

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
COURT FILE NO. 11-CP-08-3412

FIRST CITIZENS BANK AND)
TRUST COMPANY, INC.,)
SUCCESSOR-IN-INTEREST TO)
THE FEDERAL DEPOSIT)
INSURANCE CORPORATION,)
RECEIVER OF GEORGIAN BANK,)

Plaintiff,)

vs.)

GOOSE CREEK II, LLC,)
JAMES C. WALLACE A/K/A)
JAMES C. WALLACE, SR.,)
JOHN S. PAULSON A/K/A JOHN)
PAULSON, JIRI JILICH A/K/A)
JIRI JILICH, JR., JAMES K.)
PRICE, EASTWOOD HOMES,)
INC., CHARLES HUFF, AS THE)
PERSONAL REPRESENTATIVE)
OF THE ESTATE OF RICHARD P.)
HUFF, JR., SEAMON, WHITESIDE)
& ASSOCIATES, INC., MONARCH)
PLANTATION HOMEOWNERS')
ASSOCIATION, INC.,)

Defendants.)

MASTER'S DECREE
(Deficiency Demanded)

FILED
2013 OCT -4 PM 2:55
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

RECEIVED

OCT 30 2013

SC Court of Appeals

THIS MATTER comes before me on September 25, 2013, to take testimony and to render final judgment pursuant to that certain Consent Order filed herein on February 27, 2013 (the "Consent Order"). Pursuant to the Consent Order, I have held a Hearing, the Record of which, together with the exhibits, are filed herewith.

This action was brought for foreclosure of a mortgage given by Defendant Goose Creek II, LLC ("Goose Creek") to Plaintiff. This action was initiated by the filing of a Civil Action

Coversheet, Certificate of Exemption from ADR, Amended Lis Pendens, and Summons and Complaint on December 8, 2011 (the "Lawsuit"). The Defendants have been properly served with process. Defendants Goose Creek, Jiri Jilich a/k/a Jiri Jilich, Jr. ("Jilich") James K. Price ("Price"), and Monarch Plantation Homeowners Association ("Monarch") are now in default. Defendants James C. Wallace, Sr. ("Wallace") and John Paulson ("Paulson"), against whom Plaintiff asserted guaranty liability claims in the Lawsuit, filed answers and raised defenses to Plaintiff's claims in the Lawsuit. Pursuant to the Consent Order, Plaintiff's guaranty liability claims against Wallace and Paulson and their defenses thereto were bifurcated for separate trials pursuant to South Carolina Rule of Civil Procedure 42(b). Subsequently, all guaranty liability and other claims against Paulson were resolved. Accordingly, I have no jurisdiction or authority with respect to Plaintiff's claims against Wallace and Wallace's defenses to those claims and none of the rulings contained in this Master's Decree adjudicate those claims and defenses.

All Defendants were notified of the time, date and place of the Hearing, including those in default.

The Plaintiff, First Citizens Bank and Trust Company, Inc., successor-in-interest to the Federal Deposit Insurance Corporation, receiver of Georgian Bank ("Plaintiff" or "FCB"), is now and was at the times hereinafter mentioned a corporation organized and existing under the laws of the South Carolina with its principal place of business at Columbia, South Carolina, and doing business in Berkeley County, South Carolina, and this Court has jurisdiction of the parties and the subject matter of this action.

On or about January 8, 2008, Goose Creek, by and through James K. Price, its Manager, executed and delivered to Georgian Bank a negotiable Promissory Note in the original principal

amount of Nine Million Two Hundred Thirty-Five Thousand Seven Hundred Forty-Five and 00/100 Dollars (\$9,235,745.00), with interest thereon at the "Prime Rate" as quoted by the Wall Street Journal, as more fully shown in the original document, a copy of which Note is attached to the Record of Hearing as Exhibit "A" and incorporated therein by reference (the "Original Note" and/or "Original Loan").¹ The Original Note also provided that, in the event of a default thereunder, the interest rate would increase to 16% per annum (the "Default Rate").

On the same date, to secure payment of the Original Note, Goose Creek executed and delivered to Georgian Bank a Mortgage, a copy of which Mortgage is attached to the Record of Hearing as Exhibit "B" and is incorporated therein by reference (the "Mortgage"), which Mortgage was recorded on January 9, 2008, in the office of the Register of Deeds for Berkeley County, South Carolina, in Volume 7095 at Page 335, and which covered, as of the date of recording of the Mortgage, the following described real property, to wit:

PARCEL 1

ALL that certain piece, parcel or lot of land, situate, lying and being in the Town of Goose Creek, Berkeley County, State of South Carolina, containing 14.92 acres, more or less, and being more fully shown and designated as "Residual 649885.0 SQ. FT. 14.92 ACRES" as per plat entitled "PLAT SHOWING THE SUBDIVISION OF 20.0 ACRES CREATING TRACT 1-A LOCATED NEAR GOOSE CREEK, BERKELEY COUNTY, SOUTH CAROLINA" dated August 1, 2007, by Kevin M. Schwacke, Sr., PLS of A.H. Schwacke & Associates, Inc., which said plat was recorded August 7, 2007 in the ROD Office for Berkeley County in Plat Book N, at Page 53-H. The property has the location, dimensions, and butts and bounds shown on the plat, reference to which is hereby craved.

SUBJECT TO the rights, if any, of third persons in the drainage ditch along the south line of the premises as said ditch is shown on the aforesaid plat.

TOGETHER WITH a perpetual non-exclusive, appurtenant right of way, fifth (50') feet in width, for use of pedestrian, car, truck and railroad traffic and all types of utilities, either overhead or underground, providing the use does not obstruct passage on or use of this right of way land to the remaining property of the grantor's predecessor in title except during any period of construction and/or maintenance for the above uses. The said right of way is shown on the aforesaid plat and designated as "Existing 50' Access Road Easement (Book R Page 97)," and butting, bounding and measuring as follows: to the south on the northern line of the property above described, 50 feet; to the west on the right of way of Seaboard Coast

¹ The Original Note is a redacted copy because it may contain personal information protected by S.C. CODE ANN. § 30-2-330.

Line Railroad, 250 feet; to the north on the easterly extension of the northern line of an entrance road crossing said railroad right of way shown on said plat, 50 feet; and to the east on other property now or formerly of International Fastener Research Corp., 250 feet; be all the said dimensions a little more or less.

TOGETHER WITH all right, title and interest of, in and to any licenses, permits, or easements over Seaboard Coast Line Railroad Company property, appertaining to the property conveyed herein.

TOGETHER WITH a perpetual appurtenant landscape easement with portions thereof being thirty feet (30') in width and twenty feet (20') in width; running approximately nine hundred sixty-two and 09/100 feet (962.09) in length along the southeastern, southern and southwestern boundary lines of "TRACT 1-A 221078 SQ. FT. 5.08 ACRES" as depicted on the above referenced plat recorded at Plat Book N, at Page 53-H.

