record as of the date of the Pledged Loan.

(b) The execution and delivery of the Note, this Agreement, and every other agreement, instrument or document executed and delivered to Lender by Woodbridge pursuant to the terms hereof, are valid, legal and binding upon it and enforceable in accordance with their respective terms.

(c) All information furnished or to be furnished by Woodbridge pursuant to the terms hereof will not, at the time the same is furnished, contain any untrue statement of a material fact and will not omit to state a material fact necessary to make the information so furnished, in the light of the circumstances under which such information is furnished, not misleading.

(d) Lender represents and warrants to Woodbridge that: (i) the Loan Documents and the Pledged Loan they evidence constitute a commercial loan transaction and are not for investment purposes; and (ii) Lender has reviewed the Loan Documents and the associated other information on the Borrower of the Pledged Loan, and has had the opportunity to review said documents and information with its own legal counsel, and has had sufficient access to all of said documents and information to allow it to make its own credit decision with respect to the Pledged Loan, and has, in fact, made its own credit decision in making the Loan.

### **4. General Provisions.**

(a) This Agreement is an integrated document and all terms and provisions are embodied herein and shall not be varied by parol;

(b) This Agreement is made, executed and delivered in the State of Delaware and it is the specific desire and intention of the parties that it shall in all respects be construed under the laws of the State of Delaware;

(c) The captions for the paragraphs contained in this Agreement have been inserted for convenience only and form no part of this Agreement and shall not be deemed to affect the meaning or construction of any of the covenants, agreements, conditions or terms hereof;



Property ID : Belcher Street - Baldwin, NY  
Principal : \$100,000.00  
Int. Rate : 7.00%

(d) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Lender shall not assign, voluntarily, by operation of law or otherwise, any of its rights hereunder without the prior written consent of Woodbridge and any such attempted assignment without such consent shall be null and void;

(e) No delay or failure of Lender in exercising any right, power or privilege hereunder shall affect such right, power or privilege, nor shall any single or partial exercise preclude any further exercise thereof or the exercise of any other rights, powers or privileges; and

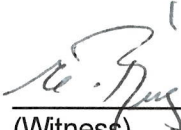
(f) This Agreement, the security interest hereby granted to Lender by Woodbridge and every representation, warranty, covenant, promise and other then herein contained shall survive until the Note has been paid in full.

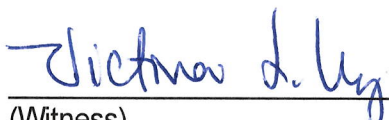
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Property ID : Belcher Street - Baldwin, NY  
Principal : \$100,000.00  
Int. Rate : 7.00%


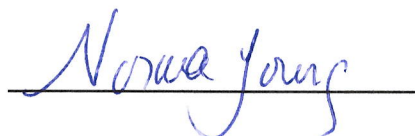
**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals, the day and year first above written.

Signed, Sealed, and Delivered  
in the Presence of:

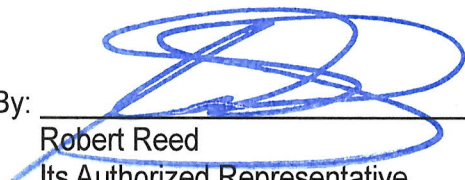
  
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(Witness)

  
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(Witness)

  
\_\_\_\_\_  
TIMOTHY J. SPAIN

  
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\_\_\_\_\_

**WOODBIDGE MORTGAGE  
INVESTMENT FUND 3A, LLC**

By:   
\_\_\_\_\_  
Robert Reed  
Its Authorized Representative

Property ID : Belcher Street - Baldwin, NY  
Principal : \$100,000.00  
Int. Rate : 7.00%

