

Commission's Complaint and Motion for Ex Parte Statutory Restraining Order, Order for Temporary Receiver, and Order to Show Cause re Preliminary Injunction [Docket #2], the Court entered a Statutory Restraining Order ("Order") [Docket #4] on September 18, 2012 and appointed Guy M. Hohmann to serve as the Receiver for the assets of Defendants Senen Pousa, ProphetMax, and Joel Friant (collectively, "Defendants"), including the assets of Defendants' respective affiliates and subsidiaries (the "ProphetMax Receivership Estate" or "Estate"). *See* Order ¶ 19. Under the Order, the Receiver was given broad powers and duties to assume responsibility for the Estate.¹

FACTUAL BACKGROUND

2. As a result of the Court's Order, the Receiver obtained exclusive custody, control, and possession of Defendant Friant's funds, property, and other assets (collectively, "Assets"). *See* Order ¶ 20. These Assets include a 2005 BMW X-5 automobile (the "BMW"). *See* Affidavit of Guy M. Hohmann ("Hohmann Aff.") ¶ 3, attached to this Motion as Exhibit A and incorporated herein by reference.

3. Based upon his factual investigation, the Receiver has determined that the BMW is subject to secured debt. Ex. A ¶ 3 (Hohmann Aff.). The BMW is encumbered by a \$38,446.35 promissory note held by BMW Financial Services entitled, "BMW Bank of North

¹ Under paragraphs 19-20 of the Order, the Receiver was given the following general powers and duties: (i) assume full control of ProphetMax and its business entities; (ii) take exclusive custody, control, and possession of all funds, property, mail and other assets of Defendants; (iii) assume full power to sue for, collect, receive and take possession of Defendants' goods, chattels, rights, moneys, land, books, and records; (iv) take all steps necessary to secure Defendants' residential and business premises; (v) preserve, hold and manage all assets of the Estate, and perform all acts necessary to preserve the value of those assets, in order to prevent any loss, damage or injury to Defendants' customers or clients; (vi) prevent the withdrawal or misapplication of funds entrusted to Defendants; (vii) manage and administer Defendants' assets; (viii) collect all money owed to Defendants; (ix) initiate, defend, compromise, or become a party to any actions or proceedings necessary to preserve or increase Defendants' assets; (x) engage and employ attorneys, accountants, appraisers, and other technical specialists, as the Receiver deems advisable or necessary; (xi) issue subpoenas and conduct discovery to obtain documents and records pertaining to the Estate; (xii) open bank accounts as designated depositories for Defendants' funds; and (xiii) make payments and disbursements from the Estate that are necessary or advisable.

America Performance Loan” (the “BMW Loan”). Ex. A ¶ 4 (Hohmann Aff.); BMW Loan, attached as Exhibit A-1 to Ex. A (Hohmann Aff.) and incorporated herein by reference as Exhibit A-1. The outstanding debt under the BMW Loan is secured by a lien on the BMW. *See* Ex. A-1, paragraph entitled “Security Agreement” (BMW Loan). As of April 10, 2014, the BMW Loan had a total payoff amount of approximately \$32,753.82, and no payments have been made since that date. Ex. A ¶ 4 (Hohmann Aff.); April 10, 2014 BMW Payoff Statement, attached as Exhibit A-2 to Ex. A (Hohmann Aff.) and incorporated herein by reference as Exhibit A-2.

4. As part of his factual investigation, the Receiver has determined the estimated fair market value for the BMW. Ex. A ¶ 5 (Hohmann Aff.). For the BMW, the Receiver retained the services of three independent automobile appraisers, who each viewed the BMW and appraised the value of the vehicle to be approximately \$21,804, \$21,000, and \$21,750, respectively. Ex. A ¶ 5 (Hohmann Aff.); Appraisal of Fullerton Appraisal Services, Inc. (“Fullerton App.”), attached as Exhibit A-3 to Ex. A (Hohmann Aff.) and incorporated herein by reference; Appraisal of Classic Auto Appraiser (“Classic Auto App.”), attached as Exhibit A-4 to Ex. A (Hohmann Aff.) and incorporated herein by reference; Appraisal of John Holmes (“Holmes App.”), attached as Exhibit A-5 to Ex. A (Hohmann Aff.) and incorporated herein by reference.

5. Based upon his analysis, the Receiver has determined that the value of the outstanding debt under the BMW Loan exceeds the estimated fair market value of the BMW by at least \$10,949.82, and as much as approximately \$11,753.82 or more. Ex. A ¶ 5 (Hohmann Aff.).

Asset	Debt	Payoff Value as of April 10,	Highest Estimated Fair Market	Lowest Estimated Fair Market	Highest Estimated Net Asset Value	Lowest Estimated Net Asset Value

		2014	Value	Value		
BMW	BMW Loan	\$32,753.82	\$21,804.00	\$21,000.00	-\$10,949.82	-\$11,753.82

6. In the Receiver's judgment, it is not economically feasible to list and sell the BMW because its estimated fair market value is less than the value of its outstanding debt. Ex. A ¶ 6 (Hohmann Aff.).

ARGUMENT AND AUTHORITIES

7. As an equity receiver under the common law, the Receiver has broad powers to administer the ProphetMax Receivership Estate. *See, e.g., Janvey v. Alguire*, 628 F.3d 164, 183 (5th Cir. 2010), *superseded on jurisdictional grounds*, 647 F.3d 585 (5th Cir. 2011) ("*Janvey I*") ("[R]eceptors are legal hybrids, imbued with rights and obligations analogous to the various actors required to effectively manage an estate in the absence of the 'true' owner.") (citation omitted); *Janvey v. Alguire*, 846 F. Supp. 2d 662, 668 (N.D. Tex. 2011) ("*Janvey II*") (same) (citing *Janvey I*, 628 F.3d at 183).

8. Pursuant to these powers, the Receiver has examined pertinent financial and legal information concerning the BMW. Ex. A ¶ 6 (Hohmann Aff.). As described above, the Receiver has determined that it is not economically feasible to list and sell the BMW because its estimated fair market value is less than the value of its outstanding debt. Ex. A ¶ 6 (Hohmann Aff.). Furthermore, the Receiver has obtained the approval of Defendant Friant to relinquish the vehicle. Ex. A ¶ 6 (Hohmann Aff.); March 17, 2014 Email from Jim George to Carrie Puccia ("George Email"), attached as Exhibit A-6 to Ex. A (Hohmann Aff.) and incorporated herein by reference. The Receiver therefore seeks an order from this Court approving the Receiver's abandonment and relinquishment of the BMW because the surrender of the vehicle to its secured lender is in the best interests of the Estate.

9. 28 U.S.C. § 2001 defines the Court's authority to authorize the sale of real property, and requires appraisals by three disinterested persons and notice of the proposed transaction published in a newspaper of general circulation. These safeguards are to protect against the "high opportunity for fraud inherent in private sales of realty." *Acadia Land Co. v. Horuff*, 110 F.2d 354, 354–55 (5th Cir.1940). 28 U.S.C. § 2004 provides for the Court to authorize the sale of personal property, and states that the default procedure for the sale of personal property is the same as that dictated by 28 U.S.C. § 2001. However, the statute provides that the Court may in its discretion deviate from those requirements in the case of personal property. *See S.E.C. v. T-Bar Res., LLC*, 2008 WL 4790987 *3 (N.D. Tex. Oct. 28, 2008) (recognizing that Congress intended that more stringent procedures guide the sale of real property as opposed to the sale of personal property).