BEING the same property conveyed to Goose Creek II, LLC by deed of Goose Creek Association, LLC dated January 8, 2008 and recorded on January 9, 2008 in the Office of the ROD for Berkeley County, South Carolina, in Volume 7095, Page 331.

TMS #235-01-01-053

ALSO:

PARCEL 2

ALL that certain piece, parcel or tract of land, situate, lying and being on Montague Plantation Road in the City of Goose Creek, County of Berkeley, State of South Carolina, measuring and containing 40.6 acres as shown on a plat entitled, "PLAT SHOWING 40.6 ACRES LOCATED NEAR GOOSE CREEK, BERKELEY COUNTY, SOUTH CAROLINA" dated December 18, 2004, prepared by Kevin M. Schwacke, S.C. Registration Number 210468, and recorded in the ROD Office for Berkeley County in Plat Cabinet Q at Page 315-B. SAID property having such size, shape, dimensions, buttings and boundings as will appear by reference to said plat and said plat is made a part and parcel of this description by reference thereto.

SAVING AND EXCEPTING THEREFROM all that certain piece, parcel or lot of land designated as Parcel 1, containing 0.11 acres as shown on a Plat entitled "A Plat of Subdivision Of TMS# 235-00-00-031 (40.6 Ac.) To Create Parcel 1 Owned by Monarch Development, LLC City of Goose Creek Berkeley County, South Carolina" dated April 24, 2007 and recorded in Plat Book R at Page 338-A in said ROD Office.

BEING the same property conveyed to Goose Creek II, LLC by deed of Monarch Development, LLC dated January 8, 2008 and recorded on January 9, 2008 in the Office of the ROD for Berkeley County, South Carolina, in Volume 7095, Page 327.

TMS #235-00-00-031

together with all buildings, structures, improvements, fixtures, personal property, machinery, equipment, appliances, furnishings, intellectual property, easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer and utility rights, water rights, estates, interests, privileges, tenements, and all other rights related to said real property (together, the "Mortgaged Property").²

Subsequent to the recording of the Mortgage, Goose Creek reconfigured and subdivided the Mortgaged Property pursuant to various subdivision plats that were recorded in the office of the Register of Deeds for Berkeley County, South Carolina, such that the real property subject to the Mortgage, as of the date of the commencement of the above-captioned foreclosure action,³ is described as follows:

All those certain pieces, parcels and lots of land, situate, lying and being in the Town of Goose Creek, County of Berkeley, State of South Carolina, and shown and designated as Lots 1-23, 29-34, 41-123, COMMERCIAL PARCEL "A", COMMERCIAL PARCEL "B", Open Space 1462.0 SQ. FT. 0.03 acres; Open Space 2757.3 SQ. FT. 0.06 acres; Open Space 12457.6 SQ. FT. 0.29 acres; Open Space 3211.1 SQ. FT. 0.07 acres; Open Space (2) 1642.6 SQ. FT. (0.01 AC) between lots 84/85 118/119; Open Space 7210.4 SQ. FT. 0.17 acres; Open Space 2608.1 SQ. FT. 0.06 acres; Open Space 2975.6 SQ. FT. 0.07 acres; Open Space 4400.5 SQ. FT. 0.10 acres; Open Space 11512.0 SQ. FT. 0.26 acres; Open Space 12930.2 SQ. FT. 0.30 acres; Open Space 17290.2 SQ. FT. 0.40 acres; Open Space 5975.6 SQ. FT. 0.14 acres; Open Space 11133.7 SQ. FT. 0.26 acres; Open Space 39936.6 SQ. FT. 0.92 acres (inclusive of Pond Area 33275.1 SQ. FT. 0.76 acres); Open Space 975.2 SQ. FT., and the private roads designated as Orangetip Drive, Silverdrop Street, Viceroy Lane, Duskywing Drive and Swallowtail Lane all as shown on plat by A. H. Schwacke, III, PLS dated January 7, 2009, last revised April 20, 2009, entitled "PLAT OF THE SUBDIVISION OF TRACT 1-C (10.89AC), INTO LOTS 1 THRU 123 MONARCH PLANTATION PHASE 1 ALSO THE SUBDIVISION OF TRACT 1-B INTO COMMERCIAL PARCELS "A" & "B" OWNED BY GOOSE CREEK II LLC" recorded in Plat Book N, page 81P - 82P, Berkeley County ROD Office.

TMS Nos.

² This Court finds that Judge Harrington's November 9, 2012 Order in this matter (the "Order") bars Defendant Eastwood Homes, Inc.'s ("Eastwood") arguments that the Mortgage is void and of no force and effect.

³ Portions of the Mortgaged Property, identified as Lots 24-28 and 35-40, as well as a sewer and wastewater collection system, were released from the Mortgage pursuant to Releases of Mortgage recorded in the office of the Register of Deeds for Berkeley County, South Carolina in Volume 8601 at Page 299 (as to Lots 24-28), in Volume 9261 at Page 124 (as to Lots 35-40), and in Volume 8079 at Page 173 (as to sewer and wastewater collection system), and are therefore not subjected to this foreclosure action.

