

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Charleston County
Mikell Scarborough
Master-in-Equity

RECEIVED
APR 24 2014
SC Court of Appeals

Circuit Court Case Number 2011-CP-10-2505

Wells Fargo Bank, N.A., as Trustee for WaMu Mortgage Pass-Through
Certificates Series 2006-PR I Trust

Respondent,

versus

Marvin Smalley, Bay Club Homes Property Owners Association, Inc.

Defendants,

Of Whom

Marvin Smalley is

Appellant.

RECORD ON APPEAL

David K. Haller
HALLER LAW FIRM, P.C.
115 River Landing Drive, Suite 102
Charleston, SC 29492
Attorney for the Appellant

OTHER COUNSEL OF RECORD

Michael Anzelmo, Esq.
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Columbia, SC 29211
Attorney for the Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wells Fargo Bank, N.A. as Trustee for
WaMu Mortgage Pass-Through
Certificates Series 2006-PR1 Trust,

Plaintiff,

vs.

Marvin Smalley, Bay Club Homes
Property Owners Association, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
DOCKET NO. 2011-CP-10-250

MASTER IN EQUITY'S
ORDER AND JUDGMENT OF
FORECLOSURE AND SALE

(NO DEFICIENCY REQUESTED)

RECEIVED

OCT 07 2013

SC Court of Appeals

TO:

Weston Adams Law Firm
Attorneys for Plaintiff

David K. Haller
Attorney for Defendant Marvin Smalley

John J. Dodds, III
Attorney for Defendant Bay Club Homes Property Owners Association, Inc.

Pursuant to Rule 53, SCRCP, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the cause, and any appeal therefrom shall be directed to the South Carolina Court of Appeals.

Pursuant to the said Order of Reference, a hearing was held, attended by the attorneys of record, the testimony was taken, which is reported herein, and from the testimony and evidence, I find and conclude as follows:

FILED

2012 DEC 27 PM 12:59

J. ARMSTRONG
CLERK OF COURT

BY

FINDINGS OF FACT

1. The Lis Pendens was filed on May 3, 2010.
2. The Summons and Complaint were filed on May 3, 2010.
3. Service was made upon the Defendants named in this Order as is shown by the proof of service filed herewith.
4. No Defendant is in default as shown by the affidavit filed herein.
5. The Defendants and all attorneys of record were notified of the time, date and place of the hearing in this matter.
6. According to the affidavit filed herein, no Defendant in default is in the military service of the United States of America as contemplated under the Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.
7. For value received, Marvin Smalley made, executed and delivered a note dated the 30th day of November, 2005, promising thereby to pay to the order of The Bank of South Carolina the sum of \$290,500.00, with interest at two and 125/1000 (2.125%) per cent per annum. Other terms and conditions are stated in the note, which is of record herein.
8. To better secure the payment of the note described above, the said Marvin Smalley made, executed and delivered to Mortgage Electronic Registration Systems, Inc. as nominee for The Bank of South Carolina a mortgage in writing dated the 30th day of November, 2005, covering real property in Charleston County, which is the same as that described in the Complaint. The mortgage was filed on the 2nd day of December, 2005 and is of record in the Office of the Register of Mesne Conveyances for Charleston County in Mortgage Book R564 at page 309.
 - (a) Thereafter, by assignment dated June 3, 2010, and recorded in the said RMC's office on June 11, 2010 in Mortgage Book 127 at page 694, the said Mortgage Electronic Registration



Systems, Inc. as nominee for The Bank of South Carolina assigned the subject mortgage to Wells Fargo Bank, N.A. as Trustee for WaMu Mortgage Pass-Through Certificates Series 2006-PR1 Trust, who is now the owner and holder thereof and the debt secured thereby.

9. This mortgage constitutes a first lien on the subject property.

10. Payment due on the note has not been made as provided for therein and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the note and mortgage in the hands of the attorney herein for collection.

11. The sum of \$4,535.00 is a reasonable amount to allow as attorney fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action under the terms of the note and mortgage.

12. The amount due and owing on the note, with interest at the rate provided in the note, and other costs and expenses of collection, including an attorney's fee, secured by the note and mortgage, is as follows:

a. Principal balance 12/1/09	\$316,947.55
b. Interest from 11/1/09 to 11/19/12	
at three and 653/1000 (3.653%) per cent per annum	\$37,744.49
c. Escrow / corporate advances	\$19,464.30
d. Late charges	\$427.34
e. Costs of collection before hearing	\$1,277.57
f. Attorney fee	\$4,535.00

Total debt secured by note and mortgage,
including interest to date shown

\$380,396.25

Interest for the period from the date shown in (b) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt herein and interest after the date of judgment at the rate of three and 653/1000 (3.653%) per cent per annum (pursuant to the terms of the note and mortgage) on the judgment debt should be added to



such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

13. The Plaintiff is seeking the usual foreclosure of the mortgage and has in the Complaint, or subsequent thereto in writing, expressly waived the right to a personal or deficiency judgment.

14. The Defendant(s) below named claim or may claim a lien upon or interest in the subject property by virtue of the matters and things hereinbelow alleged and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c) SCRCF.

(a) The Defendant, Bay Club Homes Property Owners Association, Inc. by virtue of a pending judgment obtained against Marvin H. Smalley dated April 9, 2010, and recorded in said RMC's office on April 9, 2010 as Case No. 2010-CP-10-2957. Any such interest in or lien upon the said property is junior and subordinate to Plaintiff's Mortgage.

15. The Plaintiff's Complaint alleges that no Defendant is entitled to relief under the South Carolina Supreme Court Administrative Order 2009-05-22-01. This averment was not challenged by any Defendant and it is therefore determined that no Defendant is entitled to relief under this Order.

CONCLUSIONS OF LAW

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff's Mortgage be declared a first lien and Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

2. That the Plaintiff has complied with the mandates of South Carolina Supreme Court Administrative Order 2009-05-22-01.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

1. That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$380,396.25, representing the total debt due Plaintiff as set out in Paragraph 12, supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in Paragraph 12, supra, and later accrued interest on the principal), shall constitute the total judgment debt due Plaintiff and shall bear interest hereafter at the rate of three and 653/1000 (3.653%) per cent per annum. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the judgment figures set forth herein. It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee awarded. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the Court without further hearing.

3. The Defendant is liable for the aforesaid mortgage debt and shall, on or before the date of sale of the property hereinafter described, pay to Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity at public auction at the Charleston County Courthouse on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event the sales day shall be on Tuesday next succeeding such holiday) on the following terms:

A handwritten signature or mark, possibly a stylized 'M' or 'J', is located in the bottom right corner of the page.

A. FOR CASH: The Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) at time of bid, same to be applied on the purchase price only upon compliance with the bid, but in the case of non-compliance within 30 days, same to be forfeited and applied to the costs and Plaintiff's debt.

B. Interest on the balance of the judgment shall be paid to the day of compliance at the rate of three and 653/1000 (3.653%) per cent.

C. The sale shall be subject to real property taxes and assessments, existing easements and restrictions of record, and any senior encumbrances.

D. The Purchaser is to pay for deed stamps and costs of recording the deed.

5. If Plaintiff is the successful bidder at sale for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay the Master in Equity only the amount of costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

6. Personal or deficiency judgment being waived, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

7. That the Master in Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within 30 days after the date of sale, the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

8. That the Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including plaintiff's attorney fee and including any Guardian ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to the Plaintiff, or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on same.

NEXT: Any surplus will be held pending further Order of this Court.

9. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendant in possession herein, upon full compliance with the bid the Sheriff of Charleston County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located therein, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep the successful bidder or his assigns in such peaceable possession. Pursuant to S.C. Code Ann. Sec. 27-40-710, personal property will be placed on the street or public highway for disposal, and removed after forty-eight hours.

10. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each Defendant named herein and all persons whosoever claiming under him, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

11. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant, and the Defendant who was the titleholder of the mortgaged property at the time of filing of the notice of pendency of the within action and the name of the grantee, and the Register of Mesne Conveyance is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

12. The undersigned Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

13. This case was referred to the Master in Equity for Charleston County to direct entry of final judgment in this action under Rule 53, SCRPC. Any appeal from the final judgment entered by the Master in Equity shall be directly to the South Carolina Court of Appeals.

14. The following is a description of the premises herein ordered to be sold:

ALL that certain piece, parcel or lot of land, together with any and all improvements thereon, situate, lying and being in the City of Charleston and State of South Carolina, and known and designated by the number 15 on the plan of One Hundred and One Lots made by Louis J. Barbot, April 10th, 1892 and recorded in the Office of the Register of Mesne Conveyances for Charleston County in Plat Book B, at page 149.

Measuring and containing on Bogard Street Thirty-three (33') feet Six (6") inches, on Kracke Street Ninety three (93') feet, on the East line Ninety-one (91') feet, and on the South line Thirty-three (33') feet Six (6") inches.

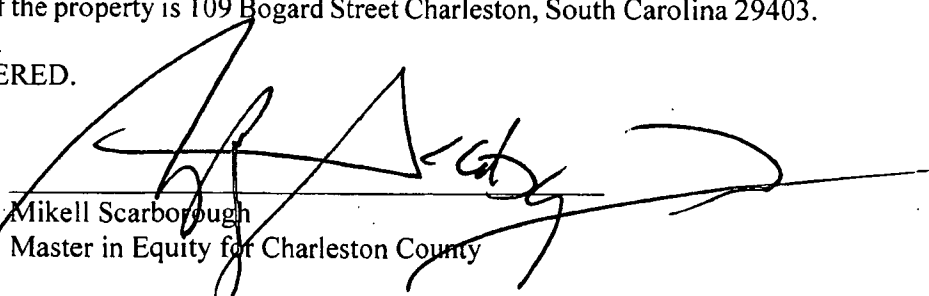
Butting and bounding to the North on Bogard Street, South on Lot No. 16 of said Plat, East by Lot No. 14 of said Plat and West by Kracke Street.

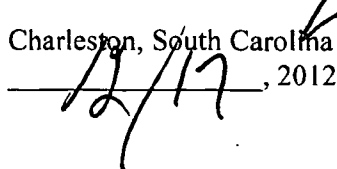
This being the same property conveyed to Marvin Smalley by deed of Denise E. Crosby and David L. Foust recorded September 22, 2000 in Deed Book H-355 at page 693.

TMS No. 460-11-02-114

The current address of the property is 109 Bogard Street Charleston, South Carolina 29403.

AND IT IS SO ORDERED.