10. Furthermore, upon a receiver's determination that an asset is "of such little value as to render administration of the same unprofitable, the court may upon his petition authorize the abandonment of the worthless property." *Quilling v. Trade Partners, Inc.*, 1:03-CV-0236, 2011 WL 4973870 (W.D. Mich. Sept. 30, 2011) *report and recommendation adopted*, 1:03-CV-236, 2011 WL 4973754 (W.D. Mich. Oct. 19, 2011) (citing *Helvey v. United States Bldg. & Loan Ass'n*, 81 Cal.App.2d 647, 184 P.2d 919, 922 (Cal.Ct.App.1947)). This is in line with the well-recognized principle of law that "the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership." *S.E.C. v. Great White Marine & Recreation, Inc.*, 428 F.3d 553, 556 (5th Cir. 2005).

11. While the Receiver's Motion relates to personal property rather than real property, and while the Receiver seeks to relinquish the property to its secured lender rather than sell the property, the Receiver has substantially complied with the "more stringent procedures" guiding

CERTIFICATE OF CONFERENCE

The Receiver and his counsel conferred with Timothy Mulreany, counsel for the CFTC, who stated that the CFTC does not oppose this Motion nor the relief sought herein. Counsel for the Receiver also conferred with James George, counsel for Defendant Joel Friant, who stated that Mr. Friant does not oppose this Motion nor the relief sought herein. Counsel for the Receiver also conferred with Brent Baker and Steve Korotash, counsel for Defendants Michael Dillard and Elevation Group, Inc., who stated that Mr. Dillard and Elevation Group, Inc. do not oppose this Motion nor the relief sought herein. No other Defendant has appeared in this action, nor has any counsel filed a notice of appearance on behalf of any other Defendant. Additionally, the Receiver and his counsel conferred with Christopher Davis, counsel for the SEC, which has filed a related action in this court, and Mr. Davis stated that the SEC does not oppose this Motion nor the relief sought herein. The Motion, therefore, is unopposed.

/s/ Carrie Puccia
Carrie Puccia

CERTIFICATE OF SERVICE

On August 8, 2014, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Western District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Carrie Puccia
Carrie Puccia

Exhibit A

represented in a BMW Financial Services payoff statement, as of April 10, 2014, the BMW Loan has a total payoff amount of approximately \$32,753.82 ("BMW Payoff Statement"). A true and correct copy of the BMW Payoff Statement is attached hereto as Exhibit A-2. No payments have been made since the payoff statement was received.

5. As part of my factual investigation, I have determined the estimated fair market value for each of these Assets. For the BMW, I retained the services of three independent automobile appraisers, who each viewed the BMW. Fullerton Appraisal Services, Inc. appraised the value of the vehicle to be approximately \$21,804 ("Fullerton App."). A true and correct copy of the Fullerton App. is attached hereto as Exhibit A-3. Classic Auto Appraiser appraised the value of the vehicle to be approximately \$21,000 ("Classic Auto App."). A true and correct copy of the Classic Auto App. is attached hereto as Exhibit A-4. John Holmes appraised the value of the vehicle to be approximately \$21,750 ("Holmes App."). A true and correct copy of the Holmes App. is attached hereto as Exhibit A-5. Based upon my analysis, I have determined that the value of the outstanding debt under the BMW Loan exceeds the estimated fair market value of the BMW by at least \$10,949.82, and as much as approximately \$11,753.82 or more.

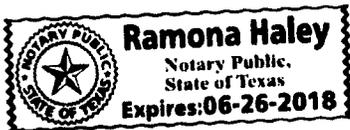
6. I have examined pertinent financial and legal information concerning the BMW. In my judgment, it is not economically feasible to list and sell the BMW because its estimated fair market value is less than the value of its outstanding debt. Furthermore, I have obtained the approval of Defendant Friant to abandon the vehicle as reflected in the March 17, 2014 Email from Joel Friant, forwarded to Carrie Puccia by Defendant Friant's Attorney Jim George ("George Email"). A true and correct copy of the George Email is attached hereto as Exhibit A-6."

Further affiant sayeth not.

Guy M. Hohmann

Guy M. Hohmann

SUBSCRIBED and SWORN TO BEFORE ME, the undersigned authority this 7th day of August 2014 to certify which witness my hand and seal of office.



Ramona Haley
Notary Public in and for the State of Texas
My commission expires: _____

Exhibit A-1

**BMW Bank of North America
Performance Loan**

PROMISSORY NOTE AND SECURITY AGREEMENT

BORROWER(S): Name(s): Joel Frant Address: 1234 Puget St Bellingham, WA 98229 Garaging Address: 1234 Puget St Bellingham, WA 98229	LENDER: BMW Bank of North America 2735 East Parlays Way, # 301 Salt Lake City, Utah 84109 DATE: 08/18/2011
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BORROWER(S) (which means everyone who signs as a borrower) jointly and severally promises to pay LENDER the amount financed as stated below, plus interest from the date of this Promissory Note and Security Agreement ("Note") on the unpaid principal balance in installments as shown below until fully paid. The final payment shall include all unpaid principal, interest and any other fees and charges under this Note. The interest rate on this note is the Annual Percentage Rate disclosed below. "You" and "your" refer to BORROWER(S) while "we," "us" and "our" refer to LENDER. "Vehicle" refers to the vehicle referenced below. This Note is governed and enforced by federal law and the laws of the State of Utah.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE. The cost of your credit as a yearly rate. 5.14 %	FINANCE CHARGE. The dollar amount the credit will cost you. \$ 5,233.65	Amount Financed. The amount of credit provided to you or on your behalf. \$ 38,446.35	Total of Payments. The amount you will have paid after you have made all payments as scheduled. \$ 43,680.00
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Payment Schedule:	Number of Payment(s) 60	Amount of Payment(s) \$ 728.00	Payments are due monthly starting on: 09/18/2011
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Security: You are giving a security interest in the Vehicle being purchased with the loan proceeds.
Prepayment: You may pay off this Note early. If you do so, you will not have to pay a penalty.
Late Charge: If all or any portion of any payment is 10 or more days late, you will pay us a late charge of 5% of the unpaid or delinquent portion.
Additional Information: See all four pages of this Note for any additional information about nonpayment, default, penalties and any required repayment in full before the scheduled due date.

ITEMIZATION OF AMOUNT FINANCED

1. Amount paid to BMW Bank of North America	\$ 38,446.35
2. Amount paid to	\$ 0.00
3. Amount paid to public officials for Certificate of Title Fees	\$ 0.00 e
4. Amount paid to public officials for Taxes	\$ 0.00 e
5. Amount paid to () for Document Fees	\$ 0.00
6. Amount paid to () for Other Charges	\$ 0.00
7. BMW of North America, LLC for Extended Service Contract	\$ 0.00
8. Amount Financed (Sum of Items 1 through 7)	\$ 38,446.35

e = estimate

If you do not meet your Note obligations, you may lose the Vehicle that you purchased or financed with the loan proceeds.

SECURITY AGREEMENT: To secure payment of this Note and performance of your obligations under this Note, you hereby grant us a security interest in the Vehicle described below plus any accessories, equipment and replacement parts installed in the Vehicle, any accessions to the Vehicle and the proceeds of the Vehicle.

Vehicle: Year: 2007 Make: BMW Model: X5 3.0si Vehicle Identification Number: 4USFE43597LY80015

Page 1 of 4
No Title Change



app date: 8/18/2011 6788088 L. Rev 09/07

.Y80015 5635

(Rev: 6/11).

SELECT ONE: Personal, Family, or Household Use or Business, Commercial, or Agricultural Use

SECURITY AGREEMENT. To secure payment of this Note and performance of your obligations under this Note, you grant us a security interest in: (1) the Vehicle; (2) any accessories, equipment and replacement parts installed in the Vehicle and any accessories to the Vehicle; (3) all proceeds of such property; and (4) to the extent permitted by state law, the loss proceeds of any Vehicle insurance and; if the cost is included in the monthly payment under this Note, the proceeds, cancellation refunds or rights of any service or mechanical breakdown protection contract. This security interest secures payment and performance of your obligations under the Note, or any extensions thereof, including any indebtedness subsequently arising because of your failure to perform such obligations. You agree to fully cooperate with us in having a certificate of title or other lien notation document issued by the appropriate state agency naming BMW Bank of North America as lienholder in a first priority (in a first priority secured position, this includes, but is not limited to, paying applicable titling and registration fees, obtaining a smog and/or safety inspection from an authorized inspection station, obtaining applicable inspections of the vehicle identification number from the appropriate law enforcement or other government official(s), and providing us with inspection certificates and other documents necessary to perfect our security interest.

