

COMMONWEALTH OF KENTUCKY
FAYETTE COUNTY
CIVIL BRANCH
qm DIVISION

FILED AND ENTERED
ATTEST. WILMA F. LYNCH, CLERK
NOV 23 2009
FAYETTE CIRCUIT CLERK
BY Sharon DEPUTY

PNC BANK, NATIONAL ASSOCIATION
(SUCCESSOR TO NATIONAL CITY BANK)

VS.

CASE NO. 09-CI-6286

DEVIL ELEVEN STABLES, INC.;
ROBERT M. HURLEY;
LESLIE HURLEY;
DEVIL ELEVEN FARMS, LLC; AND
WALMAC STUD MANAGEMENT – FLORIDA, LLC

DEFENDANTS

COMPLAINT

The plaintiff, PNC Bank, National Association (Successor to National City Bank) (“PNC”), for its Complaint against the herein defendants states:

1. The defendant, Devil Eleven Stables, Inc. (“Devil Eleven Stables”) is incorporated under the laws of Florida, whose agent as registered with the Florida Department of State is CT Corporation System, 1200 South Pine Island Road, Plantation, Florida, 33324, with a principal office located at 1410 Shoreline Way, Hollywood, Florida, 33019. This Court may exercise personal jurisdiction over Devil Eleven Stables pursuant to KRS 454.210(2)(a) in that PNC’s Complaint against Devil Eleven Stables arises from it transacting business in the Commonwealth of Kentucky.

2. The defendant, Robert M. Hurley (“Mr. Hurley”) is a resident of the state of Florida whose last address known to PNC is 1410 Shoreline Way, Hollywood, Florida 33019. This Court may exercise personal jurisdiction over Mr. Hurley pursuant to KRS 454.210(2)(a) in

that PNC's Complaint against Mr. Hurley arises from his **transacting** business in the Commonwealth of Kentucky.

3. The defendant, Leslie Hurley ("Mrs. Hurley") is a **resident** of the state of Florida whose last address known to PNC is 1410 Shoreline Way, **Hollywood**, Florida 33019. This Court may exercise personal jurisdiction over Mrs. Hurley pursuant **to** KRS 454.210(2)(a) in that PNC's Complaint against Mrs. Hurley arises from her **transacting** business in the Commonwealth of Kentucky.

4. The defendant, Devil Eleven Farms, Inc. ("Devil **Eleven** Farms") is incorporated under the laws of Florida, whose agent as registered with the **Florida** Department of State is Robert M. Hurley, with a principal office located at 1410 Shoreline Way, Hollywood, Florida, 33019. This Court may exercise personal jurisdiction over Devil **Eleven** Farms pursuant to KRS 454.210(2)(a) in that PNC's Complaint against Devil **Eleven** Farms arises from it transacting business in the Commonwealth of Kentucky.

COUNT I

5. On October 30, 2008, Devil Eleven Stables, **and** Mr. and Mrs. Hurley (collectively referred to as the "Borrowers") executed a revolving **commercial** time note (the "Note") whereby they promised to pay to PNC the sum of \$1,000,000.00, plus interest at the variable rate as defined in said Note, payable in monthly **installments** of principal and accrued interest as defined in the Note beginning on November 30, 2008 **and** ending with one final installment of all unpaid principal and accrued interest due under **said** Note on August 30, 2009 (the "maturity date"). Pursuant to the Note, the Borrowers were **also** required to make one principal payment in the amount of \$250,000.00 due May 31, 2009. The Note is a renewal of a

commercial time note executed on August 30, 2007 in the amount of \$1,000,000.00 (the "August 2007 Note"). A copy of the Note is attached hereto as Exhibit "A".

6. On August 30, 2007, Devil Eleven Farms executed a guaranty agreement whereby it guaranteed the absolute and unconditional payment in full of all amounts owed by the Borrowers to PNC pursuant to the Note, the August 30, 2007 Note, and any and all renewals or extensions thereof ("Devil Eleven Farms Guaranty"). A copy of the Devil Eleven Farms Guaranty agreement is attached hereto as Exhibit "B".

7. A default occurred pursuant to the provisions of the Note as a result of the failure of the Borrowers to make the April 30, 2009 payment and all payments thereafter.

8. The Note contains an acceleration clause, which provides that upon default in payment thereunder PNC may declare the full balance owed to be immediately due and payable.

9. A default has occurred pursuant to the provisions of the Note and PNC has declared the full balance due under the Note to be immediately due and payable.