235-06-03-001	Lot 1	235-06-03-050	Lot 50	235-06-03-088	Lot 88
235-06-03-002	Lot 2	235-06-03-051	Lot 51	235-06-03-089	Lot 89
235-06-03-003	Lot 3	235-06-03-052	Lot 52	235-06-03-090	Lot 90
235-06-03-004	Lot 4	235-06-03-053	Lot 53	235-06-03-091	Lot 91
235-06-03-005	Lot 5	235-06-03-054	Lot 54	235-06-03-092	Lot 92
235-06-03-006	Lot 6	235-06-03-055	Lot 55	235-06-03-093	Lot 93
235-06-03-007	Lot 7	235-06-03-056	Lot 56	235-06-03-094	Lot 94
235-06-03-008	Lot 8	235-06-03-057	Lot 57	235-06-03-095	Lot 95
235-06-03-009	Lot 9	235-06-03-058	Lot 58	235-06-03-096	Lot 96
235-06-03-010	Lot 10	235-06-03-059	Lot 59	235-06-03-097	Lot 97
235-06-03-011	Lot 11	235-06-03-060	Lot 60	235-06-03-098	Lot 98
235-06-03-012	Lot 12	235-06-03-061	Lot 61	235-06-03-099	Lot 99
235-06-03-013	Lot 13	235-06-03-062	Lot 62	235-06-03-100	Lot 100
235-06-03-014	Lot 14	235-06-03-063	Lot 63	235-06-03-101	Lot 101
235-06-03-015	Lot 15	235-06-03-064	Lot 64	235-06-03-102	Lot 102
235-06-03-016	Lot 16	235-06-03-065	Lot 65	235-06-03-103	Lot 103
235-06-03-017	Lot 17	235-06-03-066	Lot 66	235-06-03-104	Lot 104
235-06-03-018	Lot 18	235-06-03-067	Lot 67	235-06-03-105	Lot 105
235-06-03-019	Lot 19	235-06-03-068	Lot 68	235-06-03-106	Lot 106
235-06-03-020	Lot 20	235-06-03-069	Lot 69	235-06-03-107	Lot 107
235-06-03-021	Lot 21	235-06-03-070	Lot 70	235-06-03-108	Lot 108
235-06-03-022	Lot 22	235-06-03-070	Lot 71	235-06-03-109	Lot 109
235-06-03-023	Lot 23	235-06-03-072	Lot 72	235-06-03-110	Lot 110
235-06-03-029	Lot 29	235-06-03-073	Lot 73	235-06-03-111	Lot 111
235-06-03-030	Lot 30	235-06-03-074	Lot 74	235-06-03-112	Lot 112
235-06-03-031	Lot 31	235-06-03-075	Lot 75	235-06-03-113	Lot 113
235-06-03-032	Lot 32	235-06-03-076	Lot 76	235-06-03-114	Lot 114
235-06-03-033	Lot 33	235-06-03-077	Lot 77	235-06-03-115	Lot 115
235-06-03-034	Lot 34	235-06-03-078	Lot 78	235-06-03-116	Lot 116
235-06-03-041	Lot 41	235-06-03-079	Lot 79	235-06-03-117	Lot 117
235-06-03-042	Lot 42	235-06-03-080	Lot 80	235-06-03-118	Lot 118
235-06-03-043	Lot 43	235-06-03-081	Lot 81	235-06-03-119	Lot 119
235-06-03-044	Lot 44	235-06-03-082	Lot 82	235-06-03-120	Lot 120
235-06-03-045	Lot 45	235-06-03-083	Lot 83	235-06-03-121	Lot 121
235-06-03-046	Lot 46	235-06-03-084	Lot 84	235-06-03-122	Lot 122
235-06-03-047	Lot 47	235-06-03-085	Lot 85	235-06-03-123	Lot 123
235-06-03-048	Lot 48	235-06-03-086	Lot 86		
235-06-03-049	Lot 49	235-06-03-087	Lot 87		

235-05-11-001	COMMERCIAL PARCEL "A"
235-05-11-002	COMMERCIAL PARCEL "B"
235-05-11-004	Open Space 1462.0 SQ. FT. 0.03 acres Open Space 2757.3 SQ. FT. 0.06 acres Open Space 12930.2 SQ. FT. 0.30 acres Open Space 2608.1 SQ. FT. 0.06 acres Open Space 12457.6 SQ. FT. 0.29 acres Open Space 3211.1 SQ. FT. 0.07 acres
235-06-03-124	Open Space 7210.4 SQ. FT. 0.17 acres
235-06-03-125	Open Space 11133.7 SQ. FT. 0.26 acres
235-06-03-126	Open Space 5975.6 SQ. FT. 0.14 acres

235-06-03-127	Open Space 17290.2 SQ. FT. 0.40 acres
235-06-03-134	Open Space 975.2 SQ. FT.
235-06-03-133	Open Space 39936.6 SQ. FT. 0.92 acres (inclusive of Pond Area 33275.1 SQ. FT. 076 acres)
235-06-03-132 235-06-03-135	Open Space (2) 1642.6 SQ. FT. (0.01 AC) between lots 84/85 118/119
235-06-03-130	Open Space 4400.5 SQ. FT. 0.10 acres
235-06-03-131	Open Space 2975.6 SQ. FT. 0.07 acres
235-06-03-129	Open Space 11512.0 SQ. FT. 0.26 acres
235-05-11-003	Orangetip Drive
235-06-03-128	Silverdrop Street Viceroy Lane Duskywing Drive Swallowtail Lane

AND

All that certain piece, parcel and tract of land situate, lying and being in the Town of Goose Creek, County of Berkeley, State of South Carolina and shown and designated as "TRACT 1-B RESIDUAL 26.67 ACRES" as shown on that certain plat by A. H. Schwacke, III, PLS dated January 7, 2009, last revised March 31, 2009, entitled "PLAT OF THE SUBDIVISION OF TRACT 1-C (10.89 AC.) INTO LOTS 1 THRU 123 MONARCH PLANTATION PHASE 1 ALSO THE SUBDIVISION OF TRACT 1-B INTO COMMERCIAL PARCELS "A" & "B" OWNED BY GOOSE CREEK II LLC" recorded in Plat Book N, page 81P - 82P, Berkeley County ROD Office.

TMS No. 235-01-01-053

SUBJECT TO the rights, if any, of third persons in the open ditch as shown on the aforesaid plat.

TOGETHER WITH a perpetual non-exclusive, appurtenant right of way, fifty (50') feet in width, for use of pedestrian, car, truck and railroad traffic and all types of utilities, either overhead or underground, providing the use does not obstruct passage on or use of this right of way land to the remaining property of the grantor's predecessor in title except during any period of construction and/or maintenance for the above uses. The said right of way is shown on Plat Book N, at Page 53-H and designated as "Existing 50' Access Road Easement (Book R Page 97)," and butting, bounding and measuring as follows: to the south on the northern line of the property above described, 50 feet; to the west on the right of way of Seaboard Coast Line Railroad, 250 feet; to the north on the easterly extension of the northern line of an entrance road crossing said railroad right of way shown on said plat, 50 feet; and to the east on other property now or formerly of International Fastener Research Corp., 250 feet; be all the said dimensions a little more or less.

TOGETHER WITH all right, title and interest of, in and to any licenses, permits, or easements over Seaboard Coast Line Railroad Company property, appertaining to the property conveyed herein.

TOGETHER WITH a perpetual appurtenant landscape easement with portions thereof being thirty feet (30') in width and twenty feet (20') in width; running approximately nine hundred sixty-two and 09/100 feet (962.09) in length along the southeastern, southern and southwestern boundary lines of "TRACT 1-A 221078 SQ. FT. 5.08 ACRES" as depicted on the plat recorded at Plat Book N, at Page 53-H.

AND

All that certain piece, parcel and tract of land situate, lying and being in the Town of Goose Creek, County of Berkeley, State of South Carolina and shown and designated as "RESIDUAL 13.74 ACRES" as shown on that certain plat by A. H. Schwacke, III, PLS dated January 7, 2009, last revised March 31, 2009, entitled "PLAT OF THE SUBDIVISION OF TRACT 1-C (10.89 AC.) INTO LOTS 1 THRU 123 MONARCH PLANTATION PHASE 1 ALSO THE SUBDIVISION OF TRACT 1-B INTO COMMERCIAL PARCELS "A" & "B" OWNED BY GOOSE CREEK II LLC" recorded in Plat Book N, page 81P - 82P, Berkeley County ROD Office.