POWER OF ATTORNEY. You appoint us, to the extent permitted by law, through our officer or employee, as your attorney-in-fact. Your grant of this power of attorney is coupled with an interest, and is irrevocable until all obligations you owe under this Note are paid in full. As your attorney-in-fact, we can sign on your behalf all Certificates of Ownership, Registration Cards, applications, affidavits, or any other documents required to register and properly perfect our security interest in the Vehicle; transfer your entire interest in the Vehicle as part of a repossession and sale; act on your behalf in insurance matters relating to the Vehicle, including, but not limited to, the power to endorse insurance proceeds checks or drafts on your behalf; and cancel any credit life, credit disability, guaranteed automobile protection (GAP) coverage, extended warranty, or other optional insurance financed under this Note; and apply the refunded premium or cost to your outstanding balance if you are in default. Should an original power of attorney be necessary to accomplish any of the preceding, you agree to execute a separate identical power of attorney document and provide us with same.

PAYMENTS. Your monthly payment will be due on the same day each month as the first payment date. If the date for your first payment is the 29th, 30th or 31st, payment will be due the last day of any month that does not have that date.

BALLOON PAYMENT. If you are required to make a Balloon Payment (as indicated in the Payment Schedule), then you must pay the Balloon Payment in full when it is due, or refinance the Balloon Payment with us or another lender.

FINANCE CHARGE. This is a simple interest Note. Your actual Finance Charge will depend on your payment patterns. The actual Finance Charge may be more than the Finance Charge disclosed on the front of this Note if you make your payments later than the scheduled dates or in less than the scheduled amount. Payments will be applied first to the earned Finance Charge, then to the unpaid Amount Financed and then to any unpaid late charges. The Finance Charge is computed on a daily basis at the Annual Percentage Rate on the unpaid balance of the Amount Financed.

RETURNED ITEM CHARGE. If any payment is returned to us unpaid for any reason, or if any electronic debit authorization is not paid, you agree to pay us a service charge in an amount no greater than the maximum allowed by law per item when you are billed. A returned item charge may be added to your outstanding balance under this Note and accrue interest at the Annual Percentage Rate disclosed on the face of this Note.

INSURANCE. You agree to maintain the insurance coverage described in this section. You affirm that such insurance is in force on the date of this Note. You authorize us to speak to your insurance agent or company, and any future insurance agents, or companies, about your coverage for the Vehicle. All insurance-related matters should be sent to: P.O. Box 390933, Minneapolis, MN 55439-0911, or faxed to 888-725-8456. You agree to obtain, pay for and maintain insurance for the term of this Note against loss of or damage to the Vehicle with a policy acceptable to us. This coverage may be obtained through an existing policy of insurance owned or controlled by you or from an insurer and agent of your choice that is authorized to sell such insurance and is reasonably acceptable to us. The insurance you maintain will include comprehensive fire, theft, and collision coverage insuring the Vehicle in an amount sufficient to cover the Vehicle's actual cash value with a maximum deductible of \$1000. You shall name us as loss payee and provide us with a copy of your insurance policy acceptable to us within 30 days after the date of this Note and thereafter upon request. You agree to assign the proceeds of any insurance to us to the extent of the debt you owe and will instruct the insurance company to pay us directly. You hereby grant an irrevocable power of attorney to us, to file proofs of loss and anything else necessary to obtain the insurance proceeds in your name, including without limitation, the right to endorse your name on any insurance draft, check or instrument. If the Vehicle is stolen, lost, damaged or destroyed, we can use any insurance settlement either to repair the Vehicle or to apply to your debt. Whether or not the Vehicle is insured, you will pay us all you owe under this Note, even if the Vehicle is stolen, lost, damaged, or destroyed. You should show this provision to your insurance agent. If at any time during the term of the Note you fail to maintain or evidence the insurance required, we may, as permitted by law and at our option, purchase insurance which covers both your and our interests in the Vehicle or which covers only our interest in the Vehicle. If we buy either of these coverages we will notify you and describe the charge you must pay. The charge will be payable either: (1) in equal installments along with the remaining monthly payments and will consist of the cost of insurance plus interest at the Annual Percentage Rate shown on this Note; or (2) within 10 days written notice to you. Any charge will be secured by the Vehicle.

VEHICLE USE. You agree you will not (nor permit others to): (1) use the Vehicle for any improper or illegal purpose, or to commit any illegal act, or abandon the Vehicle; (2) use the Vehicle to transport passengers or goods for hire; (3) garage the Vehicle at an address other than the Garaging Address shown on the first page of this Note without our written consent and will notify us of changes in your address; (4) use the Vehicle in a way that causes the cancellation or suspension of any applicable insurance or manufacturer's warranty; (5) use the Vehicle outside of the state where it was first titled for more than 30 consecutive days without our prior written consent; (6) operate the Vehicle outside of the United States, except for less than 30 days in Canada; (7) allow unlicensed drivers to use the Vehicle; (8) sell the Vehicle without our prior written consent; (9) allow a lien or encumbrance other than ours on the Vehicle. You agree you will permit us to inspect the Vehicle at any reasonable time, and pay when due all taxes and assessments levied on the Vehicle. Should you fail to promptly pay any lien, encumbrance or taxes on the Vehicle, we may do so on your behalf. In such event, you must immediately reimburse us for the cost(s) thereof. If you do not immediately reimburse us, such cost(s), plus interest at a rate not to exceed the Annual Percentage Rate disclosed on the face of this Note, will be added to the amount you owe under this Note.

DEFAULT. To the extent permitted by law, you will be in default under this Note if any of the following things happen: (1) you fail to make any payment in full or fail to pay any other charge; (2) you break any promise or condition made in this Note or in any other agreement you have with us; (3) you fail to keep required insurance in force; (4) you give us false or misleading information on your application or any other document; (5) you die, are declared incompetent, become insolvent, file a bankruptcy petition, have a bankruptcy petition filed against you or dissolve or cease active business affairs; (6) the Vehicle is impounded or subject to or threatened by seizure, confiscation, levy, or other involuntary transfer by governmental, administrative or legal process; (7) the Vehicle is destroyed, stolen or damaged beyond repair; (8) your driver's license expires or is revoked, canceled, suspended or you fail to comply with any other restrictions on your license; (9) the Vehicle is not maintained in a condition acceptable to us; (10) you fail to pay any taxes which may be levied upon the Vehicle; or (11) anything else happens that we reasonably believe in good faith endangers the Vehicle or your ability to pay.