10. The Note contains a provision which provides that if the note is in default, the interest rate otherwise in effect shall be increased by 2% per annum.

11. Pursuant to Note and the Devil Eleven Farms Guaranty, the Borrowers and Devil Eleven Farms are indebted to PNC, jointly and severally, in the amount of \$946,961.58, plus interest on the principal portion thereof (\$922,678.93) at the default rate as defined in the Note from November 5, 2009 until paid, plus any additional applicable late charges. The regular variable rate is currently 3.25% per annum. Therefore, the default rate is 5.25% per annum (or \$123.56 per day).

12. The Note and the Devil Eleven Farms Guaranty provide that PNC shall be entitled to recover its attorney's fees and costs incurred in the enforcement of same, and said amounts are secured by the liens in favor of PNC.

COUNT II

13. On August 30, 2007, the Borrowers executed a Loan and Security Agreement ("Security Agreement") whereby they granted to PNC a security interest in all of its then-owned or thereafter-acquired shares and fractional interests in that certain 1998 Thoroughbred Stallion, SONGANDAPRAYER, by UNBRIDLED'S SONG out of ALIZEA (the "Stallion Shares"), which extends to (a) all additions and replacements to the foregoing and all products and progeny of additions and replacements to the foregoing; (b) all of the Borrowers Accounts, Chattel Paper, General Intangibles, Goods, rights to payment and monies due or to become due, racing income, breeders awards, and other income, all of the foregoing arising out of or in any way related to the foregoing, and all proceeds arising out of or in any way related to the foregoing or the sale of the foregoing or the progeny and products, offspring and young, born and unborn thereof; (c) all undivided fractional interest in any Thoroughbred stallion(s), which undivided fractional interests are represented and evidenced by Syndication Agreement(s) and Syndication Certificates, and all rights under breeding agreements creating or confirming the right to breed or nominate mares to any Thoroughbred stallions ("Breeding Rights Agreements"), all stallion seasons, nominations to breed and privileges to breed to Thoroughbred stallions, relating to the foregoing, and all Accounts, Chattel Paper, General Intangibles, Goods, rights to payment, and monies due or to become due, arising out of or in any way related to the Syndication Agreement(s), Syndication Certificates, Breeding Rights Agreements or Seasons, or the sale of the foregoing, whether then owned or thereafter acquired; (d) Borrowers' interests in

all policies of insurance maintained on the foregoing and all rights to the proceeds thereof and refunds thereunder; (e) all of Borrowers' interest in or to any cash, deposits, certificates of deposit, instruments or other property owned by Borrower which were then or thereafter in the possession of, on deposit with, or under the control of PNC; and (f) all Records relating to any of the foregoing, including any Equipment or Software required to retrieve said Records in perceivable form.

14. All of the property described in the preceding paragraph is referred to hereinafter collectively as the "equine collateral".

15. The above-referenced Security Agreement secures payment of the Note referred to in Count I as well as any renewals thereof, plus any and all other indebtedness of Borrowers then in existence or thereafter arising owed by the Borrowers to PNC. A copy of the Security Agreement is attached hereto as Exhibit "C".

16. The Security Agreement provides that upon any default under any obligation secured thereby, PNC will be entitled to possession of the equine collateral.

17. As a result of the default under the provisions of the Note referred to in Count I PNC is entitled to the immediate possession and control of the equine collateral; PNC is entitled to collect all accounts receivable owed to Borrowers with respect to any of the equine collateral; PNC is entitled to notify all account debtors obligated to Borrowers with respect to any of the equine collateral that payments should be sent directly to PNC; and all account debtors obligated to PNC with respect to any of the equine collateral should be ordered to make payments directly to PNC.

18. Because of the Borrowers' default under the terms of its Note to PNC, PNC is now immediately entitled to the possession, custody, control, and title to the Stallion Shares and

additionally entitled to dispose of the Stallion Shares, pursuant to Article 9 of the Uniform Commercial Code, as adopted in Kentucky, and to receive the proceeds therefrom for application to sums due PNC from the Borrowers under the terms of the Note.

19. The defendant, Walmac Stud Management – Florida, LLC (the “Syndicate Manager”), is named as a party to this action only to the extent that it holds the books, certificates, and records of the Stallion Shares; and, if it claims a lien against one or all of the Stallion Shares owned by Borrowers, then the Syndicate Manager should appear herein and assert any interest in, claim to or liens it may have in or against the Stallion Shares or against the above-referenced equine collateral, or be forever barred from asserting any such claim.