TMS No. 235-00-00-031

AND

All that certain piece, parcel and lot of land, situate, lying and being in the Town of Goose Creek, County of Berkeley, State of South Carolina and shown and designated as "NEW AMENITY AREA 16620.1 SQ. FT. 0.38 ACRES", as shown on plat by Kevin M. Schwacke, Sr., PLS dated November 20, 2008, revised December 9, 2008, entitled "PLAT OF THE SUBDIVISION OF TAX MAP NO. 235-00-00-031 25.01 AC INTO TRACT 1-C (10.89 AC.), AMENITY AREA (0.89 AC.) & RESIDUAL (13.74 AC) OWNED BY MONARCH DEVELOPMENT (sic)" and recorded in Plat Book M, page 383-P, Berkeley County ROD Office.

TMS No. 235-00-00-075

BEING portions of the same property conveyed to Goose Creek II, LLC by deed of Monarch Development, LLC dated January 8, 2008 and recorded on January 9, 2008 in the Office of the ROD for Berkeley County, South Carolina, in Volume 7095, Page 327, and by deed of Goose Creek Association, LLC dated January 8, 2008 and recorded on January 9, 2008 in the Office of the ROD for Berkeley County, South Carolina, in Volume 7095, Page 331.

together with all buildings, structures, improvements, fixtures, personal property, machinery, equipment, appliances, furnishings, intellectual property, easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer and utility rights, water rights, estates, interests, privileges, tenements, and all other rights related to said real property (together, the "Property").

In addition to the Property, the Mortgage covers all property and rights appurtenant to the Property, including, but not limited to, Goose Creek's rights as Declarant under the Declaration of Covenants, Conditions, Restrictions, And Easements For Monarch Plantation (the "Declaration"), which is dated June 21, 2009 and was recorded in the office of the Register of Deeds for Berkeley County, South Carolina, on September 25, 2009, in Volume 8130 at page

1. Furthermore, pursuant to the terms of the Acquisition and Development Loan Agreement (the "A&D Agreement") between Goose Creek and Plaintiff dated January 8, 2008, in the event of default, Plaintiff is entitled to step into the shoes of Goose Creek as Declarant under the Declaration and to carry out and perform all the functions of the Declarant as fully as if Plaintiff were the named Declarant in the Declaration. Further, pursuant to the terms of the A&D Agreement, by electing such remedy, Plaintiff does not assume any liability or responsibility for actions taken or omitted by Goose Creek as Declarant prior to Plaintiff's making such election. The A&D Agreement is attached to the Record of Hearing as Exhibit "C" and is incorporated therein by reference.

As additional consideration for the Note and in order to better secure the conditions and obligations thereunder, Goose Creek executed and delivered to Georgian Bank that certain Assignment of Leases and Rents, which said Assignment was recorded on January 9, 2008, in the office of the Register of Deeds for Berkeley County, South Carolina, in Volume 7096 at Page 1, a copy of which is attached to the Record of Hearing as Exhibit "D" and is incorporated therein by reference (the "Assignment of Leases and Rents").

On the same date and to secure further the payment of the Original Note and the indebtedness evidenced thereby, Goose Creek delivered to Georgian Bank that certain UCC-1 Financing Statement filed in the office of the Register of Deeds for Berkeley County, South Carolina, on January 9, 2008, in Volume 7096 at Page 9, a copy of which is attached to the Record of Hearing as Exhibit "E" and incorporated therein by reference.

The obligations of Goose Creek pursuant to the Original Loan have been guaranteed by the Defendants Jilich and Price (hereinafter sometimes collectively referred to as "Guarantors")

pursuant to their respective individual Guaranties given by Guarantors in favor of Georgian Bank and dated as of January 8, 2008 (as amended and affirmed from time to time, the "Guaranties"), copies of which are attached to the Record of Hearing as Exhibit "F" and are incorporated therein by reference.⁴

Thereafter, on or about January 1, 2009, Goose Creek, by and through Price, its Manager, Error! Bookmark not defined. executed and delivered to Georgian Bank a negotiable Note in the original principal amount of Nine Million Two Hundred Thirty-Five Thousand Seven Hundred Forty-Five and 00/100 Dollars (\$9,235,745.00), with interest thereon at the Prime Rate as quoted by the Wall Street Journal plus two (2%) per centum per annum (the "Renewal Note"), as more fully shown in the original document, a copy of which is attached to the Record of Hearing as Exhibit "G" and is incorporated therein by reference.⁵ The Renewal Note also provides that, in the event of default thereunder, then in such event the interest rate would increase to 16.00% per annum (the "Default Rate"). (The Original Note and the Renewal Note hereinafter sometimes collectively referred to as the "Note").

On or about January 1, 2009, and in order to further secure payment of the Renewal Note and as additional consideration for the loan, the Defendants Jilich and Price, each individually, executed and delivered to Plaintiff their respective individual Commercial Guaranty (also the "Guaranties") by which they each guaranteed payment of the amount due under said Renewal Note, and all extensions, renewals, and modifications thereof, as may be more fully seen by reference to the Commercial Guaranties attached to the Record of Hearing as Exhibits "H" and

⁴ The Guaranties are redacted copies because they may contain personal information protected by S.C. CODE ANN. § 30-2-330.

⁵ The Renewal Note is a redacted copy because it may contain personal information protected by S.C. CODE ANN. § 30-2-330.

incorporated therein by reference (collectively the "Renewal Guaranties").⁶ (The Guaranties and the Renewal Guaranties are hereinafter sometimes also collectively referred to as the "Guaranties").⁷

Thereafter, on or about January 1, 2009, Goose Creek and Georgian Bank each executed and delivered a Business Loan Agreement (the "Business Loan Agreement") in the original principal amount of Nine Million Two Hundred Thirty-Five Thousand Seven Hundred Forty-Five and 00/100 Dollars (\$9,235,745.00), as more fully shown in the original document, a copy of which is attached to the Record of Hearing as Exhibit "I" and is incorporated therein by reference.⁸

During the term of the loan evidenced by the Note, on September 25, 2009, the Federal Deposit Insurance Corporation (the "FDIC") was appointed as receiver for Georgian Bank. Plaintiff purchased some of the assets and accounts of Georgian Bank from the FDIC, including the loan evidenced by the Note. On or about September 8, 2010, the FDIC assigned and transferred all of its rights, title, and interest in and to the Note and Mortgage to First Citizens Bank and Trust Company, Inc. by executing that certain Assignment of Mortgage (the "Assignment of Mortgage"), which Assignment of Mortgage was recorded on September 13, 2010, in the office of the Register of Deeds for Berkeley County, South Carolina, in Volume 8604 at Page 102, a copy of which is attached to the Record of Hearing as Exhibit "J" and is incorporated therein by reference.