REMEDIES UPON DEFAULT. Our remedies can be exercised singularly or in any combination. If you are in default, we may demand that you pay all amounts you owe under this Note at once (accelerate), and may pursue any and all of your other rights and remedies available under the law. In the event your obligation is referred for collection to an attorney who is not one of our salaried employees, you agree to pay, in addition to all other sums due and owing under this Note, reasonable attorneys' fees plus court costs. If you default, we may take (repossess) the vehicle from you if we do so peacefully and the law allows it. If the Vehicle has an electronic tracking device, you agree that we may use the device to find the Vehicle. If we repossess the Vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. If you do not redeem the Vehicle, we will sell the Vehicle at auction. Except as otherwise provided by law, your right to redeem ends when we sell the Vehicle. If the Vehicle is sold at auction, the proceeds will be applied first to reasonable expenses of repossessing, reconditioning, storing and selling the Vehicle, including attorneys' fees and court costs, and then to all amounts due under this Note. If there is any money left over, it will be paid to you, subject to the rights of any other secured parties. If the proceeds of the sale of the Vehicle are insufficient to pay all amounts due to us, plus the costs and expenses of repossession and sale, you will be liable for any deficiency, plus interest at the Annual Percentage Rate on the face of this Note, until paid in full, to the extent permitted by applicable law. Any personal property of yours or attached to the Vehicle which is not subject to our security interest shall be held by us without liability if the Vehicle is repossessed. Except as otherwise provided by law, you shall be deemed to have waived any claim thereof unless written demand by certified mail is made upon us within 10 days after repossession;

ARBITRATION CLAUSE. PLEASE REVIEW - IMPORTANT - AFFECTS YOUR LEGAL RIGHTS. NOTICE: Either we or you may choose to have any dispute between we and you decided by arbitration and not in a court or by jury trial. If a dispute is arbitrated, you will give up your right to participate as a class representative or class member on any class claim you may have against us including any right to class arbitration or any consolidation of individual arbitrations. Discovery and rights to appeal in arbitration are generally more limited than in a lawsuit, and other rights we and you would have in court may not be available in arbitration. Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this clause, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors, which arise out of or relate to your credit application, lease, purchase or condition of this Vehicle, this Note or any resulting transaction or relationship (including any such relationship with third parties who do not sign this Note) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action or other mass action. You expressly waive any right you may have to arbitrate a class action. You may choose the following arbitration organization and its applicable rules: the National Arbitration Forum, Box 50191, Minneapolis, MN 55405-0191 (www.adrforum.com), or any organization that you may choose subject to our approval. You may get a copy of the rules of these organizations by contacting the arbitration organization or visiting its website. Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law in making an award. The arbitration hearing shall be conducted in the federal district in which you reside. The arbitrator shall be empowered as permitted under the Rules of the National Arbitration Forum to award equitable relief as well as legal relief, to provide all temporary and/or provisional remedies and to enter equitable orders that will be binding upon the parties. Any award or dispositive order of the arbitrator may be entered as a judgment in any court having jurisdiction. We agree that either we or you may, without objection, request an expedited hearing under the applicable rules. We will advance your filing, administration, service or case management fee and your arbitrator or hearing fee, all up to a maximum of \$1500, which may be reimbursed by decision of the arbitrator at the arbitrator's discretion. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this clause, then the provisions of this clause shall control. The arbitrator's award shall be final and binding on all parties, except that in the event the arbitrator's award for a party is \$0 or against a party is in excess of \$100,000, or includes an award of injunctive relief against a party, that party may request a new arbitration under the rules of the arbitration organization by a three-arbitrator panel. The appealing party requesting new arbitration shall be responsible for the filing fee and other arbitration costs subject to a final determination by the arbitrators of a fair apportionment of costs. Any arbitration under this Arbitration Clause shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et. seq.) and not by any state law concerning arbitration; however, the governing law as to the substantive issues of the Loan and Vehicle shall be the law of the state of Utah. We and you may retain any rights to self-help remedies, such as repossession. Neither we nor you waive the right to arbitrate by using self-help remedies or filing suit. Any court having jurisdiction may enter judgment on the arbitrator's award. This clause shall survive any termination, payoff or transfer of this Note. If any part of this Arbitration Clause, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. Notwithstanding any other provision for notice contained in the Note, any arbitration claim or other notice provided under the rules of the arbitration administrator will be given to us at 5550 Bliton Parkway, Hilliard, OH 43026.

ADDITIONAL TERMS. Each person who signs this Note as BORROWER is jointly and severally liable under this Note. Each person who signs this Note as BORROWER is fully liable for all payments, whether or not we try to collect from the other signers. Each BORROWER, including co-maker, co-signer, surety, endorser or guarantor, individually and jointly, waives presentment, demand, protest or notice and any notice that we are demanding payment in full of the entire outstanding balance because of default or for any other reason. You cannot assign, sell, give a security interest in or arrange an assumption of your interests or rights under this Note or in the Vehicle. We can assign the Note to another party, who will have all our rights. If this Note is sold or otherwise transferred, your rights under the law or under this Note are in no way altered or impaired. If any provision in this Note is held to be unenforceable, void, illegal or otherwise against applicable law, the other provisions shall survive and be enforceable separately from any voided provisions. We do not give up any of our rights by delaying or failing to exercise them on any one or more occasions. If for any reason we need to sequester any of your funds to an unclaimed funds department, we may retain such fee as is allowable per state law.

INFORMATION REPORTED TO CONSUMER REPORTING AGENCIES. Under the Fair Credit Reporting Act, you have the right to notify us if you believe we have reported inaccurate information about your account to any Consumer Reporting Agency. Such notices should be sent in writing and include your complete name, current address, Social Security Number, telephone number, account number, type of account, specific item of dispute and the reason why you believe the information reported is in error. You must send your notice to us at the address on the first page of this Note.

Important: The terms of this Note should be read carefully because only those terms in writing are enforceable. No other terms or oral promises not contained in this Note may be legally enforced. You may change the terms of this Note only by another written agreement signed by you and us. This Note is a final expression of the credit agreement between you and us. This Note may not be contradicted by evidence of any prior oral credit agreement or of a contemporaneous oral credit agreement between you and us. Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect you and us from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this Note, which is the complete and exclusive statement of the agreement between you and us, except as you and us may later agree in writing to modify it.

THIS IS A CONSUMER CREDIT TRANSACTION. CONSUMER PAPER. CONSUMER NOTE. NONNEGOTIABLE CONSUMER NOTE.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

NOTICE TO BORROWER(S): (a) DO NOT SIGN THIS NOTE BEFORE YOU READ ALL FOUR PAGES, EVEN IF OTHERWISE ADVISED; (b) DO NOT SIGN THIS NOTE IF IT CONTAINS ANY BLANK SPACES; (c) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN; (d) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS NOTE AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE. YOU MAY PREPAY THE UNPAID BALANCE OF THIS NOTE AT ANY TIME WITHOUT PENALTY.

NOTICE TO ARIZONA BORROWERS: Debtor's Liability for Failure to Return Vehicle: If you are in default, we may send you a notice of default. It is unlawful to fail to return a motor vehicle subject to a security interest within 30 days after receiving notice of default. A notice of default may be mailed to the address on the contract. It is your responsibility to keep the listed address current. Assuming you have no history of prior felony convictions, the maximum penalty for failure to return a motor vehicle subject to a security interest is 1 year in prison and a \$150,000 fine.

NOTICE TO INDIANA BORROWERS: The Late Charge disclosed on the face of this Note is subject to change as allowed by Ind. Code, Ann. § 24-4.5-1-106.

NOTICE TO IOWA BORROWERS: Notice to the Consumer: 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charge in accordance with law.

NOTICE TO KANSAS BORROWERS: Notice to the Consumer: 1. Do not sign this agreement before you read it. 2. You are entitled to a copy of this agreement. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charge in accordance with law.

NOTICE TO MARYLAND BORROWERS: This Note is made under Subtitle 10, CREDIT GRANTOR CLOSED-END PROVISION of Title 12 of the Commercial Law Article of the Annotated Code of Maryland. The Vehicle in this Note may be repossessed without resort to judicial process.

NOTICE TO NEW HAMPSHIRE BORROWERS: Notice to the Buyer: 1. Read this contract before signing. 2. You are entitled to an exact copy of the contract you sign. Liability insurance coverage for both bodily injury and property damages caused to others is not included.

NOTICE TO TEXAS BORROWERS: If you are in default, we may require you to repay the entire unpaid principal balance, any accrued interest at once. We don't have to give you notice that we are demanding or intend to demand immediate payment of all that you owe. This written loan agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

NOTICE TO UTAH BORROWERS: As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

Borrower: Joe Frlan
X Joe Frlan Borrower: X _____



Exhibit A-2

BMW Financial Services



March 31, 2014

Mr Joel M Friant
1234 Puget St
Bellingham WA 98229-2144

Reference: 1001294381 / 2007 BMW X5 3.0si
Subject: Payoff information

Dear Mr Friant:

Thank you for contacting BMW Financial Services regarding the payoff for the referenced account. We are delighted to provide to you the information requested.