WHEREFORE, the plaintiff, PNC Bank, National Association, demands as follows:

1. That it be awarded a judgment against Devil Eleven Stables, Inc., Robert M. Hurley, Leslie Hurley and Devil Eleven Farms, Inc., jointly and severally, in the amount of \$946,961.58, plus interest on the principal portion thereof (\$922,678.93) at the applicable default rate (currently 5.25% per annum) from November 5, 2009 until paid, plus any additional applicable late charges.

2. That it be awarded a judgment against Devil Eleven Stables, Inc., Robert M. Hurley, Leslie Hurley and Devil Eleven Farms, Inc., jointly and severally, for all of the attorney’s fees and costs incurred in its efforts to enforce the Note, the Devil Eleven Farms Guaranty, and Security Agreement referred to hereinabove.

3. That Devil Eleven Stables, Inc., Robert M. Hurley and Leslie Hurley be ordered to immediately surrender possession of the equine collateral and Stallion Shares to PNC, under penalty of contempt for their failure to do so.

4. That it be awarded the immediate possession, control, and title to the equine collateral and the Stallion Shares, together with all books, certificates and records.

5. That in the event that the Stallion Shares are recovered and disposed of by PNC, that it have judgment against Devil Eleven Stables, Inc., Robert M. Hurley, Leslie Hurley and Devil Eleven Farms, Inc. for any deficiency balance due to PNC following deduction from the sums due under the Note, the proceeds of disposition of the Stallion Shares, less all expenses of such disposition.

6. That PNC be awarded the right to collect all accounts receivable owed to Devil Eleven Stables, Inc., Robert M. Hurley and Leslie Hurley with respect to the Stallion Shares or any of the equine collateral; that PNC be awarded the right to notify all account debtors obligated to Devil Eleven Stables, Inc., Robert M. Hurley and Leslie Hurley with respect to the Stallion Shares or any of the equine collateral that payments should be sent directly to PNC; and that all account debtors obligated to Devil Eleven Stables, Inc., Robert M. Hurley and Leslie Hurley with respect to any of the equine collateral be directed to make their payments directly to PNC.

7. That any sheriff or constable in the Commonwealth of Kentucky be ordered to seize possession of the Stallion Shares and equine collateral wherever it may be located and to surrender same to PNC.

8. That it be awarded any other relief to which it may be properly entitled.

MORGAN & POTTINGER, P.S.C.



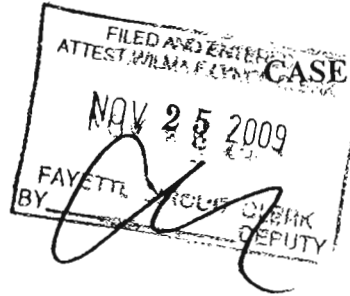
EMILY H. COWLES
133 West Short Street
Lexington, Kentucky 40507
T: (859) 253-1900
F: (859) 255-2038
ATTORNEY FOR PLAINTIFF

COMMONWEALTH OF KENTUCKY
FAYETTE COUNTY
CIVIL BRANCH
9th DIVISION

PNC BANK, NATIONAL ASSOCIATION
(SUCCESSOR TO NATIONAL CITY BANK)

PLAINTIFF

VS.



CASE NO. 09-CI-6286

DEVIL ELEVEN STABLES, INC.;
ROBERT M. HURLEY;
LESLIE HURLEY;
DEVIL ELEVEN FARMS, LLC; AND
WALMAC STUD MANAGEMENT – FLORIDA, LLC

DEFENDANTS

NOTICE AND DEMAND

PURSUANT TO KRS 425.012, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

1. A lawsuit has been filed against Devil Eleven Stables, Inc., Robert M. Hurley, and Leslie Hurley in which the Plaintiff, PNC Bank, National Association (Successor to National City Bank) (“PNC”) has moved the Court to enter a Writ of Possession which would direct the Sheriff or other Constable of Fayette County to seize the stallion shares or fractional interests in that certain 1998 Thoroughbred Stallion, SONGANDAPRAYER by UNBRIDLED’S SONG out of ALIZEA, together with any books, certificates and records related to said shares.
2. You have seven (7) days from the date of the service of this Notice and Demand to petition the Fayette Circuit Court for a hearing or in which to pay the amount claimed in the Complaint in full. Unless a hearing is set or the demand paid, a Writ of Possession will be issued.
3. The lawsuit has been filed in the Fayette Circuit Court. The Division and Case Number appear at the top of this Notice and Demand.
4. The grounds for PNC’s lawsuit and Motion for Writ of Possession are your default under the terms of your Promissory Note and Security Agreement with PNC. The date of the demand being made upon you is November 25, 2009.
5. The amount claimed due by the Plaintiff is the total amount of \$946,961.58, including principal in the amount of \$922,678.93, accrued and unpaid interest in the amount of \$23,656.46, late charges in the amount of \$626.19, and additional interest on the