**PROMISSORY NOTE**

\$100,000.00

September 7, 2017  
Sherman Oaks, California

**FOR VALUE RECEIVED**, the undersigned, **WOODBIDGE MORTGAGE INVESTMENT FUND 3A, LLC**, a Delaware limited liability company having an office and a mailing address at 14225 Ventura Boulevard, Suite 100, Sherman Oaks, California 91423 (hereinafter referred to as the "**Borrower**") does hereby promise to pay to the order of **TIMOTHY J. SPAIN**, an individual having an address of 1040 North Gardner Street, Unit 2, West Hollywood, California 90046 (hereinafter referred to as "**Lender**"), at such place as the Lender may designate by written notice to Borrower, the principal sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00), together with interest on all unpaid balances beginning as of the date hereof, at the fixed rate per annum as set forth in Section 1 hereof.

1. **Interest Rate.** The unpaid balance of the principal sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00) shall bear interest from the date hereof through October 1, 2018, at a fixed rate of interest equal to seven and 00/100 percent (7.00%) per annum. After October 1, 2018, the unpaid balance of this Note shall bear interest at a fixed rate equal to nine and 00/100 percent (9.00%) per annum. The rate of interest charged hereunder shall never exceed the maximum amount, if any, allowable by law. Interest shall be charged on the principal balance from time to time outstanding on the basis of the actual number of days elapsed computed on the basis of a 360 day year.

2. **Default Interest Rate.** During the continuance of any Event of Default (as more particularly defined in Paragraph 6 below) under this Note by acceleration or otherwise, interest shall accrue from and after such Event of Default at four (4) percentage points above the interest rate then in effect hereunder (the "**Default Interest Rate**").

3. **Repayment.** Borrower promises to pay the interest and principal on this Note, as set forth below:

Monthly payments of interest shall be made commencing on October 1, 2017 and continuing on the same day of each and every month to occur thereafter, both before and after maturity by acceleration or otherwise.

The entire principal balance plus accrued and unpaid interest thereon, and all other sums and charges due to the Lender hereunder, unless sooner paid, shall be due and payable on January 1, 2019 (the "**Maturity Date**"). Upon and after the eighth (8<sup>th</sup>) day following Borrower's receipt of written notice from Lender of Borrower's failure to pay the entire principal balance plus accrued and unpaid interest on the Maturity Date as required, any outstanding amounts due under this Note shall bear interest at a fixed rate of twenty-four and 00/100 percent (24.00%) per annum.

4. **Application of Payments.** All payments pursuant to this Note shall be made in legal tender of the United States of America and shall be applied first to the payment of delinquency or late charges, if any; second, to the payment of accrued and unpaid interest on this Note; and third, the balance on account of the principal of this Note.

5. **Cure Period and Notice of Default.** Failure of Borrower to pay by its due date any installment of the principal or of interest within thirty (30) days from the date the same becomes due and payable, shall constitute a "**Payment Default**" under this Note. Borrower shall have a cure period of not less

Property ID : Belcher Street - Baldwin, NY  
Principal : \$100,000.00  
Int. Rate : 7.00%

than thirty (30) days after receipt of written notice ("Notice of Default") of any alleged breach or Payment Default under the terms of this Note to cure the same.

6. **Event of Default.** Any alleged breach or Payment Default under this Note that is not fully cured following the expiration of the applicable cure period specified in a given Notice of Default shall constitute an event of default ("Event of Default") under this Note.

7. **Waiver of Rights.**

a. BORROWER HEREBY WAIVES TRIAL BY JURY IN ANY COURT AND IN ANY SUIT ACTION OR PROCEEDING OR ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE FINANCING TRANSACTIONS OF WHICH THIS NOTE OR THE COLLATERAL ASSIGNMENT DOCUMENTS (AS DEFINED BELOW) ARE A PART AND/OR THE ENFORCEMENT OF ANY OF LENDER'S RIGHTS AND REMEDIES. BORROWER ACKNOWLEDGES THAT IT MAKES THIS WAIVER KNOWINGLY, VOLUNTARILY AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER.

b. Borrower hereby waives diligence, demand, presentment for payment, protest and notice of protest, and notice of any renewals or extensions of this Note, and agrees that the time for payment of this Note may be changed and extended at Lender's sole discretion, without impairing its liability thereon, and further consents to the release of any party liable for this obligation, or the release of all or any part of the collateral given as security for the payment of this Note, without affecting its liability with respect hereto.