⁶ The Renewal Guaranties are redacted copies because they may contain personal information protected by S.C. CODE ANN. § 30-2-330.

⁷ Additional guarantor liability claims have been asserted by Plaintiff against Defendants James C. Wallace, Sr. ("Wallace") and John Paulson ("Paulson"). All claims against Paulson, as Guarantor, have been resolved. The guarantor claims against Wallace were not adjudicated herein, as those claims were bifurcated and remain with the Circuit Court, on the jury trial docket, pursuant to a Consent Order filed on February 27, 2013.

⁸ The Business Loan Agreement is a redacted copy because it may contain personal information protected by S.C. CODE ANN. § 30-2-330.

In the Note it was agreed by and between the parties that in the event of foreclosure of the Mortgage a reasonable attorneys' fee, which is also secured by the Mortgage, would be included in the judgment of foreclosure. It was further agreed by and between the parties that Goose Creek, its successors or administrators, would insure all buildings on, and constituting a part of, the Property, and keep the same insured from loss or damage by fire or other casualties, and such insurance policy would contain a loss payable clause to the Plaintiff, its successors and assigns. It was further agreed by and between the parties that Goose Creek, its successors and administrators would pay promptly all insurance premiums, due and owing on the Property, and in default thereof, that the holder of the Mortgage would be entitled to pay the same and add such amount to principal. It was further agreed by and between the parties to the Note that in case of default in any of the provisions of the Note or the Mortgage, all sums then owing would become immediately due and payable at the option of the Plaintiff. It was further agreed by and between the parties that Goose Creek, its successors and administrators would pay promptly all taxes assessed and chargeable against the Property and in default thereof, that the holder of the Mortgage would be entitled to pay the same and add such amount to principal.

The Mortgage constitutes a first priority mortgage lien on the subject Property.

The conditions of the Note and the Mortgage have been breached in that the Note has matured and remains unpaid, which constitutes an event of default under the Note, and Plaintiff, as holder of the Note and the Mortgage, has elected to declare a default, to accelerate the terms of the Note, and to declare the entire amount payable according to the terms of the Note and the Mortgage now due and owing, and hereby makes due demand upon Goose Creek for such entire amount as more fully described hereinbelow.

The summary of the total due Plaintiff, is as follows:

Renewal Note dated January 1, 2009 (original amount of \$9,235,745.00), as of September 25, 2013:

Principal	\$	8,471,872.43
Interest (through date of hearing).....	\$	1,219,437.96
Deferred Late Charge (GB).....	\$	2,663.47
Late Charges.....	\$	42,810.74
Appraisal Fees.....	\$	14,600.00
Property Tax Monitoring.....	\$	16,422.16
Environmental Report.....	\$	2,100.00
Taxes Paid by Bank.....	\$	107,212.23
Other.....	\$	<u>255.30</u>
 SUB-TOTAL	 \$	 9,877,374.29

Interest continues to accrue at the rate of 5.25% per centum per annum.

Advances for interim collection costs..... \$ 177,840.30

TOTAL..... \$ 10,055,214.59

The Affidavit of Indebtedness offered into evidence and attached to the Record of Hearing as Exhibit "K" satisfies the requirements of The Uniform Business Records As Evidence Act, S.C. CODE OF LAWS ANN. §19-5-510.

The Note and Mortgage provide for recovery by Plaintiff of a reasonable sum (15%) as attorneys' fees from Goose Creek II and the Note and Mortgage have been placed in the hands of Moore & Van Allen PLLC, Attorneys for Plaintiff, for collection and/or foreclosure.⁹

Plaintiff's counsel has proffered his affidavit with respect to the attorney's fees sought to be recovered in this matter. The Affidavit indicates that approximately 676 hours have been spent on this matter, with an additional 10-15 hours expected before this matter is brought to a conclusion. The fee customarily charged for foreclosures in this area is said to be 10%-15% of the amount due.

⁹ While the Renewal Note provides Plaintiff with the right to recover an attorneys' fee of fifteen percent (15%) of the current principal and accrued interest owed on the Note, Plaintiff has agreed to accept the significantly lesser sum equal to its incurred attorneys' fees.

The remaining factors to be considered by the Court are the nature, extent and difficulty of the legal services rendered, the professional standing of counsel and the beneficial results obtained. The issues involved in this case have been reasonably complex, and the total amount involved, exclusive of incurred attorneys' fees and costs, is \$9,877,374.29. The Court notes counsel's good professional standing in this area of practice. Finally, this case has been pending since December 8, 2011, and the outcome is favorable to the Plaintiff.

Upon due consideration of the statement regarding attorneys' fees, the record before this Court, and the terms of the Note and the Mortgage, that in addition to awarding the fees and costs already incurred and paid by Plaintiff, so as to reimburse it, the further fee for accrued-but- unbilled fees and estimated fees to complete in the amount of \$7,500.00 is both reasonable and appropriate in this case.

The loan that is subject to Plaintiff's above-referenced action is a commercial loan, involving commercial real property collateral, and is, therefore, NOT ELIGIBLE for modification pursuant to the terms of the Home Affordable Modification Program ("HMP") and that HMP is, therefore, inapplicable. The Plaintiff is informed and believes that the Property is not owner occupied property and therefore is not subject to South Carolina Supreme Court Administrative Order 2011-05-02-01.

Pursuant to The Code of Laws of South Carolina (1976), Annotated, Sections 29-3-610, *et seq.* and 15-39-720, *et seq.*, Plaintiff has specifically reserved its right to obtain judgment for any deficiency remaining after the sale of the Property and has specifically requested entry of judgment against Goose Creek, Jilich and Price in the full amount of their debt to Plaintiff at the time of the order for sale subject to partial satisfaction after the sale. However, the Plaintiff reserves the right to waive deficiency prior to the foreclosure sale.