principal sum at the rate of \$123.56 per day (or 5.25% per annum) from November 5, 2009, until paid. You may also owe additional collection expenses including legal fees and court costs which the undersigned counsel will inform you of upon your request.

6. The Plaintiff is PNC Bank, National Association, incorporated in Delaware, with its principal office located at 500 First Avenue, Pittsburgh, PA 15219, and a local office located at 301 East Main Street, Lexington, KY 40507.
7. Together with this Notice and Demand the following papers are being served upon you: Summons, Complaint and Exhibits, and Verified Motion for Writ of Possession and Exhibits.
8. The name and address of the attorney for the Plaintiff is Emily H. Cowles, Morgan & Pottinger, P.S.C., 133 West Short Street, Lexington, Kentucky 40507.

Respectfully submitted,

MORGAN & POTTINGER, P.S.C.



EMILY H. COWLES
133 West Short Street
Lexington, Kentucky 40507
Telephone: (859) 253-1900
Facsimile: (859) 255-2038
ATTORNEY FOR PNC BANK,
NATIONAL ASSOCIATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice and Demand (along with copies of the Complaint, Summons and Verified Motion for Writ of Possession) were served by certified mail, return receipt requested to the following Borrowers on this the 25th day of November, 2009:

Devil Eleven Stables, Inc.
Principal Office
1410 Shoreline Way
Hollywood, Florida, 33019

Robert M. Hurley
1410 Shoreline Way
Hollywood, Florida, 33019

Leslie Hurley
1410 Shoreline Way
Hollywood, Florida, 33019



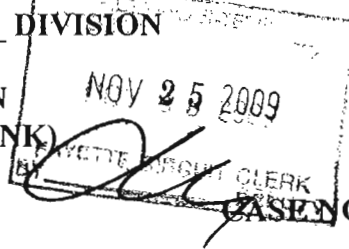
EMILY H. COWLES

COMMONWEALTH OF KENTUCKY
FAYETTE COUNTY
CIVIL BRANCH
9th DIVISION

PNC BANK, NATIONAL ASSOCIATION
(SUCCESSOR TO NATIONAL CITY BANK)

PLAINTIFF

VS.



CASE NO. 09-CI-6286

DEVIL ELEVEN STABLES, INC.;
ROBERT M. HURLEY;
LESLIE HURLEY;
DEVIL ELEVEN FARMS, LLC;
WALMAC STUD MANAGEMENT – FLORIDA, LLC

DEFENDANTS

VERIFIED MOTION FOR WRIT OF POSSESSION

Comes the Affiant, Guy Spalding, first being duly sworn, and states that he is a Vice President of PNC Bank, National Association (Successor to National City Bank) (“PNC”), that he has been specifically authorized to give this affidavit on behalf of PNC, and that he has personal knowledge of and has reviewed PNC’s records relating to the account of the Defendants, Devil Eleven Stables, Inc., Robert M. Hurley and Leslie Hurley (collectively referred to as the “Borrowers”), and that he gives this affidavit in support of Plaintiff’s Motion for a Writ of Possession.

1. The Borrowers are in default under the terms of its Commercial Time Note with PNC, a copy of which is attached hereto as Exhibit “A.” The Borrowers’ debt to Plaintiff is secured by a Security Agreement, a copy of which is attached hereto as Exhibit “B.” PNC is entitled to the immediate possession, custody, control, title, and ownership of the stallion shares or fractional interests to that certain 1998 Thoroughbred Stallion, SONGANDAPRAYER, by

A handwritten signature in black ink, appearing to be 'G. Spalding', located in the bottom right corner of the page.

UNBRIDLE'S SONG out of ALIZEA, together with all books, certificates and records (the "Stallion Shares"), described in the Security Agreement.

2. The Stallion Shares sought by PNC are wrongfully detained by the Borrowers in that the terms of the Security Agreement provide that upon the Borrowers' default, PNC is immediately entitled to take possession of the Stallion Shares that is collateral for Borrowers' debts to PNC.