All of the information required to pay off your account can be found in the following pages. Please complete and **return the attached document(s)** (Titling Instructions) of this document, along with certified funds made payable to Financial Services Remarketing Inc. (FSRI). These two items must be sent to one of our designated payoff addresses, which are listed on page two.

We are committed to providing you with the highest level of service. If you have any questions, please contact a Customer Service Advocate at (800) 578-5000, Monday through Friday, from 9:00 a.m. to 9:00 p.m. ET, or by mail at either address listed on the left of this letter.

Best regards,

Sarah Phillips
Replevin Specialist
BMW Financial Services NA, LLC

Company
BMW Financial
Services NA, LLC

BMW Group Company

Mailing Address
PO Box 3608
Dublin OH 43016-0306

Office Address
5550 Britton Parkway
Hilliard OH 43026

Telephone
(800) 578-5000

Fax
(800) 820-4269

Internet
bmwusa.com

Interested in refinancing your loan?

Contact an Automotive Finance Sales Specialist for a free quote at (800) 578-5000. Our award-winning Regional Service Center is available Monday through Thursday from 9:00 a.m. to 7:00 p.m. ET, and on Friday from 9:00 a.m. to 6:00 p.m. ET.

Where should I send the payoff?

Please send the payoff to FSRI using either of the following addresses:

Regular Mail
Financial Services Remarketing, Inc.
PO Box 713224
Columbus OH 43271-3224

Overnight Courier
Financial Services Remarketing, Inc. 71-3224
c/o Chase
370 S Cleveland Ave Dept 0471
Westerville OH 43081

If the overnight courier requests a telephone number for the addressee, please provide them the telephone number for BMW Financial Services, (800) 578-5000.

How and when will I receive the title?

The payoff will post to the BMW Financial Services account one to two business days after it is received by FSRI. If you pay using certified funds, the certificate of title or lien release will be mailed one to three business days after the payoff has posted to the account.

What are the payoff options?

Please send the payoff using certified funds. **If you choose to use non-certified funds, such as a personal check, the release of the title will be delayed by 15 business days.**

Certified funds can be obtained from a bank. Common types of certified funds include cashier's checks and money orders.

BMW Financial Services does not accept wire or electronic transfers for payoff.

How should I write the check?

Make funds payable to **Financial Services Remarketing, Inc.** (FSRI). BMW Financial Services has assigned the right to sell this vehicle for which a payoff quote has been requested to FSRI.

Please write the account number on the face of the check. Please avoid placing restrictive endorsements or language such as "paid in full" on the payoff check, as this may result in funds being returned.

Account Number: 1001294381	Date: <u>04/10/2014</u>
Pay to the Order of: <u>Financial Services Remarketing Inc</u>	<u>\$32,753.82</u>
<u>thirty two thousand seven hundred fifty three dollars and eighty two cents</u>	DOLLARS
Re: <u>Payoff for 1001294381</u>	X

Please complete and return this page with payoff

Payoff Amount

This is good through **April 10, 2014.**

Principal Balance	\$30,367.79
+ Interest	\$2,349.63
+ Outstanding Late Charges	\$36.40
+ Outstanding Other Charges	\$0.00
= Total Payoff Amount	\$32,753.82

The payoff quote may include items such as personal checks that have not yet cleared your bank. This quote is subject to increase based on the return of any such items.

The Per Diem interest amount is \$4.26. In order to extend the good through date past April 10, 2014, please add \$4.26 to the payoff amount for each day beginning April 10, 2014 until the payoff arrives at our payment processing center.

Mailing instructions:

Account: 1001294381
 Year, make and model: 2007 BMW X5 3.0si
 VIN: 4USFE43597LY80015

Check one of the following statements:

- I would like my title sent to my billing address.
- I would like my title sent to a different address, as listed below.

 Name(s) Telephone

 Address

 City State Zip

Please complete and return this page with payoff

Exhibit A-3

APPRAISAL REPORT

2007 BMW X5

Prepared by:

.
Fullerton Appraisal Services, Inc.
607 Shady Hollow Dr
Georgetown, Tx 78628
Office 512-864-1353
Fax 512-531-7592
email: info@fullertonappraisal.net

Your reliable resource for independent appraisal specialists



Dear Kristen,

I have appraised the 2007 BMW X5 and I have enclosed documents from the inspection of the car at Adesa Auto Auction along with an NADA report and comparable pricing from area listings.

The average cash retail value is \$ 21,804.00. If vehicle is sold thru wholesale auction then the price you would get for obviously would be lower than retail. If you would like to get an idea what the vehicle price is bring from the auction, please contact John Fullerton and he has someone with that information.

--

Thank You,

Tommy Caram
Fullerton Appraisal Services
817-317-1946
tommy@fullertonappraisal.net





 X5 3.0si VEHICLE TYPE: MULTIPURPOSE PASSENGER VE
MFD BY BAYERISCHE MOTORENWERKE 01/10

GVWR	6327 lbs	2870 kg		
GAWR FRONT	2767 lbs	1255 kg	REAR	3770 lbs 1710 kg

THIS VEHICLE CONFORMS TO ALL APPLICABLE U.S.
FEDERAL MOTOR VEHICLE SAFETY AND THEFT
PREVENTION STANDARDS IN EFFECT ON THE DATE OF
MANUFACTURE SHOWN ABOVE.

4USFE43597LY80015










[Print this Page](#)
[Close](#)

2007 BMW X5

\$19,992

AT Car ID: AT-15E0E68D

Dealer Information

AutoNation Nissan Irving

1500 E Airport Fwy
Irving, TX 75062
Distance from ZIP 76015: 15 miles

Contact: Please ask for our Internet Sales
Department
Call Toll Free 1-888-213-2365

Car Details



Mileage	82,204
Exterior Color	Titanium Silver Metallic
Interior Color	Gray
Body Style	Sport Utility
Doors	Four Door
Engine	6 Cylinder
Transmission	6 Speed Shiftable Automatic
Fuel Type	Gasoline
Drive Type	All wheel drive
Stock No.	7LY81400
VIN	To view VIN, return to original vehicle description window, select the View VIN link, and enter the characters shown into the text box.

Options Installed

- abs (4-wheel)
- adaptive cruise control
- air conditioning
- alloy wheels
- am/fm stereo
- backup camera
- bluetooth wireless
- bmw assist
- dual air bags
- dual power seats
- hid headlamps
- hill descent control
- leather
- mp3 (single disc)
- navigation system
- panorama roof
- parking sensors
- power door locks
- power steering
- power windows
- side air bags
- stability control
- telescoping wheel
- traction control

Comments

There are no guarantees in life except the CARFAX Buyback Guarantee you'll get when you purchase this pre-owned BMW X5 from AutoNation Nissan Irving. Gone are the days of SUVs being the size of a tank and handling like one. This BMW X5 is a perfect example of how SUVs have evolved into vehicles that are as refined as they are

rugged. The X5 3.0si's pristine good looks were combined with the BMW high standard of excellence in order to make this a unique find. Comfort. Performance. Safety. Enjoy all three with this well-appointed AWD 2007 BMW. The X5 3.0si has been lightly driven and there is little to no wear and tear on this vehicle. The care taken on this gently used vehicle is reflective of the 82,204 miles put on this BMW. Strengths of this model include Involved driving experience, more room for 2007, and practicality and luxury. WHO YOU GONNA CALL?? CALL BANKSTON Please Call us today for a wide variety of inventory and a great car buying experience! *888-213-2365* Ask for Peter Tramby.

Why buy from me?