Mikell Scarborough
Master in Equity for Charleston County


Charleston, South Carolina
12/17, 2012

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011CP-10-2505

WELLS FARGO BANK

MARVIN Smalley et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

Defendant's motion to reconsider pursuant to Rule 59(e) is denied.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062

Judge Code

Date

9/5/13

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Wells Fargo Bank, N.A. as Trustee for
WaMu Mortgage Pass-Through
Certificates Series 2006-PR1 Trust,)

Plaintiff,)

vs.)

Marvin Smalley, Bay Club Homes
Property Owners Association, Inc.,)

Defendant(s).)

IN THE COURT OF COMMON PLEAS
DOCKET NO. 2011-CP-10-2505

MOTION AND
ORDER OF REFERENCE

FILED
2011 JUN 14 PM 4:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The above captioned case is an action to foreclose real property and the issues to be tried are equitable in nature. Therefore, pursuant to Rules 53(b) and 71 SCRPC, and the common law of this state, this case is proper for mandatory reference to The Honorable Mikell R. Scarborough, Master in Equity for the above county with authority to enter a final judgment in the cause. Any appeal from this case shall be directed to the South Carolina Court of Appeals. Now, on motion of the undersigned, attorney for Plaintiff,

IT IS THEREFORE ORDERED that this action be, and the same hereby is, referred to the Master in Equity for the above county to take the testimony arising under the pleadings and to make his findings of fact and conclusions of law, with authority to enter a final judgment in the cause and to hear any issues after sale or judgment, including but not limited to issues involving appraisal proceedings under Section 29-3-680, et seq., and with the authority to sell the subject property at public auction on some convenient sales day hereafter, and any appeal therefrom shall be directed to the South Carolina Court of Appeals.

Chas
10/13, South Carolina
2011

Julie J. Armstrong
PRESIDING JUDGE OR CLERK OF COURT

WE SO MOVE:

WESTON ADAMS LAW FIRM

Caroline Glenn

Weston Adams

Ashley M. Zarrett

Chad W. Burgess

Caroline R. Glenn

Attorney for Plaintiff

1501 Richland Street

Columbia, South Carolina 29201

(803) 254-1675

Date 6-8-2011
Amount \$125.00
PAID
MIKELL R. SCARBOROUGH
MASTER IN EQUITY
By J. Weather

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Wells Fargo Bank, N.A. as Trustee for)
WaMu Mortgage Pass-Through)
Certificates Series 2006-PR1 Trust,)
)
Plaintiff,)
)
vs.)
)
Marvin Smalley, Bay Club Homes)
Property Owners Association, Inc.,)
)
Defendant(s).)
_____)

IN THE COURT OF COMMON PLEAS

10-CP-10-3603

COMPLAINT
Foreclosure (Non-Jury)

FILED
2010 MAY -3 PM 11:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The Plaintiff above named, complaining of the Defendant(s) herein alleges that:

1. Plaintiff, Wells Fargo Bank, N.A. as Trustee for WaMu Mortgage Pass-Through Certificates Series 2006-PR1 Trust, is a corporation or other legal entity doing business in the State of Florida.
2. The subject of this action is real property located in the County of Charleston, State of South Carolina.
3. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
4. Heretofore, under date the 30th day of November, 2005, Marvin Smalley made, executed, and delivered to The Bank of South Carolina a certain Mortgage Note in writing, wherein and whereby Marvin Smalley promised to pay to The Bank of South Carolina, the principal sum of two hundred ninety thousand five hundred and 00/100 Dollars (\$290,500.00), together with interest at the adjustable rate initially two and 125/100 (2.125%) per cent per annum on the unpaid balance; said principal and interest being payable in monthly installments, commencing on the 1st day of January, 2006, and on the 1st day of each month thereafter until the said Note is fully paid.
5. In order to secure the payment of said Note, the said Marvin Smalley, did on the same date, to wit, the 30th day of November, 2005, make, execute, and deliver to Mortgage Electronic Registration Systems, Inc. as nominee for The Bank of South Carolina, its successors and assigns, a certain real estate Mortgage ("Mortgage") covering real property located in the County and State aforesaid and in said Mortgage described as follows:

ALL that certain piece, parcel or lot of land, together with any and all improvements thereon, situate, lying and being in the City of Charleston and State of South Carolina, and known and designated by the number 15 on the plan of One Hundred and One Lots made by Louis J. Barbot, April 10th, 1892 and recorded in the Office of the Register of Mesne Conveyances for Charleston County in Plat Book B, at Page 149.

Measuring and containing on Bogard Street Thirty-three (33') feet Six (6") inches, on Kracke Street Ninety three (93') feet, on the East line Ninety-one (91') feet, and on the South line Thirty-three (33') feet Six (6") inches.

Butting and bounding to the North on Bogard Street, South on Lot No. 16 of said Plat, East by Lot No. 14 of said Plat and West by Kracke Street.

This being the same property conveyed to Marvin Smalley by deed of Denise E. Crosby and David L. Foust recorded September 22, 2000 in Deed Book H-355 at page 693.

PROPERTY ADDRESS: 109 Bogard Street
Charleston, South Carolina 29403

TMS# 460-11-02-114

6. On the 2nd day of December, 2005, said Mortgage was recorded in the office of the RMC for Charleston County in Mortgage Book R-564 at page 309.

(a) Thereafter, the said Mortgage Electronic Registration Systems, Inc. as nominee for The Bank of South Carolina assigned said mortgage to Wells Fargo Bank, N.A. as Trustee for WaMu Mortgage Pass-Through Certificates Series 2006-PR1 Trust, who is now the owner and holder thereof and the debt secured thereby, assignment to be recorded.

7. The Mortgage evidences and secures the repayment of money advanced by the Mortgagee to, or on behalf of, the mortgagor(s) and constitutes a first lien on the Mortgaged premises.

8. In and by the terms of said Note and the Mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal or interest or any portion thereof when due, or if any of the conditions and requirements in the Mortgage securing the same not be complied with, then the whole principal sum and accrued interest shall

at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

9. In and by the terms of the said Note, it is further provided that the maker thereof shall pay all collection costs, including reasonable attorneys fees, if the said Note be placed in the hands of an attorney for collection after default.

10. Any notice required by the terms of the Mortgage or by state or federal law has been given to the applicable defendant(s) prior to the commencement of this action.

11. The installment of principal and interest falling due from and after the 1st day of December, 2009, have not been paid although demand for the payment thereof has been made and the Plaintiff, as holder of the said Note and Mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said Note and Mortgage the full and just principal sum of three hundred sixteen thousand nine hundred forty seven and 55/100 Dollars (\$316,947.55), together with interest thereon at the current rate of four and 132/100 (4.132%) per cent per annum from the 1st day of November, 2009, together with reasonable attorneys fees for the collection thereof and the costs of this action.

12. Under the provisions of South Carolina Code §29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the subject Mortgage is perfected and Plaintiff hereby gives notice that all rents shall be payable directly to it by delivery to its undersigned attorneys from the date of default.

13. Upon information and belief, said information having been obtained from the records of the RMC/Clerk of Court for Charleston County, South Carolina, the Defendant(s) below named has, have or may claim to have some interest in or lien upon the said property.

(a) The Defendant, Bay Club Homes Property Owners Association, Inc. by virtue of a pending judgment obtained against Marvin H. Smalley dated April 9, 2010, and recorded in said RMC's office on April 9, 2010 as Case No. 2010-CP-10-2957. Any such interest in or lien upon the said property is junior and subordinate to Plaintiff's Mortgage.

14. The Plaintiff demands no personal or deficiency judgment and any right to the same is specifically waived.

15. The servicer is participating in the Home Affordable Modification Program. However, the loan is not subject to modification under the Home Affordable Modification Program because the HMP solicitation process has completed without a loan modification.

WHEREFORE, Plaintiff prays judgment that:

(a) The amount due upon the said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

(b) Plaintiff's Mortgage be declared a mortgage first lien and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due or which may be or have been paid by Plaintiff, together with attorney's fees and for the costs of this action.

(c) A Receiver be appointed to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(d) The Mortgaged premises be sold according to law and the practice of this Court, the equity of redemption be barred and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said sale:

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

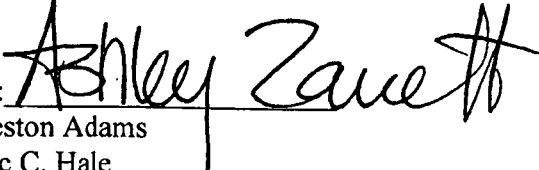
Third, to the distribution of any surplus pursuant to Rule 71, SCRPC.

(e) For such other and further relief as may be just and proper.

FURTHER, in the event the successful bidder (at the time of this foreclosure sale) is other than the Defendant(s) in possession herein, the Sheriff of Charleston will be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located therein, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep the successful bidder or his assigns in such peaceable possession.

Columbia, South Carolina
April 30, 2010

WESTON ADAMS LAW FIRM

By: 

Weston Adams

Eric C. Hale

Chad W. Burgess

Ashley M. Zarrett

Caroline R. Glenn

Attorneys for Plaintiff

Post Office Box 291

Columbia, South Carolina 29202

Telephone: (803)254-1675

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Wells Fargo Bank, N.A., as Trustee for)
WaMu Mortgage Pass-Through Certificates)
Series 2006-PRI Trust,)
)
Plaintiff,)
)
vs.)
)
Marvin Smalley, Bay Club Homes Property)
Owners Association, Inc.,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-10-2505

**ANSWER OF DEFENDANT
MARVIN SMALLEY**

2011 DEC -6 PM 12:11
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO: THE PLAINTIFF AND ITS COUNSEL

Defendant Marvin Smalley answers the complaint of the plaintiff as follows:

FOR A FIRST DEFENSE

1. Each and every allegations of the complaint not hereinafter specifically admitted is denied and strict proof thereof demanded.

FOR A SECOND DEFENSE

2. The complaint fails to state a cause of action for which relief may be granted and should be dismissed pursuant to SCRCRCP Rule 12(b)(6).

FOR A THIRD CAUSE OF ACTION

3. Paragraph one of the complaint is denied and strict proof thereof demanded. Defendant specifically alleges that the plaintiff does not exist and is a sham and that, furthermore, any transfer of the note and mortgage at issue in this matter was illegally transferred or assigned.
4. Paragraph two is admitted.