8. **Lender's Rights.** Lender's rights hereunder shall be cumulative and not exclusive and may be exercised at the sole discretion of Lender with respect to priority, order and type of collateral or security realized upon or applied toward the indebtedness evidenced hereby until this Note and all accrued and unpaid interest and other sums and charges due hereunder shall have been paid in full. Further, no failure on the part of Lender to exercise any right or remedy hereunder, whether before or after the occurrence of an Event of Default hereunder, shall constitute a waiver thereof, and no waiver of any past default shall constitute waiver of any future default or of any other default.

9. **Prepayment.** The Borrower shall have the right to prepay this Note in whole or in part at any time without penalty.

10. **Binding Effect.** This Note shall bind the successors and assigns of Borrower and shall inure to the benefit of the Lender, its successors and assigns.

11. **Captions and Section Headings.** The captions and section headings used in this Note are for convenience only and shall not be used to interpret, modify or affect in any way the covenants and agreements herein contained.

12. **Severability.** In the event that any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part, or in any respect, or in the event that any one or more of the provisions of this Note shall operate or would prospectively operate, to invalidate this Note, then the remaining provisions of this Note shall remain operative and in full force and effect, shall be valid, legal and enforceable and shall in no way be affected, prejudiced or disturbed thereby.

Property ID : Belcher Street - Baldwin, NY  
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13. **Governing Law.** This Note shall be governed by and construed in accordance with the laws of the State of Delaware.

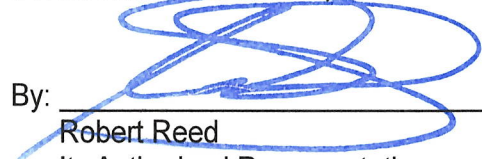
14. **No Assignment.** Neither this Note, the Loan Agreement of even date herewith between Borrower and Lender, nor all other instruments executed or to be executed in connection therewith (collectively, the "Collateral Assignment Documents") are assignable by Lender without the Borrower's written consent and any such attempted assignment without such consent shall be null and void.

15. **Commercial Transaction.** Lender and Borrower each acknowledge and stipulate that the Loan is a commercial transaction.

16. **Security.** This Note will be secured inter alia by the Collateral Assignment Documents upon execution thereof.

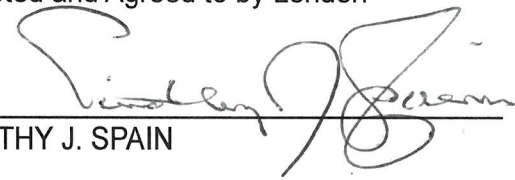
**WOODBRIIDGE MORTGAGE  
INVESTMENT FUND 3A, LLC**

By: \_\_\_\_\_



Robert Reed  
Its Authorized Representative

Accepted and Agreed to by Lender:



\_\_\_\_\_  
TIMOTHY J. SPAIN

Exhibit C  
Distributions to Timothy J. Spain

<u>Date</u>	<u>Transferor</u>	<u>Transferee</u>	<u>Memo</u>	<u>Amount</u>
11/06/17	Woodbridge Mortgage Investment Fund 3a, LLC	TIMOTHY J SPAIN	MTG3a SR BELCHER ST, NY - INT OCT	583.33
10/04/17	Woodbridge Mortgage Investment Fund 3a, LLC	TIMOTHY J SPAIN	MTG3a SR BELCHER ST, NY - INT SEP 19 DAYS	369.44
			TOTAL TRANSFERS	<u>\$952.77</u>