"Welcome to I love my car Nation. Welcome to AutoNation Nissan Irving, serving Arlington, Plano, Denton and Frisco. Over 43 Million Happy Customers have trusted us when buying or servicing their cars and trucks. Since AutoNation is America's Largest Automotive Retailer, we hold ourselves to higher standards. That's why we offer processes and guarantees you won't find anywhere else. Like Smart Choice Pricing, shop our coast to coast selection of new and pre-owned vehicles and you'll receive a low price upfront. Plus we back our new and pre-owned vehicles with a no questions asked Money-back Guarantee. So, when you need a car, truck or van... who you gonna call? AutoNation!"

Disclaimer

Subject to prior sale. Quoted price subject to change without notice to correct errors or omissions. Price may include manufacturer ("OEM") rebates and incentives which are subject to OEM qualification criteria, and may be contingent upon OEM finance company approval. See store for details. Quoted price does not include the dealer service / documentary fee. Tax, tag, and registration fees not included. Standard features are based upon trim level. Accessories, options and color may vary.

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03/31/14

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Repair & Care



[View All Photos](#)
(32 total)

About The Dealer

United Auto Group

★★★★★ (4.8) 48 dealer reviews

3300 Garden Brook Dr.
Farmers Branch, TX 75234
866-514-2492



Printed on March 31, 2014

2007 BMW X5 3.0si - \$22,995

Dealer: United Auto Group

Call: 866-514-2492

Mileage: 71,446
Body Style: SUV
Exterior Color: Monaco Blue Metallic
Interior Color: Gray
Stock #: 2050
VIN: 5UXFE435X7L016871
Fuel: Gasoline
Engine: 3.0L I6 24V MPFI DOHC
Transmission: 6-Speed Automatic
Drivetrain: AWD
Doors: 4
Wheelbase: 116"
Vehicle History Report: [CARFAX Record Check](#)

Features

- Premium Sound Pkg
- CD Player
- CD Changer
- Premium Sound System
- Technology Pkg
- Back-Up Camera
- Satellite Radio
- Head-Up Display
- Heads-Up Display
- 20-Way Pwr Multi-Contour Front Seats W/Lumbar
- Power Driver Seat
- Power Passenger Seat
- Ipod & Usb Adapter
- Auxiliary Audio Input
- BMW Assist
- BMW On-Board Navigation System
- Navigation System
- Panorama Moonroof
- Rear Climate Pkg
- Privacy Glass
- Multi-Zone A/C
- Cold Weather Pkg
- Climate Control
- 3rd Row Seat
- Rear A/C
- Air Suspension
- A/C
- Premium Pkg
- Driver Adjustable Lumbar
- Panoramic Roof
- Sun/Moonroof
- Telematics
- Passenger Adjustable Lumbar
- Power Outlet
- Universal Garage Door Opener
- Power Mirror(S)

Auto-Dimming Rearview Mirror
 Power Folding Mirrors
 Bluetooth Connection
 Sun/Moon Roof
 Leather Seats
 Rear Reading Lamps
 Dark Burl Walnut Interior Wood Trim
 Woodgrain Interior Trim
 Park Distance Control W/Graphic Display
 Rear Parking Aid
 Sport Pkg
 Active Suspension
 Leather Steering Wheel
 Bucket Seats
 Tires - Rear Performance
 Aluminum Wheels
 Tires - Front Performance
 3-Stage Heated Front Seats
 Heated Front Seat(S)
 Comfort Access System
 Power Door Locks
 Keyless Start
 Keyless Entry

[Hide Features](#)

Standard Equipment

Fuel Consumption: City: 17 mpg
 Fuel Consumption: Highway: 23 mpg
 Memorized Settings including door mirror(s)
 Memorized Settings including steering wheel
 Memorized Settings for 2 drivers
 Driver seat memory
 Remote power door locks
 Power windows
 Cruise control
 4-wheel ABS Brakes
 Front Ventilated disc brakes
 1st and 2nd row curtain head airbags
 Passenger Airbag
 Side airbag
 Rear spoiler: Lip
 Audio system security
 Digital Audio Input
 In-Dash single CD player
 MP3 player
 AM/FM/Satellite-capable Radio
 Radio Data System
 Total Number of Speakers: 12
 Braking Assist
 ABS and Driveline Traction Control
 Cornering Lights
 Stability control with anti-roll control
 Privacy glass: Light
 Silver aluminum rims
 Wheel Diameter: 18
 Wheel Width: 8.5
 Front fog/driving lights
 Leather steering wheel trim
 Leather/metal-look shift knob trim

Metal-look dash trim
 Metal-look door trim
 Metal-look center console trim
 Roof rails
 Video Monitor Location: Front
 Trip computer
 External temperature display
 Tachometer
 Manufacturer's 0-60mph acceleration time (seconds): 8.0 s
 Power remote driver mirror adjustment
 Heated driver mirror
 Heated passenger mirror
 Power remote w/tilt down passenger mirror adjustment
 Passenger reverse tilt mirror
 Dual illuminated vanity mirrors
 Daytime running lights
 Heated windshield washer jets
 Remote window operation
 Audio controls on steering wheel
 Power Activated Liftgate/tailgate
 Power remote trunk release
 Front reading lights
 Anti-theft alarm system
 Leatherette seat upholstery
 Bucket front seats
 Split rear bench
 Fold forward seatback rear seats
 Rear seats center armrest
 Tilt and telescopic steering wheel
 Steering Wheel Air Conditioning Controls
 Speed-proportional power steering
 Suspension class: Regular
 Interior air filtration
 Automatic front air conditioning
 Dual front air conditioning zones
 Residual Heat Distribution of Air Conditioner
 Tire Pressure Monitoring System: Tire specific
 Cargo area light
 Max cargo

[Hide Standard Equipment](#)

20-Way Pwr Multi-Contour Front Seats W/Lumbar	3-Stage Heated Front Seats
3rd Row Seat	A/C
Active Suspension	Air Suspension

[Show Additional Features](#)

Standard Equipment:

1st and 2nd row curtain head airbags	4-wheel ABS Brakes
ABS and Driveline Traction Control	AM/FM/Satellite-capable Radio
Anti-theft alarm system	Audio controls on steering wheel

[Show Additional Standard Equipment](#)

Seller's Notes:

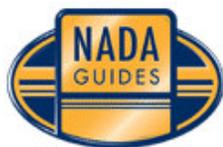
CARFAX CERTIFIED, HEAD-UP DISPLAY, THIRD ROW SEAT!!! 2007 BMW X5 3.0i AWD equipped with Factory Navigation System, Rear Back up Camera, Heads-Up Display, Panoramic Roof, Heated Seats, Third Row Seat, Keyless Entry / Keyless Go, Front and Rear Parking Assist, Premium...

[Read More](#)

(2.9) 27 reviews | [Write a review](#)

[Get Directions to United Auto Group](#)
3300 Garden Brook Dr.
Farmers Branch, TX 75234

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The Power of Vehicle Information
NADAguides.com

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3/28/2014

2007 BMW X5-I6-AWD

Utility 4D 3.0si AWD

NADAguides.com Price Report

	Rough Trade-In	Average Trade-In	Clean Trade-In	Clean Retail
Base Price	\$14,550	\$16,525	\$18,200	\$21,575
Mileage: (80,346) miles	\$850	\$850	\$850	\$850
Total Base Price	\$15,400	\$17,375	\$19,050	\$22,425
Options:				
Luggage Rack	\$50	\$50	\$50	\$75
Power Sunroof	\$550	\$550	\$550	\$625
BMW Premium Stereo System	\$350	\$350	\$350	\$400
Navigation System	\$450	\$450	\$450	\$500

PRICE with Options \$16,800 \$18,775 \$20,450 \$24,025

The history of a vehicle
impacts its value

Get the history at
AutoCheck.com/NADAguides



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Exhibit A-4

APPRAISAL REPORT

OF

2007 BMW X5

PREPARED FOR

Hohmann, Taube Summers, L.L.P.