5. Paragraph three of the complaint is denied and strict proof thereof demanded.
6. As to paragraphs four and five of the complaint, this defendant admits only that he is fee simple owner of the property described in paragraph five and that he borrowed money to buy the property. To the extent the paragraph alleges a valid lien continues to exist on the property, that allegation is denied and strict proof thereof demanded. The remainder of the paragraphs are denied and strict proof thereof demanded.
7. Paragraph six of the complaint is denied and strict proof thereof demanded.
8. Paragraph seven, eight, nine, 10, 11, 12 and 13 of the complaint are denied and strict proof thereof demanded.
9. Paragraph 14 of the complaint is admitted.
10. Paragraph 15 of the complaint is denied. In fact, plaintiff withdrew this property from active prosecution informing the court that the property was under a modification, when, in fact, no modification was agreed to by the parties or offered by the plaintiff.
11. As to the paragraph entitled "WHEREFORE" and its sub-parts, the defendants assert the plaintiff is entitled to no relief and demands strict proof thereof.

FOR A FOURTH AND AFFIRMATIVE DEFENSE

(UNCONSCIONABILITY)

12. The Note and Mortgage that the plaintiff seeks to enforce in this action are unconscionable and unenforceable as a matter of law.

FOR A FIFTH AND AFFIRMATIVE DEFENSE

(UNCLEAN HANDS)

13. Plaintiff's claims are barred by the doctrine of unclean hands, including improper assignments and questions practices.

FOR A SIXTH AND AFFIRMATIVE DEFENSE

(ASSUMPTION OF RISK)

14. Plaintiff's claims are barred by the doctrine of assumption of risk.

FOR A SEVENTH AND AFFIRMATIVE DEFENSE

(CONTRIBUTORY NEGLIGENCE)

15. Plaintiff's claims are barred by the doctrine of contributory negligence.

FOR AN EIGHTH AND AFFIRMATIVE DEFENSE

(DURESS)

16. Plaintiff's claims are barred by the doctrine of duress.

FOR A NINTH AND AFFIRMATIVE DEFENSE

(FRAUD)

17. Plaintiff's claims are barred by the doctrine of fraud in the inducement.

FOR A TENTH AND AFFIRMATIVE DEFENSE

(ILLEGALITY)

18. These defendants are informed and believe that the plaintiff's conduct may have occurred by some illegal means, thereby nullifying the transaction. Accordingly, the plaintiff's claims are barred by illegality.

FOR AN ELEVENTH AND AFFIRMATIVE DEFENSE

(LACHES)

19. The plaintiff's claims are barred by the doctrine of laches.

FOR A TWELFTH AND AFFIRMATIVE DEFENSE

(MISREPRESENTATION)

20. The plaintiff's claims are barred by the doctrine of misrepresentation.

FOR A THIRTEENTH AND AFFIRMATIVE DEFENSE

(MISTAKE)

21. These defendants entered into the agreement with the plaintiff in good faith based on the faulty appraisal and other representations made by the plaintiff. As a result, the plaintiff's claims are barred by the doctrine of mistake.

FOR A FOURTEENTH AND AFFIRMATIVE DEFENSE

(WAIVER)

22. The plaintiff's claims are barred by the doctrine of waiver.

FOR A FIFTEENTH AND AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE)

23. The plaintiff's claims are barred by the doctrine of failure to mitigate.

FOR A SIXTEENTH AND AFFIRMATIVE DEFENSE

(WINDFALL)

24. Defendants are informed and believe that the plaintiff or its predecessors received millions or billions of taxpayer money as a result of the plaintiff's mismanagement. As a result, plaintiff would be twice made whole for the amount in claims as being due and receive a windfall at the hands of the defendant, who will be left in financial ruin if the plaintiff is successful. Equity and good conscience demand that any claim of the plaintiff be extinguished to prohibit a windfall in its favor.

FOR AN SEVENTEENTH AND AFFIRMATIVE DEFENSE

(PAYMENT)

25. Plaintiff's claims are barred by the doctrine of payment.

FOR A EIGHTEENTH AND AFFIRMATIVE DEFENSE

(ACCORD & SATISFACTION)

26. Plaintiff's claims are barred by the doctrines of accord and satisfaction.

FOR A NINETEENTH AND AFFIRMATIVE DEFENSE

(PRIOR BREACH)

27. Plaintiff's claims are barred as a result of their prior breach of the contract.

FOR A TWENTIETH AND AFFIRMATIVE DEFENSE

(FAILURE TO NAME AN INDISPENSABLE PARTY)

28. Plaintiff's claims are barred for failure to name an indispensable party.

FOR A TWENTY- FIRST AND AFFIRMATIVE DEFENSE

(MODIFICATION)

29. Alternatively, plaintiff's claims may be barred by a modification of the agreement between the plaintiff and defendant.

FOR A TWENTY-SECOND AND AFFIRMATIVE DEFENSE

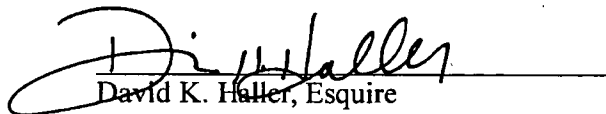
(RIGHT TO APPRAISAL)

30. Defendants demand all appraisal rights as allowed by law.

Answer Continues Next Page

WHEREFORE the defendants pray for a declaration that the plaintiff's claims are barred by its unclean hands, nullifying the documents the plaintiff claims as the basis for their suit, and awarding the defendant damages and/or equitable relief. Defendants also pray the court protect their interest herein and for such other relief as the court deems just, prudent, and proper.

HALLER LAW FIRM, P.C.


David K. Haller, Esquire
115 River Landing Drive, Suite 102
Charleston, SC 29492
843-849-1384
dhaller@hallerlawfirm.com

5th ~~December~~ day of November, 2011

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-10-2505

Wells Fargo Bank, N.A., et al

Plaintiff,

versus

Marvin Smalley, et al.

Defendants.

**DEFENDANT'S MOTION TO ALTER
OR AMEND ORDER OF
FORECLOSURE**

BY

2013 JAN 14 PM 2:21
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

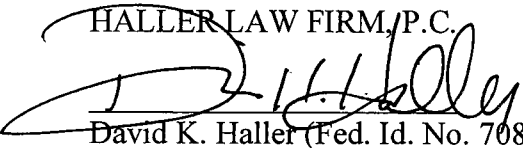
TO: THE PLAINTIFF ABOVE NAMED

YOU WILL PLEASE TAKE NOTICE that defendant Marvin Smalley will move, in ten (10) days at the Charleston County Courthouse or at such other time and place as the court deems proper, for an order pursuant to SCRCP Rule 59(e) altering or amending the Master's Order of Foreclosure and Sale. Defendant received written notice of entry of the Order on January 6, 2013. The grounds for the motion are:

1. The plaintiff failed to prove it was the real party in interest. The claimed the note and mortgage at issue had been sold to another entity immediately after closing and there was no evidence that the assignor had ownership of the note and mortgage at the time of assignment. The original note and mortgage were not placed into evidence.
2. There was no evidence of a breach of the note and mortgage by the defendant.
3. The plaintiff's testimony on damages was based on hearsay.
4. The attorneys fee award failed to meet, and the Court failed to find, the required *Glasscock* factors to meet the reasonableness standard. *Dedes v. Strickland*, 307 S.C. 155, 414 S.E.2d 134 (1992).

WHEREFORE defendant Smalley respectfully requests that the Master set aside his order and find that the plaintiff failed in its burden of proof and alter the Court's order to find for the defendant on all cause of action.

HALLER LAW FIRM, P.C.

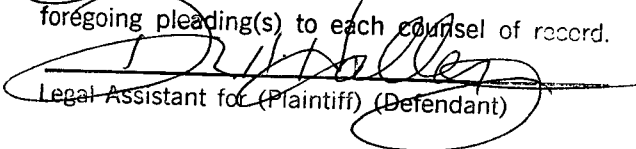

David K. Haller (Fed. Id. No. 7088)
115 River Landing Drive, Suite 102
Charleston, SC 29492
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dhaller@hallerlawfirm.com

January 11th, 2013

Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on 1-11-13, I caused to be
(mailed) (delivered) (faxed) a true copy of the
foregoing pleading(s) to each counsel of record.


Legal Assistant for (Plaintiff) (Defendant)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

FOR THE NINTH JUDICIAL CIRCUIT

WELLS FARGO,

Plaintiff,

VS.

MARVIN SMALLEY,

Defendant.

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CASE NO.:2011-CP-10-2505



COPY

Hearing before the

Honorable Mikell R. Scarborough, reported by Bernadette A.
Cali, CSR and Notary Public, at 11:00 a.m. on November 19,
2012 at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

For the Plaintiff: Robert P. Jackman, Esq.
1213 Deerwood St.
Columbia, S.C. 29205

For the Defendant: David K. Haller, Esq.
Haller Law Firm
115 River Landing Drive, Ste. 102
Mt. Pleasant, S.C. 29464

Bernadette A. Cali, CSR
Notary Public

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1 (Hearing commenced.)

2 THE COURT: Morning we have the case of Wells
3 Fargo versus Marvin Smalley. I have present for the
4 Plaintiff Mr. Robert Jackman. Mr. Jackman, you're out
5 of Columbia, the Richland County Bar?

6 MR. JACKMAN: Yes, sir.

7 THE COURT: For the Defendant Smalley I have
8 Mr. David Haller.

9 I've had a chance to review the file. This
10 appears to be a foreclosure action which is not an
11 owner occupied property and the Plaintiff is present
12 with their witness.

13 I did find a memo in support of a motion for
14 summary judgment, but we're ready to go to trial, are
15 we not, Mr. Jackman?

16 MR. JACKMAN: Yes, Your Honor.

17 THE COURT: Very good. I see where you've
18 premarked exhibits and I appreciate that. Any matters
19 to take up before we start?

20 MR. HALLER: No, sir.

21 THE COURT: All right. Very good. Mr. Jackman,
22 you may call your first witness, sir.

23 MR. JACKMAN: Your Honor, Plaintiff calls Scott
24 Sayre to the stand.

25 (Scott Sayre, 2501 Enterprise Drive, Florence, S.C. 29501,

1 duly sworn, testifies as follows:)

2 DIRECT EXAMINATION BY MR. JACKMAN:

3 Q Mr. Sayre, you work for the servicer of this loan;
4 correct?

5 A JP Morgan Chase Bank, NA; yes, sir.

6 Q JP Morgan Chase is the authorized servicer for the
7 named Plaintiff in this case; right?

8 A Yes, sir; we are.

9 Q Could you sort of describe how long you've worked
10 for JP Morgan and what it is you do there?

11 A I've been there for now three and a half years in
12 the risk department. I'm a home lending research officer.
13 I research loans that are in bankruptcy and foreclosure that
14 have the potential to go to hearing, and provide witness
15 testimony.