Plaintiff's counsel has introduced by reference those liens junior and subordinate to that of Plaintiff of record at the time this action was initiated:

- Defendant Eastwood Homes, Inc. ("Eastwood"), is made a party to this action because it has, or may claim to have, an interest in the Property, which is the subject of this action, by reason of that certain Mortgage dated February 2, 2009, and recorded on February 3, 2009, in the Office of the ROD for Berkeley County, South Carolina, in Volume 7746, Page 253, in the original stated amount of \$362,500.00, but which interest, if any, is junior and subordinate to the rights of Plaintiff herein.¹⁰
- Defendant Charles Huff, as the Personal Representative of the Estate of Richard P. Huff, Jr., is made a party to this action because he has, or may claim to have, an interest in the Property, which is the subject of this action, by reason of that certain Mortgage dated January 22, 2008, and recorded on June 25, 2010, in the Office of the ROD for Berkeley County, South Carolina, in Volume 8501, Page 246, in the original stated amount of \$1,047,501.37, but which interest, if any, is junior and subordinate to the rights of Plaintiff herein.
- Defendant Seamon, Whiteside & Associates, Inc., is made a party to this action because it has, or may claim to have, an interest in the Property, which is the subject of this action, by reason of 1) that certain Notice and Certificate of Mechanic's Lien dated April 8, 2010, and recorded on April 12, 2010, in the Office of the ROD for Berkeley County, South Carolina, in Volume 8399, Page 250, in the original stated amount of \$33,267.51, and 2) that certain Judgment filed in the Office of the Clerk of Court for Berkeley County, South Carolina, on October 19, 2011, in Court File No. 10-CP-08-2545 in the amount of \$44,629.86, but which interests, if any, are junior and subordinate to the rights of Plaintiff herein.
- Defendant Monarch Plantation Homeowners' Association, Inc., which Plaintiff is informed and believes is an eleemosynary corporation organized and existing under the laws of the State of South Carolina, is made a party to this action because it has, or may claim to have, an interest in the Property, which is the subject of this action, by reason of unpaid regime fees, property owner association fees, assessments and the like, but which interest, if any, is junior and subordinate to the rights of Plaintiff herein.

¹⁰ The Order bars Eastwood's argument that its mortgage on the Property is superior in priority to the Mortgage. Eastwood's counterclaims and related affirmative defenses that advance its arguments on this issue were dismissed by an Order filed by Judge Harrington on November 9, 2012. That Order is the law of this case. *See Long v. Sealed Air Corp.*, 391 S.C. 483, 488, 706 S.E.2d 34, 37 (Ct. App. 2011). This Court is unwilling to abrogate Judge Harrington's Order, especially considering that Eastwood did not move Judge Harrington to reconsider the Order, nor did it appeal the Order. The counterclaims and affirmative defenses in its current iteration of its Answer and Counterclaim directly mirror those dismissed or rendered moot by the Order. As such, Eastwood's pending Motion to Amend Pleading is denied.

NOW, THEREFORE,

IT IS ORDERED that:

1. The Mortgage constitutes a first priority mortgage lien on the Property.
2. Plaintiff is awarded judgment of foreclosure and the Mortgage debt is

established and confirmed in the sum of:

Renewal Note dated January 1, 2009 (original amount of \$9,235,745.00), as of September 25, 2013:

Principal	\$	8,471,872.43
Interest (through date of hearing).....	\$	1,219,437.96
Deferred Late Charge (GB).....	\$	2,663.47
Late Charges.....	\$	42,810.74
Appraisal Fees.....	\$	14,600.00
Property Tax Monitoring.....	\$	16,422.16
Environmental Report.....	\$	2,100.00
Taxes Paid by Bank.....	\$	107,212.23
Other.....	\$	<u>255.30</u>
 SUB-TOTAL	\$	 9,877,374.29
 Advances for interim collection costs.....	\$	 177,840.30
 Awarded Attorneys' Fees to Moore & Van Allen PLLC.....	\$	 <u>7,500.00</u>
 TOTAL.....	\$	 10,062,714.59__

plus interest thereafter at the rate of 5.25% per centum per annum, plus costs which accrue subsequently, including, but not limited to, any tax expense and the cost of securing the Property.

3. The Clerk of Court shall immediately enter upon the indices for judgments, a money judgment in favor of Plaintiff against Defendants Goose Creek, Jilich, and Price in the cumulative amount of Ten Million Sixty-Two Thousand Seven Hundred Fourteen Dollars and 59/100 Dollars (\$10,062,714.59), plus interest upon the judgment amount at the default rate of 5.25% per centum per annum, plus any further costs herein, which judgment shall

be subject to partial satisfaction from the proceeds of any foreclosure sale hereunder.

4. The Property described immediately below:

All those certain pieces, parcels and lots of land, situate, lying and being in the Town of Goose Creek, County of Berkeley, State of South Carolina, and shown and designated as Lots 1-23, 29-34, 41-123, COMMERCIAL PARCEL "A", COMMERCIAL PARCEL "B", Open Space 1462.0 SQ. FT. 0.03 acres; Open Space 2757.3 SQ. FT. 0.06 acres; Open Space 12457.6 SQ. FT. 0.29 acres; Open Space 3211.1 SQ. FT. 0.07 acres; Open Space (2) 1642.6 SQ. FT. (0.01 AC) between lots 84/85 118/119; Open Space 7210.4 SQ. FT. 0.17 acres; Open Space 2608.1 SQ. FT. 0.06 acres; Open Space 2975.6 SQ. FT. 0.07 acres; Open Space 4400.5 SQ. FT. 0.10 acres; Open Space 11512.0 SQ. FT. 0.26 acres; Open Space 12930.2 SQ. FT. 0.30 acres; Open Space 17290.2 SQ. FT. 0.40 acres; Open Space 5975.6 SQ. FT. 0.14 acres; Open Space 11133.7 SQ. FT. 0.26 acres; Open Space 39936.6 SQ. FT. 0.92 acres (inclusive of Pond Area 33275.1 SQ. FT. 0.76 acres); Open Space 975.2 SQ. FT., and the private roads designated as Orangetip Drive, Silverdrop Street, Viceroy Lane, Duskywing Drive and Swallowtail Lane all as shown on plat by A. H. Schwacke, III, PLS dated January 7, 2009, last revised April 20, 2009, entitled "PLAT OF THE SUBDIVISION OF TRACT 1-C (10.89AC), INTO LOTS 1 THRU 123 MONARCH PLANTATION PHASE 1 ALSO THE SUBDIVISION OF TRACT 1-B INTO COMMERCIAL PARCELS "A" & "B" OWNED BY GOOSE CREEK II LLC" recorded in Plat Book N, page 81P - 82P, Berkeley County ROD Office.

TMS Nos.