PREPARED BY

CLASSIC AUTO APPRAISER

A professional automobile valuation service for all types of vehicles

CLASSIC AUTO APPRAISER

170 Fisher Station Road, Durant, OK 74701~(817) 429-9998 (580) 931-0340 (214) 274-9205

March 27, 2014

Hormann, Taube & Summers, L.L.P.

Attn: Kristen Blank

100 Congress Ave.

18th Floor

Austin, Texas 78701

(512) 472-5997

cristenb@hts-law.com

Dear Ms. Blank,

In compliance with your recent telephone request, I have appraised the above-referenced vehicle and I have enclosed the appraisal report, which constitutes my analysis and conclusion of the vehicle.

The stated market value as of March 27, 2014 is \$21,000.00

Thank you very much for your business and if you should have any questions please don't hesitate to call.

Sincerely,



Don Shipman

Classic Auto Appraiser

PURPOSE AND SCOPE OF REPORT

PURPOSE

The purpose of this report is to estimate the stated market value of the vehicle described herein as of the inspection date.

STATED MARKET VALUE DEFINED

The stated market value of the vehicle is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell, and by a buyer, being willing to buy, under no particular necessity for so doing, each dealing with the other full knowledge of all the uses and purposes for which the property is reasonable, adaptable and available.

METHOD OF VALUATION

The value is estimated by current market data comparison supplemented by cost information. The vehicle is compared with others for sale and that have sold in the general time period. Adjustments are made for differences in equipment, mileage, cosmetics, sale terms and current economic conditions at the time of inspection.

ASSUMPTIONS AND LIMITING CONDITIONS

Information provided by the owners, parties to sales and others are assumed to be reliable although accuracy is not checked or guaranteed.

**IDENTIFICATION AND DESCRIPTION OF VEHICLE
AUTHORIZED APPRAISAL**

This narrative is an attempt to determine a valuation as of the inspection date.

VEHICLE IDENTIFICATION:

VEHICLE MAKE:	BMW
MODEL YEAR:	2007
MODEL:	X5
BODY STYLE:	UTV
VIN NUMBER:	4USFE43597L80015
LICENSE NUMBER:	n/a
ODOMETER READING:	80,344

VEHICLE DESCRIPTION:

EXTERIOR COLOR:	White
INTERIOR COLOR:	Tan Leather
EQUIPMENT:	Power Steering, Power Brakes, Air, Tilt, Cruise, AM/FM with CD, Power Windows, Power Door Locks with Remote, Power Seats Factory Alloy Wheels,
ENGINE AND TRANS;	All Wheel Drive 3.0 Liter SI with Automatic Transmission

CLASSIC AUTO APPRAISER

EXTERIOR INSPECTION

	POOR	FAIR	GOOD	V. GOOD	EXCELLENT
BODY				X	X
PAINT				X	X
TRIM					X
EMBLEMS					X
FRONT BUMPER			X		
REAR BUMPER				X	X
UNDERCARRIAGE			X		
WHEELS					X
TIRES				X	
GLASS					X
SEALS/W-STRIP					X
CONV. TOP N/A					
VINYL TOP N/A					
HARD TOP N/A					

INTERIOR INSPECTION

	POOR	FAIR	GOOD	V. GOOD	EXCELLENT
HEADLINER				X	
SEATS				X	
DOOR PANELS					X
DASH PAD					X
INSTR. PANEL					X
REAR SHELF N./A					X
INTERIOR TRIM				X	X
CARPETS				X	X
TRUNK/BED					X
ENGINE COMP.				X	X

ADDITIONAL COMMENTS

Vehicle appears to be in clean condition. Unable to start as battery was dead.

STATEMENT OF APPRAISAL

The undersigned hereby declares that:

1. A physical inspection of the stated vehicle appraised was performed.
2. There is no undisclosed personal interest, presently or contemplated in the future, in the vehicle appraised or the proceeds to be derived there from.
3. Neither the employment nor the compensation for this report is contingent upon the value estimated herein.
4. To the best of my knowledge, the statements in this report are correct and the opinions stated are based on a full and fair consideration of all the available facts.
5. The findings reported herein will not be revealed to anyone other than the named recipient without permission or until required to do so by due process of law.
6. A copy of this appraisal report is kept in our files for a period of five years, together with original notes from which it was prepared.
7. The fee for the appraisal report is not contingent upon values reported.
8. No investigation of legal title to the appraised vehicle has been made and owners or tenant's claim to the property has been assumed to be valid. No consideration has been given to liens or encumbrances that may be against the property except as specifically stated in the appraisal report.
9. The appraiser herein, by reason of this appraisal is not required to give testimony or attend court or any governmental hearing with reference to the property in question without prior agreement as to fee for additional services desired.

After having considered all the relevant factors, it is the opinion of the appraiser that the stated market value of the subject vehicle as of the inspection date is \$21,000.00

Respectfully submitted,



Don Shipman
CLASSIC AUTO APPRAISER

SUMMATION OF VALUE

Our conclusion as to dollar value is based on three or more of the following:

- The overall cosmetic and mechanical condition of the inspected vehicle
- The demand and available supply of comparables
- Dollar amounts indicated by the value guides
- The expertise of the appraiser
- Opinions of dealers who have handled the model in the past, and would market the vehicle currently
- Auction results listing actual sold cars or the highest dollar bid against an owner's reserve

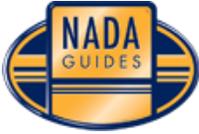
The appraised vehicle, appraised as noted is a very good example of a 2007 BMW X5 si. Mechanically, the appraised vehicle is credited as performing with no operational malfunctions and/or driving problems.

Additionally contained in this report are examples of comparables, when available, for sale at the marketplace. Asking prices fluctuate depending upon the overall cosmetic appearance and condition, originality, the mechanical history and performance, recorded mileage, and configuration of power train, options, and accessories.

Based upon the on-site inspection of this vehicle and with consideration for all the information and dollar amounts determined as relevant to this report, the appraiser has determined a stated market value of:

STATED MARKET VALUE: \$21,000.00

The stated market value is the opinion of the appraiser and the management of Classic Auto Appraiser and is arrived at after careful study of information we consider reliable. However, we assume no responsibility for errors and/or omissions.



2007 BMW X5-I6-AWD

Utility 4D 3.0si AWD

Values

	Rough Trade-In	Average Trade-In	Clean Trade-In	Clean Retail
Base Price	\$14,550	\$16,525	\$18,200	\$21,575
Mileage (80,334)	\$850	\$850	\$850	\$850
Total Base Price	\$15,400	\$17,375	\$19,050	\$22,425
Options: <u>(change)</u>				
Power Sunroof	\$550	\$550	\$550	\$625
Fixed Running Boards	\$50	\$50	\$50	\$75
Price with Options	\$16,000	\$17,975	\$19,650	\$23,125

Kelley Blue Book Retail

[\\$18,600-\\$22,100](#)



