16 Q And usually in the course of that research you
17 would be provided information on the original transaction
18 and the debt figures and things of that nature?

19 A Yes, sir.

20 MR. JACKMAN: Your Honor, I would like to enter
21 into evidence Plaintiff's Exhibit 1. It's a copy of
22 the adjustable rate note that Defendant Mr. Smalley
23 signed.

24 THE COURT: All right. Any objection?

25 MR. HALLER: No objection.

1 (Whereupon Plaintiff's Exhibit 1 is received in evidence.)

2 Q Mr. Sayre, could you take a look at this note?

3 And could you tell me who the borrower was on that note?

4 A Marvin Smalley.

5 Q What was the original amount that he promised to
6 pay?

7 A \$290,500.

8 MR. JACKMAN: Your Honor, on top of that I would
9 like to introduce Plaintiff's Exhibit 2. This is the
10 mortgage.

11 MR. HALLER: Without objection.

12 THE COURT: All right.

13 (Whereupon Plaintiff's Exhibit 2 is received in evidence.)

14 Q Mr. Sayre, would you take a look at this? Now,
15 who is the borrower on -- or that's listed on that note or
16 on the mortgage?

17 A On this mortgage is Marvin Smalley.

18 Q What is the property address that is mentioned
19 there?

20 A I believe it is 109 Bogard Street, Charleston.

21 Q Also on the back? All right. So this mortgage on
22 that address, along with -- would you say that -- would have
23 secured the note on the property in the normal course of
24 business for this sort of transaction?

25 A Yes, sir.

1 Q And the end of this -- let me see that a second.
2 There is also an assignment that's a part of this exhibit.

3 MR. JACKMAN: Have you seen the assignment?

4 MR. HALLER: (Nods affirmatively.)

5 Q All right. On this assignment could you read who
6 the recipient of the note and mortgage were?

7 A It's for value received, Mortgage Electronic
8 Registration Systems, Inc. as nominee for the Bank of South
9 Carolina. And they assigned it over to Wells Fargo.

10 Q Is Wells Fargo the entity who JP Morgan is the
11 servicer for?

12 A Yes.

13 Q So in your opinion that would mean that they are
14 the one's that own the note right now?

15 MR. HALLER: Objection to any opinion evidence,
16 Your Honor.

17 THE COURT: Sustained as to that.

18 MR. JACKMAN: Okay.

19 THE COURT: We're in the mortgage; right?

20 MR. JACKMAN: Yes.

21 THE COURT: Okay.

22 MR. JACKMAN: It's the last page attached to that.

23 THE COURT: Page 15? Or 16? Exhibit A. I've got
24 a rider. Hold on.

25 (pause)

1 THE COURT: All right. Just so you know, I'm
2 looking at the records that were provided along with
3 the memorandum in support of Plaintiff's motion for
4 summary judgment. I see an Exhibit C which is an
5 assignment of mortgage. Is this what you're referring
6 to?

7 MR. JACKMAN: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. JACKMAN: That was marked today as Exhibit 2.

10 THE COURT: Part of the Exhibit 2?

11 MR. JACKMAN: Yes, Your Honor.

12 THE COURT: Part of the mortgage? Okay. So
13 assignment dated June 3, 2010 from MERS to -- nominee
14 for the Bank of South Carolina transferred to Wells
15 Fargo, trust, care of JP Morgan Chase, is that what
16 we're talking about?

17 MR. JACKMAN: Yes, Your Honor.

18 THE COURT: All right.

19 Q So this assignment, in your opinion, would have
20 transferred the ownership interest in the mortgage from the
21 Bank of South Carolina with MERS as their nominee over to
22 Wells Fargo?

23 MR. HALLER: Two objections, Your Honor. One as
24 to the opinion, which I believe Your Honor already
25 ruled on. Two, as to it calls for a legal conclusion.

1 THE COURT: Okay. All right.

2 Q On this assignment who does it say the Bank of
3 South Carolina and MERS transferred interest in, over to,
4 according to the document?

5 A Wells Fargo Bank, NA as Trustee for WAMU Mortgage
6 pass through certificate series 2006 dash PR 1 Trust. In
7 care of JP Morgan Chase Bank.

8 MR. JACKMAN: Your Honor, next I would like to
9 exhibit an affidavit of debt as Plaintiff's Exhibit 3.

10 THE COURT: All right.

11 MR. HALLER: Your Honor, we object to the
12 affidavit of debt on hearsay grounds. It's putting in
13 an affidavit of somebody else's testimony when there is
14 a witness here to testify as to whatever debt Plaintiff
15 claims.

16 THE COURT: All right.

17 Q In your normal course of business, would you say
18 that you handle documents like affidavits of debt on a
19 normal basis?

20 A Yes, sir.

21 Q Whoever signed the affidavit of debt also worked
22 for JP Morgan Chase; right?

23 A That's normal policy we will follow; yes, sir.

24 MR. JACKMAN: So, Your Honor, I would state here
25 that because this is a business record it should have

1 an exception to the hearsay rule.

2 THE COURT: Just ask him that. Ask him just what
3 you just said.

4 Q All right. Would you say that --

5 THE COURT: Hand him that document.

6 MR. JACKMAN: All right.

7 THE COURT: Ask him to identify it.

8 Q Would you please identify that affidavit of debt?

9 A This is an affidavit of debt.

10 MR. JACKMAN: It's might first time.

11 (Laughter)

12 THE COURT: What is that? It is a --

13 THE WITNESS: This is an affidavit of debt.

14 THE COURT: And do you normally see those in
15 your --

16 Q Do you normally see these documents in your
17 day-to-day business?

18 A Yes, I do.

19 Q And --

20 THE COURT: Now ask him the question you just
21 stated a minute ago.

22 Q On this affidavit of debt --

23 THE COURT: No. Is this a document that --

24 Q Is this a document that you would handle in your
25 normal day-to-day business operations?

1 A Yes, I would review this document.

2 Q Okay.

3 MR. HALLER: Your Honor, same objection that an
4 affidavit is not a business record. It is a court
5 record which is the recitation of one individual's
6 testimony in court from which he is testifying.

7 The witness -- the affidavit is a witnesses'
8 testimony to the court. It is not a business record.
9 And, if anything, it may be hearsay within hearsay,
10 because it's one employee's review of the records from
11 which he is now reading. It's not as if there is a
12 printout of the debt which he can now say I went to my
13 computer, I printed this out, this is the record as we
14 maintain them in the normal course of business.
15 Instead this is another employee's recitation to the
16 court of what the testimony is.

17 THE COURT: Who is the affidavit from? It's not
18 from Mr. Sayre, I guess?

19 MR. JACKMAN: No, Your Honor.

20 THE WITNESS: From Anthony Marentic.

21 THE COURT: Who is he?

22 THE WITNESS: His capacity as a vice president of
23 Chase.

24 THE COURT: Do you know Mr. Marentic?

25 THE WITNESS: I do not.

1 THE COURT: You do not work with him?

2 THE WITNESS: I do not; no, sir.

3 THE COURT: Do you know where he got his numbers
4 from?

5 THE WITNESS: From Chase's business records.

6 THE COURT: Can you testify as to Chase's business
7 records?

8 THE WITNESS: I do testify as to Chase's business
9 records; yes, sir.

10 THE COURT: Tell me what you know.

11 THE WITNESS: As far as? The indebtedness on the
12 loan?

13 THE COURT: Sure, sure.

14 THE WITNESS: I reviewed the business records in
15 our system of record, indicates the same figures that
16 are on the affidavit of indebtedness.

17 THE COURT: You know that from where?

18 THE WITNESS: From Chase's system of records, from
19 our servicing product.

20 THE COURT: All right.

21 MR. HALLER: Your Honor, the witness is testifying
22 about -- by looking at the affidavit.

23 THE COURT: I think he just testified he looked at
24 somewhere else. Is that right, Mr. Sayre?

25 THE WITNESS: I have reviewed the account in

1 Chase's system of record; yes, sir.

2 THE COURT: All right.

3 MR. HALLER: If he wants to offer that testimony
4 and I can cross examine him on that, that's fine. I
5 object to him having the affidavit of debt to read
6 from, because then he is testifying as to what somebody
7 else's testimony was as to what those records hold.

8 THE COURT: All right.

9 MR. HALLER: If he brought records with him today
10 on this account he can do that, but testifying from the
11 affidavit of debt is his testifying as to what somebody
12 else has testified as to what the debt is and how the
13 debt is calculated.

14 THE COURT: I'm with you. I'm with you. Okay.
15 So prior to coming here today you reviewed the records
16 in the Chase system; is that correct?

17 THE WITNESS: I did; yes, sir.

18 THE COURT: All right. And without looking at the
19 affidavit that's being presented can you testify as to
20 what those figures are?

21 THE WITNESS: I don't remember them off the top of
22 my head; no, sir.

23 THE COURT: Did you verify them in accordance with
24 the affidavit that's before you now, for their
25 accuracy?

1 THE WITNESS: I'm sorry. The question was did I
2 or would I?

3 THE COURT: Did you.

4 THE WITNESS: I did compare the affidavit to
5 Chase's system of record; yes, sir.

6 THE COURT: All right. And based upon that are
7 you prepared to testify as to what those figures are?

8 THE WITNESS: Yes, sir.

9 THE COURT: All right. Be my guest. Take him
10 through it.

11 Q So could you please --

12 MR. HALLER: Your Honor, the witness is reviewing
13 a document that has not been moved into evidence.
14 That's the affidavit of debt.

15 THE COURT: Well, I'm probably not going to let
16 that affidavit come into evidence.

17 MR. HALLER: I would ask the witness not have it
18 during his testimony.

19 THE COURT: All right. Mr. Jackman, you've got to
20 work with that problem.

21 MR. JACKMAN: All right.

22 MR. HALLER: Your Honor, I'm just watching the
23 witness read the affidavit of debt while we're here on
24 the break.

25 THE COURT: He is entitled to do that. Here's

1 what you've got to do. Go ahead. I'm not trying to
2 help too much, but I know I'm helping a lot. You've
3 got a witness here, Mr. Jackman. This is your witness.
4 You've got to live and die by your witness. I think he
5 testified that -- well, I know he testified that he
6 reviewed the records today before he came down here. I
7 assume he drove two and a half hours to get here from
8 Florence. I assume he does not recollect what those
9 numbers were off the top of his head. That's what I
10 assume.