3. The Borrowers obtained possession of the Stallion Shares that are collateral for its debts to PNC through PNC's extension of credit to the Borrowers and payment by PNC to the seller of the Stallion Shares to Borrowers. The Borrowers, at all times, have held title and possession of the Stallion Shares subject to the security interest granted by Borrowers to PNC. The Borrowers continue to hold possession of and exercise rights in the Stallion Shares, Plaintiff's collateral, in that Borrowers have the beneficial use and enjoyment of the Stallion Shares.


4. The Stallion Shares for which PNC seeks a Writ of Possession are shares/fractional interest numbers 1-12 in that certain 1998 Thoroughbred Stallion, SONGANDAPRAYER, by UNBRIDLE'S SONG out of ALIZEA, together with all books, certificates and records (collectively, "the Stallion Shares"). The total value of the Stallion Shares, according to PNC's best knowledge, information, and belief, and based on standard industry references is approximately \$1,000,000.00.

5. The Borrowers have reported to PNC that the Stallion Shares are in the custody and control of Walmac Stud Management – Florida, LLC, the syndicate manager of the shares/fractional interests, located at Walmac Farm, LLC, 3395 Paris Pike, Lexington, Kentucky

40511 ("Walmac Farm"). Walmac Farm is a private place and may have to be entered by the Sheriff of Fayette County to levy the Writ of Possession for which PNC herewith moves.

6. To the best of PNC's and Affiant's knowledge, the Stallion Shares sought by PNC have not been taken for a tax assessment, or fine, pursuant to a statute; or seized under an execution against property of the Borrowers, or if so seized it is exempt by statute from such seizure.

WHEREFORE, PNC Bank, National Association, and Affiant, by and through PNC's counsel, move the Court, pursuant to KRS 425.011, to issue a Writ of Possession to be levied upon the Stallion Shares.

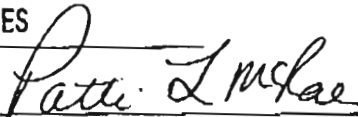


GUY C. SPALDING, AFFIANT
VICE PRESIDENT
PNC BANK, NATIONAL ASSOCIATION

STATE OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

I, the undersigned, a notary within and for the State and County aforesaid, do hereby certify that the foregoing Affidavit was this 23rd day of November, 2009, produced and acknowledged before me in said State and County by Guy C. Spalding, a Vice President of PNC Bank, National Association, a Delaware corporation, on behalf of the corporation


My Commission Expires: MY COMMISSION EXPIRES
 NOVEMBER 16, 2012



Notary Public

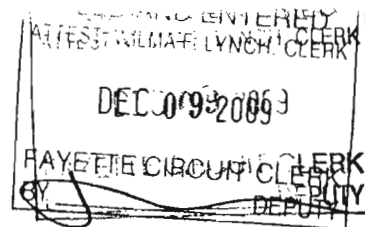


TENDERED BY:

MORGAN & POTTINGER, P.S.C.


EMILY H. COWLES
133 West Short Street
Lexington, Kentucky 40507
T: 859-253-1900
F: 859-255-2036
ATTORNEY FOR PNC BANK, NATIONAL ASSOCIATION
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COMMONWEALTH OF KENTUCKY
FAYETTE COUNTY
CIVIL BRANCH
9th DIVISION



PNC BANK, NATIONAL ASSOCIATION
(SUCCESSOR TO NATIONAL CITY BANK)

PLAINTIFF

VS.

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DEVIL ELEVEN STABLES, INC.;
ROBERT M. HURLEY;
LESLIE HURLEY;
DEVIL ELEVEN FARMS, LLC;
WALMAC STUD MANAGEMENT - FLORIDA, LLC

DEFENDANTS

BOND ON WRIT OF POSSESSION

*** **

We undertake that the Plaintiff, if it should fail to recover judgment in this action, shall return the property to the Defendants, Devil Eleven Stables, Inc., Robert M. Hurley and Leslie Hurley, if return thereof be ordered, and shall pay all costs that may be awarded to said Defendants and all damages sustained by said Defendants which are proximately caused by the levy of the Writ of Possession, and the loss of possession of the property pursuant to levy of the Writ of Possession or in compliance with an Order issued under KRS 425.036 not exceeding the sum of \$2,000,000.00.

WITNESS my hand this 23 day of November, 2009.