235-06-03-001	Lot 1	235-06-03-050	Lot 50	235-06-03-088	Lot 88
235-06-03-002	Lot 2	235-06-03-051	Lot 51	235-06-03-089	Lot 89
235-06-03-003	Lot 3	235-06-03-052	Lot 52	235-06-03-090	Lot 90
235-06-03-004	Lot 4	235-06-03-053	Lot 53	235-06-03-091	Lot 91
235-06-03-005	Lot 5	235-06-03-054	Lot 54	235-06-03-092	Lot 92
235-06-03-006	Lot 6	235-06-03-055	Lot 55	235-06-03-093	Lot 93
235-06-03-007	Lot 7	235-06-03-056	Lot 56	235-06-03-094	Lot 94
235-06-03-008	Lot 8	235-06-03-057	Lot 57	235-06-03-095	Lot 95
235-06-03-009	Lot 9	235-06-03-058	Lot 58	235-06-03-096	Lot 96
235-06-03-010	Lot 10	235-06-03-059	Lot 59	235-06-03-097	Lot 97
235-06-03-011	Lot 11	235-06-03-060	Lot 60	235-06-03-098	Lot 98
235-06-03-012	Lot 12	235-06-03-061	Lot 61	235-06-03-099	Lot 99
235-06-03-013	Lot 13	235-06-03-062	Lot 62	235-06-03-100	Lot 100
235-06-03-014	Lot 14	235-06-03-063	Lot 63	235-06-03-101	Lot 101
235-06-03-015	Lot 15	235-06-03-064	Lot 64	235-06-03-102	Lot 102
235-06-03-016	Lot 16	235-06-03-065	Lot 65	235-06-03-103	Lot 103
235-06-03-017	Lot 17	235-06-03-066	Lot 66	235-06-03-104	Lot 104
235-06-03-018	Lot 18	235-06-03-067	Lot 67	235-06-03-105	Lot 105
235-06-03-019	Lot 19	235-06-03-068	Lot 68	235-06-03-106	Lot 106
235-06-03-020	Lot 20	235-06-03-069	Lot 69	235-06-03-107	Lot 107
235-06-03-021	Lot 21	235-06-03-070	Lot 70	235-06-03-108	Lot 108
235-06-03-022	Lot 22	235-06-03-070	Lot 71	235-06-03-109	Lot 109
235-06-03-023	Lot 23	235-06-03-072	Lot 72	235-06-03-110	Lot 110
235-06-03-029	Lot 29	235-06-03-073	Lot 73	235-06-03-111	Lot 111
235-06-03-030	Lot 30	235-06-03-074	Lot 74	235-06-03-112	Lot 112
235-06-03-031	Lot 31	235-06-03-075	Lot 75	235-06-03-113	Lot 113
235-06-03-032	Lot 32	235-06-03-076	Lot 76	235-06-03-114	Lot 114

235-06-03-033	Lot 33	235-06-03-077	Lot 77	235-06-03-115	Lot 115
235-06-03-034	Lot 34	235-06-03-078	Lot 78	235-06-03-116	Lot 116
235-06-03-041	Lot 41	235-06-03-079	Lot 79	235-06-03-117	Lot 117
235-06-03-042	Lot 42	235-06-03-080	Lot 80	235-06-03-118	Lot 118
235-06-03-043	Lot 43	235-06-03-081	Lot 81	235-06-03-119	Lot 119
235-06-03-044	Lot 44	235-06-03-082	Lot 82	235-06-03-120	Lot 120
235-06-03-045	Lot 45	235-06-03-083	Lot 83	235-06-03-121	Lot 121
235-06-03-046	Lot 46	235-06-03-084	Lot 84	235-06-03-122	Lot 122
235-06-03-047	Lot 47	235-06-03-085	Lot 85	235-06-03-123	Lot 123
235-06-03-048	Lot 48	235-06-03-086	Lot 86		
235-06-03-049	Lot 49	235-06-03-087	Lot 87		

235-05-11-001	COMMERCIAL PARCEL "A"
235-05-11-002	COMMERCIAL PARCEL "B"
235-05-11-004	Open Space 1462.0 SQ. FT. 0.03 acres Open Space 2757.3 SQ. FT. 0.06 acres Open Space 12930.2 SQ. FT. 0.30 acres Open Space 2608.1 SQ. FT. 0.06 acres Open Space 12457.6 SQ. FT. 0.29 acres Open Space 3211.1 SQ. FT. 0.07 acres
235-06-03-124	Open Space 7210.4 SQ. FT. 0.17 acres
235-06-03-125	Open Space 11133.7 SQ. FT. 0.26 acres
235-06-03-126	Open Space 5975.6 SQ. FT. 0.14 acres
235-06-03-127	Open Space 17290.2 SQ. FT. 0.40 acres
235-06-03-134	Open Space 975.2 SQ. FT.
235-06-03-133	Open Space 39936.6 SQ. FT. 0.92 acres (inclusive of Pond Area 33275.1 SQ. FT. 076 acres)
235-06-03-132 235-06-03-135	Open Space (2) 1642.6 SQ. FT. (0.01 AC) between lots 84/85 118/119
235-06-03-130	Open Space 4400.5 SQ. FT. 0.10 acres
235-06-03-131	Open Space 2975.6 SQ. FT. 0.07 acres
235-06-03-129	Open Space 11512.0 SQ. FT. 0.26 acres
235-05-11-003	Orangetip Drive
235-06-03-128	Silverdrop Street Viceroy Lane Duskywing Drive Swallowtail Lane

AND

All that certain piece, parcel and tract of land situate, lying and being in the Town of Goose Creek, County of Berkeley, State of South Carolina and shown and designated as "TRACT 1-B RESIDUAL 26.67 ACRES" as shown on that certain plat by A. H. Schwacke, III, PLS dated January 7, 2009, last revised March 31, 2009, entitled "PLAT OF THE SUBDIVISION OF TRACT 1-C (10.89 AC.) INTO LOTS 1 THRU 123 MONARCH PLANTATION PHASE 1 ALSO THE SUBDIVISION OF TRACT 1-B INTO COMMERCIAL PARCELS "A" & "B" OWNED BY GOOSE CREEK II LLC" recorded in Plat Book N, page 81P - 82P, Berkeley County ROD Office.

TMS No. 235-01-01-053

SUBJECT TO the rights, if any, of third persons in the open ditch as shown on the aforesaid plat.

TOGETHER WITH a perpetual non-exclusive, appurtenant right of way, fifty (50') feet in width, for use of pedestrian, car, truck and railroad traffic and all types of utilities, either overhead or underground, providing the use does not obstruct passage on or use of this right of way land to the remaining property of the grantor's predecessor in title except during any period of construction and/or maintenance for the above uses. The said right of way is shown on Plat Book N, at Page 53-H and designated as "Existing 50' Access Road Easement (Book R Page 97)," and butting, bounding and measuring as follows: to the south on the northern line of the property above described, 50 feet; to the west on the right of way of Seaboard Coast Line Railroad, 250 feet; to the north on the easterly extension of the northern line of an entrance road crossing said railroad right of way shown on said plat, 50 feet; and to the east on other property now or formerly of International Fastener Research Corp., 250 feet; be all the said dimensions a little more or less.

TOGETHER WITH all right, title and interest of, in and to any licenses, permits, or easements over Seaboard Coast Line Railroad Company property, appertaining to the property conveyed herein.