11 MR. JACKMAN: Yes.

12 THE COURT: So ask him how he's going to recollect
13 those numbers, how's he best going to be able to do
14 that.

15 Q How would you best be able to refresh your memory
16 as to the debt figures that you reviewed in Chase's business
17 data base?

18 A I could review the affidavit that's in front of me
19 or if I had access to Chase's system, which I don't right
20 now, I could review that again as well.

21 THE COURT: If you had a computer access could you
22 get into it or you would have to be at a Chase
23 location?

24 THE WITNESS: If I had my computer. I don't have
25 it with me but if I did I could access the system; yes,

1 sir.

2 THE COURT: Just for future reference you might
3 want to think about that.

4 So, I think you used the magic language. What was
5 the magic language?

6 Q What would you use to refresh your memory as to
7 the figures that you reviewed in Chase's business system?

8 A I could review the affidavit of debt.

9 Q All right. Obviously --

10 THE COURT: I'll let him do that. Over objection
11 he can review the affidavit of debt.

12 Q All right. Could you please read off what the
13 principle balance is on the affidavit?

14 THE COURT: No. Just ask him what is --

15 Q What is the principle balance?

16 A The principle balance is \$316,947.55.

17 Q And what does -- what is the interest due on the
18 loan from the last missed payment through October 31st?

19 A \$36,158.45.

20 Q Are there any late charges on this loan?

21 A Yes, \$427.34.

22 Q Are there any deficient taxes or insurance on the
23 loan?

24 A There is an escrow deficiency of \$19,352.30.

25 Q And does Chase have any other expenses or fees or

1 accrued penalty that have --

2 A There are property inspections of \$112.

3 MR. JACKMAN: That is all on that issue, Your
4 Honor.

5 THE COURT: Do you have a figure that that totals
6 to?

7 THE WITNESS: Yes, sir. The total amount is
8 \$372,997.64.

9 THE COURT: All right.

10 MR. JACKMAN: Your Honor, I don't think I have any
11 further questions for the witness.

12 THE COURT: Okay. There was a Plaintiff's Exhibit
13 4 which has something to do with costs. Are those
14 attorneys fees?

15 MR. JACKMAN: Those are attorneys fees that our
16 firm has incurred.

17 THE COURT: Have you provided those to Mr. Haller?
18 (Hands up document.)

19 MR. JACKMAN: Also the last exhibit I have just a
20 copy of the hearing notice which is Exhibit 5.

21 THE COURT: I think we're good to go on that one.
22 You can hand it up if you want. I think it's in the
23 record. I don't think that's in question. Then the
24 Plaintiff's 4 is the affidavit of attorneys fees and
25 costs?

1 MR. JACKMAN: Yes, Your Honor.

2 MR. HALLER: No, sir. It's just a statement of
3 costs.

4 THE COURT: Incurred by your firm?

5 MR. JACKMAN: Yes, Your Honor. That doesn't
6 include fees. Just filing fees and other costs.

7 THE COURT: Do you-all seek attorneys fees?

8 MR. JACKMAN: Yes, Your Honor.

9 THE COURT: How do you seek those?

10 MR. JACKMAN: Looks like we have requested
11 attorneys fees in the amount of \$4850.

12 THE COURT: You want to show that to Mr. Haller?
13 Does that come in the form of affidavit?

14 MR. JACKMAN: No, just the costs we've prepared.
15 I can -- that's the figures.

16 (Hands up document.)

17 MR. JACKMAN: Your Honor, we don't have an
18 affidavit as far as those costs go. Mr. Haller, would
19 you like us to come back with a breakdown?

20 MR. HALLER: The trial is today, Your Honor.

21 THE COURT: I understand. There is an affidavit
22 of costs; is that right?

23 MR. JACKMAN: Yes.

24 THE COURT: How much is that?

25 MR. JACKMAN: Statement of costs.

1 MR. HALLER: It's a typed up statement, Your
2 Honor.

3 THE COURT: Comes in the form of a statement?

4 MR. HALLER: To which nobody's testified to.

5 THE COURT: What's it for?

6 MR. JACKMAN: It includes \$150 for filing --

7 THE COURT: No, just tell me how much it is.

8 MR. JACKMAN: \$1277.57.

9 THE COURT: All right. That's coming from the law
10 firm; correct?

11 MR. JACKMAN: Yes, Your Honor.

12 THE COURT: And the attorneys fees are coming from
13 the law firm. Do you have any kind of itemized
14 statement or just a statement of what you seek?

15 MR. JACKMAN: Just a statement transcript, Your
16 Honor.

17 THE COURT: All right. So Plaintiff's Exhibit 1
18 and 2, note and mortgage, are in evidence. He's
19 testified as to the debt, the costs and the hearing
20 notice we don't need. We'll have to cover that at a
21 later date. I'm not going to put Mr. Jackman on the
22 stand and have you cross examine him, but I will let
23 you cross examine Mr. Sayre. Mr. Haller.

24 MR. HALLER: Thank you, Your Honor. May it please
25 the Court.

1 CROSS EXAMINATION BY MR. HALLER:

2 Q Mr. Sayre, on Exhibit 2 you testified about the
3 assignment. What's the date on that assignment, please?

4 A The date was June 3rd of 2010.

5 Q Okay. Can you look at the back of Exhibit Number
6 1? You see there at the very bottom it says paid to the
7 order of Washington Mutual Bank, FA without recourse on
8 November 30, 2005? Do you see that?

9 A Yes, sir.

10 Q Doesn't that appear to you that this note was
11 assigned by the Bank of South Carolina to Washington Mutual
12 on November 30, 2005?

13 A That's what that would seem to indicate; yes, sir.

14 Q Yet what's marked at the back of the assignment on
15 the back of Exhibit 2 says that MERS assigns it on June 30,
16 2010.

17 A Yes, sir.

18 Q Can you show me where Washington Mutual assigned
19 the note to MERS?

20 A No, sir. I cannot.

21 Q What's the date this note went into default?

22 A I don't have the date in the front of me, I'm
23 sorry.

24 Q What was the interest rate in 2009?

25 A I don't have that information in front of me.

1 Q What was the interest rate in 2010?

2 A I do not have that information.

3 Q How about 2011?

4 A Do not have that information.

5 Q It's an adjustable note so that rate's going to
6 change?

7 A Yes, sir.

8 Q How about 2012?

9 A I do not have that information.

10 MR. HALLER: That's all the questions I have, Your
11 Honor.

12 THE COURT: Mr. Jackman?

13 REDIRECT EXAMINATION BY MR. JACKMAN:

14 Q Mr. Sayre, an adjustable rate would change about
15 every so often depending on what the LIBOR is set at, would
16 you -- is that true?

17 A The adjustable rate can change periodically, yes.

18 Q Now, would Chase have a different number in their
19 internal business records for the total interest due
20 regardless of whether the rate was going up or down in the
21 course of the loan or would the total interest due still be
22 the total that was shown on the screen prints or the screens
23 that you would look at prepared for testimony today?

24 A It would reflect the same number that I testified
25 to.

1 Q So in your recollection, from looking at the
2 business records, what would the total interest due from all
3 the accumulated different adjustable rate periods be?

4 MR. HALLER: Same objection as before as to
5 hearsay.

6 THE COURT: All right. Sustained.

7 MR. JACKMAN: Your Honor, as far as the adjustable
8 rate question, I don't have any way at the moment of
9 saying what the rates were or what the amounts were as
10 the loan was going by. All we can testify to is I
11 think the total debt due at the moment. Now, I have a
12 screen print that we have, but that hasn't been entered
13 into evidence, that Chase gives us to calculate these
14 affidavits that are done.

15 THE COURT: You're welcome to try it.

16 MR. JACKMAN: All right.

17 Q Would you like to look at the screen print from
18 Chase's records?

19 MR. JACKMAN: Any objection?

20 MR. HALLER: Lay a foundation, counselor.

21 Q All right. Mr. Sayre, would you please look at
22 this document? What is that -- does that document reflect a
23 screen print from Chase's business record system?

24 MR. HALLER: Objection to leading and lack of
25 foundation.

1 MR. JACKMAN: Your Honor, this document --

2 THE COURT: Just ask him what it is.

3 Q What is this document? Do you know what it is?

4 A It is a screen shot from Chase's system of record.

5 Q And what is reflected on that document?

6 A This reflects the principle balance on the loan,
7 escrow advances, late charges.

8 Q Does it reflect any other numbers on the document?

9 A It reflects interest that's due on the loan as
10 well and then a total payoff figure.

11 Q Now, does that document have different interest
12 rates or is it one singular rate?

13 A It reflects different interest rates.

14 Q And what was the initial rate on the loan or the
15 initial rate on the screen that you see?

16 A Initial rate here is 3.818 percent in November of
17 2009.

18 Q And what was the last rate?

19 MR. HALLER: Your Honor, I'm sorry. I'm sorry. I
20 object to that hearsay. And my objection is this.
21 Chase did not, under the records, which we dispute, and
22 I will come to that in a few minutes, Chase though did
23 not own on its own records, did not own this mortgage
24 until June of 2010, the assignment that Mr. Sayre
25 testified to a few moments ago. So what he's reading

1 from is somebody's else's business record that has been
2 added into its business records.

3 THE COURT: All right. I'll overrule that. Go
4 ahead.

5 Q What was the last interest rate you see reflected
6 on the screen?

7 A In January of 2012 3.696 percent.

8 MR. JACKMAN: I have no further questions in
9 regards to the adjustable interest rate.

10 THE COURT: Anything?

11 MR. HALLER: Nothing further, Your Honor.

12 THE COURT: Mr. Sayre, the only question I've got,
13 I don't know if you can answer it or not, but I noted
14 that the principle amount of the debt at the time it
15 was taken out was 290,500 and today you testified the
16 principle amount was 316,947.15, which is some \$26,000
17 more. Do you know how or why the principle came to
18 rise to that level?

19 THE WITNESS: I do not.

20 THE COURT: Is a deficiency judgment being sought?

21 MR. JACKMAN: No.

22 THE COURT: It is not? It's being waived? All
23 right. Any questions about what I asked?

24 MR. HALLER: (Nods negatively.)

25 THE COURT: All right. All right, Mr. Sayre.

1 Thank you. You may step down.

2 (Discussion off the record.)

3 (Whereupon Plaintiffs Exhibit 6 and 7 are received in
4 evidence.)

5 THE COURT: In evidence is 1, 2, 6, and 7. All
6 right. I'm assuming Plaintiff seeks foreclosure of the
7 note and mortgage in whatever the amount the dollars
8 add up to; correct?