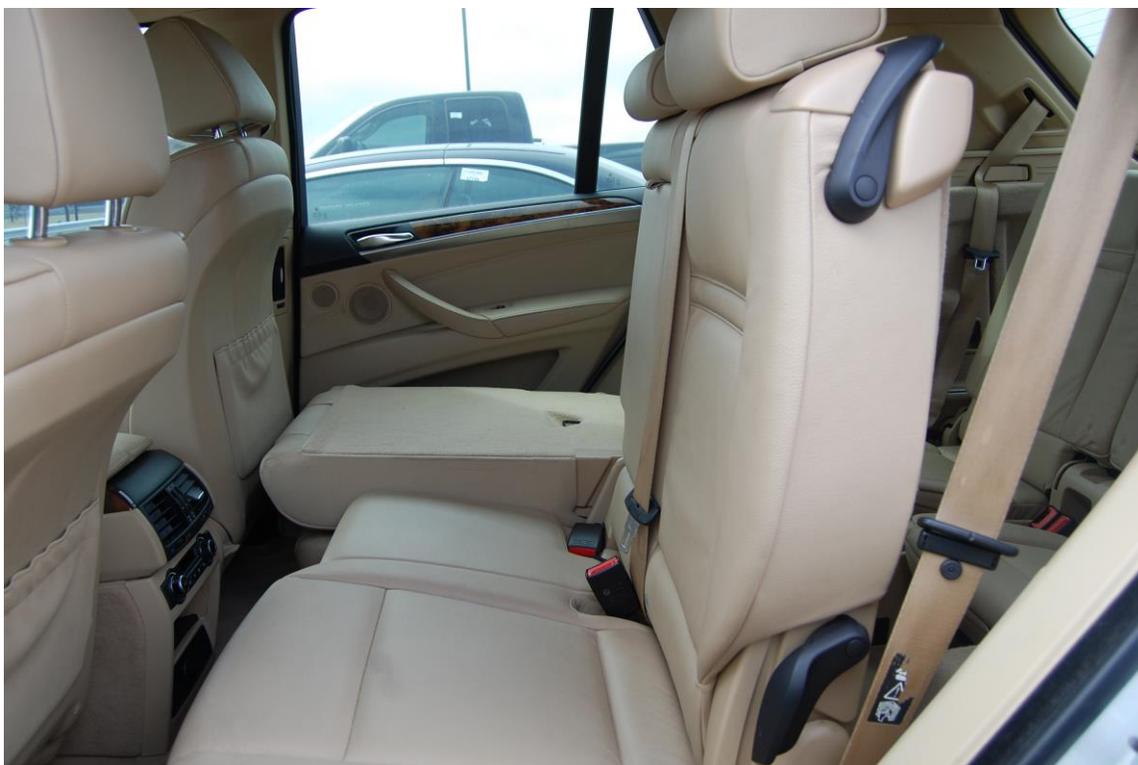


















CLASSIC AUTO APPRAISER
EXTERIOR INSPECTION
Printed 03/18/2014 09:12 AM

Inventory Management

4USFE43597LY80015 2007 BMW X5 3.0, Alpine White

Owner: A2152 - Financial Services Remarketing Inc. Term Acct: BMWFS Date: 1 of 1
Stock #: 922822 Checkin: 2/19/13 11:24 AM Checkout: Inventory: 1 of 1

Vehicle	Ownership	Commercial	Options	Announcements	Special Acct.	Vehicle History	Property	Lights	Interior	AISC
VIN: 4USFE43597LY80015										
Year: 2007										
Make: BMW										
Model: X5 3.0										
Series:										
Body Style:										
Engine:										
Doors: 4										
Color: Alpine White										
Int. Color: Sand Beige Nevada										
Odometer: 80,344 Miles										
Gross Weight:										
Net Weight:										
Manual Code: T00										
LVC:										
Body Code:										
Model Number:										
Vehicle Type: Car										
Vehicle Segment:										
Invoice Amount: 30										
Alternative Fuel:										
Transmit: <input checked="" type="checkbox"/>										
Recreational Vehicle: <input type="checkbox"/>										

Work Pass Maintenance

BRINGS UP TO REDUPTION LOT.



SIMILAR VEHICLES FOR SALE

2007 BMW X5 3.0si



About this Car

Seller's Comments

Key Details

- 71,063 Miles
- White
- 6 Cylinder Engine
- Gasoline
- 6 Speed Shiftable Automatic Transmission
- All wheel drive
- Four Door Sport Utility
- Stock No: A19Y80249
- VIN: 4USFE43517LY80249

Exhibit A-5

International Vehicle Appraisers Network

VEHICLE APPRAISAL

John W. Holmes

(972) 691-4181

Cell:(817) 320-7165

2708 Meadow Glen DR

Flower Mound, TX 75022

Email:johnrfeng@yahoo.com

www.i-van.org/holmes.htm

On April 1, 2014 I personally inspected and evaluated the vehicle described below for the purpose of providing an estimation of the vehicle's value today. I inspected the vehicle's exterior, interior, chassis, and engine compartment. A mechanical evaluation was conducted where possible. The evaluation is based upon authenticity, preservation/ restoration, maintenance and/or replacement costs.

Vehicle Make & Year: 2007 BMW X5 3.0

VIN: **4USFE43597LY80015**

Body Style: SUV

Color: Alpine White

Interior (color/material): tan/leather

Vehicle Inspected at: Adesa

ATTN: Kristen Blank

Address: Hohmann, Taube, & Summers 100 Congress Ave, Suite 1800 Austin, TX 78701

Special Features

(Mileage: 80344) BMW X5 with sun roof and fixed running boards.

Comments

Engine/Engine Compartment: Compartment is free from damage and rust. Need a detail. All original equipment is present. Engine is the 3.0L six cylinder with an automatic transmission.

Chassis: Shows some wear. Minor areas of dirt, grime, and surface rust are present. This is normal wear for a driven SUV with 80,344 miles. Tires are in very good shape.

Interior: Drivers seat shows some wear with minor cracks in the seat bottom. The rest of the interior is in very good condition. Interior is very clean for a car of this vintage.

Exterior: Car is Alpine White and the paint is in good shape. The black trim is in need of some TLC. Headlights are very fogged and need to be restored or replaced. The car is dent free. Car could use a good detailing.

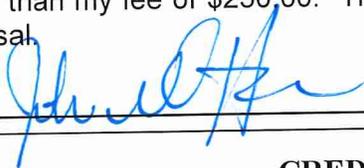
Summary/Comments

This X5 is in above average condition for a car with 80,344 miles. I did not detect any body damage

After careful evaluation of this vehicle, based on my expertise and experience (and after consulting Old Cars Price Guide, NADA, Kruse International Auction Results, The Production Figure Book for U.S. Cars, the Internet, reviewing the *International Vehicle Appraisers Network* database, etc., and after consulting with other Professional Appraisers, museums, and automotive experts, etc., when necessary, I appraise (estimate) this vehicle as having a cash value of \$21,750.

I hereby state that I have no financial interest, ownership, or employment in/with any firm engaged in the purchase, sale, insurance or transport of motorized vehicles nor in any firm engaged in the repair or restoration of motorized vehicles. I further state that I have received no compensation for this appraisal, from any source, other than my fee of \$250.00. Therefore I have no actual or potential conflict of interest in providing this appraisal.

Signed _____



John Holmes

CREDENTIALS

- 1) Certified Appraiser in the International Vehicle Appraisers Network (nationwide association).
- 2) Providing Professional Appraisals of automobiles, trucks, and motorcycles since 1996. Appraisals accepted by every insurance company as well as banks, credit unions, IRS, and Courts of Law (expert Witness), etc.
- 3) In-process Master Judge for the Antique Automobile Club of America (AACA)
- 4) Authorized Vehicle Inspector for Barrett-Jackson Auction Co. (nationwide).
- 5) Former Drag Racer and One Lap of America veteran.
- 6) Guest Speaker on Appraisals before clubs and organizations.
- 7) Auto Body Repair Tech with over five years experience. Trained on EZ-Liner frame Rack.

Exhibit A-6

From: [James W. George](#)
To: [Carrie E Puccia](#)
Subject: FW: To whom it may concern.../joel friant/BMW
Date: Monday, March 17, 2014 2:14:14 PM

Carrie-here is mr. friant's authority-thanks, jwg

From: Joel [mailto:ptftoday@comcast.net]
Sent: Monday, March 17, 2014 2:06 PM
To: jwgeorge@texas.net
Subject: To whom it may concern...

To whom it may concern –

I, Joel Friant grant full authority to the Hohman Law Firm to sell or dispose of my 2007 BMW X-5 in any manner they see fit.

-Joel Friant

Text inserted by Panda GP 2013:

This message has NOT been classified as spam. If it is unsolicited mail (spam), click on the following link to reclassify it: [It is spam!](#)