TOGETHER WITH a perpetual appurtenant landscape easement with portions thereof being thirty feet (30') in width and twenty feet (20') in width; running approximately nine hundred sixty-two and 09/100 feet (962.09) in length along the southeastern, southern and southwestern boundary lines of "TRACT 1-A 221078 SQ. FT. 5.08 ACRES" as depicted on the plat recorded at Plat Book N, at Page 53-H.

AND

All that certain piece, parcel and tract of land situate, lying and being in the Town of Goose Creek, County of Berkeley, State of South Carolina and shown and designated as "RESIDUAL 13.74 ACRES" as shown on that certain plat by A. H. Schwacke, III, PLS dated January 7, 2009, last revised March 31, 2009, entitled "PLAT OF THE SUBDIVISION OF TRACT 1-C (10.89 AC.) INTO LOTS 1 THRU 123 MONARCH PLANTATION PHASE 1 ALSO THE SUBDIVISION OF TRACT 1-B INTO COMMERCIAL PARCELS "A" & "B" OWNED BY GOOSE CREEK II LLC" recorded in Plat Book N, page 81P - 82P, Berkeley County ROD Office.

TMS No. 235-00-00-031

AND

All that certain piece, parcel and lot of land, situate, lying and being in the Town of Goose Creek, County of Berkeley, State of South Carolina and shown and designated as "NEW AMENITY AREA 16620.1 SQ. FT. 0.38 ACRES", as shown on plat by Kevin M. Schwacke, Sr., PLS dated November 20, 2008, revised December 9, 2008, entitled "PLAT OF THE SUBDIVISION OF TAX MAP NO. 235-00-00-031 25.01 AC INTO TRACT 1-C (10.89 AC.), AMENITY AREA (0.89 AC.) & RESIDUAL (13.74 AC) OWNED BY MONARCH DEVELOPMENT (sic)" and recorded in Plat Book M, page 383-P, Berkeley County ROD Office.

TMS No. 235-00-00-075

BEING portions of the same property conveyed to Goose Creek II, LLC by deed of Monarch Development, LLC dated January 8, 2008 and recorded on January 9, 2008 in the Office of the ROD for Berkeley County, South Carolina, in Volume 7095, Page 327, and by deed of Goose Creek Association, LLC dated January 8, 2008 and recorded on January 9, 2008 in the Office of the ROD for Berkeley

County, South Carolina, in Volume 7095, Page 331.

together with all buildings, structures, improvements, fixtures, personal property, machinery, equipment, appliances, furnishings, intellectual property, easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer and utility rights, water rights, estates, interests, privileges, tenements, and all other rights related to said real property shall be sold at 11:00 a.m. on the next convenient sale date, and should the regular day of judicial sales fall on a legal holiday, then in such event, the sales day shall be on the next business day succeeding such holiday, at public auction at the Berkeley County Courthouse, subject to Plaintiff's reservation of the right to waive deficiency, and subject to real property taxes, if applicable, which are a lien on the Property, but not yet due and payable as of the date of the sale, by the Master according to the statutes governing such sales, and the proceeds of the sale, after paying the costs and expenses of this action, and of said sale, be paid first to Plaintiff, to the extent of the amount due to Plaintiff, as determined as aforesaid, and the balance, if any, be held subject to the further Order of this Court. To the extent the foregoing legal description of the Property to be sold differs from what is set forth in other court documents filed herein, then the legal description of the Property set forth in such other court documents, including without limitation, the Lis Pendens on file herein, is hereby amended to conform to the legal description of the Property set forth in this Section 4.

Should surplus funds result, they will be handled in accordance with Rule 71(c) of The South Carolina Rules of Civil Procedure.

5. In the event the successful bidder shall be other than Plaintiff, Plaintiff shall be entitled to interest on the bid from date of sale to date of compliance at the default rate of 5.25% per centum per annum, and the advertisement for such sale shall include notice of this requirement.

6. The Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) by no later than 4:00 p.m. on the day of the sale to be applied to the purchase price if compliance is made, but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to Plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at the time of bid or to comply with the other terms of the bid within 30 days, then the Property may be re-sold on the same terms and conditions on the same or some subsequent Sales Day, but at the risk of the defaulting bidder(s).

7. The successful bidder shall step into the shoes of Goose Creek as Declarant under the Declaration and, by operation of this Decree, shall be assigned all of Declarant's rights under that Declaration, with no such rights to be retained by Goose Creek or any other entity or individual. This assignment of Declarant's rights shall be a whole assignment and such rights shall vest immediately upon the recordation of the Master's Deed related to the Property, pursuant to the foreclosure sale referenced herein. Further, such successful bidder shall not assume any liability or responsibility for actions taken or omitted by Goose Creek as Declarant prior to the recordation of the Master's Deed in this action.

8. The Defendants and all persons claiming any interest in the Property by, through or under the Defendants, since the filing of the Lis Pendens in this action, be forever foreclosed and barred of any equity of redemption in and to the Property.

9. Pursuant to SOUTH CAROLINA CODE ANN. Section 30-9-31, the deeds of conveyance made pursuant to this sale shall be indexed in the Direct Conveyance or Grantor Index by the Office of the Register of Deeds in the name of the owner of record of the Property immediately prior to execution of the deed, as well as in the name of the undersigned Master,

who executes such deed as Grantor.

10. In the event the successful bidder is other than any of the Defendants in possession herein, the Sheriff of Berkeley County is ordered and directed immediately and without delay, as the Plaintiff may request, and without the necessity of any further documentation, to eject and remove from the premises the occupant or occupants of the Property sold, together with all personal property located thereon, and to put the successful bidder or his assigns in full, quiet and peaceable possession of the Property without delay, and to keep the successful bidder or his assigns in such possession.

11. The Master in Equity shall retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and hearing any issues involving appraisal proceedings under SOUTH CAROLINA CODE ANN. Section 29-3-680, *et seq.*

12. In the event Plaintiff or Plaintiff's representative does not for any reason appear at the scheduled sale of the Property, then the sale of the Property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.

13. This Master's Decree expressly does not adjudicate Plaintiff's claims against Defendant Paulson and Defendant Paulson's defenses thereto in the Lawsuit, as those claims and defenses have been resolved.

14. This Master's Decree expressly does not adjudicate Plaintiff's claims against Defendant Wallace and Defendant Wallace's defenses thereto in the Lawsuit, as those claims and defenses have been bifurcated for separate trial and remain pending in the Circuit Court, on the jury trial docket, pursuant to the Consent Order.

AND IT IS SO ORDERED.

Robert E. Watson

Robert E. Watson
Master in Equity for Berkeley County

MONCK'S CORNER, SC
October 3, 2013