9 MR. JACKMAN: Yes, Your Honor.

10 THE COURT: I'll let you figure that out for me
11 later. Let me hear from you, Mr. Haller.

12 MR. HALLER: May it please the Court, Your Honor,
13 we would ask for judgment in the Defendant's favor on
14 the following grounds.

15 Number one, there was no testimony that the
16 Defendant was in default on the note and mortgage,
17 which what was admitted into evidence was the note and
18 the mortgage and then there were some statements about
19 what was due which were inconsistent at best. However
20 there was -- and I specifically asked the witness
21 what's the date of default and the answer we got back
22 was I don't know. There was never any kind of
23 testimony from the witness that the debt had not been
24 paid, that demand had been made, demand had failed, et
25 cetera, et cetera.

1 THE COURT: Okay.

2 MR. HALLER: And the lack of testimony as to the
3 breach is a salient element of the claim that must be
4 proven and has not been proved.

5 Number two, we would assert that the Plaintiff is
6 not the real party in interest in this case. There is,
7 at the very least, conflicting evidence in the record
8 as to who owns the mortgage -- note and mortgage today.

9 The Exhibit 1 which was admitted into evidence
10 shows that on the day of closing, November 30, 2005,
11 Bank of South Carolina sold to WAMU the note and
12 mortgage on that day. Then there is a separate
13 document five years later, the assignment of the note
14 and mortgage, in which MERS purports to sell it to --
15 note and mortgage to the Plaintiff. However, there is
16 a gap in time and there is some missing evidence as to
17 how, if Exhibit 1 is correct, that it was sold on
18 November 30, 2005, MERS then gets it back, if, in fact,
19 it did get it back five years later.

20 And for that reason, because the Plaintiff hasn't
21 proven it is, in fact, the party in interest, it's not
22 entitled to any relief.

23 The third grounds would be, based on the hearsay
24 over hearsay, essentially a restatement of our previous
25 objections, that the Plaintiff even if it has proven

1 that there is a breach of the contract, the Plaintiff
2 has failed to prove damages.

3 For those reasons, Your Honor, we would ask
4 judgment in the Defendant's favor.

5 THE COURT: All right. Mr. Jackman. Three
6 arguments; no evidence of default, no real party in
7 interest and the amount of the debt.

8 MR. JACKMAN: Your Honor, I believe that as far
9 as --

10 (pause)

11 MR. JACKMAN: As far as the default goes, we have
12 entered into evidence the affidavit of debt which
13 states that the borrower was in default. Although the
14 witness couldn't testify to the affidavit itself, the
15 affidavit still comes into evidence. I believe that's
16 still a legally valid document to enter into court and
17 that document does state that the Defendant had gone
18 into default.

19 As far as the real party in interest, the --
20 obviously the last assignment has stated that Wells
21 Fargo as the trustee for the WAMU loans is the WAMU
22 fund which is where all of the Washington Mutual funds
23 went into; has stated that they do own the note and we
24 provided copies of said documents, said notes, said
25 mortgage, said assignment --

1 THE COURT: What happened with all those WAMU
2 loans? I know they went out of business. Who got
3 them?

4 MR. JACKMAN: JP Morgan Chase.

5 THE COURT: They became the servicer for all
6 those?

7 MR. JACKMAN: Yes, Your Honor.

8 As far as the hearsay argument goes, I believe
9 we've already hashed out that the witness had looked at
10 the business record from Chase and was qualified to
11 testify to his recollection of what those were.
12 That's, I believe, where we stand on that issue.

13 THE COURT: All right. So I agree with everything
14 so far except for your affidavit of debt. I
15 specifically did not include it in evidence. It was
16 not prepared by this witness and he did -- I did have
17 him testify as to the debt but -- which I think he
18 could do based upon his position, and you've used the
19 magic language to refresh his memory. He testified to
20 the figures, but I wouldn't let the document in because
21 it's not his testimony and the person, the affiant,
22 whoever that was, is not present. So tell me about how
23 you-all get to the point of default.

24 MR. JACKMAN: Well, I could bring the witness back
25 up, Your Honor, to testify what he's seen in the

1 business record as far as the servicer's record to when
2 the last payment was.

3 THE COURT: I think you did ask him that at one
4 point in time. I don't remember getting an answer.
5 (pause)

6 THE COURT: All right. Very good. All right.
7 I'm going to find, based on the record before the
8 Court, that the Plaintiff has presented sufficient
9 evidence of foreclosure to foreclose on the note and
10 mortgage; that clearly the Defendant is in default and
11 has been for a period of time.

12 I disagree as to the Plaintiff not being the real
13 party in interest and, evidently, Mr. Jackman was aware
14 of this. And I don't often do this either, but I had a
15 loan with WAMU at one time and the loan disappeared.
16 WAMU just flat out went out of business. The federal
17 government stepped in, as I recall, and it must be JP
18 Morgan Chase. I don't remember who took over. By the
19 time WAMU went out of business, that was Washington
20 Mutual -- if I remember right it was an S and L out of
21 Washington State but, anyway, so somebody took over all
22 their loans. I'm assuming it was JP Morgan Chase. I
23 couldn't remember but that testimony rings true with
24 me.

25 As to the amount of the debt I think that it's

1 proper to allow Mr. Sayre to testify in the fashion
2 which he did. It is not the preferred method by which
3 to do that. Someone with actual knowledge is better
4 because in any foreclosure action -- and, frankly,
5 Mr. Jackman, we talked about that briefly beforehand.
6 One of the reasons I don't generally grant summary
7 judgment is because I do require that the Plaintiff
8 come forward and prove the amount of the damages. I
9 think that's an ongoing figure up until the point in
10 time at which foreclosure is rendered.

11 So based upon that I'm going to render judgment
12 for the Plaintiff and allow the foreclosure to proceed.

13 What I'm also going to do is allow you to
14 supplement the record with an affidavit of attorneys
15 fees and costs, and you can submit that along with a
16 proposed order as to what those are, and it's my
17 practice to allow the Defendant time to object if they
18 wish to object. Under the circumstances, this being a
19 waiver of deficiency, I don't know that it makes any
20 difference but it could.

21 I'm still a little uncertain as to how the
22 principle amount of the debt exceeds the initial amount
23 of the debt, although I do see that in the note
24 provided for at least 110% increase in the amount of
25 the debt. So maybe that was part of a modification. I

1 don't know. I didn't hear any testimony about that.
2 But the note itself provides for 110% of the principle
3 amount to allow to be borrowed. That was whatever
4 figure it was going to be. And that's consistent with
5 what was alleged in the Complaint. The figure is
6 consistent with what was alleged in the Complaint as to
7 the amount due, and that the loan was in default from I
8 think it was September 1 of '09, if I remember right.
9 Or December 1 of '09. It's in there somewhere.

10 MR. HALLER: Your Honor, respectfully, it's not in
11 the record from this morning.

12 THE COURT: All right. Well, you have every right
13 to appeal it.

-14 MR. HALLER: Yes, sir. Thank you.

15 THE COURT: The last payment must have been
16 November of '09. Okay?

17 So, I'll find judgment for Plaintiff. Right now
18 the judgment figures stand at the 372,997.64 figure.

19 Mr. Jackman, I'll allow you an opportunity to
20 supplement that record with an affidavit of attorneys
21 fees and costs incurred. As to the attorneys fees
22 you'll need to break out what they are. I need them on
23 an itemized basis not just a summarized basis and
24 provide those to Mr. Haller. Okay?

25 MR. JACKMAN: Yes, Your Honor.

1 THE COURT: All right. With that, then, I think
2 we can conclude this one.

3 I ask you get me a proposed order within 15 days.
4 That would be great. I think I'm setting sales for
5 February, am I not?

6 (pause)

7 THE COURT: Should be February 5th. That gives us
8 some time. Okay?

9 MR. JACKMAN: Okay.

10 THE COURT: To work this through. Very good.
11 Good luck to you.

12 (Hearing concluded.)

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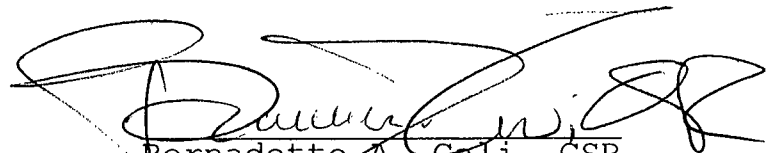
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

C E R T I F I C A T E

I, Bernadette A. Cali, Notary Public, do hereby certify that the within hearing was taken and transcribed by me; and that the foregoing pages are a true and accurate transcript of the within proceedings. I further certify that the persons were present as stated.

I further certify that I am not of counsel or kin to any of the parties to this action, nor am I interested in the result of the said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this December 11, 2012.


Bernadette A. Cali, CSR
Notary Public
My Commission Expires
April 5, 2020

**ADJUSTABLE RATE NOTE
(12-MTA Index - Payment and Rate Caps)**

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN 110 % OF THE ORIGINAL AMOUNT (OR \$ 319,550.00). MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THIS NOTE OR ANY RIDER TO THIS NOTE. A BALLOON PAYMENT MAY BE DUE AT MATURITY.

November 30, 2005
[Date]

Mount Pleasant
[City]

SOUTH CAROLINA
[State]

109 Bogard St., Charleston, SOUTH CAROLINA 29403
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 290,500.00 plus any amounts added in accordance with Section 4 (G) below, (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is **THE BANK OF SOUTH CAROLINA**

I will make all payments under this Note in the form of cash, check or money order. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder".

2. INTEREST

Interest will be charged on unpaid Principal until the full amount has been paid. Up until the first Change Date (as defined in Section 4 of this Note) I will pay interest at a yearly rate of 2.1250 %. The interest rate required by this Section 2 and Section 4 of this Note is the Rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month. In this Note, "payments" refer to principal and interest payments only, although other charges such as taxes, insurance and/or late charges may also be payable with the monthly payment.

I will make my monthly payments on the first day of each month beginning on **January 1, 2006**. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If on **December 1, 2035**, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date".

I will make my monthly payments at **256 MEETING STREET
CHARLESTON, SOUTH CAROLINA 29401**
or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 1,091.99, unless adjusted at an earlier time under section 4(H) of this Note.

(C) Payment Changes

My monthly payment will be recomputed, according to Sections 4(E)(F)(G)(H) and (I) of this Note, to reflect changes in the Principal balance and interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of **January, 2006**, and on that day every month thereafter. Each date on which my interest rate could change is called a "Change Date".