PNC BANK, NATIONAL ASSOCIATION



GUY C. SPALDING, AFFIANT
VICE PRESIDENT

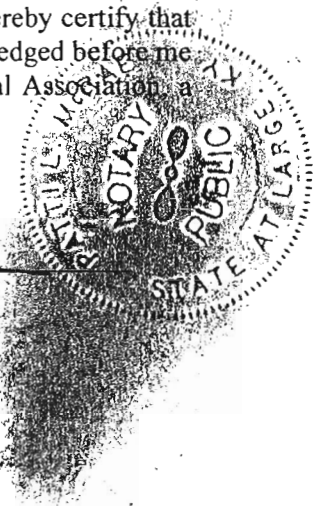
NO SURETY REQUIRED PURSUANT TO KRS 425.001

STATE OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

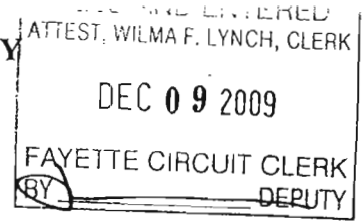
I, the undersigned, a notary within and for the State and County aforesaid, do hereby certify that the foregoing Affidavit was this 23rd day of November, 2009, produced and acknowledged before me in said State and County by Guy C. Spalding, a Vice President of PNC Bank, National Association, a Delaware corporation, on behalf of the corporation

My Commission Expires: MY COMMISSION EXPIRES
NOVEMBER 16, 2012

Patti L. McVee
Notary Public



COMMONWEALTH OF KENTUCKY
FAYETTE COUNTY
CIVIL BRANCH
9th DIVISION



PNC BANK, NATIONAL ASSOCIATION
(SUCCESSOR TO NATIONAL CITY BANK)

PLAINTIFF

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DEVIL ELEVEN FARMS, LLC; AND
WALMAC STUD MANAGEMENT – FLORIDA, LLC

DEFENDANTS

WRIT OF POSSESSION
AND ORDER TRANSFERRING POSSESSION

*** **

The COMMONWEALTH OF KENTUCKY to the Sheriff of Fayette County,

Greetings:

You are hereby ORDERED to seize from the possession of the Defendants, Devil Eleven Stables, Inc., Robert M. Hurley and Leslie Hurley, the following described property:

All Stallion Shares to that certain 1998 Thoroughbred Stallion, SONGANDAPRAYER by UNBRIDLED'S SONG out of ALIZEA, together with any accounts, disbursements, cash, books, certificates and records related to said shares (collectively, the "Stallion Shares").

You are further ORDERED to direct, Defendant, Walmac Stud Management – Florida, LLC or its successors or assigns, to note the transfer of the Stallion Shares in said books, certificates and records, and note that all rights and privileges granted to Devil Eleven Stables, Inc., Robert M. Hurley and Leslie Hurley under the SONGANDAPRAYER Syndicate Agreement is hereby transferred to "PNC Bank, National Association, Secured Creditor," which shall include the right to dispose of the Stallion Shares as a secured creditor of Devil Eleven Stables, Inc., Robert M. Hurley and Leslie Hurley pursuant to the Uniform Commercial Code as adopted by Kentucky.

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You may enter upon the following private place to take possession of the property or any of it:

**Walmac Farm, LLC
3395 Paris Pike
Lexington, Kentucky 40511**

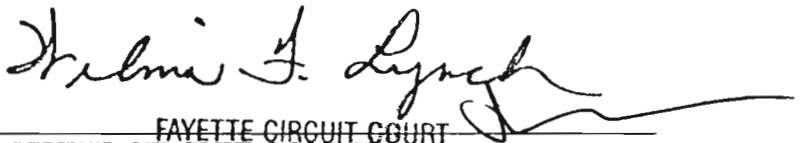
You are directed to levy on the property pursuant to KRS 425.091 if it is found and to retain it in your custody until released or sold pursuant to KRS 425.101. Should you, pursuant to KRS 425.101(3), determine that it is either impractical or impossible for you to retain possession of the property upon which this Writ of Possession is levied, you may place the property in the hands of the Plaintiff, who shall retain the property subject to the requirements of KRS 425.101(3)(a).

NOTICE TO DEFENDANTS

You have the right to obtain re-delivery of the property being seized by filing a Bond with one or more sufficient sureties as prescribed by KRS 425.116.

You further have the right to seek an order from the Court, pursuant to KRS 425.081, to quash the Writ of Possession and seek a release of the property seized.

Dated this ~~DEC~~ 9 day of December, 2009.



FAYETTE CIRCUIT COURT
FAYETTE CIRCUIT COURT