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(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" ("the Monthly Yields"). The Twelve-Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12.

The most recent Index figure available as of the date 15 days before each rate Change Date is called the "Current Index". If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Interest Rate Change Calculations

Before each Change Date, the Note Holder will calculate my new interest rate by adding **Three and One Half** percentage point(s) **3.5000 %** ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-thousandth of one percentage point (0.001%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. In the event a new Index is selected, pursuant to paragraph 4(B), a new Margin will be determined. The new Margin will be the difference between the average of the old Index for the most recent three year period which ends on the last date the Index was available plus the Margin on the last date the old Index was available and the average of the new Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). The difference will be rounded to the next higher 1/8 of 1%.

(D) Interest Rate Limit

My interest rate will never be greater than **Ten and Seven Tenths** **10.7000 %** ("Cap"), except that following any sale or transfer of the property which secures repayment of this Note after the first interest rate Change Date, the maximum interest rate will be the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of such sale or transfer.

(E) Payment Change Dates

Effective every year commencing **January 1, 2007**, and on the same date each twelfth month thereafter ("Payment Change Date"), the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the projected principal balance I am expected to owe as of the Payment Change Date in full on the Maturity Date at the interest rate in effect 45 days prior to the Payment Change Date in substantially equal payments. The result of this calculation is the new amount of my monthly payment, subject to Section 4(F) below, and I will make payments in the new amount until the next Payment Change Date unless my payments are changed earlier under Section 4(H) of the Note.

(F) Monthly Payment Limitations

Unless Section 4(H) and 4(I) below apply, the amount of my new monthly payment, beginning with a Payment Change Date, will be limited to 7 1/2% more or less than the amount I have been paying. This payment cap applies only to the Principal payment and does not apply to any escrow payments Lender may require under the Security Instrument.

(G) Changes in My Unpaid Principal Due to Negative Amortization or Accelerated Amortization

Since my payment amount changes less frequently than the interest rate and since the monthly payment is subject to the payment limitations described in Section 4(F), my monthly payment could be less or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the maturity date in substantially equal payments. For each month that the monthly payment is less than the interest portion, the Note Holder will subtract the monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the current interest rate. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the excess towards a principal reduction of the Note.

(H) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed a maximum amount equal to **110 %** of the Principal amount originally borrowed. In the event my unpaid Principal would otherwise exceed that **110 %** limitation, I will begin paying a new monthly payment until the next Payment Change Date notwithstanding the 7 1/2% annual payment increase limitation. The new monthly payment will be an amount which would be sufficient to repay my then unpaid Principal in full on the maturity date at my interest rate in effect the month prior to the payment due date in substantially equal payments.



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(I) Required Full Monthly Payment

On the **fifth** anniversary of the due date of the first monthly payment, and on that same day every **fifth** year thereafter, the monthly payment will be adjusted without regard to the payment cap limitation in Section 4(F).

(J) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any questions I may have regarding the notice.

(K) Failure to Make Adjustments

If for any reason Note Holder fails to make an adjustment to the interest rate or payment amount as described in this Note, regardless of any notice requirement, I agree the Note Holder may, upon discovery of such failure, then make the adjustment as if they had been made on time. I also agree not to hold the Note Holder responsible for any damages to me which may result from the Note Holder's failure to make the adjustment and to let the Note Holder, at its option, apply any excess monies which I may have paid to partial Prepayment of unpaid Principal.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment". When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will apply all of my prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may have the effect of reducing the amount of my monthly payments, but only after the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then; (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

Miscellaneous Fees: I understand that the Note Holder will also charge a return item charge in the event a payment that I make in connection with repayment of this loan is not honored by the financial institution on which it is drawn. The current fee is \$15.00. Lender reserves the right to change the fee from time to time without notice except as may be required by law.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of **Fifteen** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **5.0000** % of my overdue payment of Principal and interest. I will pay this late charge promptly, but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note, whether or not a lawsuit is brought, to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower.

If all or any part of the Property or any interest in the property is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee, (b) Lender reasonably determines that Lender's security will be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument or other obligations related to the Note or other loan document is acceptable to Lender, (c) Assuming party executes Assumption Agreement acceptable to Lender at its sole choice and discretion, which Agreement may include an increase to Cap as set forth below; and (d) payment of Assumption Fee, if requested by Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption and Lender may increase the maximum interest rate limit to the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of the transfer. Lender may also require the transferee to sign an Assumption Agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender has entered into a written Assumption Agreement with transferee and formally releases Borrower.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.



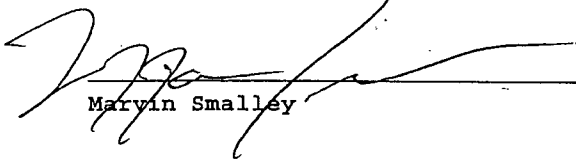
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12. MISCELLANEOUS PROVISIONS

In the event the Note Holder at any time discovers that this Note or the Security Instrument or any other document related to this loan, called collectively the "Loan Documents", contains an error which was caused by a clerical or ministerial mistake, calculation error, computer error, printing error or similar error (collectively "Errors"), I agree upon notice from the Note Holder, to reexecute any Loan Documents that are necessary to correct any such Errors and I also agree that I will not hold the Note Holder responsible for any damage to me which may result from any such Errors.

If any of the Loan Documents are lost, stolen, mutilated or destroyed and the Note Holder delivers to me an indemnification in my favor, signed by the Note Holder, then I will sign and deliver to the Note Holder a Loan Document identical in form and content which will have the effect of the original for all purposes.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.



Marvin Smalley (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

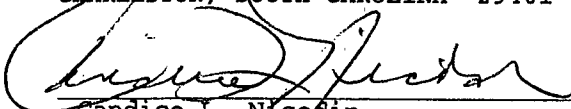
(Seal)
- Borrower

(Seal)
- Borrower

PAY TO THE ORDER OF
WASHINGTON MUTUAL BANK, FA

WITHOUT RECOURSE ON November 30, 2005

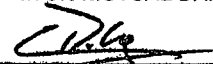
THE BANK OF SOUTH CAROLINA
256 MEETING STREET
CHARLESTON, SOUTH CAROLINA 29401



Candice L. Nicodin
Senior Vice President

Pay to the order of

Without Recourse
WASHINGTON MUTUAL BANK, FA

By 

CYNTHIA RILEY
VICE PRESIDENT

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Return To:

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Prepared By:
Antione Frederick

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05-KR-813 Mort
ACTA 8.1

MORTGAGE

MIN 1002146-0000001561-7

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated November 30, 2005 together with all Riders to this document.
- (B) "Borrower" is Marvin Smalley

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

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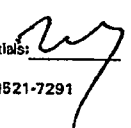
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SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS Form 3041 1/01

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VMP MORTGAGE FORMS - (800)521-7291



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(D) "Lender" is THE BANK OF SOUTH CAROLINA

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Lender is a BANK

organized and existing under the laws of

SOUTH CAROLINA

Lender's address is 256 MEETING STREET, CHARLESTON, SC 29401

(E) "Note" means the promissory note signed by Borrower and dated November 30, 2005. The Note states that Borrower owes Lender Two Hundred Ninety Thousand Five Hundred and no/100

(U.S. \$290,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than December 1, 2035

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|---|---|--|
| ☒ Adjustable Rate Rider | ☐ Condominium Rider | ☐ Second Home Rider |
| ☐ Balloon Rider | ☐ Planned Unit Development Rider | ☒ 1-4 Family Rider |
| ☐ VA Rider | ☐ Biweekly Payment Rider | ☐ Other(s) [specify] |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used

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in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the

County of Charleston
[Type of Recording Jurisdiction]

Charleston
[Name of Recording Jurisdiction]

Parcel ID Number:
109 Bogard St
Charleston
("Property Address"):

which currently has the address of
[Street]
[City] , South Carolina 29403 [Zip Code]

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns,) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

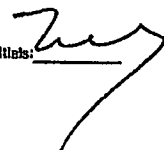
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in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

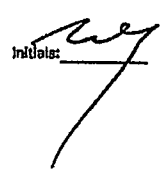
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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

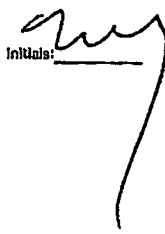
All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

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BK R 564PG318

12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

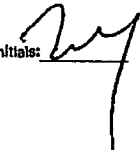
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16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

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BK R 564PG320

requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. **Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. **Release.** Upon Payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall by any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. **Homestead Waiver.** Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

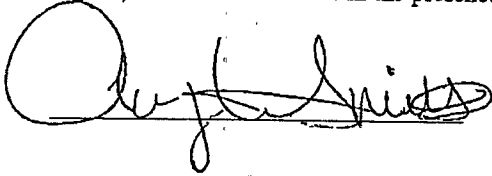
26. **Future Advances.** The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

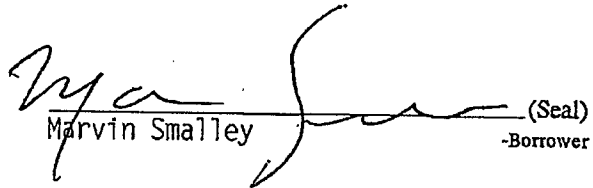
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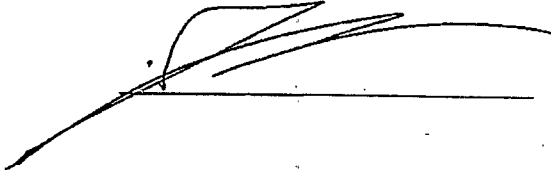
BK R 564PG322

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:



 (Seal)
Marvin Smalley -Borrower



____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

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STATE OF SOUTH CAROLINA,
County of Charleston

BK R 564PG323

Personally appeared before me Angela Smits
and made oath that he/she saw the within named Borrower sign, seal, and as his/her/their act and deed,
deliver the within written Mortgage; and that he/she with John K. Knebel
, witnessed the execution thereof.

Angela Smits

Sworn to before me this 30th day of November, 2005.

My Commission Expires: 1-12-2019

[Signature]
Notary Public for South Carolina

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Initials: [Signature]

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EXHIBIT A

BK R 564PG324

ALL that certain piece, parcel or lot of land, together with any and all improvements thereon, situate, lying and being in the City of Charleston and State of South Carolina, and known and designated by the number 15 on the plan of One Hundred and One Lots made by Louis J. Barbot, April 10th, 1892 and recorded in the Office of the Register of Mesne Conveyances for Charleston County in Plat Book B, at Page 149.

Measuring and containing on Bogard Street Thirty-three (33') feet Six (6') inches, on Kracke Street Ninety three (93') feet, on the East line Ninety-one (91') feet, and on the South line Thirty-three (33') feet Six (6") inches.

Butting and bounding to the North on Bogard Street, South on Lot No. 16 of said Plat, East by Lot No. 14 of said Plat and West by Kracke Street.

This being the same property conveyed to the mortgagor(s) by deed of Denise E. Crosby and David L. Foust dated 09/21/00 and recorded 09/22/00 in Charleston County RMC Office in Book H355 at Page 693.

TMS: 460-11-02-114

Street Address: 109 Bogard St.

mtg legal refi
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BK R 564PG325

1-4 FAMILY RIDER (Assignment of Rents)

THIS 1-4 FAMILY RIDER is made this 30th day of November, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to THE BANK OF SOUTH CAROLINA, BANK

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

109 Bogard St, Charleston, SC 29403

[Property Address]

1-4 FAMILY COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT. In addition to the Property described in the Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

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MULTISTATE 1-4 FAMILY RIDER - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Initials: 

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UAD-57R (0008)

MW 08/00

VMP MORTGAGE FORMS - (800)521-7291



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BK R 564PG326

B. USE OF PROPERTY; COMPLIANCE WITH LAW. Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

C. SUBORDINATE LIENS. Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

D. RENT LOSS INSURANCE. Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

E. "BORROWER'S RIGHT TO REINSTATE" DELETED. Section 19 is deleted.

F. BORROWER'S OCCUPANCY. Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

G. ASSIGNMENT OF LEASES. Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until: (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument, and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii)

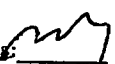
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Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

I. CROSS-DEFAULT PROVISION. Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

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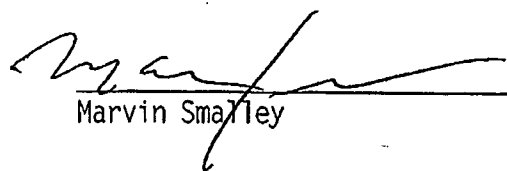
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BK R 564PG328

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this 1-4 Family Rider.


Marvin Smartley

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
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LOAN #:

**ADJUSTABLE RATE RIDER
(12-MTA Index - Payment and Rate Caps)**

THIS ADJUSTABLE RATE RIDER is made this 30th day of November, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to THE BANK OF SOUTH CAROLINA

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:

109 Bogard St., Charleston, SOUTH CAROLINA 29403
(Property Address)

THIS RIDER CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN 110 % OF THE ORIGINAL AMOUNT (OR \$ 319,550.00). MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THE NOTE AND RIDER. A BALLOON PAYMENT MAY BE DUE AT MATURITY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

Interest will be charged on the unpaid Principal until the full amount of Principal has been paid. Up until the first Change Date (as defined in Section 4 of the Note) I will pay interest at the yearly rate of 2.1250 %. The interest rate I will pay will thereafter will change in accordance with Section 4 of the Note.

Section 4 of the Note provides for changes in the interest rate and monthly payment as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of January, 2006, and on that day every month thereafter. Each date on which my interest rate could change is called a "Change Date".

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LOAN #:

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve-Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12.

The most recent Index figure available as of the date 15 days before each Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Interest Rate Change Calculation

Before each Change Date, the Note Holder will calculate my new interest rate by adding **Three and One Half** percentage point(s) **3.5000 %** ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-thousandth of one percentage point (0.001%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. In the event a new Index is selected, pursuant to paragraph 4(B), a new Margin will be determined. The new Margin will be the difference between the average of the old Index for the most recent three year period which ends on the last date the Index was available plus the Margin on the last date the old Index was available and the average of the new Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). The difference will be rounded to the next higher 1/8 of 1%.

(D) Interest Rate Limit

My interest rate will never be greater than **10.7000 %** ("Cap"), except that following any sale or transfer of the property which secures repayment of this Note after the first interest rate Change Date, the maximum interest rate will be the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of such sale or transfer.

(E) Payment Change Dates

Effective every year commencing **January 1, 2007**, and on the same date each twelfth month thereafter ("Payment Change Date"), the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the projected Principal balance I am expected to owe as of the Payment Change Date in full on the Maturity Date at the interest rate in effect 45 days prior to the Payment Change Date in substantially equal payments. The result of this calculation is the new amount of my monthly payment, subject to Section 4(F) below, and I will make payments in the new amount until the next Payment Change Date unless my payments are changed earlier under Section 4(H) of the Note.



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LOAN #:

(F) Monthly Payment Limitations

Unless Section 4(H) and 4(I) below apply, the amount of my new monthly payment, beginning with a Payment Change Date, will be limited to 7 1/2% more or less than the amount I have been paying. This payment cap applies only to the Principal Payment and does not apply to any escrow payments Lender may require under the Security Instrument.

(G) Changes in My Unpaid Principal Due to Negative Amortization or Accelerated Amortization

Since my payment amount changes less frequently than the interest rate and since the monthly payment is subject to the payment limitations described in Section 4(F), my monthly payment could be less or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that the monthly payment is less than the interest portion, the Note Holder will subtract the monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the current interest rate. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the excess towards a principal reduction of the Note.

(H) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed a maximum amount equal to 110 % of the principal amount originally borrowed. In the event my unpaid Principal would otherwise exceed that 110 % limitation, I will begin paying a new monthly payment until the next Payment Change Date notwithstanding the 7 1/2% annual payment increase limitation. The new monthly payment will be an amount which would be sufficient to repay my then unpaid Principal in full on the Maturity Date at my interest rate in effect the month prior to the payment due date in substantially equal payments.

(I) Required Full Monthly Payment

On the Fifth anniversary of the due date of the first monthly payment, and on that same day every fifth year thereafter, the monthly payment will be adjusted without regard to the payment cap limitation in Section 4(F).

(J) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any questions I may have regarding the notice.

(K) Failure to Make Adjustments

If for any reason the Note Holder fails to make an adjustment to the interest rate or payment amount as described in this Note, regardless of any notice requirement, I agree the Note Holder may, upon discovery of such failure, then make the adjustment as if they had been made on time. I also agree not to hold the Note Holder responsible for any damages to me which may result from Note Holder's failure to make the adjustment and to let the Note Holder, at its option, apply any excess monies which I may have paid to partial Prepayment of unpaid "Principal".

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LOAN #:

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Section 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower.

As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the property is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by applicable law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee, (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument or other obligations related to the Note or other loan document is acceptable to Lender, (c) Assuming party executes an Assumption Agreement acceptable to Lender at its sole choice and discretion, which Agreement may include an increase to Cap as set forth below and (d) payment of Assumption Fee if requested by Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption, and Lender may increase the maximum interest rate limit to the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of the transfer. Lender may also require the transferee to sign an Assumption Agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender has entered into a written Assumption Agreement with transferee and formally releases Borrower.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

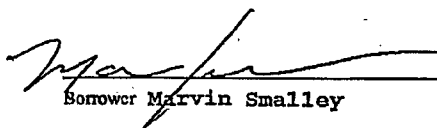


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LOAN #:

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider. Borrower agrees to execute any document necessary to reform this Agreement to accurately reflect the terms of the Agreement between Borrower and Beneficiary or if the original Note, Trust Deed or other document is lost, mutilated or destroyed.

 11/30/05
Borrower Marvin Smalley Date

Borrower Date

Borrower Date

Borrower Date

Borrower Date

Borrower Date

Borrower Date

Borrower Date

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RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



FILED

December 2, 2005

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Charlie Lybrand, Register
Charleston County, SC

Filed By:

King & Knobloch, P.C.

Attorneys at Law

735 Johnnie Dodds Blvd.

Mt. Pleasant

SC 29464

DESCRIPTION

AMOUNT

	\$ 31.00
Postage	

TOTAL

\$ 31.00

DRAWER:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Charleston County
Mikell Scarborough
Master-in-Equity

Circuit Court Case Number 2011-CP-10-2505

Wells Fargo Bank, N.A., as Trustee for WaMu Mortgage Pass-Through
Certificates Series 2006-PR I Trust

Respondent,

versus

Marvin Smalley, Bay Club Homes Property Owners Association, Inc.

Defendants,

Of Whom

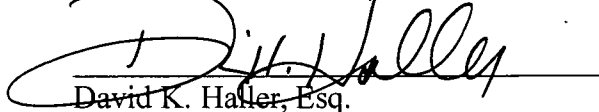
Marvin Smalley is

Appellant.

NOTICE OF APPEAL

Appellant Marvin Smalley appeals the Master In Equity's Order and Judgment of Foreclosure and Sale dated December 27, 2012 and Order denying Defendant's Motion to Alter or Amend Order of Foreclosure dated September 5, 2013.

HALLER LAW FIRM, P.C.



David K. Haller, Esq.

115 River Landing Drive, Suite 102

Charleston, SC 29492

843-849-1384

dhaller@hallerlawfirm.com

Attorney for the Appellant

This 1st day of October, 2013

Charleston, South Carolina

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SC Court of Appeals

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CERTIFICATION

I certify that the forgoing Record on Appeal contains such matter as designated by the parties and no other material.

HALLER LAW FIRM, P.C.

A handwritten signature in black ink, appearing to read 'D. K. Haller', written over a horizontal line.

David K. Haller

Haller Law Firm, PC

115 River Landing Drive, Suite 102

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Tel: (843) 849-1384

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ATTORNEY FOR APPELLANT

Charleston, South Carolina

April 21, 2014

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Charleston County
Mikell Scarborough
Master-in-Equity

Circuit Court Case Number 2011-CP-10-2505

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SC Court of Appeals

Wells Fargo Bank, N.A., as Trustee for WaMu Mortgage Pass-Through
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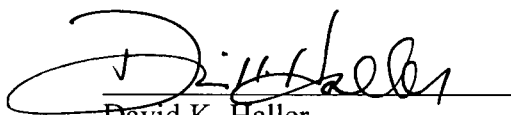
Of Whom

Marvin Smalley is

Appellant.

Proof of Service

I certify that I served the Record on Appeal and Final Brief of Appellant on counsel for
the respondent at the address below.



David K. Haller
HALLER LAW FIRM, P.C.
115 River Landing Drive, Suite 102
Charleston, SC 29492
Attorney for the Appellant

Counsel Served:
Michael Anzelmo, Esq.
Nelson Mullins, Riley, & Scarborough, LLP
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Columbia, SC 29211
Attorney for the Respondent